

# Federal Register

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



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**WHAT IT IS AND HOW TO USE IT**

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

**WHO:** Sponsored by 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.

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**WASHINGTON, DC**

[Two Sessions]

**WHEN:** February 6, 1996 at 9:00 am and February 21, 1996 at 9:00 am

**WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street, NW., Washington, DC (3 blocks north of Union Station Metro)

**RESERVATIONS:** 202-523-4538



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**Reader Aids**

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

**New Feature in the Reader Aids!**

Beginning with the issue of December 4, 1995, a new listing will appear each day in the Reader Aids section of the Federal Register called "Reminders". The Reminders will have two sections: "Rules Going Into Effect Today" and "Comments Due Next Week". Rules Going Into Effect Today will remind readers about Rules documents published in the past which go into effect "today". Comments Due Next Week will remind readers about impending closing dates for comments on Proposed Rules documents published in past issues. Only those documents published in the Rules and Proposed Rules sections of the Federal Register will be eligible for inclusion in the Reminders.

The Reminders feature is intended as a reader aid only. Neither inclusion nor exclusion in the listing has any legal significance.



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The Office of the Federal Register has been compiling data for the Reminders since the issue of November 1, 1995. No documents published prior to November 1, 1995 will be listed in Reminders.

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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

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Friday, January 26, 1996

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

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 95-089-1]

#### Mexican Fruit Fly Regulations; Addition of Regulated Areas

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

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Mexican fruit fly regulations by adding California to the list of quarantined States and by designating portions of Los Angeles County and San Diego County, CA, as regulated areas. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. This action restricts the interstate movement of regulated articles from the regulated areas in California.

**DATES:** Interim rule effective January 22, 1996. Consideration will be given only to comments received on or before March 26, 1996.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 95-089-1, 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. 95-089-1. 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 to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruits. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64-10 and referred to below as the regulations) were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas. Prior to the effective date of this rule, Texas was the only State quarantined for the Mexican fruit fly.

Section 301.64-3 provides that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Plant Protection and Quarantine (PPQ) shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs. Less than an entire quarantined State is designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of the regulated articles that are substantially the same as those with respect to the interstate movement of the articles; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies

and by inspectors of PPQ reveal that portions of Los Angeles County and San Diego County, CA, are infested with the Mexican fruit fly. Specifically, on October 26, 1995, inspectors found one male Mexican fruit fly in a trap in a residential area of Los Angeles County; and, on November 14, 1995, inspectors discovered four Mexican fruit flies in traps set at three separate locations between 1/2 to 1 mile from the site of the October 26th detection. Two of these flies were mated females, indicating that an infestation exists. In San Diego County, inspectors found six Mexican fruit flies between November 29, 1995, and December 4, 1995. The Mexican fruit fly is not known to occur anywhere else in the continental United States, except parts of Texas.

Accordingly, to prevent the spread of the Mexican fruit fly to other States, we are amending the regulations in § 301.64(a) by designating California as a quarantined State and in § 301.64-39(c) by designating as regulated areas portions of Los Angeles County and San Diego County, CA. The regulated areas are described in the rule portion of this document.

There does not appear to be any reason to designate any other portions of the quarantined State of California as a regulated area. Officials of State agencies of California have begun an intensive Mexican fruit fly eradication program in the regulated areas in California. Also, California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of certain articles from the regulated areas that are substantially the same as those with respect to the interstate movement of regulated articles.

#### Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mexican fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication

of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule restricts the interstate movement of regulated articles from portions of Los Angeles County and San Diego County, CA. Within the regulated areas there are approximately 931 small entities that may be affected by this rule. These include 579 fruit sellers, 259 distributors, 51 nurseries, 30 swap meets, 5 growers, 4 food banks, 2 community gardens, and 1 processor. These 931 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for the Mexican fruit fly program. The assessment provides a basis for the conclusion that the methods employed to eradicate the Mexican fruit fly will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection 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 to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

#### Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 301

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

Accordingly, 7 CFR part 301 is 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 2.22, 2.80, and 371.2(c).

#### **§ 301.64 [Amended]**

2. In § 301.64, paragraph (a) is amended by removing the phrase “the State of Texas” and adding “the States of California and Texas” in its place.

3. In § 301.64–3, paragraph (c) is amended by adding an entry for “California” and the description of the regulated areas for Los Angeles County and San Diego County, CA, to read as follows:

#### **§ 301.64–3 Regulated areas.**

\* \* \* \* \*  
(c) \* \* \*

#### California

*Los Angeles County.* That portion of Los Angeles County in the City Terrace area bounded by a line drawn as follows: Beginning at the intersection of U.S. Highway 101 and State Highway 110; then northeast along State Highway 110 to Via Marisol; then east along Via Marisol to Monterey Road; then south along Monterey Road to Huntington Drive; then east along Huntington Drive to Poplar Boulevard; then east along Poplar Boulevard to Fremont Avenue; then south along Fremont Avenue to Mission Road; then northeast along Mission Road to Atlantic Boulevard; then south along Atlantic Boulevard to Interstate Highway 10; then east along Interstate Highway 10 to Alhambra Avenue; then south along Alhambra Avenue to Graves Avenue; then east along Graves Avenue to Del Mar Avenue; then south along Del Mar Avenue to Hill Drive; then southeast along Hill Drive to Paramount Boulevard; then southwest along Paramount Boulevard to Montebello Boulevard; then southwest along Montebello Boulevard to Montebello Way; then west along Montebello Way to Greenwood Avenue; then southwest along Greenwood Avenue to Gage Avenue; then west along Gage Avenue to Garfield Avenue; then southwest along Garfield Avenue to Florence Avenue; then west along Florence Avenue to Alameda Street; then north along Alameda Street to Vernon Avenue; then west along Vernon Avenue to Central Avenue; then north along Central Avenue to Interstate Highway 10; then northwest along Interstate Highway 10 to Broadway; then northeast along Broadway to U.S. Highway 101; then northwest along U.S. Highway 101 to the point of beginning.

*San Diego County.* That portion of San Diego County in the National City area bounded by a line drawn as follows: Beginning at the intersection of State Highway 15 and State Highway 94; then northeast along State Highway 94 to Federal Boulevard; then northeast

along Federal Boulevard to San Miguel Avenue; then east along San Miguel Avenue to Massachusetts Avenue; then south along Massachusetts Avenue to Canton Drive; then southeast along Canton Drive to Skyline Drive; then south along Skyline Drive to Jamacha Road; then east along Jamacha Road to County Highway S17; then south and southwest along County Highway S17 to Otay Lakes Road; then southeast along Otay Lakes Road to H Street; then southwest along H Street to Paseo Del Rey; then south along Paseo Del Rey to Telegraph Canyon Road; then northwest along Telegraph Canyon Road to Oleander Avenue; then south along Oleander Avenue to East Naples Street; then west along East Naples Street to Naples Street; then west along Naples Street to Industrial Boulevard; then north along Industrial Boulevard to L Street; then west along L Street to Interstate Highway 5; then north along Interstate Highway 5 to Harbor Drive; then northwest along Harbor Drive to 32nd Street; then north along 32nd Street to Wabash Boulevard; then northeast along Wabash Boulevard to State Highway 15; then north along State Highway 15 to the point of beginning.

\* \* \* \* \*

Done in Washington, DC, this 22nd day of January 1996.

Terry L. Medley,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 96-1414 Filed 1-25-96; 8:45 am]

BILLING CODE 3410-34-P

## Agricultural Marketing Service

### 7 CFR Part 999

[FV95-999-1FIR]

#### Specialty Crops; Import Regulations—Exemption of Brine Dried Prunes From Import Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which exempted brine dried prunes from import requirements by specifying that brine dried prunes do not fall within the definition of prunes in the import regulation. This rule is implemented in accordance with section 8e of the Agricultural Marketing Agreement Act of 1937. Section 8e requires imports of prunes to meet the same or comparable requirements as

those implemented under Federal Marketing Order No. 993, regulating the handling of dried prunes produced in California. The Department has determined that brine dried prunes are different from those normally handled by California prune handlers and that such prunes shall not be subjected to Section 8e import requirements.

**EFFECTIVE DATE:** February 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: 202-205-2829.

**SUPPLEMENTARY INFORMATION:** This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (Act). Section 8e provides that whenever certain specified commodities, including prunes, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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

Import regulations issued under section 8e of the Act are based on regulations established under Federal marketing orders for fresh fruits, vegetables, and specialty crops, like

prunes. Thus, import regulations also have small entity orientation and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are approximately 10 importers who may be affected by this final rule. Small agricultural service firms, which include importers of dried prunes, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000. A majority of the importers may be classified as small entities.

Prior to publication of the interim final rule in the Federal Register on November 24, 1995 (60 FR 57910), sulfur-bleached prunes, commonly known as silver prunes, and high moisture plums were exempt from import requirements. The interim final rule added brine dried prunes as an additional exemption under the import regulation. This rule finalizes that interim final rule.

Brine dried prunes are different in form and character from those prunes regulated under the order, and were never intended to be subject to section 8e import requirements. Therefore, it is appropriate that they be exempt from the dried prune import regulation specified in § 999.200. Brine dried prunes are imported under International Harmonized Tariff Schedule No. 0813.20.1000. All prunes now regulated under the order are imported under Harmonized Tariff Schedule No. 0813.20.2000.

To exempt brine dried prunes from import regulation requirements, the definition of "prunes" in paragraph (a)(1) of § 999.200, was amended to add brine dried prunes as an exclusion from that definition. Brine dried prunes are defined as prunes that have been impregnated with brine or salt during the dehydration process to the extent that they have lost their form and character as prunes and cannot be reconstituted to permit economic use of the individual fruits as prunes.

The change to the import regulation was published in the Federal Register as an interim final rule on November 24, 1995 (60 FR 57910). That rule provided that interested persons could file comments through December 26, 1995. No comments were received.

In accordance with section 8e of the Act, the United States Trade Representative (USTR) has concurred with the issuance of this rule.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic

impact on a substantial number of small entities.

The information collection requirements contained in the referenced section have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581-0099.

After consideration of all relevant matters presented, it is hereby found that the issuance of this rule will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 999 is amended to read as follows:

#### **PART 999—SPECIALTY CROPS; IMPORT REGULATIONS**

Accordingly, the interim final rule amending 7 CFR Part 999 which was published at 60 FR 57910 on November 24, 1995, is adopted as a final rule without change.

Dated: January 22, 1996.

Sharon Bomer Lauritsen,  
Deputy Director, Fruit and Vegetable Division.  
[FR Doc. 96-1296 Filed 1-25-96; 8:45 am]  
BILLING CODE 3410-02-P

### **SMALL BUSINESS ADMINISTRATION**

#### **13 CFR Parts 101, 133, and 135**

#### **Administration, Index to Approved SBA Reporting and Recordkeeping Requirements, and Intergovernmental Review of Small Business Administration Programs and Activities**

**AGENCY:** Small Business Administration.  
**ACTION:** Final rule.

**SUMMARY:** In response to President Clinton's government-wide regulatory reform directive, the Small Business Administration completed a page-by-page and line-by-line review of all of its existing regulations. As a result, SBA now clarifies and streamlines its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This rule reorganizes all of present Parts 101, 133, and 135 and consolidates them into one new rule. As part of this streamlining process large portions of present Part 101 have been removed from the regulations and will be published in the

Federal Register. Present Parts 133 and 135 are revised, updated and consolidated with Part 101. Finally, the remaining sections are rewritten into a straightforward "plain English" style of writing.

**EFFECTIVE DATE:** This rule is effective February 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Cheri C. Wolff, Chief Counsel for General Litigation; Office of General Counsel, at (202) 205-6643.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton issued a Memorandum to Federal agencies directing them to simplify their regulations and eliminate those that are unnecessary. In response to this directive SBA completed a page-by-page, line-by-line review of all of its existing regulations to determine which should be revised or eliminated. This rule revises, amends, reorganizes, and consolidates all of present 13 CFR Parts 101, 133, and 135. This new consolidated rule reorganizes Part 101 into four subparts and renumbers all remaining sections to reflect this new configuration.

Proposed changes to Parts 101, 133, and 135 were published in the Federal Register on November 24, 1995 (60 FR 57965). The public was invited to comment during a thirty day comment period. SBA received no comments concerning this part during that time period. Therefore, the following final rule contains no changes to the proposed rule, except minor typographical ones.

For a detailed description of the changes to each subpart and the new organization of Part 101, please refer to SBA's proposed rules, published at 60 FR 57965 (November 24, 1995).

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. 35)

SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This rule consolidates three Parts of SBA's current regulations, moves substantial amounts of general organizational information from SBA's regulations to other sources, and rewrites the remaining provisions into plain English. Contracting opportunities and financial assistance for small business will not be affected by this rule. Therefore, it is not likely to have an annual economic effect of \$100 million or more, result in a

major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. 35, SBA certifies that this final rule contains no new reporting or record keeping requirements. For purposes of Executive Order 12612, SBA certifies that this rule will not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

#### List of Subjects

##### *13 CFR Part 101*

Administrative practice and procedure; Authority delegations (Government agencies); Investigations; Organization and functions (Government agencies); Reporting and recordkeeping requirements.

##### *13 CFR Part 133*

Reporting and recordkeeping requirements.

##### *13 CFR Part 135*

Intergovernmental relations.

For the reasons set forth above, and under the authority of 15 U.S.C. 634(b)(6), SBA hereby amends 13 CFR Chapter I as follows:

1. Part 101 is revised to read as follows:

#### **PART 101—ADMINISTRATION**

##### **Subpart A—Overview**

- 101.100 What is the purpose of SBA?
- 101.101 Who manages SBA?
- 101.102 Where is SBA's Headquarters located?
- 101.103 Where are SBA's field offices located?
- 101.104 What are the functions of SBA's field offices?
- 101.105 Who may use SBA's official seal and for what purposes?
- 101.106 Does Federal law apply to SBA programs and activities?
- 101.107 What SBA forms are authorized for public use?
- 101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?
- 101.109 Do SBA regulations include the section headings?

##### **Subpart B—Employment of Private Counsel**

- 101.200 When does SBA hire private counsel?
- 101.201 What are the minimum terms of private counsel's employment?

**Subpart C—Inspector General**

- 101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?
- 101.301 Who should receive information or allegations of waste, fraud, and abuse?
- 101.302 What is the scope of the Inspector General's authority?
- 101.303 How are Inspector General subpoenas served?

**Subpart D—Intergovernmental Partnership**

- 101.400 What is the purpose of this subpart?
- 101.401 What programs and activities of SBA are subject to this subpart?
- 101.402 What procedures apply to the selection of SBA programs and activities?
- 101.403 What are the notice and comment procedures?
- 101.404 How does the Administrator receive comments?
- 101.405 How does the Administrator respond to comments?
- 101.406 What are the Administrator's responsibilities in interstate situations?
- 101.407 May the Administrator waive these regulations?

Authority: 5 U.S.C. 552 and App. 3, secs. 2, 4(a), 6(a), and 9(a)(1)(T); 15 U.S.C. 633, 634, 687; 31 U.S.C. 6506; 44 U.S.C. 3512; E.O. 12372 (July 14, 1982), 47 FR 30959, 3 CFR, 1982 Comp., p. 197, as amended by E.O. 12416 (April 8, 1983), 48 FR 15887, 3 CFR, 1983 Comp., p. 186.

**Subpart A—Overview****§ 101.100 What is the purpose of SBA?**

The U.S. Small Business Administration (SBA) aids, counsels, assists, and protects the interests of small business concerns, and advocates on their behalf within the Government. It also helps victims of disasters. It provides financial assistance, contractual assistance, and business development assistance. For a more detailed description of the functions of SBA see The United States Government Manual, a special publication of the Federal Register, which is available from Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954.

**§ 101.101 Who manages SBA?**

(a) An Administrator, appointed by the President with the advice and consent of the Senate, manages SBA. The Administrator—

- (1) Is responsible to the President and Congress for exercising direction, authority, and control over SBA.
- (2) Determines and approves all policies covering SBA's programs to aid, counsel, assist, and protect the interests of the nation's small businesses.
- (3) Employs or appoints employees necessary to implement the Small Business Act, as amended, the Small

Business Investment Act, as amended, and other laws and directives.

(4) Delegates certain activities, by issuing regulations or otherwise, to Headquarters and field positions.

(b) A Deputy Administrator, appointed by the President with the advice and consent of the Senate, serves as Acting Administrator during the absence or disability of the Administrator or in the event of a vacancy in the Office of the Administrator.

**§ 101.102 Where is SBA's Headquarters located?**

The Headquarters of SBA is at 409 3rd Street, S.W., Washington, D.C. 20416.

**§ 101.103 Where are SBA field offices located?**

A list of SBA's field offices with addresses, phone numbers and jurisdictions served is periodically published in the Federal Register. You can also obtain the address and phone number of an SBA office to serve you by calling 1-800-8-ASK-SBA or 1-800-827-5722.

**§ 101.104 What are the functions of SBA field offices?**

(a) *Regional offices.* Regional offices are managed by a Regional Administrator who is responsible to the Administrator and to the Associate Administrator for Field Operations. They are located in major cities and have geographical boundaries which cover multi-state areas. Regional offices exercise limited authority over field activities within their region.

(b) *District offices.* District offices are managed by a District Director and are located in cities within a region. District offices are responsible to Headquarters, the Associate Administrator for Field Operations, and to a regional office. Within their delegated authority, district offices have authority for—

- (1) Conducting all program delivery activities within the district boundaries;
- (2) Supervising all branch offices located within the district boundaries; and
- (3) Providing subordinate branch offices with the technical capability necessary to execute assigned programs.

(c) *Branch offices.* Branch offices are managed by a Branch Manager and are located in cities within a district. Branch offices are responsible to the district office within whose boundaries it is located. Branch offices execute one or more elements of the business or disaster loan programs and have limited authority for program execution.

(d) *Disaster area offices.* Disaster area offices are managed by Area Directors and are located in cities within defined

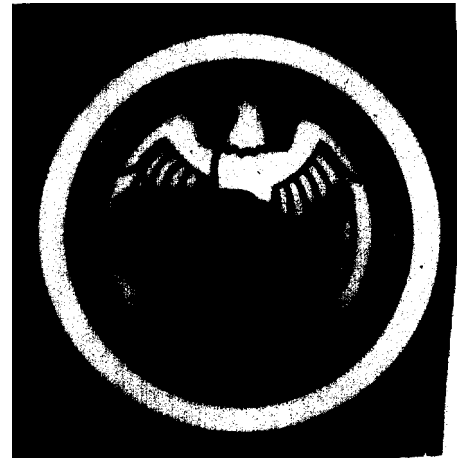
geographical areas. Disaster area offices are responsible to Headquarters and provide loan services to victims of declared disasters. Temporary disaster offices are often established in areas where disasters have occurred.

(e) *Responsibilities.* Each field office has responsibilities within a defined geographical area as periodically set forth in the Federal Register.

**§ 101.105 Who may use SBA's official seal and for what purposes?**

(a) The SBA's seal shall be in a manner and form set forth as follows:

BILLING CODE 8025-01-P



BILLING CODE 8025-01-C

(b) The Administrator, Deputy Administrator, General Counsel, Assistant Administrator for Administration, Assistant Administrator for Hearings and Appeals, Associate Administrator for Minority Enterprise Development, Regional Administrators, District Directors, Branch Managers, the Inspector General, and Disaster Area Directors are authorized to—

- (1) Certify and authenticate originals and copies of any books, records, papers, or other documents on file within SBA, or extracts taken from them.
- (2) Certify the nonexistence of records.
- (3) Affix the Seal of SBA to all such certifications for those purposes authorized by 28 U.S.C. 1733.

**§ 101.106 Does Federal law apply to SBA programs and activities?**

(a) SBA makes loans and provides other services that are authorized and executed under Federal programs to achieve national purposes.

(b) The following are construed and enforced in accordance with Federal law—

- (1) Instruments evidencing loans;
- (2) Security interests in real or personal property payable to or held by SBA or the Administrator such as

promissory notes, bonds, guarantee agreements, mortgages, and deeds of trust;

(3) Other evidences of debt or security;

(4) Contracts or agreements to which SBA is a party, unless expressly provided otherwise.

(c) To the extent feasible, SBA uses local or state procedures, especially for recordation and notification purposes, in implementing and facilitating SBA's loan programs. This use of local or state procedures is not a waiver by SBA of any Federal immunity from any local or state control, penalty, tax, or liability.

(d) No person, corporation, or organization that applies for and receives any benefit or assistance from SBA, or that offers any assurance or security upon which SBA relies for the granting of such benefit or assistance, is entitled to claim or assert any local or state law to defeat the obligation incurred in obtaining or assuring such Federal benefit or assistance.

**§ 101.107 What SBA forms are approved for public use?**

(a) SBA uses forms approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), as amended. You may obtain approved forms for use by the public when applying for or obtaining SBA assistance, or when providing services for SBA, from any field office (see § 101.103). You may also use forms which you have prepared yourself, or have obtained from another source, if those forms are identical in every respect to the forms approved by OMB for the same purpose.

(b) Any member of the public who has reason to believe any SBA office or agent is in violation of the Public Protection Clause of the Paperwork Reduction Act (44 U.S.C. 3512 and see 5 CFR 1320.6) should notify SBA. Direct such comments to the Assistant Administrator for Administration at 409 3rd Street, S.W., Washington, DC 20416.

**§ 101.108 Has SBA waived any of the public participation exemptions of the Administrative Procedure Act?**

Yes. Despite these exemptions, SBA will follow the public participation requirements of the Administrative Procedure Act, 5 U.S.C. 553, in rulemakings relating to public property, loans, grants, benefits, or contracts.

**§ 101.109 Do SBA regulations include the section headings?**

Yes. All SBA regulations must be interpreted as including the section headings.

**Subpart B—Employment of Private Counsel**

**§ 101.200 When does SBA hire private counsel?**

(a) *Business loans.* SBA may hire private counsel to represent it in regard to business loans when the volume of activity in an area is not sufficient to require a full-time SBA employee, or the area is too remote for economical use of a full-time SBA employee.

(b) *Disaster loans.* SBA may hire private counsel in regard to disaster loans when the disaster presents an emergency and a volume of activity that cannot be promptly and economically serviced by available SBA employees.

**§ 101.201 What are the minimum terms of private counsel's employment?**

(a) Private counsel must perform all requested work in compliance with SBA's regulations, policies, and instructions, and take such action as is legally required under the Small Business Act, the Small Business Investment Act, and other laws applicable to SBA.

(b) Private counsel must adhere to the highest standards of professional conduct and maintain confidentiality appropriate to the attorney-client relationship.

(c) Private counsel acts under the supervision of the SBA General Counsel (and designees).

(d) Private counsel usually is compensated at an hourly rate as approved by SBA. Contingency fee agreements may be used if approved by the General Counsel.

(e) Either party may terminate the employment upon written notice.

**Subpart C—Inspector General**

**§ 101.300 What is the Inspector General's authority to conduct audits, investigations, and inspections?**

The Inspector General Act of 1978, as amended (5 U.S.C. App. 3) authorizes SBA's Inspector General to provide policy direction for, and to conduct, supervise, and coordinate such audits, investigations, and inspections relating to the programs and operations of SBA as appears necessary or desirable.

**§ 101.301 Who should receive information or allegations of waste, fraud and abuse?**

The Office of Inspector General should receive all information or allegations of waste, fraud, or abuse regarding SBA programs and operations.

**§ 101.302 What is the scope of the Inspector General's authority?**

To obtain the necessary information and evidence, the Inspector General (and designees) have the right to:

(a) Have access to all records, reports, audits, reviews, documents, papers, recommendations, and other materials available to SBA and relating to SBA's programs and operations;

(b) Require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence;

(c) Administer oaths and affirmations or take affidavits; and

(d) Request information or assistance from any Federal, state, or local government agency or unit.

**§ 101.303 How are Inspector General subpoenas served?**

(a) Service of subpoenas may be effected by any of the following means—

(1) If by mail, a copy of the subpoena must be addressed to the person, partnership, corporation, or unincorporated association to be served at a residence or usual dwelling place, or a principal office or place of business, and mailed first class by registered or certified mail (postage prepaid, return receipt requested), or by a commercial or U.S. Postal Service overnight or express delivery service.

(2) If by personal delivery, a copy of the subpoena must be delivered to the person to be served, or to a member of the partnership to be served, or to an executive officer or a director of the corporation or unincorporated association to be served, or to a person authorized by appointment or by law to receive process for the person or entity named in the subpoena.

(3) If by delivery to an address, a copy of the subpoena must be left at the principal office or place of business of the person, partnership, corporation, or unincorporated association to be served, or at the residence or usual dwelling place of the person, member of the partnership, or officer or director of the corporation or unincorporated association to be served, with someone of suitable age and discretion.

(b) Proof of service—

(1) When service is by registered, certified, overnight, or express mail, it is complete upon delivery of the document by the Postal Service or commercial service.

(2) The return Postal Service receipt for a document that was registered or certified and mailed, the signed receipt for a document delivered by an overnight or express delivery service, or the Return of Service completed by the individual serving the subpoena by personal delivery shall be proof of service.



## Subpart D—Intergovernmental Partnership

### § 101.400 What is the purpose of this subpart?

(a) This subpart implements section 401 of the Intergovernmental Cooperation Act (31 U.S.C. 6506 *et seq.*) which promotes intergovernmental partnership and strengthens Federalism by relying on state processes and state, area-wide, regional, and local coordination for the review of proposed Federal financial assistance and direct Federal development.

(b) While guiding SBA's management, this subpart does not create any right or benefit enforceable at law.

### § 101.401 What programs and activities of SBA are subject to this subpart?

SBA publishes in the Federal Register a list of programs and activities subject to this subpart.

### § 101.402 What procedures apply to the selection of SBA programs and activities?

(a) A state may—

(1) Select any program or activity published in the Federal Register under § 101.401 for intergovernmental review (providing it consults with local elected officials before doing so) and then notify the Administrator of the programs and activities selected; and

(2) Notify the Administrator of changes in its selections at any time. For each change, the state submits to the Administrator an assurance that it consulted with local elected officials regarding the change.

(b) SBA may establish deadlines by which states must inform the Administrator of changes in their program selections.

(c) After receiving notice of a state's selections, the Administrator uses a state's process as soon as feasible depending on individual programs and activities.

(d) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

### § 101.403 What are the notice and comment procedures?

(a) The Administrator provides notice to directly affected state, area-wide, regional, and local entities in a state of proposed SBA financial assistance or direct SBA development if—

(1) The state has not adopted a process under Executive Order 12372 (3 CFR, 1982 Comp., p. 197), as amended by Executive Order 12416 (3 CFR, 1983 Comp., p. 186); or

(2) The assistance or development involves a program or activity not selected for the state process.

(b) Notice may be made by publication in the Federal Register or other means as SBA deems appropriate.

(c) Except in unusual circumstances the Administrator gives state processes or directly affected state, area-wide, regional, and local officials and entities at least 60 days to comment on proposed SBA financial assistance or direct SBA development.

(d) In cases where SBA delegates the review, coordination, and communication authority under this subpart, this section also applies.

### § 101.404 How does the Administrator receive comments?

(a) The Administrator follows the procedures of § 101.405 if—

(1) A state office or official is designated to act as a single point of contact between a state process and all Federal agencies; and

(2) That office or official transmits a state process recommendation for a program selected under § 101.402(a).

(b)(1) The single point of contact is not obligated to transmit comments from state, area-wide, regional, or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, area-wide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, area-wide, regional, and local officials and entities may submit comments to SBA.

(d) If a program or activity is not selected for a state process, state, area-wide, regional, and local officials and entities may submit comments to SBA. In addition, if a state process recommendation for a non-selected program or activity is transmitted to SBA by the single point of contact, the Administrator follows the procedures of § 101.405.

(e) The Administrator considers comments which do not constitute a state process recommendation submitted under this subpart and for which the Administrator is not required to apply the procedures of § 101.405 when such comments are provided by a single point of contact directly to SBA by a commenting party.

### § 101.405 How does the Administrator respond to comments?

(a) If a state process provides a recommendation to SBA through its

single point of contact, the Administrator:

(1) Accepts the recommendation; or

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the decision in a form the Administrator deems appropriate. The Administrator may also supplement the written explanation by telephone or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that—

(1) SBA will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) Because of unusual circumstances the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing.

### § 101.406 What are the Administrator's responsibilities in interstate situations?

The Administrator is responsible for—

(a) Identifying proposed SBA financial assistance and direct SBA development that have an impact on interstate areas;

(b) Notifying appropriate officials and entities in states which have adopted a process and selected an SBA program or activity;

(c) Making efforts to identify and notify the affected state, area-wide, regional, and local officials and entities in states that have not adopted a process or selected an SBA program or activity;

(d) Using the procedures of § 101.405 if a recommendation of a designated area-wide agency is transmitted by a single point of contact in cases in which the review, coordination, and communication with SBA has been delegated; and

(e) Using the procedures of § 101.405 if a state process provides a state recommendation to SBA through a single point of contact.

### § 101.407 May the Administrator waive these regulations?

The Administrator may waive any provision of §§ 101.400 through and including 101.406 in an emergency.

## PARTS 133 AND 135—[REMOVED]

2. Parts 133 and 135 are removed.

Dated: January 19, 1996.  
 Philip Lader,  
*Administrator.*  
 [FR Doc. 96-1163 Filed 1-25-96; 8:45 am]  
 BILLING CODE 8025-01-P

### 13 CFR Part 105

#### Standards of Conduct and Other Employee Responsibilities

**AGENCY:** Small Business Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) amends its regulations governing employee standards of conduct. This amendment repeals provisions that are superseded by the Office of Government Ethics (OGE) Uniform Standards of Conduct for Employees of the Executive Branch (5 CFR Part 2635); amends one provision by adding the Associate General Counsel for General Law as an Assistant Standards of Conduct Counselor; and renumbers the remaining provisions with several minor technical amendments.

**EFFECTIVE DATE:** This rule is effective February 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robinson S. Nunn, Chief Counsel for Ethics, Office of the General Counsel, U.S. Small Business Administration, 409 Third Street SW., Washington, D.C. 20416, (202) 205-6867, or Martin D. Teckler, Deputy General Counsel (202) 205-6642.

**SUPPLEMENTARY INFORMATION:** The Small Business Administration repeals numerous provisions of its existing standards of conduct regulations at 13 CFR Part 105 as either superseded by the Office of Government Ethics' (OGE) Uniform Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635), eliminated by other regulatory authority, or determined to be inappropriate for continued inclusion in this part. SBA repeals the following sections of 13 CFR Part 105: 105.101 through 105.301; 105.401; 105.402; 105.405; 105.406 through 105.408; 105.501 through 105.505; 105.506 except paragraph (g)(1); 105.507 through 105.515; 105.518 through 105.521 and 105.901. The remaining provisions of 13 CFR Part 105 are renumbered and renamed "Standards of Conduct and Employee Restrictions and Responsibilities."

In place of SBA's former standards at 13 CFR Part 105, SBA issues a residual cross reference provision at new 13 CFR section 105.101 to refer to the uniform Standards of Conduct and financial disclosure regulations for Executive

Branch employees and SBA's Supplemental Standards of Conduct regulation. Additionally, SBA reissues, in the new 13 CFR Part 105, several provisions regarding other employee responsibilities.

Proposed changes to Part 105 were published in the Federal Register on November 27, 1995 (60 FR 58260). The public was invited to comment during a thirty day comment period. SBA received seven comments (all of which concerned post-employment restrictions) during that time period. SBA discusses the comments and SBA's response here.

Section 105.201, "Definitions": This section provides definitions unique to SBA which are applicable throughout Part 105. The definition of "SBA Assistance" (§ 105.201(e)) was proposed to be amended to include all participating lenders, including banks, as recipients of SBA Assistance. This proposal generated several comments, which noted that SBA employees with specialized knowledge losing jobs due to downsizing would now be precluded from employment with participating lenders, and that such employment is often the only means available to such employees to maintain a customary standard of living and make use of education and skills. SBA employees commented that the SBA would be unable to attract private sector employees to the SBA if they believe that they will be unmarketable when they leave the government. In addition, participants in SBA's financial programs commented that the interpretation would deny them a qualified universe of potential employees to the detriment of the delivery of SBA's programs.

As a result of these comments, and those relative to the other sections contained in the proposal (discussed below), SBA has determined that revision of the definition will be deferred. This final rule therefore merely restates the existing definition of SBA Assistance, and does not adopt the proposed change, pending further review.

SBA also received three comments concerning Section 105.202, "Employment of Former Employee by Person Previously the Recipient of SBA Assistance". This section, the first of two sections providing restrictions relating to former SBA employees, was not changed by the proposed rule, although the preamble to this section did not make that fact completely clear. All of the comments were directed at the effect on § 105.202 of the addition of participating lenders as recipients of SBA Assistance to the definition section of section 105.201(e).

All three commenters were concerned that agency employees losing their employment as a result of an involuntary separation or those otherwise seeking post-SBA employment would be unfairly denied employment best suited for their specialized knowledge and education and would be unable to maintain their lifestyles and support their families by virtue of section 105.202. One of the commenters also argued that 105.202 should not apply to Certified Development Companies (CDC's), because they are not business enterprises receiving loans from the agency and should therefore be exempt from this rule.

As set forth above, the proposed rule made no change to section 105.202 which is based upon section 13 of the Small Business Act. To the extent all of these comments were directed at the addition of participating lenders to the § 105.201 definition of SBA Assistance, that issue is addressed by the withdrawal of the proposal.

The same issue arises in connection with section 105.203 "SBA Assistance to Person Employing Former SBA Employee." This section is based on the same provision of the Small Business Act as section 105.202. It prohibits SBA from providing assistance to any Person who has as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor, or debtor, any individual who, within one year prior to the request for such assistance, was an SBA employee, without the prior approval of the SBA Standards of Conduct Counselor.

Additionally, this section sets forth the criteria to be used in reviewing such applications for SBA Assistance.

SBA received one comment on this section to the effect that this provision unfairly penalizes a business which hires a qualified former SBA employee.

As discussed above, to the extent that the impact of this section was proposed to be altered by adding Participating lenders as recipients of Assistance, the provision is unaffected by this rule. However, it is SBA's intent to revisit both sections 105.202 and 105.203 at a later point keeping in mind the comments received in this rulemaking.

SBA received no other comments on this rule. For a detailed description of the other changes made to this rule, please refer to SBA's proposed rules, published at 60 FR 58260 (November 27, 1995).

Compliance With Executive Orders 12612, 12778 and 12866; the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.; and the Paperwork Reduction Act, 44 U.S.C. ch. 35

SBA certifies that this rule will not be considered a significant rule within the meaning of Executive Order 12866 and does 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.

For purposes of Executive Order 12612, SBA certifies that this rule does not have federalism implications. For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Paperwork Reduction Act, SBA certifies that this rule, if promulgated in final, will impose no new reporting or recordkeeping requirements.

#### List of Subjects in 13 CFR Part 105

Conflict of interests.

For the reasons set forth above, part 105 of title 13, Code of Federal Regulations, is revised to read as follows:

### **PART 105—STANDARDS OF CONDUCT AND EMPLOYEE RESTRICTIONS AND RESPONSIBILITIES**

#### Standards of Conduct

##### Sec.

105.101 Cross reference to employee ethical conduct standards and financial disclosure regulations.

#### Restrictions and Responsibilities Related to SBA Employees and Former Employees

105.201 Definitions.

105.202 Employment of former employee by person previously the recipient of SBA Assistance.

105.203 SBA Assistance to person employing former SBA employee.

105.204 Assistance to SBA employees or members of their household.

105.205 Duty to report irregularities.

105.206 Applicable rules and directions.

105.207 Politically motivated activities with respect to the Minority Small Business Program.

105.208 Penalties.

#### Restrictions on SBA Assistance to Other Individuals

105.301 Assistance to officers or employees of other Government organizations.

105.302 Assistance to employees or members of quasi-Government organizations.

#### Administrative Provisions

105.401 Standards of Conduct Committee.

105.402 Standards of Conduct Counselors.

105.403 Designated Agency Ethics Officials.

Authority: 5 U.S.C. 7301; 15 U.S.C. 634, 637(a)(18) and (a)(19), 642, and 645(a).

#### Standards of Conduct

##### **§ 105.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.**

In addition to this Part, Small Business Administration (SBA) employees should refer to the Uniform Standards of Ethical Conduct for Executive Branch employees at 5 CFR Part 2635, the SBA Supplemental Standards of Ethical Conduct at 5 CFR Chapter XLIV, and the Uniform Financial Disclosure regulation for Executive Branch employees at 5 CFR Part 2634.

#### Restrictions and Responsibilities Related to SBA Employees and Former Employees

##### **§ 105.201 Definitions.**

(a) *Employee* means an officer or employee of the SBA regardless of grade, status or place of employment, including employees on leave with pay or on leave without pay other than those on extended military leave. Unless stated otherwise, Employee shall include those within the category of Special Government Employee.

(b) *Special Government Employee* means an officer or employee of SBA, who is retained, appointed or employed to perform temporary duties on a full-time or intermittent basis, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days.

(c) *Person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(d) *Household member* means spouse and minor children of an employee, all blood relations of the employee and any spouse who resides in the same place of abode with the employee.

(e) *SBA Assistance* means financial, contractual, grant, managerial or other aid, including size determinations, section 8(a) participation, licensing, certification, and other eligibility determinations made by SBA. The term also includes an express decision to compromise or defer possible litigation or other adverse action.

##### **§ 105.202 Employment of former employee by person previously the recipient of SBA Assistance.**

(a) No former employee, who occupied a position involving discretion over, or who exercised discretion with respect to, the granting or

administration of SBA Assistance may occupy a position as employee, partner, agent, attorney or other representative of a concern which has received this SBA Assistance for a period of two years following the date of granting or administering such SBA Assistance if—

(1) The date of granting or administering such SBA Assistance was within the period of the employee's term of employment; or

(2) The date of granting or administering such SBA Assistance was within one year following the termination of such employment.

(b) Failure of a recipient of SBA Assistance to comply with these provisions may result, in the discretion of SBA, in the requirement for immediate repayment of SBA financial Assistance, the immediate termination of other SBA Assistance involved or other appropriate action.

##### **§ 105.203 SBA Assistance to person employing former SBA employee.**

(a) SBA will not provide SBA Assistance to any person who has, as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor or debtor, any individual who, within one year prior to the request for such SBA Assistance was an SBA employee, without the prior approval of the SBA Standards of Conduct Counselor. The Standards of Conduct Counselor will refer matters of a controversial nature to the Standards of Conduct Committee for final decision; otherwise, his or her decision is final.

(b) In reviewing requests for approval, the Standards of Conduct Counselor will consider:

(1) The relationship of the former employee with the applicant concern;

(2) The nature of the SBA Assistance requested;

(3) The position held by the former employee with SBA and its relationship to the SBA Assistance requested; and

(4) Whether an apparent conflict of interest might exist if the SBA Assistance were granted.

##### **§ 105.204 Assistance to SBA employees or members of their household.**

Without the prior written approval of the Standards of Conduct Committee, no SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, shall be furnished to a person when the sole proprietor, partner, officer, director or significant stockholder of the person is an SBA employee or a household member.

##### **§ 105.205 Duty to report irregularities.**

Every employee shall immediately report to the SBA Inspector General any

acts of malfeasance or misfeasance or other irregularities, either actual or suspected, arising in connection with the performance by SBA of any of its official functions.

**§ 105.206 Applicable rules and directions.**

Every employee shall follow all agency rules, regulations, operating procedures, instructions and other proper directions in the performance of his official functions.

**§ 105.207 Politically motivated activities with respect to the Minority Small Business Program.**

(a) Any employee who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to section 8(a) or section 7(j) of the Small Business Act, shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees shall expeditiously report to the SBA Inspector General any such action for which such employee's participation has been solicited or directed.

(b) Any employee who willfully and knowingly violates this section shall be subject to disciplinary action, which may consist of separation from service, reduction in grade, suspension, or reprimand.

(c) This section shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

(d) The prohibitions in and remedial measures provided for under this section with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

**§ 105.208 Penalties.**

Any employee guilty of violating any of the provisions in this Part may be disciplined, including removal or suspension from SBA employment.

**Restrictions on SBA Assistance to Other Individuals**

**§ 105.301 Assistance to officers or employees of other Government organizations.**

(a) SBA must receive a written statement of no objection by the pertinent Department or military service before it gives any SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, to a person when its sole proprietor, partner, officer,

director or stockholder with a 10 percent or more interest, or a household member, is an employee of another Government Department or Agency having a grade of at least GS-13 or its equivalent.

(b) The Standards of Conduct Committee must approve an SBA contract with an entity if a sole proprietor, general partner, officer, director, or stockholder with a 10 or more percent interest (or a household member of such individuals) is an employee of a Government Department or Agency. See also 48 CFR part 35, subpart 3.6.

(c) The Standards of Conduct Committee must approve SBA Assistance, other than disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, to a person if its sole proprietor, general partner, officer, director or stockholder with a 10 percent or more interest (or a household member of such individual) is a member of Congress or an appointed official or employee of the legislative or judicial branch of the Government.

**§ 105.302 Assistance to employees or members of quasi-Government organizations.**

(a) The Standards of Conduct Committee must approve SBA Assistance, other than Disaster loans under subparagraphs (1) and (2) of section 7(b) of the Small Business Act, to a person if its sole proprietor, general partner, officer, director or stockholder with a 10 percent or more interest (or a household member) is a member or employee of a Small Business Advisory Council or is a SCORE volunteer.

(b) In reviewing requests for approval, factors the Standards of Conduct Committee may consider include whether the granting of the SBA Assistance might result in or create the appearance of giving preferential treatment, the loss of complete independence or impartiality, or adversely affect the confidence of the public in the integrity of the Government.

**Administrative Provisions**

**§ 105.401 Standards of Conduct Committee.**

(a) The Standards of Conduct Committee will:

(1) Advise and give direction to SBA management officials concerning the administration of this Part and any other rules, regulations or directives dealing with conflicts of interest and ethical standards of SBA employees; and

(2) Make decisions on specific requests when its approval is required.

(b) The Standards of Conduct Committee will consist of:

(1) The General Counsel or, in his or her absence, the Deputy General Counsel or, in his or her absence, the Acting General Counsel who shall act as Chairman of the Committee;

(2) The Associate Deputy Administrator for Management and Administration, or in his or her absence, the Assistant Administrator for Administration; and

(3) The Director of Human Resources, or in his or her absence, the Deputy Director of Human Resources.

**§ 105.402 Standards of Conduct Counselors.**

(a) The SBA Standards of Conduct Counselor is the Deputy General Counsel. The Associate General Counsel for General Law (AGC) is an Assistant Standards of Conduct Counselor, and other Assistants may be designated by the Standards of Conduct Counselor.

(b) The Standards of Conduct Counselors and Assistants:

(1) Provide general advice, assistance and guidance to employees concerning this Part and the regulations referred to in § 105.101;

(2) Monitor the Standards of Conduct Program within their assigned areas and provide required reports thereon;

(3) Review Confidential Financial Disclosure Reports as required under 5 CFR part 2634, subpart I, and provide an annual report on compliance with filing requirements to the SBA Standards of Conduct Counselor as of February 1 of each year; and

(4) Provide Outside Employment decisions pursuant to 5 CFR 5401.104.

(c) Each employee will be periodically informed of the name, address and telephone number of the Assistant Standards of Conduct Counselor to contact for advice and assistance.

(d) Employee requests for advice or rulings should be directed to the appropriate Standards of Conduct Counselor for appropriate action.

**§ 105.403 Designated Agency Ethics Officials.**

(a) The Designated Agency Ethics Official, pursuant to the Ethics in Government Act of 1978 (5 U.S.C. App.), is the Deputy General Counsel. He or she may, in turn, appoint one or more Alternate Designated Agency Ethics Officials. The Alternates will assist the Designated Agency Ethics Official and act for him or her whenever absent.

(b) The Designated Agency Ethics Official and Alternates administer the program for Financial Disclosure Statements under 5 CFR 2634.201,

receive and evaluate these statements, and provide advice and counsel regarding matters relating to the Ethics in Government Act of 1978 and its implementing regulations. The duties and responsibilities of the Designated Agency Ethics Official and Alternates are set forth in more detail in 5 CFR 2638.203, which is promulgated and amended by the Office of Government Ethics.

Dated: January 19, 1996.

Philip Lader,

Administrator.

[FR Doc. 96-1161 Filed 1-25-96; 8:45 am]

BILLING CODE 8025-01-P

### 13 CFR Part 114

#### Policies of General Application

**AGENCY:** Small Business Administration.  
**ACTION:** Final rule.

**SUMMARY:** In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is clarifying and streamlining its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This final rule reorganizes the entire Part 114 covering administrative claims under the Federal Tort Claims Act to make it clearer and easier to use. It also amends the Part to streamline the review and adjustment of claims and provide for the use of nonbinding alternative dispute resolution in appropriate cases.

**EFFECTIVE DATE:** This rule is effective February 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jeff Lane, Office of General Counsel, at (202) 205-6879.

**SUPPLEMENTARY INFORMATION:** Part 114 of chapter I, 13 CFR contains policies governing the presentment, review and handling of administrative claims brought against the Federal Government for money damages for injuries or death arising from the negligent or wrongful act or omission of any employee of the Small Business Administration. The rule reorganizes the entire Part 114 to make it clearer and easier to use and amends it to create a more efficient administrative process. It eliminates from the process the various boards of survey that now investigate and review claims, and gives District Counsel authority to review and deny claims of \$5,000 or less and use nonbinding alternative dispute resolution in appropriate cases. (Boards of Survey

would retain all other existing responsibilities.)

The proposed rule was published on November 3, 1995, at 60 FR 55808. The SBA received four comments on the proposed rule during the thirty-day comment period. Two comments questioned generally the need for revisions in the existing rule. As indicated, SBA has revised and reorganized the rule to streamline its operation and make it more understandable to employees and others who may be affected by it. One of those two comments supported the proposal to eliminate the boards of survey from the review process, but stated that employees should not enjoy the benefits of the attorney-client privilege. With regard to this latter point, this final rule makes no substantive change in the longstanding SBA policy applying the attorney-client privilege in cases where Government legal representation is authorized for employees. Finally, two commenters suggested changes in section 114.105 that are adopted in the final rule. Section 114.105(b) now makes clear that any alternative dispute resolution mechanisms must be nonbinding, and § 114.105(c) is clarified to state that District Counsel have authority to deny claims under \$5,000, but may only recommend their approval. In addition to this clarification in proposed section 114.105(c) in response to comments, SBA includes in the final rule an administrative change: the recommendation for approval will be made by District Counsel to the General Counsel or designee, not to the Senior Area Counsel.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule involves internal administrative procedures and is not a significant rule within the meaning of Executive Order 12866 and 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. It is not likely to have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

#### List of Subjects in 13 CFR Part 114

##### Claims.

Accordingly, pursuant to the authority set forth in sections 5(b)(1) and (b)(6) of the Small Business Act, 15 U.S.C. 634(b)(1) and (b)(6), 28 U.S.C. 2672, and 28 CFR 14.11 (31 FR 16616), SBA revises part 114 of Title 13, Code of Federal Regulations (CFR), to read as follows:

#### **PART 114—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND REPRESENTATION AND INDEMNIFICATION OF SBA EMPLOYEES**

##### **Subpart A—Administrative Tort Claims**

###### Sec.

- 114.100 Definitions.
- 114.101 What do these regulations cover?
- 114.102 When and where do I present a claim?
- 114.103 Who may file a claim?
- 114.104 What evidence and information may SBA require relating to my claim?
- 114.105 Who investigates and considers my claim?
- 114.106 What if my claim exceeds \$5,000?
- 114.107 What if my claim exceeds \$25,000 or has other special features?
- 114.108 What if my claim is approved?
- 114.109 What if my claim is denied?

##### **Subpart B—Representation and Indemnification of SBA Employees**

- 114.110 What is SBA's policy with respect to indemnifying and providing legal representation to SBA employees?
- 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?

Authority: 15 U.S.C. 634 (b)(1), (b)(6); 28 U.S.C. 2672; 28 CFR 14.11.

##### **Subpart A—Administrative Tort Claims**

###### **§ 114.100 Definitions.**

As used throughout this Part 114, *date of accrual* means the date you know or reasonably should have known of your injury. The date of accrual will depend on the facts of each case. *Site* means the geographic location where the incident giving rise to your claim occurred.

###### **§ 114.101 What do these regulations cover?**

This part applies only to monetary claims you assert under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., for

injury to or loss of property, personal injury, or death arising from the negligent or wrongful act or omission of any SBA employee acting within the scope of his or her employment.

**§ 114.102 When and where do I present a claim?**

You must present your claim within two years of the date of accrual at the SBA District Office nearest to the site and within the same state as the site. You must use an official form obtained from SBA or give other written notice of your claim, stating the specific amount of your alleged damages and providing enough information to enable SBA to investigate your claim. Your claim will be considered presented when SBA receives this information.

**§ 114.103 Who may file a claim?**

(a) If a claim is based on factors listed in the first column, then it may be presented by persons listed in the second column.

Claim factors	Claim presenters
Injury to or loss of property.	The owner of the property, his or her duly authorized agent, or legal representative.
Personal injury .....	The injured person, his or her duly authorized agent, or legal representative.
Death .....	The executor, administrator, or legal representative of the decedent's estate, or any other person entitled to assert the claim under applicable state law.
Loss wholly compensated by an insurer with rights as a subrogee.	The parties individually, as their interests appear, or jointly.

(b) An agent or legal representative may present your claim in your name, but must sign the claim, state his or her title or legal capacity, and include documentation of authority to present the claim on your behalf.

**§ 114.104 What evidence and information may SBA require relating to my claim?**

- (a) For a claim based on injury to or loss of property:
  - (1) Proof you own the property.
  - (2) A specific statement of the damage you claim with respect to each item of property.
  - (3) Itemized receipts for payment for necessary repairs or itemized written estimates of the cost of such repairs.

- (4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.
- (5) Full information about potential insurance coverage and any insurance claims or payments relating to your claim.
- (6) Any other information that may be relevant to the government's alleged liability or the damages you claim.
  - (b) For a claim based on personal injury, including pain and suffering:
    - (1) A written report from your health care provider stating the nature and extent of your injury and treatment, the degree of your temporary or permanent disability, your prognosis, period of hospitalization, and any diminished earning capacity.
    - (2) A written report following a physical, dental or mental examination of you by a physician employed by SBA or another Federal Agency. If you want a copy of this report, you must request it in writing, furnish SBA with the written report of your health care provider, if SBA requests it, and make or agree to make available to SBA any other medical reports relevant to your claim.
    - (3) Itemized bills for medical, dental and hospital expenses you have incurred, or itemized receipts of payment for these expenses.
    - (4) Your health care provider's written statement of the expected expenses related to any necessary future treatment.
    - (5) A statement from your employer showing actual time lost from employment, whether you are a full or part-time employee, and the wages or salary you actually lost.
    - (6) Documentary evidence showing the amount of earnings you actually lost if you are self-employed.
    - (7) Information about the existence of insurance coverage and any insurance claims or payments relating to the claim in question.
    - (8) Any other information that may be relevant to the government's alleged liability or the damages you claim.

- (c) For a claim based on death:
  - (1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.
  - (2) Evidence of decedent's employment or occupation at the time of death, including monthly or yearly salary or earnings, and the duration of such employment or occupation.
  - (3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent upon the decedent for support at the time of his or her death.

(4) Evidence of the support provided by the decedent to each dependent survivor at the time of his or her death.

- (5) A summary of the decedent's general physical and mental condition before death.
  - (6) Itemized bills or receipts for payments for medical and burial expenses.
  - (7) For pain and suffering damage claims, a physician's detailed statement specifying the injuries suffered, the duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.
  - (8) Any other information that may be relevant to the government's alleged liability or the damages claimed.

**§ 114.105 Who investigates and considers my claim?**

- (a) SBA may investigate, or ask another Federal agency to investigate, your claim. SBA also may request any Federal agency to conduct a physical examination of you and provide a report to SBA. SBA will reimburse the Federal agency for the costs of that examination when authorized or required by statute or regulation.
  - (b) In those cases in which SBA investigates your claim, the SBA District Counsel with jurisdiction over the site will conduct an investigation and make recommendations or a determination with respect to your claim. The District Counsel may negotiate with you and is authorized to use alternative dispute resolution mechanisms (nonbinding on SBA) when they may promote the prompt, fair and efficient resolution of your claim.

(c) If your claim is for \$5,000 or less, the District Counsel may deny the claim, or may recommend approval, compromise, or settlement of the claim to the General Counsel or designee, who may take final action. The District Counsel first must refer the claim to SBA's General Counsel or designee for review if SBA should consult with the Department of Justice before approving the claim, as required under § 114.107.

**§ 114.106 What if my claim exceeds \$5,000?**

The District Counsel must review and investigate your claim and forward it with a report and recommendation to the General Counsel or designee, who may approve or deny an award, compromise, or settlement of claims in excess of \$5,000, but not exceeding \$25,000. The General Counsel or designee will handle claims in excess of \$25,000 as required by § 114.107.

**§ 114.107 What if my claim exceeds \$25,000 or has other special features?**

(a) The U.S. Attorney General or designee must approve in writing any award, compromise, or settlement of a claim in excess of \$25,000. For this purpose, a principal claim and any derivative or subrogated claim are considered a single claim.

(b) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever the General Counsel or designee determines:

- (1) The claim involves a new precedent or a new point of law; or
- (2) The claim involves or may involve a question of policy; or
- (3) The United States is or may be entitled to indemnity or contribution from a third party and SBA is unable to adjust the third party claim; or
- (4) Approval of a claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.

(c) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever SBA learns that the United States, or any of its employees, agents, or cost-plus contractors, is involved in litigation based on a claim arising out of the same incident or transaction.

(d) SBA, acting through its General Counsel or designee, must make any referrals to the Department of Justice for approval or consultation by transmitting them in writing to the Assistant Attorney General, Civil Division.

(1) The referral must contain a short and concise statement of the facts and the reason for the request or referral, copies of the relevant portions of the claim file, and SBA's views and recommendations.

(2) SBA may make this referral at any time after a claim is presented.

**§ 114.108 What if my claim is approved?**

SBA will notify you in writing if it approves your claim. The District Counsel will forward to you or your agent or legal representative the forms necessary to indicate satisfaction of your claim and your acceptance of the payment. Acceptance by you, your agent or your legal representative, of any award, compromise or settlement of your claim is final and conclusive under the Federal Tort Claims Act. It binds you, your agent or your legal representative, and any other person on whose behalf or for whose benefit the claim was presented. It also constitutes a complete release of your claim against the United States and its employees. If

you are represented by counsel, SBA will designate you and your counsel as joint payees and will deliver the check to your counsel. Payment is contingent upon the waiver of your claim and is subject to the availability of appropriated funds.

**§ 114.109 What if my claim is denied?**

SBA will notify you or your agent or legal representative in writing by certified or registered mail if it denies your claim. You have a right to file suit in an appropriate U.S. District Court not later than six months after the date the notification was mailed.

**Subpart B—Representation and Indemnification of SBA Employees****§ 114.110 What is SBA's policy with respect to indemnifying and providing legal representation to SBA employees?**

(a) If an SBA employee engages in conduct, within the scope of his or her employment, which gives rise to a claim, and the SBA Administrator or designee determines that any of the following actions relating to the claim are in SBA's interest, SBA may:

(1) Indemnify the employee after a verdict, judgment, or other monetary award is rendered personally against the employee in any civil suit in state or federal court or any arbitration proceeding;

(2) Settle or compromise the claim; and/or

(3) Pay for, or request that the Department of Justice provide, legal representation to the employee once personally named in such a suit.

(b) If you are an SBA employee, you may ask SBA to settle or compromise your claim, provide you with legal representation, or provide you with indemnification for a verdict, judgment or award entered against you in a suit. To do so, you must submit a timely, written request to the General Counsel, with appropriate documentation, including copies of any pleadings, verdict, judgment, award, or settlement proposal. The General Counsel will decide all requests for representation or settlement, and will forward to the Administrator, with the accompanying documentation and a recommendation, any requests for indemnification.

(c) Any payments by SBA under this section will be contingent upon the availability of appropriated funds.

**§ 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?**

When attorneys employed by SBA participate in any process in which SBA seeks to determine whether SBA should request the Department of Justice to

provide representation to an SBA employee sued, subpoenaed, or charged in his or her individual capacity, or whether attorneys employed by SBA should provide representational assistance for such an employee, those attorneys undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. If representation is authorized, SBA attorneys who assist in the representation of an SBA employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Unless authorized by the employee, the attorney must not disclose to anyone other than attorneys also responsible for the employee's representation information communicated to the attorney by the client-employee during the course of the attorney-client relationship. The attorney-client privilege will continue with respect to that information whether or not representation is provided, and even if the employee's representation is denied or discontinued.

Dated: January 19, 1996.

Philip Lader,

Administrator.

[FR Doc. 96-1160 Filed 1-25-96; 8:45 am]

BILLING CODE 8025-01-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 95-NM-16-AD; Amendment 39-9481; AD 96-01-05]

**Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes and C-9 (Military) Series Airplanes**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 and C-9 (military) series airplanes, that requires replacement, inspection, and modification of the attach fittings of the main landing gear (MLG). This amendment is prompted by reports of severe structural damage and rupture of the integral fuel tank due to overload of the MLG caused by adverse landing conditions. The actions specified by this AD are intended to minimize the possibility of primary structural damage and rupture of the



integral fuel tank due to overload of the MLG; these conditions could lead to fuel spillage and a resultant fire.

**DATES:** Effective February 26, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 26, 1996.

**ADDRESSES:** The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David Y. J. Hsu, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5323; fax (310) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC-9 and C-9 (military) series airplanes was published in the Federal Register on May 24, 1995 (60 FR 27449). That action proposed to require replacement, inspection, and modification of the attach fittings of the main landing gear (MLG).

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

Several commenters support the proposed rule.

#### Requests for Extension of the Compliance Time

Several commenters request that the proposed compliance time of 12 months be extended by as much as 12 additional months. Two commenters indicate that a parts availability problem was encountered when accomplishing one of the service bulletins cited in the proposed rule, McDonnell Douglas DC-9 Service Bulletin 57-148. One of these commenters indicates that the manufacturer requires a lead time in

excess of 6 months to provide required parts. Another commenter states that, in light of the proposed time frame for compliance with the proposal, the number of work hours specified in the AD is too low because operators would need to schedule special maintenance visits to modify their aircraft. Similarly, other commenters request an extended compliance time that would align with regularly scheduled maintenance visits, thereby reducing lost revenue service. One commenter contends that inspection of MLG attach fittings in accordance with Revision 5 of McDonnell Douglas DC-9 Service Bulletin 57-148 will provide an adequate level of safety until modification of those fittings is accomplished.

In light of these considerations, the FAA concurs with the commenters' requests to extend the compliance time. The FAA finds that extending the compliance time by 12 additional months will not adversely affect safety significantly, and will allow operators to accomplish the requirements of this AD at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Accordingly, paragraphs (a) and (b) of the final rule have been revised to specify a compliance time of 24 months.

#### Request To Clarify the Applicability of the AD

One commenter requests that the applicability of the proposal be revised to reference the specific series of Model DC-9 airplanes affected, rather than simply specifying that the proposed AD applies to "All Model DC-9 and C-9 (military) series airplanes." The commenter justifies its request by stating that McDonnell Douglas considers Model MD-80 airplanes to be "Series 80 DC-9" airplanes. Therefore, since the service bulletins cited in the proposed AD only apply to Model DC-9 series 10 through 50 and C-9 (military) series airplanes, the commenter suggests that those airplanes specifically be identified in the applicability of the AD to avoid any confusion and misinterpretation on the part of operators. The FAA concurs with the commenter's request, and has revised the applicability of the final rule accordingly.

#### Request To Include Actions Already Required by Other AD's

One commenter requests that the actions currently required by three existing AD's be included in the proposed rule. Those AD's are:

- AD 80-06-04 R1, amendment 39-4909 (49 FR 35617, September 11, 1984);
- AD 84-26-01, amendment 39-4971 (50 FR 448, January 4, 1985); and
- AD 90-18-03, amendment 39-6701 (55 FR 34704, August 24, 1990).

The commenter provides the following justification for this request:

1. The three existing AD's address the same subject as that specified in the proposed AD.

2. One of the existing AD's, AD 90-18-03, specifies a compliance time for accomplishment of McDonnell Douglas DC-9 Service Bulletin 57-125 that is different from the compliance time specified in the proposal for accomplishment of the same action.

3. McDonnell Douglas DC-9 Service Bulletin 57-148, which is cited in paragraph (b) of the proposed rule, also is listed in Table 2.3 of Report No. MDC K1572, "DC-9/MD80 Aging Aircraft Service Action Requirements Document (SARD)," Revision B, dated January 15, 1993 (hereinafter referred to as the "SARD"). The compliance time specified in Table 2.3 of the SARD for accomplishment of McDonnell Douglas DC-9 Service Bulletin 57-148 differs from that specified in paragraph (b) of this proposed rule for accomplishment of the same action. Therefore, if a new AD is issued to mandate accomplishment of Table 2.3 of the SARD, the compliance time specified in this proposed AD may conflict with the compliance time specified in the new AD that addresses the SARD.

The FAA acknowledges that certain actions specified in earlier versions of the service bulletins addressed in this AD (McDonnell Douglas DC-9 Service Bulletins 57-125 and 57-148) are mandated currently in the three existing AD's cited by the commenter and that the compliance times between certain documents vary. However, the FAA does not concur with the commenter's request to include the requirements of those AD's in this final rule for several reasons:

On November 4, 1994, the FAA issued a notice of proposed rulemaking (NPRM), Docket 94-NM-92-AD (59 FR 56011, November 11, 1994), which proposes to supersede AD 90-18-03. That NPRM proposes to require, in part, the accomplishment of certain inspections and structural modifications specified in Table 2.3 of the SARD. The FAA acknowledges that the SARD references the two service bulletins cited in this final rule (McDonnell Douglas DC-9 Service Bulletins 57-125 and 57-148). However, in the final rule for Docket 94-NM-92-AD, the FAA intends to exclude the actions specified



in the two service bulletins from the requirements of that AD. Therefore, the actions described in those service bulletins would be required by this AD only at the times specified herein.

Further, the FAA finds that the accomplishment of the requirements of this final rule will terminate the requirements of AD 80-06-04 R1 and AD 84-26-01. The FAA has added a new paragraph (c) in the final rule to specify this information.

#### Requests To Limit the Applicability of the AD

One commenter requests that only airplanes equipped with certain gear fitting installations be applicable to the proposed AD. The commenter indicates that replacement of the attach fittings, as described in McDonnell Douglas DC-9 Service Bulletin 57-125, is addressed in AD 90-18-03, and that there are various configurations of fitting installations for which installation of smaller ( $7/8$ -inch diameter) lower tension bolts is not required. The commenter also indicates that, since the intent of the proposed AD is to improve the breakaway feature of the MLG (which is affected by the diameter of the lower tension bolts), only airplanes equipped with certain gear fittings would be affected by the proposed AD.

The same commenter states that airplanes equipped with fittings having large counterbore radii (7075-T73 fittings) that were installed with clearance fit NAS bolts should be excluded from the applicability of the proposal. The commenter indicates that it operates such airplanes and, at one time, this type of installation was permissible. The commenter explains that, although the complete intent of McDonnell Douglas DC-9 Service Bulletin 57-148 has not been accomplished, the portion of the service bulletin that has not been accomplished does not affect the breakaway function of the fitting.

Additionally, one commenter states that the proposed AD should require only the installation of a reduced diameter lower tension bolt ( $7/8$ -inch) and bushing portion of McDonnell Douglas DC-9 Service Bulletin 57-148 at an accelerated rate. The commenter adds that operators of large fleets should be allowed to accomplish the remainder of the actions specified in the service bulletin (including the enlargement of the counterbore, the replacement of the lower flange attachments with interference fit fasteners, and glass bead shotpeening of the fitting) on schedule in accordance with the SARD, which is being addressed in the final rule for Docket 94-NM-92-AD. The commenter

contends that the actions required by the proposed AD would impose a severe hardship on operators. The commenter adds that only the reduction in size of the lower tension bolt improves the breakaway function of the gear fitting, which is the immediate concern addressed in the proposed AD.

The FAA does not concur with these commenters' requests. The FAA acknowledges that the key to breakaway capability of the MLG is the installation of smaller ( $7/8$ -inch) diameter tension bolts that attach the MLG fittings to the airframe. However, the FAA finds that accomplishment of the corrective actions necessary to address stress corrosion cracking of these fittings is equally as critical as incorporation of the breakaway feature. Therefore, the FAA has determined that the two objectives must be accomplished concurrently to address these safety issues in a timely manner. The FAA finds that accomplishment of the actions specified in both service bulletins cited in this AD (McDonnell Douglas DC-9 Service Bulletins 57-125 and 57-148) within 24 months after the effective date of this AD will adequately address these safety concerns.

#### Request To Clarify Shotpeening Requirements

One commenter questions the effectiveness of on-wing, glass bead shotpeening of the MLG fittings, as described in McDonnell Douglas DC-9 Service Bulletins 57-125 and 57-148. The commenter states that, in order to be effective, shotpeening must be controlled precisely to attain the required Almen Intensity. The commenter remarks that on-wing shotpeening of the gear fittings cannot be controlled to obtain the required Almen Intensity and fatigue life improvement. The commenter specifies that the use of glass particles in the landing gear area, which includes many moveable components, raises a serious issue of system contamination and premature failure of components (i.e., bearings, due to glass particle contamination). The commenter makes no specific request for a change to the final rule, and provides no engineering data to substantiate that the fatigue life improvement is reduced or that premature failure of components occurs due to system contamination from glass particles.

The FAA finds that some clarification is necessary. Although the shotpeening process described in the service bulletins has been used in service for a substantial period of time, neither the FAA nor the airplane manufacturer have received any reports concerning system

contamination or premature failure of components. Therefore, the FAA finds that no change to the final rule is necessary in this regard. However, the FAA would consider a request for approval of an alternative method of compliance, in accordance with the provisions of paragraph (d) of this AD, provided that adequate justification is presented to support such a request.

#### Request To Clarify Number of Necessary Work Hours

One commenter states that the actual work hours and elapsed times required to accomplish the actions specified in McDonnell Douglas DC-9 Service Bulletin 57-148 differ substantially from the figures reflected in the service bulletin. The commenter remarks that the actual work hours are approximately 400 more than the number specified in the service bulletin, and that the actual elapsed time is 100 hours more.

The FAA infers from these remarks that the commenter requests that the FAA revise the economic impact information, below, to increase the number of work hours required for accomplishment of the actions specified in this AD. The FAA concurs with the commenter's request. The FAA has revised the number of work hours estimated for accomplishment of the inspection and modification specified as Phase 2 in McDonnell Douglas DC-9 Service Bulletin 57-148 from 36 to 436 work hours. Estimated hours for elapsed time are not reflected specifically in AD actions.

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

#### Economic Impact

There are approximately 906 Model DC-9 and C-9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 549 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that the replacement specified as Option 1 in McDonnell Douglas DC-9 Service Bulletin 57-125 has been accomplished on all 549 airplanes of U.S. registry that will be affected by this AD. (As discussed previously, accomplishment of Option 1 was required by AD 90-18-03.) Accordingly, the FAA finds that the replacement required by this AD will

impose no additional economic burden on any U.S. operator.

However, should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 425 work hours to accomplish Option 1, at an average labor rate of \$60 per work hour. The cost of required parts will be \$58,853 per airplane. Based on these figures, the cost impact for accomplishing Option 1 will be \$84,353 per airplane.

The FAA estimates that all 549 airplanes of U.S. registry will be required to accomplish the inspection and modification specified as Phase 2 in McDonnell Douglas DC-9 Service Bulletin 57-148. It will take approximately 436 work hours per airplane to accomplish Phase 2, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$4,338 per airplane. Based on these figures, the cost impact on U.S. operators for accomplishing Phase 2 is estimated to be \$16,743,402, or \$30,498 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished the requirement (Phase 2) of this AD action, and that no operator would accomplish that action in the future if this AD were not adopted.

**Regulatory Impact**

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

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

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

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

**§ 39.13 [Amended]**

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

96-01-05 McDonnell Douglas: Amendment 39-9481. Docket 95-NM-16-AD.

*Applicability:* All Model DC-9-10, -20, -30, -40, and -50 series airplanes, and C-9 (military) series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

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

To minimize the possibility of primary structural damage and rupture of the integral fuel tank due to overload of the main landing gear (MLG) caused by adverse landing conditions, and subsequent fuel spillage and a resultant fire, accomplish the following:

(a) For airplanes on which Option 1 (or production equivalent) has not been accomplished as specified in McDonnell Douglas DC-9 Service Bulletin 57-125 (original issue through Revision 5): Within 24 months after the effective date of this AD, replace the attach fittings of both the right and left MLG's in accordance with Option 1 of the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 57-125, Revision 5, dated November 5, 1990.

Note 2: Airplanes on which Option 1 has been accomplished as specified in any of the following revisions of McDonnell Douglas DC-9 Service Bulletin 57-125, are considered to be in compliance with this AD and no further action is required by this AD:

Service bulletin No.	Revision level	Date
57-125	Revision 3 .....	October 28, 1982; or June 21, 1983; or November 5, 1990.
	Revision 4 .....	
	Revision 5 .....	

(b) For airplanes on which Option 1 has been accomplished as specified in McDonnell Douglas DC-9 Service Bulletin 57-125 (original version through Revision 2); but on which Phase 2 has not been accomplished as specified in McDonnell Douglas DC-9 Service Bulletin 57-148 (original version through Revision 5): Within 24 months after the effective date of this AD, inspect and modify the attach fittings of both the right and left MLG's in accordance with Phase 2 of McDonnell Douglas DC-9 Service Bulletin 57-148, Revision 5, dated November 23, 1992.

Note 3: Airplanes on which both Option 1 (or a production equivalent) has been accomplished as specified in any of the following revisions of McDonnell Douglas DC-9 Service Bulletin 57-125; and Phase 2 (or a production equivalent) has been accomplished as specified in any of the following revisions of McDonnell Douglas DC-9 Service Bulletin 57-148; are considered to be in compliance with this AD and no further action is required by this AD:

Service bulletin No.	Revision level	Date
57-125	(Original) .....	January 26, 1979; or February 16, 1979; or August 24, 1979; and
	Revision 1 .....	
	Revision 2 .....	
57-148	(Original) .....	October 1, 1982; or June 8, 1983; or August 9, 1989; or September 11, 1990; or February 25, 1991; or November 23, 1992.
	Revision 1 .....	
	Revision 2 .....	
	Revision 3 .....	
	Revision 4 .....	
Revision 5 .....		

(c) Accomplishment of the actions required by this AD constitutes terminating action for the requirements of AD 80-06-04 R1, amendment 39-4909, and AD 84-26-01, amendment 39-4971.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO),

FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with McDonnell Douglas DC-9 Service Bulletin 57-125, Revision 5, dated November 5, 1990; and McDonnell Douglas DC-9 Service Bulletin 57-148, Revision 5, dated November 23, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 26, 1996.

Issued in Renton, Washington, on January 2, 1996.

Darrell M. Pederson,

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

[FR Doc. 96-187 Filed 1-25-96; 8:45 am]

BILLING CODE 4910-13-P

#### 14 CFR Part 39

[Docket No. 95-NM-91-AD; Amendment 39-9485; AD 96-01-09]

#### Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes, that requires installation of hydraulic line restrictors in the main landing gear (MLG), and modification of the hydraulic damper assembly of the MLG. This amendment is prompted by reports of vibration occurring in the MLG during landing; in some cases, such

vibration has led to the collapse of the MLG. The actions specified by this AD are intended to prevent incidents of vibration in the MLG, which can adversely affect the integrity of the MLG.

**DATES:** Effective February 26, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 26, 1996.

**ADDRESSES:** The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5336; fax (310) 627-5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes was published in the Federal Register on September 26, 1995 (60 FR 49523). That action proposed to require installation of hydraulic line restrictors in the main landing gear (MLG), and modification of the hydraulic damper assembly of the MLG.

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

Four commenters support the proposal.

One commenter requests that the FAA revise the proposal to include references to later revisions of the pertinent service bulletins, which were recently released. The FAA concurs. Subsequent to the issuance of the proposal, the FAA reviewed and approved Revision 1 of McDonnell Douglas MD-80 Service Bulletin MD80-32-276, dated October

17, 1995; and Revision 1 of McDonnell Douglas MD-80 Service Bulletin MD80-32-278, dated September 6, 1995. These revisions are essentially identical to the original issues of the service bulletins (which were referenced in the proposal), but contain additional clarifying information. Additionally, the FAA has reviewed and approved McDonnell Douglas MD-80 Alert Service Bulletin MD80-A32-286, dated September 11, 1995, which contains, among other things, instructions for installing filtered restrictors in the MLG hydraulic brake system. The FAA has revised the final rule to include these newly released service bulletins as additional sources of appropriate service instructions.

One commenter requests that paragraph (a) of the proposal be revised to extend the compliance time for installation of the brake line restrictors. This commenter is concerned that an ample number of required parts will not be available to modify its large fleet within the proposed compliance time of 9 months. The FAA does not concur that an extension of the compliance time is necessary. In McDonnell Douglas MD-80 Service Bulletin MD80-32-276, the manufacturer recommended that the installation of the restrictors be accomplished on the affected fleet within 12 months. Since the latest revision of that service bulletin was issued on October 17, 1995, the FAA considers it to be substantiation that the manufacturer can support parts production and delivery for the affected fleet through October 17, 1996. Since compliance with this AD is required by approximately that same date, the FAA does not foresee that the availability of required parts will be a problem for operators. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

One commenter requests that the FAA defer action on the proposed requirements of paragraph (b), which would require operators to modify the hydraulic damper assembly. This commenter contends that further research and testing of the structural integrity of the reservoir should be accomplished first to substantiate that the installation of the hydraulic brake line restrictors [that would be required by paragraph (a) of the proposal] will successfully curb the vibration problems. This commenter claims that, if the most vulnerable part of the damper design is the reservoir, then no amount of "efficiency improvements" to the basic damper assembly will help.

The FAA does not concur with the commenter's request. The FAA finds that the previous evaluations of this problem confirm that the reservoir failures are the result of the landing gear vibration, and are not a preceding failure that contributes to the vibration. Based on these evaluations and other data obtained to date, the FAA maintains that the modification required by paragraph (b) is both warranted and appropriate.

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

There are approximately 1,100 Model DC-9-80 series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 600 airplanes of U.S. registry will be affected by this proposed AD.

Accomplishment of the installation of the brake line restrictor, as described in McDonnell Douglas MD-80 Service Bulletin MD80-32-276, will take approximately 4 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$928 per airplane. Based on these figures, the cost impact of this installation on U.S. operators is estimated to be \$700,800, or \$1,168 per airplane.

Accomplishment of the modification of the hydraulic damper assembly, as described in McDonnell Douglas MD-80 Service Bulletin MD80-32-278, will take approximately 6 work hours per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts will cost approximately \$4,000 per airplane. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be \$2,616,000, or \$4,360 per airplane.

Based on the figures discussed above, the FAA estimates that the cost impact of this AD on U.S. operators would be approximately \$3,316,800, or \$5,528 per airplane. This cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

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

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

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

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

#### Adoption of the Amendment

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

### **PART 39—AIRWORTHINESS DIRECTIVES**

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

Authority: 49 USC 106(g), 40101, 40113, 44701.

#### **§ 39.13 [Amended]**

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

96-01-09 McDonnell Douglas: Amendment 39-9485. Docket 95-NM-91-AD.

*Applicability:* Model DC-9-81 (MD-81), -82 (MD-82), -83 (MD-83), and -87 (MD-87) series airplanes, and Model MD-88 airplanes; certificated in any category; and listed in the following McDonnell Douglas Service Bulletins:

- McDonnell Douglas MD-80 Service Bulletin MD80-32-276, dated March 31, 1995; and
- McDonnell Douglas MD-80 Service Bulletin MD80-32-278, dated March 31, 1995.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area

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

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

To reduce the possibility of vibration in the main landing gear (MLG) that can adversely affect its integrity, accomplish the following:

(a) For airplanes listed in McDonnell Douglas MD-80 Service Bulletin MD80-32-276, dated March 31, 1995, that have not been previously modified (installation of brake line restrictors) in accordance with McDonnell Douglas MD-80 Service Bulletin 32-246: Within 9 months after the effective date of this AD, install filtered brake line restrictors in the MLG hydraulic brake system in accordance with McDonnell Douglas MD-80 Service Bulletin MD80-32-276, dated March 31, 1995, or Revision 1, dated October 17, 1995.

Note 2: Installation of the filtered restrictors in accordance with the instructions contained in McDonnell Douglas MD-80 Alert Service Bulletin MD80-A32-286, dated September 11, 1995, is considered acceptable for compliance with paragraph (a) of this AD.

(b) For airplanes listed in McDonnell Douglas MD-80 Service Bulletin MD80-32-278, dated March 31, 1995: Within 36 months after the effective date of this AD, modify the hydraulic damper assembly (by removing shims, increasing bolt torque, and incorporating changes to increase the volume of fluid passing between the two damper chambers) in accordance with McDonnell Douglas MD-80 Service Bulletin MD80-32-278, dated March 31, 1995, or Revision 1, dated September 6, 1995.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The installation shall be done in accordance with McDonnell Douglas MD-80 Service Bulletin MD80-32-276, dated March 31, 1995; or McDonnell Douglas MD-80 Service Bulletin MD80-32-276, Revision 1, dated October 17, 1995. The modification shall be done in accordance with McDonnell Douglas MD-80 Service Bulletin MD80-32-278, dated March 31, 1995; or McDonnell Douglas MD-80 Service Bulletin MD80-32-278, Revision 1, dated September 6, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 26, 1996.

Issued in Renton, Washington, on January 5, 1996.

Darrell M. Pederson,  
*Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.*  
[FR Doc. 96-475 Filed 1-25-96; 8:45 am]

BILLING CODE 4910-13-P

#### 14 CFR Part 39

[Docket No. 95-NM-250-AD; Amendment 39-9487; AD 96-02-02]

#### Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes. This action requires installation of locking plates at the guide bushings in the area of the spigot bolt for certain aft flap track attachments. This amendment is prompted by reports of these guide bushings migrating out of position and resulting in a partial transfer of loads from the main attachment spigot bolt to two fail-safe bolts. Since the fail-safe bolts can withstand such loads for only a limited time, they can eventually fail and allow the wing flap to separate from the airplane. The actions specified in this AD are intended to prevent separation of the wing flap, which can lead to reduced controllability of the

airplane and injury to persons or damage to property on the ground.

**DATES:** Effective February 12, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 12, 1996.

Comments for inclusion in the Rules Docket must be received on or before March 26, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 95-NM-250-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Charles Huber, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2589; fax (206) 227-1149.

**SUPPLEMENTARY INFORMATION:** The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that operators have reported finding guide bushings in the area of the spigot bolt for the aft wing flap attachment at tracks 2 through 5 that have migrated out of position. Such bushing migration was found on one flight test airplane and on two in-service airplanes. When migration of the guide bushing takes place, it can result in a partial transfer of loads from the main attachment spigot bolt to two fail-safe bolts. Although the flaps are still operable in this condition, the fail-safe bolts are able to withstand the loads only for a limited period of time. If the bolts were to fail, the flap then could separate from the airplane. This condition, if not corrected, could result in reduced controllability of the airplane, and possible injury to persons or damage to property on the ground.

Airbus has issued Service Bulletins A330-57-3028 (for Model A330 series airplanes), and A340-57-4032 (for Model A340 series airplanes), both dated June 6, 1995. These service

bulletins describe procedures for installing locking plates at the bushings in the area of the spigot bolt for the flap track attachment at flap tracks 2 through 5, left-hand and right-hand. Installation of these locking plates will preclude the possibility of migration of the bushings, and ensure the correct function of the aft track attachment. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive (CN) 95-124-012(B) (applicable to Model A330 series airplanes), and CN 95-125-023(B) (applicable to Model A340 series airplanes), both dated June 21, 1995, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent migration of the guide bushings at the aft wing flap attachments. This AD requires the installation of locking plates at the flap track attachments on flap tracks 2 through 5, left-hand and right-hand. The actions are required to be accomplished in accordance with the service bulletins described previously.

None of the Model A330 or A340 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 40 work hours to accomplish the required actions, at an average labor charge of \$60 per work hour. Required parts would be furnished by the manufacturer at no cost

to operators. Based on these figures, the cost impact of this AD would be \$2,400 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the Federal Register.

#### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95-NM-250-AD." The postcard will be date stamped and returned to the commenter.

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

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

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

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

#### Adoption of the Amendment

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

### **PART 39—AIRWORTHINESS DIRECTIVES**

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

Authority: 49 USC 106(g), 40113, 44701.

#### **§ 39.13 [Amended]**

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

96-02-02 Airbus: Amendment 39-9487. Docket 95-NM-250-AD.

*Applicability:* Model A330-301, 0321, -322, -341, and -342 series airplanes; and Model A340-211, -212, -311, and -312 series airplanes; on which Airbus Modification 43328 or 43479 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

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

To prevent migration of the guide bushings in the area of the spigot bolt for the aft flap track attachments, accomplish the following:

(a) Prior to the accumulation of 3,500 total flight cycles, install locking plates at the guide bushings at flap track attachments 2 through 5, left-hand and right-hand, in accordance with Airbus Service Bulletin A330-57-3028 (for Model A330 series airplanes) or A340-57-4032 (for Model A340 series airplanes), both dated June 6, 1995, as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Airbus Service Bulletin A330-57-3028 (for Model A330 series airplanes), dated June 6, 1995; or Airbus Service Bulletin A340-57-4032 (for Model A340 series airplanes), dated June 6, 1995; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 12, 1996.

Issued in Renton, Washington, on January 11, 1996.

Darrell M. Pederson,

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

[FR Doc. 96-572 Filed 1-25-96; 8:45 am]

**BILLING CODE 4910-13-P**

#### **14 CFR Part 39**

**[Docket No. 95-NM-66-AD; Amendment 39-9488; AD 96-02-03]**

### **Airworthiness Directives; Airbus Model A310 Series Airplanes**

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



**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that currently requires inspections to detect cracks in the area of the shock absorber attachment at the top of the barrel at the main landing gear (MLG), a measurement of the gap between the barrel and the shock absorber attachment; and corrective action, if necessary. That AD was prompted by a report of the rupture of the aft hinge arm of the left MLG barrel. This amendment requires a measurement of the gap between the washer and barrel of the MLG, eddy current inspections to detect cracking of the MLG barrel, correction of any discrepancy, and accomplishment of certain other follow-on actions. Terminating actions are also provided by this AD. The actions specified by this AD are intended to prevent collapse of the MLG.

**DATES:** Effective February 26, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 26, 1996.

**ADDRESSES:** The service information referenced in this AD may be obtained from Messier Services, 45635 Willow Pond Plaza, Sterling, Virginia 20164. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Phil Forde, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2146; fax (206) 227-1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91-22-52, amendment 39-8119 (57 FR 5372, February 14, 1992), which is applicable to all Airbus Model A310 series airplanes, was published in the Federal Register on November 8, 1995 (60 FR 56271). That action proposed to require a measurement of the gap between the washer and barrel of the main landing gear (MLG), eddy current inspections to detect cracking of the MLG barrel, correction of any discrepancy, and accomplishment of certain other follow-on actions.

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

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 18 airplanes of U.S. registry will be affected by this proposed AD.

To accomplish the gap measurements, visual inspections, and other follow-on actions will require approximately 5 work hours per airplane, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be \$5,400, or \$300 per airplane, per cycle.

To accomplish the eddy current inspections will require approximately 8 work hours per airplane, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of these required inspections on U.S. operators is estimated to be \$8,640, or \$480 per airplane, per inspection cycle.

Based on the figures discussed above, the cost impact of this AD on U.S. operators is estimated to be \$14,040, or \$780 per airplane. The cost impact figures are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

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

Docket at the location provided under the caption **ADDRESSES**.

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

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

**Adoption of the Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

Authority: 49 USC 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39-8119 (57 FR 5372, February 14, 1992), and by adding a new airworthiness directive (AD), amendment 39-9488, to read as follows:

96-02-03 Airbus Industrie: Amendment 39-9488. Docket 95-NM-66-AD. Supersedes AD 91-22-52, Amendment 39-8119.

*Applicability:* Model A310 series airplanes on which Airbus Modification 1033 (reference Airbus Service Bulletin A310-32-2066, Revision 1, dated January 30, 1992) has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

*Compliance:* Required as indicated, unless accomplished previously. To prevent collapse of the main landing gear (MLG), accomplish the following:

(a) Perform a measurement of the gap between the washer and barrel at the times specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Messier Bugatti Airbus A310 Service Bulletin 470-32-726, Revision 2, dated February 8, 1994.

(1) For airplanes equipped with MLG barrels applicable to Table No. 1 of the

service bulletin: Perform the measurement within 8 days after the effective date of this AD.

(2) For airplanes equipped with MLG barrels applicable to Table No. 2 of the service bulletin: Perform the measurement within 3 months after the effective date of this AD.

(b) If the gap measurement is less than 1 mm (0.04 in.): Accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes equipped with MLG barrels applicable to Table No. 1 of the service bulletin: No further action is required by this paragraph for those airplanes.

(2) For airplanes equipped with MLG barrels applicable to Table No. 2 of the service bulletin: Prior to further flight, coat the MLG barrel and shock absorber connecting rod nut with a rubber sealant in accordance with Messier Bugatti Airbus A310 Service Bulletin 470-32-726, Revision 2, dated February 8, 1994.

(c) If the gap is equal to or greater than 1 mm (0.04 in.): Accomplish paragraphs (c)(1), (c)(2), and (c)(3) of this AD, as applicable, in accordance with Messier Bugatti Airbus A310 Service Bulletin 470-32-726, Revision 2, dated February 8, 1994.

(1) For all airplanes: Within 15 days after accomplishing the measurement required by paragraph (a) of this AD, perform a gap recovery procedure in accordance with paragraph 2.B.(5) of the Accomplishment Instructions of the service bulletin.

(2) For airplanes equipped with MLG barrels applicable to Table No. 2 of the service bulletin: Prior to further flight after accomplishing the gap recovery procedure required by paragraph (c)(1) of this AD, coat the MLG barrel and connecting rod nut with a rubber sealant in accordance with the service bulletin.

(3) For all airplanes: Within 15 days after accomplishing the measurement required by paragraph (a) of this AD, perform a visual inspection to detect cracks of the MLG barrel, in accordance with paragraph 2.B.1 of the Accomplishment Instructions of the service bulletin.

(i) If no crack is detected: Repeat the visual inspection thereafter at intervals not to exceed 7 days until the eddy current inspection required by paragraph (d) of this AD is accomplished.

(ii) If any crack is detected: Prior to further flight, replace the MLG barrel with a barrel that has been modified in accordance with Messier Bugatti Service Bulletin 470-32-640, dated July 11, 1988, and Messier Bugatti Service Bulletin 470-32-763, dated February 28, 1994. Accomplishment of this replacement shall be done in accordance with Messier Bugatti Airbus A310 Service Bulletin 470-32-726, Revision 2, dated February 8, 1994. After accomplishment of this replacement, no further action is required by this AD.

(d) Except as provided by paragraph (c)(3)(ii) of this AD (MLG barrel replacement): Following accomplishment of either paragraph (b) or (c) of this AD, and at the applicable times specified in Table No. 1 and Table No. 2 of Messier Bugatti Airbus A310 Service Bulletin 470-32-726, Revision 2, dated February 8, 1994, remove the rubber

sealant and perform an eddy current inspection to detect cracks of the MLG barrel in accordance with Table No. 3 of that service bulletin.

(1) If no crack is detected: At the times specified in Table No. 3 of the service bulletin, perform the various follow-on actions in accordance with the service bulletin. (The follow-on actions include repetitive gap measurements, repetitive eddy current and visual inspections, installation of a new bushing, and replacement of the bronze washer with a stainless steel washer.)

(i) However, in lieu of installing a new bushing on crack-free barrels having no oxidation of the cadmium plating at the next overhaul, as specified in the service bulletin, operators must either repeat the gap measurement and eddy current inspection at intervals not to exceed 2 years, or install a new bushing and replace the bronze washer at the upper part of the MLG barrel with a stainless steel washer, in accordance with the service bulletin.

(ii) After accomplishment of the installation of a new bushing (reference Messier Bugatti Service Bulletin 470-32-640) and the replacement of the bronze washer (reference Messier Bugatti Service Bulletin 470-32-763), no further action is required by this AD.

(2) If any crack is detected: Prior to further flight, replace the barrel with a barrel that has been modified in accordance with Messier Bugatti Service Bulletin 470-32-640, dated July 11, 1988, and Messier Bugatti Service Bulletin 470-32-763, dated February 28, 1994. Accomplishment of this replacement shall be done in accordance with the Messier Bugatti Airbus A310 Service Bulletin 470-32-726, Revision 2, dated February 8, 1994. After accomplishment of this replacement, no further action is required by this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Messier Bugatti Airbus A310 Service Bulletin 470-32-726, Revision 2, dated February 8, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Messier Services, 45635 Willow Pond Plaza, Sterling, Virginia 20164. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind

Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on February 26, 1996.

Issued in Renton, Washington, on January 11, 1996.

Darrell M. Pederson,

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

[FR Doc. 96-571 Filed 1-25-96; 8:45 am]

BILLING CODE 4910-13-P

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## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR PART 4

[T.D. 96-11]

RIN 1515-AB37

#### Preliminary Vessel Entry and Permits to Lade and Unlade

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

ACTION: Final rule.

**SUMMARY:** This document amends the Customs Regulations regarding the preliminary entry of vessels arriving in ports of the United States and the granting of permits for the lading and unlading of merchandise from those vessels. The Customs Regulations regarding this subject are being amended to accurately reflect recent changes to the underlying statutory authority, enacted as part of the Customs Modernization Act.

**EFFECTIVE DATE:** February 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** William Scopa, Office of Field Operations, 202-927-3112 (operational matters), or Larry L. Burton, 202-482-6940 (legal matters).

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of the President signing Pub. L. 103-182, Title VI of which is popularly known as 2 the Customs Modernization Act (the Act). Sections 653 and 656 of the Act significantly amended the statutes governing the entry and the lading and unlading of vessels in the United States. These operations are governed, respectively, by sections 434 and 448 of the Tariff Act of 1930, as amended (19 U.S.C. 1434 and 1448).

Prior to these amendments, the entry of vessels of the United States and vessels of foreign countries had been



governed by separate statutes (19 U.S.C. 1434 and 1435), neither of which included elements concerning preliminary vessel entry or the boarding of vessels. The Act repealed section 1435 and amended section 1434 to provide for the entry of American and foreign-documented vessels under the same statute. Additionally, the amended section 1434 now provides authority for the promulgation of regulations regarding preliminary vessel entry, and while neither mandating boarding for all vessels nor specifying that optional boarding must be accomplished at any particular stage of the vessel entry process, the amended law does require that a sufficient number of vessels be boarded to ensure compliance with the laws enforced by the Customs Service.

Section 1448 had previously linked the granting of preliminary vessel entry to a mandatory boarding requirement and the physical presentation of manifest documents to the Customs boarding officer. The amended section 1448 no longer contains provisions regarding preliminary vessel entry, vessel boarding, or manifest presentation, matters which are now provided for in other statutes. Section 1448 now states that Customs may electronically issue permits to lade or unlade merchandise, pursuant to an authorized data interchange system.

The regulations which implement the statutory authority for the granting of preliminary vessel entry and the issuance of permits to lade and unlade merchandise are contained in sections 4.8 and 4.30 of the Customs Regulations (19 CFR 4.8 and 4.30). These provisions still contain mandatory boarding and physical document presentation requirements, and of course do not include any reference to an electronic permit issuance option.

On March 18, 1994, a document was published in the Federal Register (59 FR 12878) soliciting comments regarding a proposal to amend sections 4.8 and 4.30 of the Customs Regulations (19 CFR 4.8 and 4.30), in order to properly implement the amended statutory authority. This document considers the comments received and amends the cited sections of the Customs Regulations.

#### Discussion of Comments

Thirty comments were received in response to the proposal. There were thirteen comments received from vessel operators, nine from vessel agents, six from vessel and import trade groups, one from a customs broker, and one from a labor union. Of the thirty comments received, twenty-eight of them expressed enthusiastic and

unqualified support for the published proposal. A discussion of the remaining comments follows.

*Comment:* One commenter stated that while the inclusion of elements concerning the electronic transmission of information was both welcome and necessary, our proposal was "vague" in this regard. It is stated that if the authorized electronic system contemplated by Customs is one which will be used with the Automated Commercial System (ACS), that fact should have been made clear and guidelines should have been published. The question of compliance by Customs with 19 U.S.C. 1412, as enacted by section 631 of the Customs Modernization Act, was also raised. The newly enacted section provides, in its entirety, that with regard to the National Customs Automation Program (the Program):

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

- (1) is uniform and consistent;
- (2) is as minimally intrusive upon the normal flow of business activity as practicable; and
- (3) improves compliance.

The commenter goes on to urge that if Customs is contemplating revised requirements for the submission of information electronically, that existing legal considerations concerning electronic commercial document transactions be taken into account.

*Response:* The quoted statutory language merely recites the goals of the automation program when that program is eventually devised and published. The amendments presented in this document do not implement an automation program; they are simply intended to authorize the voluntary utilization of such a system, once implemented, in transacting operations under sections 4.8 and 4.30 of the regulations.

Further, Customs will implement regulations concerning how electronic transmission of documents and information may be accomplished only after a thorough investigation and with a full appreciation of all legal and practical considerations. The process will, as always, invite public participation.

*Comment:* One commenter correctly states that section 434, Tariff Act of 1930 (as amended by section 653 of the Customs Modernization Act) 19 U.S.C. 1434, places an affirmative obligation upon Customs to board a sufficient number of vessels during the preliminary entry process to ensure

compliance with various provisions of law. The commenter then goes on to rely upon language in the legislative history relating to section 653 in an effort to fix the number of vessels to be boarded. It is urged that the number of vessels boarded be published in the Federal Register, and that the regulations themselves state that the number of vessel boardings may not be decreased.

*Response:* The commenter does not suggest that the amended statute is in any way ambiguous, and neither does Customs believe it to be. With statutory authority clear on its face, there is no need to seek clarification in the history of the law. The statute, in setting forth that Customs shall board a sufficient number of vessels to ensure compliance with the laws it administers, merely reinforces the underlying current prevalent throughout the Customs Modernization Act. That common theme is the vesting in Customs of broad discretion to promulgate regulations and install procedures. There is no question that Customs will continue to board vessels for the purpose of enforcing the laws of the United States. Effectively ensuring enforcement of U.S. laws can best be realized by boarding vessels when circumstances suggest that a Customs presence is warranted, to include random boardings. Boarding quotas will not further the ends of the statute as reflected in its plain words.

#### Conclusion

After careful consideration of all comments received as well as further review of the matter, it has been determined that the amendments should be adopted as proposed.

#### Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

#### Drafting Information

The principal author of this document was Larry L. Burton, Carrier Rulings Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Reporting and recordkeeping requirements, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations (19 CFR Part 4), is amended as set forth below.

**PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES**

1. The general authority citation for Part 4, Customs Regulations (19 CFR Part 4) and specific authority citation for section 4.8 continue, and the specific authority citation for section 4.30 is revised, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91;  
\* \* \* \* \*

Section 4.8 also issued under 19 U.S.C. 1448, 1486;  
\* \* \* \* \*

Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;  
\* \* \* \* \*

2. Section 4.8 is revised to read as follows:

**§ 4.8 Preliminary entry.**

Preliminary entry allows a U.S. or foreign vessel arriving under circumstances which require it to formally enter, to discharge cargo, passengers, or baggage prior to making formal entry. The granting of preliminary entry may be accomplished electronically pursuant to an authorized electronic data interchange system, or by other means of communication approved by the Customs Service. Preliminary entry must be made in compliance with § 4.30 of this part. The granting of preliminary vessel entry by the Customs Service may be conditioned upon the presentation of a completed Customs Form 1300 (Master's Certificate on Preliminary Entry) to Customs during discretionary vessel boarding, or upon the filing with Customs of a Customs Form 1300 or its equivalent by electronic or other means in instances where vessels are not boarded.

3. Section 4.30 (a) is amended by removing the period at the end and adding the words "or electronically pursuant to an authorized electronic data interchange system or other means of communication approved by the Customs Service."

4. Section 4.30(b) is amended by adding after the phrase "Customs Form 3171," the words "or electronically pursuant to an authorized electronic data interchange system or other means

of communication approved by the Customs Service,".

George J. Weise,  
*Commissioner of Customs.*

Approved: November 24, 1995.  
John P. Simpson,  
*Deputy Assistant Secretary of the Treasury.*  
[FR Doc. 96-1327 Filed 1-25-96; 8:45 am]  
BILLING CODE 4820-02-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 5**

**Delegations of Authority and Organization; Office of the Commissioner**

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for redelegations of authority from the Commissioner of Food and Drugs to other officers of FDA in order to give the Associate Commissioner for Policy Coordination, Office of Policy, authority to issue Federal Register notices and proposed and final regulations for FDA. This action is being taken in order to hasten the process of issuing such notices and proposed and final regulations. This authority may not be further redelegated at this time.

**EFFECTIVE DATE:** January 26, 1996.  
**FOR FURTHER INFORMATION CONTACT:** Ellen Rawlings, Division of Management, Systems and Policy (HFA-340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4976.

**SUPPLEMENTARY INFORMATION:** FDA is amending the regulations in § 5.20 *General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration* (21 CFR 5.20) in order to add the title of Associate Commissioner for Policy Coordination to those authorized to issue Federal Register notices and proposed and final regulations for FDA. This action is being taken in order to hasten the process of issuing such notices and proposed and final regulations.

Further redelegation of these authorities is not authorized at this time. Authority delegated to a position by title may be exercised by a person officially designated to serve in such

position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

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

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

**PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION**

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

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

2. Section 5.20 is amended by revising paragraph (f)(1) to read as follows:

**§ 5.20 General redelegations of authority from the Commissioner to other officers of the Food and Drug Administration.**

\* \* \* \* \*

(f)(1) The Deputy Commissioner for Policy and the Associate Commissioner for Policy Coordination are authorized to perform any of the functions of the Commissioner of Food and Drugs with respect to the issuance of Federal Register notices and proposed and final regulations of the Food and Drug Administration.

\* \* \* \* \*

Dated: January 19, 1996.  
William B. Schultz,  
*Deputy Commissioner for Policy.*  
[FR Doc. 96-1322 Filed 1-25-96; 8:45 am]

BILLING CODE 4160-01-F

**21 CFR Part 558**

**New Animal Drugs For Use In Animal Feeds; Chlortetracycline, Sulfathiazole, Penicillin**

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fermenta Animal Health Co. The supplement provides for use of fixed combination Type A medicated articles containing chlortetracycline, sulfathiazole, and penicillin in making Type B and C medicated swine feeds for swine from 10 pounds to 6 weeks post-weaning.

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

James F. McCormack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1607.

**SUPPLEMENTARY INFORMATION:** Fermenta Animal Health Co., 10150 North Executive Hills Blvd., Kansas City, MO 64153, filed a supplement to NADA 39-077 CSP™ 250 (20 grams (g) of chlortetracycline (as the hydrochloride), 20 g of sulfathiazole, and 10 g of penicillin (as penicillin procaine), per pound) and CSP™ 500 (40 g of chlortetracycline (as the hydrochloride), 40 g of sulfathiazole, and 20 g of penicillin (as penicillin procaine), per pound). The NADA provides for use of fixed combination Type A medicated articles to make Type B and C medicated swine feeds for prestarter, starter, grower, and finisher rations. The supplement provides for prestarter and starter rations to be given to swine from 10 pounds of body weight to 6 weeks postweaning for reduction of incidence of cervical abscesses, treatment of bacterial enteritis (salmonellosis or necrotic enteritis caused by *Salmonella choleraesuis* and vibronic dysentery), maintenance of weight gains in the presence of atropic rhinitis, increased rate of weight gain and improved feed efficiency. The supplement is approved as of January 26, 1996, and the regulations are amended in § 558.155 (21 CFR 558.155) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, the agency is revising the section heading for § 558.155 to reflect the active ingredients as on the label, i.e., that the product is known as chlortetracycline with sulfathiazole and penicillin, not as chlortetracycline hydrochloride with procaine penicillin and sulfathiazole. The approvals paragraph does specify the salts and esters approved for use.

In § 558.155(d) the feed consumption table is removed. The performance or therapeutic claims of the product are based on *ad libitum* consumption and

not the minimum desired daily feed intake consumption values reported in the table. This, together with changes in weaning weights, renders the table obsolete. Also, the indications for use are editorially revised to clarify the indications for each feeding group.

The product, chlortetracycline, sulfathiazole, and penicillin, in combination in a Type A medicated article, is a new animal drug used to make Type B and Type C medicated feeds. As provided in § 558.4(b), the combination drug product is a Category II drug because it requires a withdrawal period at its lowest continuous use level. Therefore, it requires an approved Form FDA 1900 for making Type B or Type C medicated feeds as in approved NADA 39-077 and in § 558.155.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval does not qualify for marketing exclusivity because the supplement does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) or human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

Animal drugs, Animal feeds.

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

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

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

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

2. Section 558.155 is amended by revising the section heading and paragraphs (d)(2) and (d)(3) to read as follows:

**§ 558.155 Chlortetracycline, sulfathiazole, penicillin.**

\* \* \* \* \*

(d) \* \* \*

(2) *Indications for use.* For reduction of incidence of cervical abscesses. Treatment of bacterial enteritis (salmonellosis or necrotic enteritis caused by *Salmonella choleraesuis* and vibronic dysentery). Maintenance of weight gains in the presence of atrophic rhinitis. Swine 10 pounds of body weight to 6 weeks post-weaning; Increased rate of weight gain and improved feed efficiency. Swine 6 to 16 weeks post-weaning; Increased rate of weight gain.

(3) *Limitations.* For swine raised in confinement (dry-lot) or on limited pasture. Feed as sole ration. Withdraw 7 days prior to slaughter.

Dated: January 3, 1996.

Robert C. Livingston,  
Director, Office of New Animal Drug  
Evaluation, Center for Veterinary Medicine.  
[FR Doc. 96-1323 Filed 1-25-96; 8:45 am]

BILLING CODE 4160-01-F

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

[CGD02-95-003]

RIN 2115-AE84

**Regulated Navigation Area; Ohio River Mile 466.0 to Mile 473.0**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a regulated navigation area on the Ohio River in the Cincinnati, OH area. The rule is needed to control vessel traffic while transiting downbound at night during high water conditions in the regulated area. The rule will restrict commercial navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

**EFFECTIVE DATE:** This rule is effective February 26, 1996.

**ADDRESSES:** The Commanding Officer, U.S. Coast Guard Marine Safety Office, Louisville, KY, maintains the public docket for this rule. The documents and

other materials referenced in this notice will be available for inspection at the U.S. Coast Guard Marine Safety Office, 600 Martin Luther King Place, Room 360, Louisville, KY 40202-2230. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:**

Lieutenant Gregory A. Howard, Project Officer, U.S. Coast Guard Marine Safety Office, Louisville, Kentucky at (502) 582-5194.

**SUPPLEMENTARY INFORMATION:**

Drafting Information: The principal persons involved in drafting this document are Lieutenant Gregory A. Howard, Project Officer for the Captain of the Port, Louisville, Kentucky (502) 582-5196 and Lieutenant S. Moody, Project Attorney, Second Coast Guard District Legal Office, St. Louis, MO (314) 539-3900.

**Background and Purpose**

On May 16, 1995 the Notice of Proposed Rule Making was published in the Federal Register at 60 FR 26012. No comments were received from the date of publication of the proposed rule until the end of the comment period on July 17, 1995. Therefore the Coast Guard is establishing this regulated navigation area by this final rule with only a minor change to the proposed rule.

The situation requiring this regulation is periodic high water conditions on the Ohio River in the vicinity of Cincinnati, Ohio. The Ohio River in the Cincinnati area is hazardous to transit under the best conditions. To transit the area, mariners must navigate through several sweeping turns and seven bridges. When the water level in the Ohio River reaches 45 feet on the Cincinnati gauge, river currents increase and become very unpredictable, making it difficult for downbound vessels to maintain steerageway. During the period of 1983-1993 there were 13 marine casualties involving towboats from mile 468.5 to mile 473.0 on the Ohio River. A review of the case documentation showed that seven of the thirteen cases mentioned high water specifically or used terms such as "swift current" or "heavy current" as contributing factors to the casualties. Nine of these cases involved tows greater than 600 feet in length; six of the cases involved downbound tows; and five cases occurred at night. During hours of darkness the background lights of the city of Cincinnati hamper mariners' ability to maintain sight of the front of their tow. This rule is intended to protect the public and the environment, at night during periods of high water, from a potential hazard of large downbound tows carrying

hazardous material through the regulated area.

In the past, the Captain of the Port, Louisville, Kentucky has responded to this hazard by issuing a Temporary Final Rule to establish a Safety Zone in the area when warranted by high water conditions. This rule is intended to establish a permanent Regulated Navigation Area in which restrictions are activated and deactivated as a function of river level. The number of days that traffic will be affected by this rule will vary from several days to several weeks depending on the river levels. A permanent Regulated Navigation Area will permit vessels and commerce using the Ohio River to plan and schedule their tow traffic accordingly.

**Discussion of Regulations**

This rule would establish a Regulated Navigation Area on the Ohio River in the Cincinnati, Ohio area. The restrictions for the Regulated Navigation Area will only be in effect from one-half hour before sunset to one-half hour after sunrise whenever the river level is at or above 45 on the Cincinnati gauge. The rule prohibits transit by downbound tows containing cargoes regulated by title 46 Code of Federal Regulations Subchapter D and O which have a tow length exceeding 600 feet in length not including the tow boat; requires all commercial vessels in the regulated navigation area to monitor VHF-FM radiotelephone Channel 13; requires all downbound commercial vessels to attempt to contact other vessels in the regulated navigation area shortly before entering the area (this is a change from the Notice of Proposed Rule Making which required contact shortly after entering the area); and prohibits vessels from loitering in the navigation channel.

Since the water level of the Ohio River is seasonal and not predictable, establishing fixed calendar dates for the regulation is not practical. The rule is structured to permit the Captain of the Port, Louisville, Kentucky to activate or deactivate the regulated navigable area by issuing the proper notices. Broadcast Notice to Mariners will be issued in anticipation of high water, then again when the river reaches 45 feet, and then a termination broadcast will be issued when the river falls below 45 feet.

These regulations are needed due to the hazardous conditions that exist for all vessels transiting the Cincinnati area when the Ohio River is at high water during hours of darkness.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

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

**Federalism Assessment**

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

**Environmental Assessment**

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, as revised by 59 FR 38654; July 29, 1994, this rule is categorically excluded from further environmental documentation as an action required to protect the public and the environment.

**List of Subjects in 33 CFR Part 165**

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

For the reasons set out in the preamble, The Coast Guard amends

Subpart F of Part 165 of Title 33, Code of Federal Regulations, as follows:

#### **PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

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

2. A new § 165.205 is added to read as follows:

#### **§ 165.205 Ohio River at Cincinnati, OH; regulated navigation area.**

(a) *Location.* The following is a regulated navigation area (RNA)—The waters of the Ohio River between mile 466.0 and mile 473.0.

(b) *Activation.* The restrictions in paragraphs (c) (i) through (iv) are in effect from one-half hour before sunset to one-half hour after sunrise when the Cincinnati, Ohio, Ohio River Gauge is at or above the 45 foot level. The Captain of the Port, Louisville, Kentucky will publish a notice in the Local Notice to Mariners and will make announcements by Coast Guard Marine Information Broadcasts whenever the river level measured at the gauge activates or terminates the navigation restrictions in this section.

#### (c) *Regulations.*

(i) Transit through the RNA by all downbound vessels towing cargoes regulated by Title 46 Code of Federal Regulations Subchapters D and O with a tow length exceeding 600 feet excluding the tow boat is prohibited.

(ii) No vessel shall loiter, anchor, stop, remain or drift without power at any time within the navigation channel of the RNA.

(iii) All commercial vessels shall continually monitor VHF-FM channel 13 on their radiotelephone while in or approaching the RNA.

(iv) Between Ohio River miles 464.0 and 466.0, downbound vessels shall make a broadcast in the blind, on VHF-FM channel 13 announcing their estimated time of entering the RNA.

Dated: January 9, 1996.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander,  
Second Coast Guard District, St. Louis, MO.  
[FR Doc. 96-1386 Filed 1-25-96; 8:45 am]

BILLING CODE 4910-14-M

#### **33 CFR Part 165**

[COTP Louisville 96-001]

RIN 2115-AA97

#### **Safety Zone; Ohio River, Cincinnati, OH**

AGENCY: Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Ohio River. The regulation is needed to control commercial vessel traffic in the regulated area while transiting downbound at night during high water conditions. The regulation will restrict commercial navigation in the regulated area for the safety of vessel traffic and the protection of life and property along the river.

**EFFECTIVE DATES:** This regulation is effective on January 19, 1996, at 2 p.m. est. It will terminate at 8 a.m. est. on February 1, 1996, unless sooner terminated by the Captain of the Port Louisville, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** LT Paul D. Thorne, Supervisor, Coast Guard Marine Safety Detachment, Cincinnati, Ohio at (513) 922-3820.

#### **SUPPLEMENTARY INFORMATION:**

##### Background and Purpose

The situation requiring this regulation is high water in the Ohio River in the vicinity of Cincinnati, Ohio. The Ohio River in the Cincinnati area is hazardous to transit under the best conditions. To transit the area, mariners must navigate through several sweeping turns and seven bridges. When the water level in the Ohio River reaches 45 feet, on the Cincinnati gage, river currents increase and become very unpredictable, making it difficult for downbound vessels to maintain steerageway. During hours of darkness the background lights of the city of Cincinnati hamper mariners' ability to maintain sight of the front of their tow. The regulation is intended to protect the public and the environment, at night during periods of high water, from a potential hazard of large downbound tows carrying hazardous material through the regulated area.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the high water periods in the Cincinnati, Ohio, area are natural events which cannot be predicted with any reasonable accuracy. The Coast Guard deems it to be in the public's best interest to issue a regulation now, as the situation presents an immediate hazard to navigation, life, and property.

##### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of

Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). Because the duration of this emergency situation is anticipated to be short, the Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port Louisville, Kentucky, will monitor river conditions and will authorize entry of restricted vessels into the regulated area as conditions permit. Changes will be announced by Marine Safety Information Radio broadcast (Broadcast Notice to Mariners) on VHF marine band radio, channel 22 (157.1 MHz). Mariners may also call LT Paul D. Thorne, Supervisor, Coast Guard Marine Safety Detachment, Cincinnati, Ohio at (513) 922-3820 for current information.

##### Collection of Information

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

##### Federalism Assessment

The Coast Guard has analyzed this regulation under the principles and criteria contained in Executive Order 12612 and has determined that it does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

##### Environment

The Coast Guard considered the environmental impact of this regulation and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

##### Lists of Subjects in 33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

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

2. A new temporary § 165.T02-071 is added, to read as follows:

**§ 165.T02-071 Safety Zone: Ohio River, Cincinnati, OH.**

(a) *Location.* The following area is a safety zone: The Ohio River between miles 468.5 and 473.0.

(b) *Effective Dates.* This regulation becomes effective on January 19, 1996, at 2 p.m. est. It will terminate at 8 a.m. est on February 1, 1996, unless sooner terminated by the Captain of the Port Louisville, Kentucky.

(c) *Regulations.* In accordance with the general regulations of § 165.23 of this part, entry into this zone by all downbound vessels towing cargoes regulated by Title 46, Code of Federal Regulations, Subchapters D and O with a tow length exceeding 600 feet, excluding the tow boat, is prohibited from one-half hour before sunset to one-half hour after sunrise. The Captain of the Port will notify the maritime community of river conditions affecting the area covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: January 19, 1996.

B.D. Branham,

*Commander, U.S. Coast Guard, Captain of the Port, Louisville, Kentucky.*

[FR Doc. 96-1387 Filed 1-25-96; 8:45 am]

BILLING CODE 4910-14-M

**33 CFR Part 165**

[COTP Philadelphia, PA 96-004]

RIN 2115-AA97

**Safety Zone Regulations: Delaware Bay, Delaware River, Marcus Hook, PA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Delaware River and Delaware Bay from Marcus Hook, Pennsylvania, to the Delaware Breakwater. This safety zone is needed to protect vessels, the port community and the environment from potential safety and environmental hazards associated with the transit of the T/V HAVPRINS.

**EFFECTIVE DATES:** This rule is effective from 11:59 p.m., on January 19, 1996 and terminates at 11:59 a.m., on January 29, 1996. The Captain of the Port, Philadelphia, may, at an earlier date, advise mariners by Broadcast Notice to

Mariners that the safety zone will not be enforced.

**FOR FURTHER INFORMATION CONTACT:** LTJG S.J. Kelly, Project Officer c/o U.S. Coast Guard Captain of the Port, 1 Washington Ave., Philadelphia, PA. 19147-4395, Phone: (215) 271-4909.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. The Coast Guard was informed by the owner/operator of the T/V HAVPRINS on January 11, 1996 of the intended transit of the T/V HAVPRINS along the Delaware River. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect the environment and mariners against potential hazards associated with the transit of the T/V HAVPRINS while carrying liquefied petroleum gas.

**Drafting Information:** The drafters of this regulation are LTJG S.J. Kelly, project officer for the Captain of the Port, Philadelphia, and CDR T.R. Cahill, Project Attorney, Fifth Coast Guard District Legal Staff.

**Discussion of the Regulation**

This safety zone is a specified area around the LPG vessel while underway, at anchor and during cargo operations. It will be in effect during the T/V HAVPRINS's inbound transit of the Delaware River and Delaware Bay and during cargo operations. The circumstances requiring this regulation are the potential hazards associated with the transportation of liquefied petroleum gas by a large tankship in heavily trafficked areas of the Delaware River and Delaware Bay as well as in the Ports of Philadelphia. This transit consists of T/V HAVPRINS's inbound transit to Marcus Hook, Pennsylvania, and cargo operations at the Sun Refining and Marketing Refinery terminal on the Delaware River, at Marcus Hook, Pennsylvania. Coast Guard Captain of the Port Philadelphia may impose transit restrictions on vessels operating within the safety zone while the T/V HAVPRINS is loaded with LPG that exceeds 2% of the vessel's cargo carrying capacity.

**Regulatory Evaluation**

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not

significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

**Environment**

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e. (34) of Commandant Instruction M16475.1B (as amended by 59 FR 38654; 29 July 1994), this rule is categorically excluded from further environmental documentation.

**Collection of Information**

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

**Federalism Assessment**

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

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, waterways.

**Temporary Regulation**

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

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

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

2. A new § 165.T05-004 is added to read as follows:

**§ 165.T05-004 Safety Zone: Marcus Hook, PA and the Delaware Breakwater.**

(a) *Location:* A safety zone is established for:

(1) All waters within an area which extends 500 yards on either side and 1,000 yards ahead and astern of the T/V HAVPRINS while the T/V HAVPRINS is underway on the Delaware River in a loaded condition in the area bounded by the Delaware Breakwater and the Sun Refining and Marketing Refinery terminal at Marcus Hook, Pennsylvania.

(2) All waters within a 200 yard radius of the T/V HAVPRINS while it is moored at the Sun Refining and

Marketing Refinery terminal in a loaded condition.

(b) *Effective Date:* This section is effective from 11:59 p.m., January 19, 1996 to 11:59 a.m., January 29, 1996. If the conditions requiring a safety zone terminate at an earlier date, the Captain of the Port, Philadelphia, may advise mariners by Broadcast Notice to Mariners that the safety zone will not be enforced.

(c) *Regulations:* (1) No person or vessel may enter the safety zone unless its operator obtains permission of the Captain of the Port or his designated representative.

(d) As a condition of entry, the COTP or his designated representative may order that each vessel:

(1) Maintain a continuous radio guard on channel 16 and channel 13 VHF-FM while underway;

(2) Proceed as directed by the designated representative of the Captain of the Port, Philadelphia;

(3) Not overtake the T/V HAVPRINS unless the overtaking is to be completed before any bends in the channel, and the pilots, masters and operators of both vessels clearly agree on all actions including vessel speeds, time and location of overtaking; and

(4) When above the C&D Canal, not meet the T/V HAVPRINS at a relative speed greater than twenty (20) knots, or greater than prevailing weather conditions make prudent. The COTP will not permit meeting situations on river bends absent exigent circumstances related to safe navigation of either vessel.

(e) *Definitions:* The following definitions shall apply within the safety zone.

(1) The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Philadelphia, Pennsylvania to act on his behalf. The designated representative enforcing the safety zone may be contacted on VHF channels 13 and 16. The Captain of the Port of Philadelphia and the Command Duty Officer at the Marine Safety Office, Philadelphia, may be contacted at telephone number (215) 271-4940.

(2) Loaded condition is LPG on board exceeding 2% of cargo tank capacity of the vessel.

Dated: January 19, 1996.

John E. Veentjer,

*Captain, U.S. Coast Guard, Captain of the Port, Philadelphia, PA.*

[FR Doc. 96-1389 Filed 1-25-96; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[DE26-1-6940a; FRL-5320-1]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware: Regulation 24—"Control of Volatile Organic Compound Emissions"

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware on December 19, 1994 pertaining to Delaware Regulation 24—"Control of Volatile Organic Compound Emissions", sections 10, 11, 12, 44, 45, 47, 48, and 49, and Appendices I, K, L, and M, effective November 29, 1994. These sections of Regulation 24 establish additional emission standards that represent the application of reasonably available control technology (RACT) to categories of stationary sources of volatile organic compounds (VOCs), and establish associated testing, monitoring, recordkeeping, compliance certification, and permit requirements. This revision was submitted to comply with the RACT "Catch-up" provisions of the Clean Air Act Amendments of 1990 (CAAA). This action is being taken under section 110 of the Clean Air Act (CAA).

**EFFECTIVE DATE:** This action will become effective March 26, 1996 unless notice is received on or before February 26, 1996 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 597-3164, at the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:** On December 19, 1994, the Delaware Department of Natural Resources & Environmental Control (DNREC) submitted a revision to its SIP. This revision was submitted to comply with the RACT "Catch-up" provisions of the CAA. The revision pertains to Regulation 24, "Control of Volatile Organic Compound Emissions", by establishing statewide emissions standards for eight (8) additional VOC source categories, effective November 29, 1994. The 8 additional VOC source categories are as follows: (1) Section 10—Aerospace Coatings, (2) Section 11—Motor Vehicle Refinishing, (3) Section 12—Surface Coating of Plastic Parts, (4) Section 44—Batch Processing Operations, (5) Section 45—Industrial Cleaning Solvents, (6) Section 47—Offset Lithographic Printing, (7) Section 48—Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (SOCMI), and (8) Section 49—Control of Volatile Organic Compound Emissions from Volatile Organic Liquid Storage Vessels. In addition, new appendices were added as follows: Appendix I—Method to Determine Length of Rolling Period for Liquid/Liquid Material Balance, Appendix K—Emission Estimation Methodologies, Appendix L—Method to Determine Total Organic Carbon for Offset Lithographic Solutions, and Appendix M—Test Methods for Determining the Performance of Alternative Cleaning Fluids. A revision to Regulation 24, section 2—Definitions—additions, and an Errata sheet to correct typographical errors, reference notations, etc. were also submitted on December 19, 1994 and effective November 29, 1994.

#### I. EPA Evaluation and Action

VOCs contribute to the production of ground level ozone and smog. These rules were adopted as part of an effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. [The other source categories was published in the Federal Register on May 3, 1995 (60 FR 21708).] The following is EPA's evaluation of and action on sections 10, 11, 12, 44, 45, 47, 48, and 49, and appendices I, K, L, and M of Regulation 24, for the State of Delaware. Detailed descriptions of the amendments addressed in this document, and EPA's evaluation of the amendments, are contained in the technical support document (TSD) prepared for these rulemaking actions



by EPA. Copies of the TSD are available from the EPA Regional office listed in the ADDRESSES section of this document.

For the purpose of assisting States and local agencies in developing RACT rules, EPA prepared a series of control technique guidance (CTG), and alternative control technology (ACT). The CTGs and ACTs applicable to the sections mentioned above are:

Aerospace Coatings (CTG & MACT)—59 FR 29216, June 6, 1994; Automobile Refinishing (ACT)—EPA-453/R-94-031, April 1994; Surface Coating of Automotive/Transportation and Business Machine Parts (ACT)—EPA-453/R-94-017, February 1994; Control of VOC Emissions from Batch Processes (ACT)—EPA-453/R-93-017, February 1994; Industrial Cleaning Solvents (ACT)—EPA-453/R-94-015, February 1994; Offset Lithographic Printing (ACT)—EPA-453/R-94-054, June 1994; Control of VOC Emissions from Reactor Processes and Distillation Operations in SOCOMI (CTG)—EPA-450/4-91-031, August 1993; and Volatile Organic Liquid Storage in Floating and Fixed Roof Tanks (ACT)—EPA-453/R-94-001, January 1994.

*State Submittal:* Sections 10, 11, 12, 44, 45, 47, 48, and 49 of Regulation 24 cover the following VOC source categories, respectively: Aerospace Coatings, Motor Vehicle Refinishing, Surface Coating of Plastic Parts, Batch Processing Operations, Industrial Cleaning Solvents, Offset Lithographic Printing, Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry, and Control of Volatile Organic Compound Emissions from Volatile Organic Liquid Storage Vessels. Appendices I, K, L, & M cover respectively: Method to Determine Length of Rolling Period for Liquid/Liquid Material Balance, Emission Estimation Methodologies, Method to Determine Total Organic Carbon for Offset Lithographic Solutions, and Test Method Determining the Performance of Alternative Cleaning Fluids.

#### A. Section 10—Aerospace Coatings

Section 10 applies to the following operations in each aerospace manufacturing or rework facility: (1) general cleaning operations, (2) all hand-wipe cleaning operations, (3) spray-gun cleaning operations, (4) all flush cleaning operations, (5) primer and topcoat application operation, (6) repainting operation, which applies to the repainting of the outer surface of aerospace vehicles with the exception of parts or units normally removed during repainting, (7) chemical milling

maskant application operation, and (8) waste storage and handling operation.

Section 10 does not apply to the following operations: Chemical milling, metal finishing, electrodeposition, composite processing, adhesives, adhesive bonding primers, sealants, and specialty coatings. Section 10 does not apply to the aerospace manufacturing and rework facilities whose plant-wide, actual emissions from the operations without control devices are less than 15 pounds of volatile organic compounds (VOCs) per day.

*EPA's Evaluation:* The regulations listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

#### B. Section 11—Motor Vehicle Refinishing

Section 11 applies to any source that applies coatings to motor vehicle refinishing operation.

Section 11 does not apply to sources applying coatings to motor vehicle parts if the parts are not a component of a vehicle or mobile equipment being coated at a motor vehicle refinishing operation, and to any coating operation at a motor vehicle assembly plant.

*EPA's Evaluation:* The regulations listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

#### C. Section 12—Surface Coating of Plastic Parts

Section 12 applies to any facility that coats plastic components for the following uses:

(1) Automotive or other transportation equipment including interior and/or exterior parts for automobiles, trucks (light-, medium-, or heavy-duty), large and small farm machinery, motorcycles, construction equipment, vans, buses, lawnmowers, and other mobile, motorized mobilized equipment.

(2) Housing and exterior parts for business and commercial machines including, but not limited to, computers, copy machines, typewriters, medical equipment, and entertainment equipment.

Section 12 does not apply to the following operations:

(1) Coating of interior and exterior parts of aircraft.

(2) Coating of exterior of completely assembled marine vessels.

(3) Refinishing of aftermarket automobiles, trucks, and other transportation equipment.

(4) Coating of internal electrical components of business and commercial machines.

(5) Coating of a metal component in a spray booth or on a process line.

Section 12 does not apply to plastic parts coating facilities whose plant wide actual emissions, without control devices, from all plastic parts coating operations, are less than 15 pounds of VOCs per day.

*EPA's Evaluation:* The regulations listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

#### D. Section 44—Batch Processing Operations

Section 44 applies to process vents associated with batch processing operations in the following affected manufacturing facilities with the corresponding Standard Industrial Classification (SIC) Codes:

(1) Plastic Materials & Resins (SIC 2821).

(2) Medical Chemicals & Botanical Products (SIC 2833).

(3) Gum & Wood Chemicals (SIC 2861).

(4) Cyclic Crudes & Intermediates (SIC 2869).

(5) Industrial Organic Chemicals (SIC 2869).

(6) Agricultural Chemicals (SIC 2879).

Section 44 does not apply to the following operations:

(1) Combined process vents from each batch process train with an annual mass emission total of 10,000 lbs of VOCs or less; or

(2) Single unit operations which have annual mass emission of 227 kg (500 lb) VOCs or less.

*EPA's Evaluation:* The regulation listed above is approvable as a SIP revision because it conforms to EPA guidance and complies with the requirements of the CAA.

#### E. Section 45—Industrial Cleaning Solvents

Section 45 applies to all sources that use organic solvents for the purpose of cleaning. Section 45 does not apply to: any non-manufacturing area cleaning operation, any non-routine maintenance of manufacturing facilities and equipment, and any source that uses less than 4,540 kilograms (5 tons) of cleaning solvent per year.

*EPA's Evaluation:* The regulations listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

#### F. Section 47—Offset Lithographic Printing

Section 47 applies to any offset lithographic printing facility, including



heatset web, non-heatset web (non-newspaper), non-heatset sheet-fed, and newspaper (non-heatset web) facilities.

Section 47 does not apply to any offset lithographic printing facility whose total actual VOC emissions from all lithographic printing operations (including emissions from cleaning solutions used on lithographic printing presses) are less than 15 lbs VOCs per day before the application of capture systems and control devices.

Section 47 does not apply to other types of printing operations, such as flexography, rotogravure, or letterpress.

*EPA's Evaluation:* The regulations listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

#### G. Section 48—Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry

Section 48 applies to any vent stream that originates from a process unit in which a reactor or distillation operation is located at a facility within the synthetic organic chemical manufacturing industry (SOCMI).

Section 48 does not apply to the following operations:

(1) Any reactor process or distillation operation that is designed and operated in a batch mode.

(2) Any reactor process or distillation operation that is part of a polymer manufacturing operation.

(3) Any reactor process or distillation operation that operates in a process unit with a total design capacity of less than 1,100 tons per year for all chemicals produced within that unit except for the reporting/recording requirements.

(4) Any vent stream for a reactor process or distillation operation with a flow rate less than 0.0085 standard cubic meters per minute (scmm) or a total VOC concentration of less than 500 parts per million by volume (ppmv) except for the performance testing requirement and the reporting/recording requirements.

*EPA's Evaluation:* The regulation listed above is approvable as a SIP revision because it conforms to EPA guidance and complies with the requirements of the CAA.

#### H. Section 49—Control of Volatile Organic Compound Emissions From Volatile Organic Liquid Storage Vessels

Section 49 applies to each storage vessel with a capacity equal to or greater than 40,000 gallons that is used to store volatile organic liquids (VOLs).

Section 49 does not apply to:

(1) Storage vessels with a capacity less than 5,000 gal.

(2) Storage vessels with a capacity equal to or greater than 5,000 gal and less than 40,000 gal provided that records are maintained.

(3) Storage vessels with a capacity equal to or greater than 40,000 gal storing a liquid with a maximum true vapor pressure less than 1.0 psia provided that records are maintained.

(4) Storage vessels with a capacity equal to or greater than 40,000 gal storing a liquid with a maximum true vapor pressure equal to or greater than 1.0 psia but less than 1.5 psia provided that records are maintained.

(5) Storage vessels at coke oven by-product plants.

(6) Pressure vessels which operate without emissions to the atmosphere.

(7) Storage vessels permanently attached to mobile vehicles such as trucks, railcars, barges, or ships.

(8) Storage vessels used to store beverage alcohol.

*EPA's Evaluation:* The regulation listed above is approvable as a SIP revision because it conforms to EPA guidance and complies with the requirements of the CAA.

#### I. Appendix I—Method To Determine Length of Rolling Period for Liquid/Liquid Material Balance

Appendix I determines the length of the rolling material balance period used in the liquid-liquid material balance test method to measure the overall performance of volatile organic compound (VOC) emission control; systems employing carbon adsorbers for solvent recovery as the control device.

Physical properties and usage are determined for the solvents used in the process, and configuration and operating parameters are identified for the emission source and its emission control system. This information is used to calculate the concentration of VOC in the outlet air of the capture unit, amount of VOC adsorbed on the carbon, maximum VOC loading on the carbon, unmeasured solvent holding capacity of the solvent recovery system, and unmeasured solvent holding capacity of the process unit. These values are then used to calculate the rolling material balance period.

*EPA's Evaluation:* The methods listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

#### J. Appendix K—Emission Estimation Methodologies

The methodologies presented in Appendix K are based on the Ideal Gas Law and on fundamental vapor/liquid equilibrium relationships such as

Henry's and Raoult's Law. The equations are for estimating and characterizing uncontrolled emission streams from batch processes.

*EPA's Evaluation:* The methods listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

#### K. Appendix L—Method To Determine Total Organic Carbon for Offset Lithographic Solutions

Appendix L is a method applicable for the determination of organic carbon in diluted offset lithographic solutions. Organic carbon in a sample is converted to carbon dioxide (CO<sub>2</sub>) by catalytic combustion or wet chemical oxidation. The CO<sub>2</sub> formed can be measured directly by an infrared detector or converted to methane (CH<sub>4</sub>) and measured by a flame ionization detector. The amount of CO<sub>2</sub> or CH<sub>4</sub> is directly proportional to the concentration of carbonaceous material in the sample.

*EPA's Evaluation:* The methods listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

#### L. Appendix M—Test Method for Determining the Performance of Alternative Cleaning Fluids

Appendix M presents a test method for evaluating the performance of alternative cleaning fluids. Any fluids may be tested, but the primary intent is that it will be used to evaluate the performance of alternatives relative to a VOC solvent. It is a screening technique designed to determine whether the alternatives cleans at least as well as currently used VOC solvent in a simple, standardized wiping application.

*EPA's Evaluation:* The methods listed above are approvable as SIP revisions because they conform to EPA guidance and comply with the requirements of the CAA.

As required by 40 CFR 51.102, the State of Delaware has certified that public hearings with regard to these revisions were held in Delaware on September 22, 1994.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will become effective March 26, 1996 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 26, 1996.

#### Final Action

EPA is approving sections 10, 11, 12, 44, 45, 47, 48, and 49, and Appendices I, K, L, and M of Delaware Regulation 24 as a revision to the Delaware SIP. The State of Delaware submitted these amendments to EPA as a SIP revision on December 19, 1994.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed/promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action approving the 8 additional VOC source categories for Delaware must be filed in the United States Court of Appeals for the appropriate circuit by March 26, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone,

Reporting and recordkeeping requirements.

Dated: October 18, 1995.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52, subpart I of chapter I, title 40 is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart I—Delaware

2. Section 52.420 is amended by adding paragraphs (c)(54) to read as follows:

#### § 52.420 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(54) Revisions to the Delaware State Implementation Plan submitted on December 19, 1994 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of December 19, 1994 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 24—"Control of Volatile Organic Compound Emissions", effective November 29, 1994.

(B) Regulation 24—"Control of Volatile Organic Compound Emissions", Sections 10, 11, 12, 44, 45, 47, 48, and 49 and appendices I, K, L, and M, effective November 29, 1994.

(C) Administrative changes to Regulation 24, Section 2—Definitions: Addition of sections 2(c) Basecoat; 2(j) Clearcoat; 2(x) Gloss flattener; 2(bb) Internal Floating Roof; 2(gg) Liquid-mounted seal; 2(ss) Petroleum; 2(tt) Petroleum Liquid; 2(xx) Primer; 2(iii) Storage Vessel; 2(mmm) Transfer efficiency; 2(ppp) Vapor-mounted seal; and 2(ttt) Volatile Organic Liquid (VOL); and section 2(zz) by changing ASTM D323-89 to ASTM D323-82, effective November 29, 1994.

(D) An Errata sheet of Regulation 24 with administrative changes to Section 4-4(b) by renumbering section 13 to 10 and section 22 to 23, 4(b)(1)(iii) by renumbering section 13 to 10 and section 22 to 23, 4(c) by renumbering section 22 to 23, 4(d) by renumbering section 22 to 23, 4(e) by renumbering section 13 to 10 and section 22 to 23, 4(e)(2)(iv) by adding the following lines: section 10(e)(1)(iii), section 11(d), section 12(e)(1)(iii), and section 23(e)(1)(iii), 4(e)(x) correcting 50 degrees F to 82 degrees F; Section 8-8(a)(2) by renumbering section 13 to 10; Section 21-21(a)(5) correcting the number 4 to

5; Section 25—25(c)(4)(vi) by changing *calibrated* to *calculated*; Section 29—29(i)(3)(i)(A) by correcting 0.09 to 0.044 in Hg, 29(i)(3)(i)(B) by correcting 0.09 to 0.044 in Hg; Section 30—30(b) by deleting definitions of *liquid mounted seal and vapor mounted seal* that were added in Section 2—Definitions; Section 31—31(b) by deleting definition of *internal floating roof* that was added to Section 2—Definitions, 31(e)(ii) by correcting letter *i* to *ii*; Section 33—33(f)(3) by correcting (c)(3)(j)(B) to (c)(3)(ii)(B), Section 35—35(c)(2)(i) by adding *weight*, 35(c)(3)(i) by adding *by weight*; Section 37—37(a)(1) by deleting *of press ready ink*; Section 43—43(a)(1) by renumbering section 13 to 10 and section 42 to 49; Appendix A—(a) by renumbering section 13(c)(1) or section 14 through 43 to section 19 through 50; Appendix D—(a)(2)(iii)(i) by deleting *to be published*, effective November 29, 1994.

(ii) Additional Material.

(A) Remainder of December 19, 1994 State submittal pertaining to Regulation 24 referenced in paragraphs (c)(54)(i).

[FR Doc. 96-1299 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-P

## 40 CFR Part 52

[IL 18-6-6516a; FRL-5334-2]

### Approval and Promulgation of Implementation Plans; Illinois

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

**ACTION:** Direct final rule.

**SUMMARY:** On October 21, 1993, and March 4, 1994, the Illinois Environmental Protection Agency (IEPA) submitted to the USEPA volatile organic compound (VOC) rules that were intended to satisfy part of the requirements of section 182(b)(2) of the Clean Air Act (Act) amendments of 1990. Specifically, these rules provide control requirements for certain major sources not covered by a Control Technique Guideline (CTG) document. These non-CTG VOC rules apply to sources in the Chicago ozone nonattainment area which have the potential to emit 25 tons of VOC per year. These rules provide an environmental benefit due to the imposition of these additional control requirements. IEPA estimates that these rules will result in VOC emission reductions, from 119 industrial plants, of 2.78 tons per day. The rationale for the approval is set forth in this final rule; additional information is available at the address indicated below.

Elsewhere in this Federal Register USEPA is proposing approval and soliciting public comment on this requested revision to the Illinois State implementation plan (SIP). If adverse comments are received on this direct final rule, USEPA will withdraw the final rule and address the comments received in a new final rule. Unless this final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

**DATES:** This final rule is effective March 26, 1996 unless adverse comments are received by February 26, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments can be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR-18J), Air and Radiation Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision request are available for inspection at the following address: (It is recommended that you telephone Steven Rosenthal at (312) 886-6052, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Steven Rosenthal, Regulation Development Branch (AR-18J), (312) 886-6052.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 29, 1990, USEPA promulgated a Federal implementation plan (FIP) for the six counties in the Chicago metropolitan area: Cook, Du Page, Kane, Lake, McHenry, and Will. 55 FR 26818, codified at 40 CFR 52.741. This FIP required that certain VOC sources comply with reasonably available control technology (RACT) requirements.

Under the Act as amended in 1977, ozone nonattainment areas were required to adopt reasonably available control technology (RACT) for sources of VOC emissions. USEPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. USEPA determined that the

area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Those areas (including the Chicago area) that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987, were required to adopt RACT for all CTG sources and for all major (100 tons per year or more of VOC emissions under the pre-amended Act) non-CTG sources.

Section 182(b)(2) of the Act as amended in 1990 (amended Act) requires States to adopt reasonably available control technology (RACT) rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the amended Act of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. These section 182(b)(2) RACT requirements are referred to as the RACT "catch-up" requirements.

The amended Act requires USEPA to issue CTGs for 13 source categories by November 15, 1993. A CTG was published by this date for two source categories—Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactors and Distillation; however, the CTGs for the remaining source categories have not been completed. The amended Act requires States to submit rules for sources covered by a post-enactment CTG in accordance with a schedule specified in a CTG document. Accordingly, States must submit a RACT rule for SOCMI reactor processes and distillation operations before March 23, 1994.

The USEPA created a CTG document as Appendix E to the *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*. (57 FR 18070, 18077, April 28, 1992). In Appendix E, USEPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG, based on the list of CTGs USEPA expected to issue to meet the requirement in section 183. Appendix E states that if USEPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule for those sources by November 15, 1994. In accordance with section 182(b)(2), implementation of that RACT rule should occur by May 31, 1995.

On October 21, 1993, and March 4, 1994, IEPA submitted VOC rules for the Chicago ozone severe nonattainment area.<sup>1</sup> The rules submitted on March 4, 1994, include both new rules and revisions to the rules that were submitted on October 21, 1993. Those sections contained in the March 4, 1994, submittal supersede the same sections in the October 21, 1993, submittal. These rules were intended to satisfy, in part, the major non-CTG control requirements of section 182(b)(2). These "catch-up" rules lower the applicability cutoff for major non-CTG sources from 100 tons VOC per year to 25 tons VOC per year. This cutoff was lowered because section 182(d) of the amended Act defines a major source in a severe ozone nonattainment area as a source that emits 25 tons or more of VOC per year. However, this March 4, 1994, submittal does not include major non-CTG regulations for the 11 source categories for which USEPA expected to issue CTGs to satisfy section 183, but did not. As stated previously, Illinois is required to adopt and submit RACT regulations by November 1994 for these 11 source categories.

#### Evaluation of Rules

##### *Subpart B: Definitions*

Illinois has added 18 definitions to Subpart B. All but one of these definitions apply to new rules for "Polyester Resin Product Manufacturing Process," "Aerosol Can Filling," and "Leather Coating." These definitions accurately describe the specified terms and are necessary for implementation of these three rules. These definitions are therefore approvable.

Illinois has also added a definition of "potential to emit" (PTE). This term is used to establish the applicability cutoff for the major non-CTG "catch-up" rules described in the following part of this notice. PTE is defined as "the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restriction on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable." This definition is acceptable for establishing applicability and for establishing federally

enforceable restrictions for the purpose of allowing a source to avoid applicability. This definition is therefore approvable.

##### *Subpart A: General Provisions*

Section 218.106 Compliance Dates—A new subsection 218.106(c) is added which provides a compliance date of March 15, 1995, for newly subject 25 ton per year VOC sources. This subsection is approvable because this date is prior to May 31, 1995, the implementation date that is specified in section 182(b)(2) for major non-CTG sources.

Section 218.108 Exemptions, Variations, and Alternative Means of Control or Compliance Determinations—Subsection 218.108(b) allows equivalent alternative control plans and test methods to be established in a federally enforceable permit. This provision allows Illinois to revise its control requirements and test methods through a federally enforceable state operating permit (FESOP) or Title V (of the Act) operating permit. The application of this section is discussed in subsequent parts of these rules.

Section 218.113 Compliance with Permit Conditions—This section requires sources to comply with their permit requirements and is therefore approvable.

Section 218.402 Applicability—This section contains a 25 tons per year PTE cutoff (in addition to a 100 ton maximum theoretical emissions<sup>2</sup> (MTE)

<sup>2</sup> "Maximum theoretical emissions" means the quantity of volatile organic material that theoretically could be emitted by a stationary source before add-on controls based on the design capacity or maximum production capacity of the source and 8760 hours per year. The design capacity or maximum production capacity includes use of coating(s) or ink(s) with the highest volatile organic material content actually used in practice by the source, provided, however, the Agency shall, when appropriate, and upon request by the permit applicant, limit the "maximum theoretical emissions" of a source by the imposition of conditions in a federally enforceable operating permit for such source. Such conditions shall not be inconsistent with requirements of the Clean Air Act, as amended, or any applicable requirements established by the Board. Such conditions shall be established in place of design capacity or maximum production capacity in calculating the "maximum theoretical emissions" for such source and may include, among other things, the establishment of production limitations, capacity limitations, or limitations on the volatile organic material content of coatings or inks, or the hours of operation of any emission unit, or a combination of any such limitations. Production or capacity limitations shall be established on a basis of no longer than one month except in those cases where a limit spanning a longer period of time is appropriate. In such cases, a limit or limitation must not exceed an annual limit rolled on a basis of at most a month; that is, for example, a monthly production or a capacity level must be determined for each parameter subject to a production or capacity limitation and added to the eleven prior monthly levels for monthly

cutoff) for flexographic and rotogravure printing sources as required by the new major source definition applicable in severe ozone nonattainment areas. In addition, this section allows sources to avoid the applicability of specified printing rules, provided a source has a federally enforceable permit that limits emissions to below the applicable cutoff through capacity or production limitations. This use of federally enforceable permits is approvable because USEPA can deem a permit to be "not federally enforceable" in a letter to IEPA. Upon issuance of such a letter, the source is no longer protected by this permit. The source would then be subject to the SIP requirements if its emissions exceed the applicable cutoffs. This is consistent with USEPA's December 17, 1992, approval of Illinois' operating permit program which states: "In approving the State operating program USEPA is determining that Illinois' program allows USEPA to deem an operating permit not 'federally enforceable' for purposes of limiting potential to emit and offset credibility." (57 FR 59928, 59930). IEPA has agreed to this approach and specified the applicable procedures in a March 26, 1993, letter to USEPA. This section is therefore approvable because it adds a cutoff consistent with the requirements of the amended Act and because USEPA can invalidate the protection provided by an operating permit by deeming such operating permit to be "not federally enforceable" in a letter to IEPA.

Section 218.611 Applicability for Petroleum Solvent Dry Cleaners—The above discussion in section 218.402, for flexographic and rotogravure printing sources, applies to this section for petroleum solvent dry cleaners.

Section 218.620 Applicability—This section contains a 25 tons per year PTE cutoff (in addition to a 100 ton MTE cutoff) for paint and ink manufacturing sources as required by the new major source definition applicable in severe ozone nonattainment areas and is therefore approvable.

Subpart CC: Polyester Resin Product Manufacturing Process—This new rule applies to a source's polyester resin products manufacturing process emission units and the associated handling of materials, cleanup activity, and formulation activity at sources with MTE of less than 100 tons. The control requirements consist of any of the following: (1) The use of polyester resin material with specified monomer contents; (2) the use of a closed-mold or

comparison with the annual limit. Any production or capacity limitations shall be verified through appropriate recordkeeping.

<sup>1</sup> The Chicago severe ozone nonattainment area consists of Cook, Du Page, Kane, Lake, McHenry, and Will Counties and Aux Sable Township and Goose Lake Township in Grundy County and Oswego Township in Kendall County.

pultrusion system which will result in less than 4% weight loss of polyester resin materials; (3) the use of vapor suppressed polyester resin approved by IEPA in the source's permit such that weight loss from VOC emissions does not exceed 60 grams per square meter of exposed surface area during molding; or (4) the use of any materials or processes demonstrated to the satisfaction of IEPA to achieve VOC emission levels equivalent to any of the above control techniques. This alternative must be approved by IEPA and USEPA in a federally enforceable permit or as a SIP revision. An analysis of alternative equivalent control plans is contained below within the discussion of Subparts PP, QQ, RR, and TT. This rule also includes work practices (such as use of closed containers) and regulates the use of cleaning materials. Section 218.668(a)(3)(C), 218.668(a)(4)(D) and 218.668(a)(5)(C), allow for the determination of specified control requirements "By site-specific sampling and analysis methods approved by the Agency and USEPA in a federally enforceable permit." The procedures for USEPA's review and approval of these alternative test methods are specified in a September 13, 1995, letter from the Illinois Environmental Protection Agency to Region 5 of the USEPA. The emission limits contained in this rule are very similar to the emission limits contained in Rule 1162 for Polyester Resin Operations that was revised, in May 1994, by the South Coast Air Quality Management District—which covers the Los Angeles area. Rule 1162 was approved by USEPA on August 25, 1994 (59 FR 43571). Illinois' Polyester Resin Product Manufacturing Process rule is therefore approvable.

Subpart DD: Aerosol Can Filling—This new rule applies to a source's aerosol can filling lines if the source's MTE is less than 100 tons and it has a PTE equal or greater than 25 tons VOC per year. Aerosol can filling lines can comply by one of the following options: (1) Use of add-on control which achieves an overall reduction of 81%; or (2) (A) Use of through-the-valve (TTV) fill or enhanced under-the-cup (UTC) fill to minimize loss of VOC propellant; or use of another system approved in a federally enforceable permit which achieves at least 75% reduction of the emissions of UTC fill; (B) Fill on a monthly basis at least 90% of cans filled on such aerosol can filling lines that are capable of being filled by the TTV method with TTV fill. TTV filling causes only 15% to 25% of the emissions from UTC (the standard method of filling cans) and is

considered to be RACT. Based on discussions with IEPA, the two aerosol can filling sources that have been identified as emitting over 25 tons VOC per year either are or will be controlled as follows: CCL Custom Manufacturing will be installing an incinerator and will therefore comply with the 81% overall control requirement and Chase Products Company is filling 90% of its cans with TTV. Therefore this rule satisfies the requirement for RACT on aerosol filling operations.

Section 218.926(b)(2) consists of a new set of control requirements which apply to a source's leather coating operations if the source's MTE is less than 100 tons and it has a PTE of 25 tons VOC per year or greater. These control requirements are: (A) For the application of stain coating to leather, other than specialty leather, the VOC contained in the subject coatings shall not exceed 10 tons in any consecutive 12-month period or the application of such coatings shall comply with (C) below; (B) For the application of coatings to specialty leather, the total VOC content of all coatings, including stains, as applied to a category of specialty leather, shall not exceed 38 lbs per 1000 square feet of such specialty leather produced, determined on a monthly basis; or (C) The daily-weighted average VOC content shall not exceed 3.5 lbs VOC/gallon of coating as applied. A daily-weighted average of 3.5 lbs VOC per gallon has previously been established as RACT by USEPA for major non-CTG coating sources and a 38 lbs VOC per 1000 square feet limit is contained in Wisconsin's leather coating rules which has been approved as RACT by USEPA. IEPA justified its 10 ton exemption for stains by explaining that use of high VOC content stain is needed for some natural leathers. Even when a stain with dye can be thinned with water the VOC content can still be very high because of the VOC required to actually dissolve the small amount of dye present. Stain is applied at varying rates on different pieces of leather and at varying rates on a single piece of leather, as it is used to achieve uniform shade on animal hides with naturally varying coloration. IEPA added that at the same time and in light of the above, total VOC emissions from a source attributable to stain are small. Illinois' leathercoating rule is therefore consistent with RACT. The compliance certification and recordkeeping requirements for leathercoating operations are contained in Sections 218.991(d)(1) and 218.991(d)(2), respectively. The recordkeeping requirements in Section 218.991(d)(2)

establish monthly records of (1) the pounds VOC per gallon of coating (VOC content) and volume of each stain coating used for other than specialty leather, (2) the VOC content and volume of each coating used for specialty shoe leather, (3) the VOC content and volume of each coating used for specialty football leather, (4) the square feet of specialty shoe leather produced, and (5) and the square feet of specialty football leather produced. These recordkeeping requirements are therefore sufficient to establish compliance with the leathercoating emission limits.

Subparts PP, QQ, RR, and TT consist of "generic" major non-CTG rules for sources not specifically covered by another rule. Sections 926, 946, 966, and 986 specify the control requirements for the rules. Subsection (a) of each of these Sections requires an overall 81 percent reduction from each emission unit. A Board Note has been added to each subsection to clarify what is intended by the term "emission unit." A further clarification of the Board Note has been provided in a June 16, 1993, letter from Dennis Lawler, IEPA.

Subpart UU contains the recordkeeping and reporting requirements for the non-CTG requirements in Subparts PP, QQ, RR, and TT and Section 218.990 contains the recordkeeping and reporting requirements for exempt sources. Although these sections refer to emission units which are exempt, it should be noted that the owner or operator of such an exempt emission unit would need to submit records for the entire source to demonstrate that maximum theoretical emissions from all non-CTG and unregulated CTG operations are below the applicable cutoff. In those cases where one or more (but not all) emission units are exempt (as in 218.920(d), 218.940(d), 218.960(d), and 218.980(d)), records must also be submitted documenting that each such emission unit is exempt.

Illinois' major non-CTG VOC rules in Subparts PP, QQ, RR, and TT allow compliance via (1) Emission capture and control techniques which achieve an overall reduction in uncontrolled VOC emissions of at least 81 percent from each emission unit, or (2) For coating lines, the daily-weighted average VOC content shall not exceed 3.5 pounds (lbs) VOC per gallon (gal) of coating, or (3) an equivalent alternative control plan which has been approved by the Agency and the USEPA in a federally enforceable permit or as a SIP revision.

On December 17, 1992, (57 FR 59928) USEPA approved Illinois' existing Operating Permit program as satisfying

USEPA's June 28, 1989, (54 FR 27274) five criteria regarding Federal enforceability. One of the criteria is that permits may not be issued that make less stringent any SIP limitation or requirement. USEPA's December 17, 1992, notice states that operating permits issued by Illinois in conformance with the five criteria (including the prohibition against States issuing operating permit limits less stringent than the regulations in the SIP) discussed in this notice will be considered federally enforceable. This notice also states Illinois' operating permit program allows USEPA to deem an operating permit not "federally enforceable."

On July 21, 1992, USEPA promulgated a new part 70 of chapter 1 of title 40 of the Code of Federal Regulations. See 57 FR 32250. This new part 70 contains regulations, required by Title V of the Act, that require and specify the minimum elements of State operating permit programs. Part 70 is therefore an appropriate basis for evaluating the acceptability of Illinois' use of federally enforceable State operating permits (FESOP) and Title V permits in its VOC rules.

Section 70.6(a)(1)(iii) states:

If an applicable implementation plan allows a determination of an alternative emission limit at a part 70 source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the State elects to use such process, any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

USEPA has therefore determined that the alternative control requirement, submitted on March 4, 1994, in subsections 218.926(c), 218.946(b), 218.966(b) and 218.986(c), is approvable because it requires that any alternative must be equivalent to the underlying SIP requirements (consistent with part 70) and USEPA can deem a permit containing an alternative control plan to be not "federally enforceable" if it determines that a permit is not quantifiable or practically enforceable or a permit relaxes the SIP. The underlying SIP, to which any equivalent alternative control plan must be compared, has federally enforceable control requirements, test methods, and recordkeeping and reporting requirements. In addition, IEPA's September 13, 1995, letter contains the specific procedures for USEPA review and approval.

Subsections 218.620(a)(1)(B), 218.920(a)(1)(B), 218.940(a)(1)(B), 218.960(a)(1)(B), 218.980(a)(1)(B), along with the following subsections in conjunction with Section 211.4970 (the definition of "Potential to emit"): Subsections 218.620(b)(1), 218.920(b)(1), 218.940(b)(1), 219.960(b)(1) and 218.980(b)(1), allow sources to avoid the applicability of specified major non-CTG rules, provided a source has a federally enforceable permit that limits emissions to below the applicable cutoff through capacity or production limitations. These subsections are approvable because USEPA can deem a permit to be "not federally enforceable" in a letter to IEPA. Upon issuance of such a letter, the source is no longer protected by the permit referenced in the subject subsections. The source would then be subject to the SIP requirements if its emissions exceed the applicable cutoff. This is consistent with USEPA's December 17, 1992, approval of Illinois' operating permit program which states: "In approving the State operating program USEPA is determining that Illinois' program allows USEPA to deem an operating permit not 'federally enforceable' for purposes of limiting potential to emit and to offset creditability." (57 FR 59928, 59930). IEPA has agreed to this approach and specified the applicable procedures in a March 26, 1993, letter to USEPA. In summary, these subsections are approvable because USEPA can invalidate the protection provided by an operating permit by deeming such operating permit to be "not federally enforceable" in a letter to IEPA.

USEPA's "generic major (based on potential emissions of 25 tons of VOC) non-CTG rules" in subparts PP, QQ, RR and TT, do not apply to synthetic organic chemical industry (SOCMI) distillation, SOCMI reactors, wood furniture, plastic parts coating (business machines), plastic parts coating (other), offset lithography, industrial wastewater, autobody refinishing, SOCMI batch processing, volatile organic liquid storage tanks and clean-up solvent operations. In addition, bakeries (for which an Alternative Control Technology document was issued in December, 1992) are exempt from the control requirements in the generic rules. Out of these categories, Illinois has submitted adopted rules for USEPA approval for all except industrial wastewater, clean-up solvent operations, autobody refinishing, and bakeries. Autobody refinishing rules are not required to satisfy RACT requirements because there are no major

autobody refinishing sources. Illinois' adopted major non-CTG rules are undergoing USEPA review and will be the subject of separate rulemaking actions.

#### Final Rulemaking Action

For the reasons discussed above, USEPA approves the major non-CTG VOC RACT rules in Part 218 (for the Chicago ozone nonattainment area) that were submitted on October 21, 1993, and March 4, 1994. More specifically, this includes all sections of part 218 that were submitted on March 4, 1994, and Section 218.990 from the October 21, 1993, submittal.

On September 9, 1994, (FR 59 46562) USEPA approved a number of Illinois' VOC regulations which replaced a large part of the Chicago FIP, which was promulgated June 29, 1990 (55 FR 26814) and codified at 40 CFR 52.741. This rule completes approval of Illinois' VOC regulations which, in combination with the rules approved on September 9, 1994, replace the Chicago FIP, as the federally enforceable VOC rule, except as indicated below:

(1) In accordance with Section 101(b), all FIP requirements remain in effect (and are enforceable after the effective date of this SIP revision) for the period prior to the effective date of this SIP revision.

(2) Any source that received a stay, as indicated in Section 218.103(a)(2), remains subject to the stay if still in effect, or (if the stay is no longer in effect) the federally promulgated rule applicable to such source.

As of the effective date of this final action, these rules are the sole federally enforceable control strategy for sources of VOC located in the Chicago area.

Because USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. The action will become effective on March 26, 1996. However, if we receive adverse comments by February 26, 1996, then USEPA will publish a notice that withdraws this final action. If no request for a public hearing has been received, USEPA will address the public comments received in a new final rule on the requested SIP revision based on the proposed rule located in the proposed rules section of this Federal Register. If a public hearing is requested, USEPA will publish a notice announcing a public hearing and reopening the public comment period until 30 days after the public hearing. At the conclusion of this additional public comment period, USEPA will publish a final rule responding to the public comments received and announcing final action.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, former Acting Assistant Administrator for the Office of Air and Radiation. A July 10, 1995, memorandum from Mary D. Nichols, Assistant Administrator for the Office of Air and Radiation explains that the authority to approve/disapprove SIPs has been delegated to the Regional Administrators for Table 3 actions. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") (signed into law on March 22, 1995) requires that the USEPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year. Section 203 requires the USEPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the USEPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The USEPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the USEPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the USEPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this

rule, the USEPA is not required to develop a plan with regard to small governments. This rule only approves the incorporation of existing state rules into the SIP. It imposes no additional requirements.

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 26, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

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

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

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

Dated: November 1, 1995.

Valdas V. Adamkus,

*Regional Administrator.*

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(102) to read as follows:

#### § 52.720 Identification of plan.

\* \* \* \* \*

(c) \* \* \*  
(102) On October 21, 1993 and March 4, 1994, the State submitted volatile organic compound control regulations for incorporation in the Illinois State Implementation Plan for ozone.

(i) *Incorporation by reference.*

(A) Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, chapter c: Emission Standards and Limitations for Stationary Sources, Part 211: Definitions and General Provisions, Subpart B: Definitions, Sections 211.270, 211.1070, 211.2030, 211.2610, 211.3950, 211.4050, 211.4830, 211.4850, 211.4970, 211.5390, 211.5530, 211.6110, 211.6170, 211.6250, 211.6630, 211.6650, 211.6710, 211.6830, 211.7050. These sections were adopted on January 6, 1994, Amended at 18 Ill. Reg. 1253, and effective January 18, 1994.

(B) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 218: Organic Material Emissions Standards and Limitations for the Chicago Area, Subpart PP: 218.927, 218.928; Subpart QQ: 218.947, 218.948; Subpart RR: 218.967, 218.968; Subpart TT: 218.987, 218.988; Subpart UU: 218.990. These sections were adopted on September 9, 1993, Amended at 17 Ill. Reg. 16636, effective September 27, 1993.

(C) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 218: Organic Material Emissions Standards and Limitations for the Chicago Area, Subpart A: 218.106, 218.108, 218.112, 218.113; Subpart H: 218.402; Subpart Z:



218.602, 218.611; Subpart AA: 218.620, 218.623 (repealed); Subpart CC; Subpart DD; Subpart PP: 218.920, 218.926; Subpart QQ: 218.940, 218.946; Subpart RR: 218.960, 218.966; Subpart TT: 218.980, 218.986; Subpart UU: 218.991. These sections were adopted on January 6, 1994, Amended at 18 Ill. Reg. 1945, effective January 24, 1994.

\* \* \* \* \*

3. Section 52.741 is amended by revising paragraph (a)(2) to read as follows:

**§ 52.741 Control Strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry or Will County.**

(a) \* \* \*

(2) Applicability.

(i) Effective October 11, 1994, Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions Standards and Limitations for Stationary Sources, Part 218: Organic Material Emission Standards and Limitations for the Chicago Area replaces the requirements of 40 CFR 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will County as the federally enforceable control measures in these counties except as noted in paragraphs (a)(2)(i) (A) through (C) of this section.

(A) Until March 26, 1996, Illinois' major non-CTG sources in the Chicago area, subject to paragraph u, v, w, or x because of the applicability criteria in these paragraphs, continue to be subject to paragraphs u, v, w, x, and in addition they remain subject to the recordkeeping requirements in paragraph y and any related parts of section 52.741 necessary to implement these paragraphs, e.g., those paragraphs containing test methods, definitions, etc.

(B) In accordance with Section 218.101(b), all FIP requirements remain in effect and are enforceable after October 11, 1994, for the period prior to October 11, 1994 (and the major non-CTG FIP requirements specified in paragraph (a)(2)(i)(A) remain in effect and are enforceable after March 26, 1996 for the period prior to March 26, 1996.

(C) Any source that received a stay, as indicated in Section 218.103(a)(2), remains subject to the stay if still in effect, or (if the stay is no longer in effect) the federally promulgated rule applicable to such source.

(ii) Effective March 26, 1996, Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air pollution, Chapter I: Pollution Control Board, Subchapter c: Emissions

Standards and Limitations for Stationary Sources, Part 218: Organic Material Emission Standards and Limitations for the Chicago Area replaces the requirements of 40 CFR 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry and Will County as the federally enforceable control measures in these counties except as noted in paragraphs (a)(2)(i) (A) and (B) of this section.

(A) In accordance with Section 218.101(b), all major non-CTG FIP requirements specified in paragraph (a)(2)(i)(A) remain in effect and are enforceable after March 26, 1996 for the period prior to March 26, 1996.

(B) Any source that received a stay, as indicated in Section 218.103(a)(2), remains subject to the stay if still in effect, or (if the stay is no longer in effect) the federally promulgated rule applicable to such source.

\* \* \* \* \*

[FR Doc. 96-1297 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 52**

[IL99-2-7003, IN46-2-7004, MI33-2-7005, WI47-2-7006; FRL-5402-8]

**Approval of a Section 182(f) Exemption; Illinois, Indiana, Michigan, and Wisconsin**

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

**ACTION:** Final rule.

**SUMMARY:** As requested by the States of Illinois, Indiana, Michigan, and Wisconsin in a July 13, 1994 submittal pursuant to section 182(f)(3) of the Clean Air Act (CAA or the Act), the EPA is granting exemptions from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of Oxides of Nitrogen (NO<sub>x</sub>) and from vehicle Inspection/Maintenance (I/M) and general conformity requirements for NO<sub>x</sub> for ozone nonattainment areas within the Lake Michigan Ozone Study (LMOS) modeling domain, which includes portions of the States of Illinois, Indiana, Michigan, and Wisconsin. The EPA is also granting exemptions from transportation conformity requirements for NO<sub>x</sub> for ozone nonattainment areas classified as marginal or transitional within the LMOS modeling domain. The EPA is approving the exemptions based on a demonstration that additional NO<sub>x</sub> reductions would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS)

for ozone within the LMOS modeling domain. The EPA is not taking final action at this time on the granting of exemptions from the transportation conformity requirements of the CAA for ozone nonattainment areas classified as moderate or above in the LMOS modeling domain. The continued approval of these exemptions is contingent on the results of the final ozone attainment demonstrations and plans. These plans are expected to be submitted by mid-1997 and to incorporate the results of the Ozone Transport Assessment Group process. The attainment plans will supersede the initial modeling information which is the basis for the waiver EPA is granting in this document. To the extent the attainment plans include NO<sub>x</sub> controls on certain major stationary sources in the LMOS ozone nonattainment areas, EPA will remove the NO<sub>x</sub> waiver for those sources. To the extent the final plans achieve attainment of the ozone standard without additional NO<sub>x</sub> reductions from certain sources, the NO<sub>x</sub> emissions control exemption would continue for those sources. EPA's rulemaking action to reconsider the initial NO<sub>x</sub> waiver may occur simultaneously with rulemaking action on the attainment plans.

**DATES:** This final rule will be effective February 26, 1996.

**ADDRESSES:** Copies of the exemption request, public comments and EPA's responses are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Edward Doty, Regulation Development Section (AR-18J), Regulation Development Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 886-6057.

**SUPPLEMENTARY INFORMATION:**

I. Background Information

On July 13, 1994, the States of Illinois, Indiana, Michigan, and Wisconsin submitted a petition to the EPA requesting that the ozone nonattainment areas within the LMOS modeling domain be exempted from requirements to implement NO<sub>x</sub> controls pursuant to section 182(f) of the Act. The exemption request is based on modeling demonstrating that additional NO<sub>x</sub> emission controls within the nonattainment areas will not contribute



to attainment of the ozone NAAQS within the LMOS modeling domain.

On March 6, 1995, EPA published a rulemaking proposing approval of the NO<sub>x</sub> exemption petition and specifically identifying the Counties or areas covered by the exemption. During the 30 day public comment period, EPA received a number of comments favoring or objecting to the proposed approval. In addition to these comments, the EPA also received adverse comments objecting to any NO<sub>x</sub> control waiver within the United States, with the commenters requesting that these comments be addressed in all EPA rulemakings dealing with such emission control waivers.

## II. Public Comments

The following discussion summarizes the comments received regarding the States' petition and/or EPA's proposed rulemaking and presents EPA's responses to these comments.

*Comment:* A number of comments supporting the proposed rulemaking were received from organizations representing various industrial groups, local planning organizations, and the States themselves. One commenter, who generally supported the proposed rulemaking, noted that the EPA proposed to reverse its decision on the petition if subsequent modeling results supported such a reversal. The commenter raised a concern that the EPA should only reverse its decision to approve the petition if well documented modeling results are available clearly indicating the need for such a reversal.

*Response:* The favorable comments support the logic used in the proposed rulemaking.

With regard to the concern over the quality of the modeling results needed to reverse this decision, it should be noted that such modeling results will be well documented and are expected to be based on validated modeling. The States involved in the LMOS are conducting a number of additional modeling analyses (subsequent to the preparation of the NO<sub>x</sub> waiver request) to assess the impacts of emission controls on peak ozone concentrations and on ozone concentrations transported out of the modeling domain (long range ozone transport has become a significant issue in the development of ozone demonstrations of attainment in the eastern United States). Additional modeling analyses are required to support the States' demonstrations of attainment, which have not been completed. These modeling analyses are well documented and are now based on a modeling system which has been accepted by the EPA as being validated

for the LMOS modeling domain. Any conclusion showing the need for NO<sub>x</sub> controls will be well supported by the modeling.

It should be noted that the modeling used to support the NO<sub>x</sub> waiver petition was not based initially on validated modeling. The modeling system and its base year inputs were modified to a validated form subsequent to the submittal of the petition. Nonetheless, the "signals" of the modeling results regarding Volatile Organic Compound (VOC) controls versus NO<sub>x</sub> controls have not changed with the validation of the modeling system. The modeling results continue to show that NO<sub>x</sub> emission controls in the ozone nonattainment areas will not contribute to reduction of peak ozone levels within the LMOS modeling domain, and may actually increase peak ozone levels near the major urban areas.

*Comment:* A commenter, who supports the proposed NO<sub>x</sub> exemption, considers the exemption, through section 182(f), to also increase the major source threshold relating to federal operating permit programs from 25 tons/year (tpy) to 100 tpy (this comment is assumed to apply to the ozone nonattainment areas classified as severe).

*Response:* The commenter is correct. Based on guidance contained in 40 CFR Part 70.2 (subparagraph (3)(1) under the "major source" definition), the major source threshold for federal operating programs would be revised to 100 tpy, potential to emit, in the areas covered by the NO<sub>x</sub> waiver. In addition, for new source considerations, it should be noted that the waived areas should be considered to be covered by Prevention of Significant Deterioration requirements, with a control source size threshold of 250 tpy, potential to emit, for NO<sub>x</sub> rather than by nonattainment area new source requirements.

*Comment:* A commenter notes that, in addition to modeling data supporting approval of the petition, monitoring data were collected during the 1991 LMOS field study which also support the approval of the NO<sub>x</sub> waiver. The combination of modeling data and monitoring data meet the requirements for a section 182(f) exemption specified in EPA's guidance documents titled: "State Implementation Plan; Nitrogen Oxides Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 55628, November 25, 1992); and the "Guideline for Determining Applicability of Nitrogen Oxide Requirement under Section 182(f)" (December 1993).

*Response:* Although the commenter did not specifically reference the data

from which this conclusion was drawn, EPA acknowledges that data, such as concentrations of non-methane hydrocarbons and NO<sub>x</sub> and derived/monitored ozone production potentials of air parcels, collected for the urban source areas during the 1991 field study support the approval of the NO<sub>x</sub> waiver. It is noted, however, that the primary basis for the approval of the NO<sub>x</sub> waiver is the modeling results submitted in support of the waiver. The 1991 field data by themselves may not be an adequate support for the waiver since these data are limited in nature and do not present a complete picture of the impacts of NO<sub>x</sub> controls on LMOS modeling domain peak ozone concentrations.

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

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

The EPA disagrees with the commenters regarding the process for considering NO<sub>x</sub> exemption requests under section 182(f), and instead believes that sections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO<sub>x</sub> exemption requests. The language in section 182(f)(1), which indicates that the EPA should act on NO<sub>x</sub> exemptions in conjunction with action on a plan or a plan revision, does not appear in section 182(f)(3). While section 182(f)(3) references section

182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) [and by extension, paragraph (2)], not the procedural requirement that the EPA act on exemptions only when acting on State Implementation Plans (SIPs). Additionally, section 182(f)(3) provides that "person[s]" [which section 302(e) of the Act defines to include States] may petition for NO<sub>x</sub> exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to adopt NO<sub>x</sub> RACT and NSR rules, unless exempted. These rules were generally due to be submitted to the EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO<sub>x</sub> exemption would have needed to submit this exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations were not due until November 1993 or 1994 (and EPA may take 12 to 18 months to approve or disapprove the demonstrations). For marginal ozone nonattainment areas (subject to NO<sub>x</sub> NSR), no attainment demonstrations are called for in the CAA. For areas seeking redesignation to attainment of the ozone NAAQS, the CAA does not specify a deadline for submittal of maintenance demonstrations (in reality, EPA would generally consider redesignation requests without accompanying maintenance plans to be unacceptable). Clearly, the CAA envisions the submittal of and EPA action on NO<sub>x</sub> exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

With respect to the comment that section 182(b)(1) is the appropriate authority for granting interim-period transportation conformity NO<sub>x</sub> exemptions, EPA agrees with the commenters and has published an interim final rule that changes the transportation conformity rule's reference to section 182(b)(1) as the correct authority under the Act for waiving the NO<sub>x</sub> build/no-build and less-than-1990 emissions tests for certain areas. See 60 FR 44762 (A related proposed rule, 60 FR 44790, published on the same day, invited public comment on how the Agency plans to implement section 182(b)(1)

transportation conformity NO<sub>x</sub> exemptions. That proposal has been subsequently finalized. See 60 FR 57179). However, EPA also notes that section 182(b)(1), by its terms, only applies to moderate and above ozone nonattainment areas. Consequently, EPA believes that the interim-reductions requirements of section 176(c)(3)(A)(iii), and hence the authority provided in section 182(b)(1) to grant relief from those interim-reduction requirements, apply only with respect to those areas that are subject to section 182(b)(1). EPA intends to continue to apply the transportation conformity rule's build/no-build and less-than-1990 emissions tests for purposes of implementing the requirements of section 176(c)(1), and EPA intends to continue to provide relief from those requirements under section 182(f). In addition, because general federal actions are not subject to section 176(c)(3)(A)(iii), which explicitly references section 182(b)(1), EPA will also continue to offer relief under section 182(f)(3) from the applicable NO<sub>x</sub> requirements of the general conformity rule.

In order to demonstrate conformity, transportation-related federal actions that are taken in ozone nonattainment areas not subject to section 182(b)(1) and, hence, not subject to section 176(c)(3)(A)(iii) must still be consistent with the criteria specified under section 176(c)(1). Specifically, these actions must not, with respect to any standard, cause or contribute to new violations, increase the frequency or severity of existing violations, or delay attainment. In addition, such actions must comply with the relevant requirements and milestones contained in the applicable state implementation plan, such as reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstrations, numerical emission limits, or prohibitions. EPA believes that the build/no-build and less-than-1990 emissions tests provide an appropriate basis for such areas to demonstrate compliance with the above criteria.

As noted earlier, EPA intends to continue to offer relief under section 182(f) from the interim NO<sub>x</sub> requirements of the conformity rules that would apply under section 176(c)(1) for the areas not subject to section 182(b)(1) in the manner described above. EPA believes this approach is consistent both with the way NO<sub>x</sub> requirements in ozone nonattainment areas are treated under the Act generally, and under section 182(f) in particular. 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 EPA to determine when NO<sub>x</sub> requirements should not apply. 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. Moreover, where EPA has determined that NO<sub>x</sub> reductions will not benefit attainment or would be counterproductive in an area, the EPA believes it would be unreasonable to insist on NO<sub>x</sub> reductions for purposes of meeting reasonable further progress or other milestone requirements. Thus, even as to the conformity requirements of section 176(c)(1), EPA believes it is reasonable and appropriate, first, to offer relief from the applicable NO<sub>x</sub> requirements of the general and transportation conformity rules in areas where such reductions would not be beneficial and, second, to rely in doing so based on the exemption tests provided in section 182(f).

For moderate and above ozone nonattainment areas which are relying on modeling data in petitioning for a transportation conformity NO<sub>x</sub> exemption, the proposed change affects the process for applying for such waivers. Unlike section 182(f)(3), section 182(b)(1) requires that EPA approve a NO<sub>x</sub> waiver (i.e., determine that additional reductions of NO<sub>x</sub> would not contribute to attainment) as part of a SIP revision. Thus, under section 182(b)(1), petitions for transportation conformity NO<sub>x</sub> waivers for areas subject to that section must be submitted as formal SIP revisions by the Governor (or designee) following a public hearing. As explained previously, EPA will continue to process and approve, under section 182(f)(3), conformity NO<sub>x</sub> waivers for areas not subject to section 182(b)(1) without public hearings or submission by the Governor. Finally, as noted earlier, the NO<sub>x</sub> provisions of the general conformity rule would not be affected by this proposal. A NO<sub>x</sub> waiver under section 182(f) removes the NO<sub>x</sub> general conformity requirements entirely and would continue to do so. The Clean Air Act's provision for transportation conformity NO<sub>x</sub> waivers stems from section 176(c)(3)(A)(iii), which addresses only transportation conformity, and not general conformity. Therefore, the statutory authority for general conformity NO<sub>x</sub> waivers is not

required to be section 182(b) for any areas and may continue to be section 182(f) for all areas.

It should be noted that EPA is taking no final action on a NO<sub>x</sub> exemption for transportation conformity for ozone nonattainment areas classified as moderate and above in the petition covered by this rulemaking. The States of Illinois, Indiana, Michigan, and Wisconsin may seek a transportation conformity NO<sub>x</sub> exemption for such areas through formal SIP revisions pursuant to section 182(b)(1) of the Act (Illinois and Wisconsin have submitted such SIP revisions, which are currently being reviewed by the EPA).

*Comment:* Commenters argue that waiver of NO<sub>x</sub> control requirements is unlawful if such a waiver would impede attainment and maintenance of the ozone standard in downwind areas.

*Response:* As a result of these comments, the EPA reevaluated its position on this issue and has revised the previously issued guidance. See Memorandum, "Section 182(f) Nitrogen Oxides (NO<sub>x</sub>) Exemptions—Revised Process and Criteria" dated February 8, 1995, for John Seitz's signature. As described in this memorandum, EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO<sub>x</sub> emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO<sub>x</sub> emissions could contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be independent of any action taken by EPA on a NO<sub>x</sub> exemption request under section 182(f). That is, EPA action to grant or deny a NO<sub>x</sub> exemption request under section 182(f) for any area would not shield that area from EPA action to require NO<sub>x</sub> emission reductions, if necessary, under section 110(a)(2)(D).

Significant new modeling analyses are being conducted by the Lake Michigan Air Directors Consortium (LADCO) (the technical and functional directors of the Lake Michigan Ozone Study and the Lake Michigan Ozone Control Program, including representatives of the four LMOS States and the EPA), EPA and other agencies as part of the Ozone Transport Assessment Group (OTAG) process. The OTAG process is a consultative process among the eastern States and EPA. The OTAG process, which ends at the close of 1996, assesses national and regional emission control strategies using improved modeling techniques. The goal of the OTAG process is for EPA and the affected States to reach consensus on

the additional regional and national emission reductions that are needed for attainment of the ozone standard. Based on the results of the OTAG process, States are expected to submit by mid-1997 attainment plans which show attainment of the ozone standard through local, regional, and national controls.

The OTAG plans to complete additional modeling between now and September 1996 using emissions data and strategies currently being developed among OTAG workgroups. These new analyses will improve the information available on NO<sub>x</sub> and VOC impacts on ozone concentrations both in the LMOS area and over the eastern half of the United States. These analyses will for example, provide more accurate boundary conditions for the LMOS area analyses; this provides greater accuracy in both the attainment plan and in the decision regarding NO<sub>x</sub> reductions contribution to attainment.

In light of the modeling completed thus far and considering the importance of the OTAG process and attainment plan modeling efforts, EPA is granting this waiver on a contingent basis. As the OTAG modeling results and control recommendations are completed in 1996, this information will be incorporated into the attainment plans being developed by the LADCO States. When these attainment plans are submitted to EPA in mid-1997, these new modeling analyses will be reviewed to determine if the NO<sub>x</sub> waiver should be continued, altered, or removed.

The attainment plans will supersede the initial modeling results which are the basis for the waiver which EPA is granting in this rule. To the extent the attainment plans include NO<sub>x</sub> controls on certain major stationary sources in the LMOS ozone nonattainment areas, EPA will remove the NO<sub>x</sub> waiver for those sources. To the extent the plans achieve attainment without additional NO<sub>x</sub> reductions from certain sources, the NO<sub>x</sub> reductions would be considered excess reductions and, thus, the exemption would continue for those sources. EPA's rulemaking action to reconsider the initial NO<sub>x</sub> waiver may occur simultaneously with rulemaking action on the attainment plans.

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

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

*Response:* As explained previously, EPA's transportation conformity rule originally provided for a NO<sub>x</sub> waiver if an area received a section 182(f) exemption. The EPA published amendments to the transportation conformity rule in a final rule on November 14, 1995 (60 FR 57179) which addresses the issue of conformity to NO<sub>x</sub> budgets in SIPs when a NO<sub>x</sub> waiver for transportation conformity has been approved. The final rule is based on an August 29, 1995 (60 FR 44790) proposed rule and comments which were received regarding that proposal. The final rule requires consistency with NO<sub>x</sub> motor vehicle emissions budgets in control strategy SIPs regardless of whether a NO<sub>x</sub> waiver has been granted. The NO<sub>x</sub> build/no-build tests and less-than-1990 tests, however, no longer apply to ozone nonattainment areas receiving a NO<sub>x</sub> waiver. Furthermore, some flexibility is possible for areas that have been issued a NO<sub>x</sub> waiver based on air quality modeling data. This flexibility is described in the notice of final rulemaking (60 FR 57183). The NO<sub>x</sub> emission budget provisions of the revised rules will be effective 90 days after the date of the final rule (November 14, 1995).

*Comment:* Commenters argue that the Act does not authorize any waiver of the NO<sub>x</sub> reduction requirements until conclusive evidence exists that such reductions are counterproductive.

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

tests, EPA determines that in certain areas NO<sub>x</sub> reductions would generally not be beneficial towards attainment of the ozone standard. In section 182(f)(1), Congress explicitly conditioned action on NO<sub>x</sub> exemptions on the results of an ozone precursor study required under section 185B of the Act. Because of the possibility that reducing NO<sub>x</sub> in an area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout Title I of the Act, to avoid requiring NO<sub>x</sub> reductions where such would not be beneficial or would be counterproductive. In describing these various ozone provisions, including section 182(f), the House Conference Committee Report states in the pertinent part: “[T]he Committee included a separate NO<sub>x</sub>/VOC study provision in section [185B] to serve as the basis for the various findings contemplated in the NO<sub>x</sub> provisions. The Committee does not intend NO<sub>x</sub> reduction for reduction’s sake, but rather as a measure scaled to the value of NO<sub>x</sub> reductions for achieving attainment in the particular ozone nonattainment area.” H.R. Rep. No. 490, 101st Cong., 2d Sess. 257–258 (1990).

As noted in response to an earlier comment, the command in section 182(f)(1) that EPA “shall consider” the 185B report taken together with the timeframe the Act provides for completion of the report and for acting on NO<sub>x</sub> exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for EPA to act on NO<sub>x</sub> exemption requests, even absent the additional information that would be included in affected areas’ attainment or maintenance demonstrations.

While there is no specific requirement in the Act that EPA actions granting NO<sub>x</sub> exemption requests must await “conclusive evidence,” as the commenters argue, there is also nothing in the Act to prevent EPA from revisiting an approved NO<sub>x</sub> exemption if warranted by additional, current information.

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

(1) in any area, the net air quality benefits are greater in the absence of

NO<sub>x</sub> reductions from the sources concerned;

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

(3) in nonattainment areas within an ozone transport region, additional NO<sub>x</sub> reductions would not produce net ozone air quality benefits in the transport region. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for a full or limited NO<sub>x</sub> exemption.

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

*Comment:* Commenters argue that, while NO<sub>x</sub> controls may be less beneficial than VOC-only controls in reducing ozone concentrations in some areas of the Lake Michigan region on some days, the States have not demonstrated that VOC-only controls will sufficiently reduce ozone concentrations for the majority of episodes, particularly in areas farther downwind.

*Response:* Several modeling and data analyses were performed by the States and LADCO to examine the relative benefits of VOC versus NO<sub>x</sub> emission controls. The modeling analyses included emissions sensitivity tests for several different basecase scenarios, including: (1) an original base period emissions inventory; (2) increased VOC emissions in the base period inventory (higher VOC/NO<sub>x</sub> ratios); (3) increased base period VOC/NO<sub>x</sub> ratios through either increased VOC emissions or decreased NO<sub>x</sub> emissions; and (4) differences in photochemistry photolysis rates as applied in the Urban Airshed Model—Version IV (UAM-IV) (the photochemical dispersion model generally accepted and supported by the EPA) and in UAM-V (the photochemical dispersion model approved by the EPA for use in the LMOS).

Despite differences in the absolute and relative amounts of VOC and NO<sub>x</sub> emissions in the sensitivity analyses, the analyses found that the modeled domain-wide peak ozone concentration, the areal coverage of modeled ozone concentrations exceeding 120 parts per billion (ppb), and the number of hours with modeled ozone concentrations exceeding 120 ppb decreased in response to VOC emission reductions and increased in response to NO<sub>x</sub>

emission reductions (up to more than 60 percent controls for some episode analysis days) for all modeled episodes.

VOC and NO<sub>x</sub> emission reductions were found to produce different impacts spatially. In and downwind of major urban areas, within the ozone nonattainment areas, VOC reductions were effective in lowering peak ozone concentrations, while NO<sub>x</sub> emission reductions resulted in increased peak ozone concentrations. Farther downwind, within attainment areas, VOC emissions reductions became less effective for reducing ozone concentrations, while NO<sub>x</sub> emission reductions were effective in lowering ozone concentrations. It must be noted, however, that the magnitude of ozone decreases farther downwind due to NO<sub>x</sub> emission reductions was less than the magnitude of ozone increases in the ozone nonattainment areas as a result of the same NO<sub>x</sub> emission reductions.

Analyses of ambient data by LMOS contractors provided results which corroborated the modeling results. These analyses identified areas of VOC- and NO<sub>x</sub>-limited conditions (VOC-limited conditions would imply a greater sensitivity of ozone concentrations to changes in VOC emissions. The reverse would be true for NO<sub>x</sub>-limited conditions.) and tracked the ozone and ozone precursor concentrations in the urban plumes as they moved downwind. The analyses indicated VOC-limited conditions in the Chicago/Northwest Indiana and Milwaukee areas and NO<sub>x</sub>-limited conditions further downwind. These results imply that VOC controls in the Chicago/Northwest Indiana and Milwaukee areas would be more effective at reducing peak ozone concentrations within the severe ozone nonattainment areas.

The consistency between the modeling results and the ambient data analysis results for all episodes with joint data supports the view that the UAM-V modeling system developed in the LMOS may be used to investigate the relative merits of VOC versus NO<sub>x</sub> emission controls. The UAM-V results for all modeled episodes point to the benefits of VOC controls versus NO<sub>x</sub> controls in reducing the modeled domain peak ozone concentrations.

*Comment:* Commenters argue that the UAM-V modeling system is experimental and untested and has not yet undergone extensive peer review by independent experts, unlike the Regional Oxidant Model (ROM) supported by the EPA. The EPA should review the ROM results for the episodes modeled in the LMOS to show

consistency between the ROM results and those for UAM-V.

*Response:* Even though the UAM-V modeling system is relatively new, it has undergone external review. LADCO supported an external review of the computer code used in the modeling system and an external evaluation of model performance in the Lake Michigan region. Modeling results show that the system, as it is currently being used for control strategy analyses, produces ozone concentrations which meet EPA-established criteria for adequate model performance.

Direct comparisons of ROM and UAM-V results must be conducted with caution and may produce conflicting results even though both modeling systems are performing adequately. The UAM-V modeling system is theoretically more complete and incorporates improved scientific principles and more area-specific input data. ROM, on the other hand, is a simpler modeling system with lower spatial resolution, more uncertain emission estimates, and no special treatment of meteorological phenomena, such as lake-breeze effects (critical factors in the Lake Michigan area), and individual source plumes for large sources. These differences in model formulation and data input resolution as well as differences in output resolution may preclude direct comparisons of the two models. It should be noted, that such a comparison may be attempted in the near future because UAM-V may be applied to a larger domain to assess the impacts of long range transport of ozone and ozone precursors.

*Comment:* Commenters state that the EPA must rely on the recent National Academy of Sciences (NAS) report in its review of NO<sub>x</sub> waivers. The commenters pointed out that the NAS report found that to reduce transported ozone, NO<sub>x</sub> reductions are needed.

*Response:* The NAS report and EPA's companion report both support the conclusion that, as a general matter for ozone nonattainment areas across the country, NO<sub>x</sub> reductions in addition to VOC reductions will be needed to achieve attainment. This general conclusion, however, must be assessed in the context of the more detailed analysis provided in those same reports. For example, the NAS report notes that NO<sub>x</sub> reductions can have either a beneficial or detrimental effect on ozone concentrations, depending on the locations and emission rates of VOC and NO<sub>x</sub> sources in a region. The effect of NO<sub>x</sub> reductions depends on the local VOC/NO<sub>x</sub> ratio and a variety of other factors. In its report issued pursuant to section 185B of the Act, EPA stated that

“[a]pplication of gridded photochemical models on a case by case basis is required to determine the efficacy of NO<sub>x</sub> controls, because the ozone response to precursor reductions is area specific.”

The analyses performed in the Lake Michigan region demonstrate a local disbenefit from NO<sub>x</sub> control in the urban nonattainment areas. Those same analyses suggest there would be ozone benefits experienced farther downwind from NO<sub>x</sub> control in the urban nonattainment areas. LADCO acknowledges that NO<sub>x</sub> controls in the LMOS modeling domain may be needed ultimately to reduce ozone transport in the eastern United States. Nonetheless, the modeling results show that, due to the ozone reduction disbenefits associated with NO<sub>x</sub> reductions for the ozone nonattainment areas in the LMOS domain, these areas meet the test under section 182(f)(1)(A) of the Act required to support a waiver from the NO<sub>x</sub> requirements of section 182(f).

*Comment:* Commenters believe that NO<sub>x</sub> emission reductions will not only reduce transported ozone, but will also improve visibility, especially in downwind Class I areas.

*Response:* The NO<sub>x</sub> control waiver request was submitted in conjunction with the preparation of a four-State ozone control plan. To this end, the focus is on the local ozone problem in the Lake Michigan region. Other air pollution problems will be dealt with as part of separate regulatory activities.

*Comment:* Commenters argue that the burden of proof is on the States and LADCO to demonstrate that NO<sub>x</sub> reductions will not be beneficial over the entire Lake Michigan region. It was the explicit intent of Congress that NO<sub>x</sub> reductions are to be presumed to be beneficial unless demonstrated otherwise.

*Response:* Modeling and data analyses addressed in the States' NO<sub>x</sub> waiver request demonstrate the positive benefits of VOC control in the major urban areas and downwind in the areas of highest ozone concentrations. These analyses also show the negative effects of NO<sub>x</sub> control in these same ozone nonattainment areas, and suggest positive benefits from NO<sub>x</sub> control farther downwind in attainment areas. In other words, the benefits resulting from NO<sub>x</sub> control are modelled to occur in areas that experience, based on modeling and monitoring data, ozone concentrations well below the ozone standard even prior to the implementation of emission controls. Consequently, as required under section 182(f), the States have demonstrated the disbenefits of implementing NO<sub>x</sub>

emission controls in terms of greater domain-wide peak ozone concentrations throughout the LMOS modeling domain. Since these States are relying on the section 182(f)(1)(4) “contribute to attainment” test, they do not also need to demonstrate NO<sub>x</sub> reduction benefits over the entire Lake Michigan region as the commenters claim.

As noted above, the EPA believes, as described in EPA's December 1993 guidance, that section 182(f)(1) of the Act provides that the new NO<sub>x</sub> requirements shall not apply if the Administrator determines that any one of the following tests is met:

- (1) in any area, the net air quality benefits are greater in the absence of NO<sub>x</sub> reductions from the sources concerned;
- (2) in nonattainment areas not within an ozone transport region, additional NO<sub>x</sub> reductions would not contribute to ozone attainment in the area; or
- (3) in nonattainment areas within an ozone transport region, additional NO<sub>x</sub> reductions would not produce net ozone air quality benefits in the transport region. Based on the plain language of section 182(f) and the modeling results supplied with the LMOS States' NO<sub>x</sub> waiver request, the EPA believes these States have met the requirements of test (2) above since the States have demonstrated that across-the-board NO<sub>x</sub> controls in the LMOS ozone nonattainment areas will interfere with the attainment of the ozone standard in these nonattainment areas. Based on the scheme provided by Congress under the Act, it is not necessary for the States to also demonstrate the lack of ozone benefits from NO<sub>x</sub> controls everywhere within the entire Lake Michigan region.

As a separate matter and as noted above, the States, LADCO, and the EPA are conducting additional studies on the impact of ozone precursor (including NO<sub>x</sub>) emission reductions in areas outside of the LMOS ozone nonattainment areas on downwind ozone concentrations. These studies, in part, will consider the LMOS nonattainment areas as downwind areas to assess the impact of upwind emissions controls on ozone and ozone precursor transport into these areas.

*Comment:* Commenters argue that LADCO's statistical comparisons provide an incomplete evaluation of model performance and do not assess the model's ability to accurately predict the impact of VOC versus NO<sub>x</sub> control.

*Response:* LADCO, through a September 1994 model evaluation report, has documented a thorough evaluation of the modeling system performance. The model evaluation, which is based on an ideal model

evaluation process proposed by a number of technical experts<sup>1</sup>, includes the following elements:

- (1) Evaluations of the scientific formulation of the model;
- (2) Assessment of the fidelity of the computer codes to scientific formulation, governing equations, and numerical solution procedures;
- (3) evaluation of the predictive performance of the individual process modules and preprocessor modules;
- (4) evaluation of the full model's predictive performance;
- (5) application of sensitivity tests to assure conformance of the model with known or expected behavior;
- (6) application of comparative modeling; and
- (7) implementation of quality control/assurance activities.

The September 1994 model evaluation report addressed all of these elements for the modeling system used in the LMOS. In addition, the report also discussed several analyses which were performed specifically to assess the reliability of the model's response to VOC and NO<sub>x</sub> emission reductions (see response to comment above concerning the response of the model to VOC-only controls).

The model evaluation conducted for the LMOS modeling system examined performance over as wide a range of emission densities as possible (both spatial and temporal ranges were considered), considered topographic and land use uncertainties, and evaluated the impacts of variations in meteorology. Demonstration of acceptable model performance over this range of conditions reflects correct representation of the governing chemical and physical processes. It is, therefore, reasonable to assume that the model will respond realistically irrespective of emission strengths of VOC versus NO<sub>x</sub>.

*Comment:* Commenters argue that LADCO has failed to conduct additional analyses of model performance which provide a better test of VOC-NO<sub>x</sub> sensitivity [e.g., analyses of afternoon concentrations of total reactive nitrogen (NO<sub>y</sub>)]. An examination of ambient NO<sub>x</sub> concentrations over Lake Michigan clearly show NO<sub>x</sub>-limited conditions (i.e., NO<sub>x</sub> control should be beneficial for reducing ozone concentrations) and, further, that the modeled NO<sub>x</sub> concentrations are overestimated, which would cause the model to incorrectly identify VOC control as being

preferential to NO<sub>x</sub> control. NO<sub>x</sub> concentrations, as predicted by the model to occur over Lake Michigan (i.e., 90 parts per billion), are unlikely to occur anywhere other than in urban centers.

*Response:* The September 1994 model evaluation report submitted by LADCO does include the type of analysis suggested by the commenters. This analysis of predicted and measured NO<sub>2</sub> concentrations (NO<sub>y</sub> concentrations were not measured making evaluation of modeled results for NO<sub>y</sub> impossible. NO<sub>x</sub> is assumed to be primarily NO<sub>2</sub> at the peak ozone times and locations.) at the time and location of maximum ozone concentration for each day shows no discernible bias in the model predictions.

The September 1994 model evaluation report also includes a general assessment of model performance for NO<sub>2</sub>. Rather than focusing on just one or two days, as was done by the commenters, the evaluation considered all of the modeled high ozone days. The results for all high ozone days demonstrate that model performance overall for NO<sub>2</sub> is good.

The magnitude of the predicted NO<sub>x</sub> concentrations over Lake Michigan, as cited by the commenters, is not correct. The model predicted NO<sub>2</sub> concentrations over Lake Michigan on the order of 50 parts per billion or less. NO<sub>x</sub> measurements by the LMOS aircraft over Lake Michigan were on the order of 30–50 parts per billion, in good agreement with the model's predicted concentrations (NO<sub>x</sub> over Lake Michigan is primarily NO<sub>2</sub>).

*Comment:* Commenters argue that VOC emissions are likely underestimated in the emission inventory used for the LMOS modeling, which would cause a bias in the model towards favoring VOC control. Also, LADCO's finding that its VOC inventory may be low by only 30 percent conflicts with studies elsewhere which suggest a high degree of underestimation.

*Response:* Several methods were used by LADCO to evaluate the LMOS emissions inventory, including comparisons of ambient to emissions-based nonmethane organic compound to NO<sub>x</sub> (NMOC:NO<sub>x</sub>) ratios; comparisons of ambient to emissions-based carbon monoxide to NO<sub>x</sub> ratios; receptor modeling; and comparisons of ambient to model-based NMOC:NO<sub>x</sub> ratios. These analyses for an initial emissions inventory suggested a significant underestimation of VOC emissions, overestimation of NO<sub>x</sub> emissions, or some combination of these two. Consequently, LADCO conducted an extensive re-evaluation of the emissions

inventory and made several modifications. The resulting, final emissions inventory was found to compare more closely to the ambient NMOC:NO<sub>x</sub> ratios (the ambient NMOC:NO<sub>x</sub> ratios are only about 1.0–1.5 times greater than the emissions inventory-based NMOC:NO<sub>x</sub> ratios).

To assess the effect of the emissions uncertainty on the model's response to VOC and NO<sub>x</sub> reductions, sensitivity tests were performed with a higher VOC:NO<sub>x</sub> ratio. The results of this modeling were qualitatively the same (NO<sub>x</sub> disbenefits were demonstrated for attainment of the ozone standard) as those found for the unadjusted emissions inventory. Consequently, any possible underestimation of VOC emissions does not affect the conclusions drawn concerning VOC versus NO<sub>x</sub> controls.

With regard to the results of other emissions studies, it should first be noted that a certain degree of variability of emissions ratios (NMOC:NO<sub>x</sub>) exists depending of the locations of the studies and the sources sampled. Application of the results of these studies to the LMOS source areas is not straight forward and must be viewed to have a high degree of uncertainty. The LMOS results leading to the adjustment of emissions and the favorable comparison of modeled and monitored results lends some credibility to the emissions used in the LMOS.

Secondly, the LMOS States and LADCO, based on the studies of mobile source emissions conducted previously in other areas, recognized the potential for the underestimation of mobile source VOC emissions. This recognition was part of the basis for the comparison of monitored and modeled emissions and the modeling sensitivity studies considering alternate NMOC:NO<sub>x</sub> ratios. As indicated above, increased NMOC:NO<sub>x</sub> ratios lead to the same conclusions regarding the impacts of VOC versus NO<sub>x</sub> emissions controls.

*Comment:* A commenter notes that the problems with the LMOS modeling are not "routine" model errors. The LMOS model results, as presented in a February 1994 report by Alpine Geophysics, showed large errors in comparison with measurements for certain pollutant species and these errors suggest a bias in favor of VOC control and against NO<sub>x</sub> control. The finding that the model systematically overestimates NO<sub>y</sub> also suggests that the model is biased in favor of VOC control.

*Response:* The commenter has chosen to rely on outdated results from a preliminary February 1994 model evaluation report. Since then, as documented, for example, in the

<sup>1</sup> "A Conceptual Framework for Evaluating the Performance of Grid-Based Photochemical Air Quality Simulation Models", Roth, Reynolds, Tesche, and Dennis (1991).

September 1994 model evaluation report submitted to the EPA by LADCO, significant improvements have been made in the modeling system and in its inputs. (See also the discussions in response to other comments regarding the model's performance.) The improved modeling system and its results make moot the concerns of the commenter.

*Comment:* A commenter is concerned about the quality of the multi-species evaluation contained in the September 1994 model evaluation report. The commenter notes that an interim report indicated that the model performed poorly in modeling the concentrations of paraffins, frequently erring by a factor of two or more. Such an error implies that the model may be biased in favor of VOC controls. The commenter further notes that the September 1994 model evaluation report fails to include a significant discussion of multi-species evaluations, particularly a discussion of modeled versus measured paraffin concentrations.

*Response:* The September 1994 report does discuss the fact that multi-species analyses were performed for the updated modeling system and updated input data. As noted above, the updated model performed acceptably for the prediction of species such as ozone, NO<sub>2</sub>, NO<sub>x</sub>, and VOC:NO<sub>x</sub>. The report did fail to discuss most other species addressed in the model. LADCO has acknowledged this failure, and has offered to supply any data requested by the EPA. LADCO, however, has indicated, in its own responses to the comments on the proposed approval of the NO<sub>x</sub> waiver, that the multi-species performance of the model has significantly improved from past versions of the modeling system and input data. It is not clear how the performance of the model regarding prediction of paraffin concentrations has changed.

*Comment:* A commenter notes that the emissions inventory used in the modeling underestimates emissions of both anthropogenic and biogenic VOC emissions. A particular deficiency is the lack of any biogenic isoprene emissions in the Chicago area. In addition, the failure to evaluate model performance for isoprene is especially important. Models that recommend VOC-based control strategies should be required to demonstrate that they have not underestimated ambient concentrations of isoprene.

*Response:* As noted in a response to a comment above, the current version of the emissions inventory used in the modeling reasonably agrees with the ambient data. Although the current

LMOS emissions inventory does not contain biogenic isoprene emissions, calculations made by LADCO, as discussed in LADCO's response to this comment, indicate that this does not result in a significant change in the VOC inventory (addition of biogenic isoprene emissions would only increase the regional VOC inventory by 1 percent or less). Ambient VOC measurements also reflect negligible isoprene concentrations in the Chicago, Gary, and Milwaukee urban areas. The lack of an evaluation of isoprene concentrations should not detract from the overall assessment of model performance.

LADCO has noted that the EPA-recommended emission factors for biogenic isoprene are under review nationally. LADCO has committed to revise the emissions inventory if these emission factors are changed significantly, particularly if they are significantly increased.

LADCO has noted that the UAM-V modeling system has been thoroughly evaluated. In fact this evaluation significantly exceeds the requirements of the EPA and exceeds the evaluations employed for UAM in most other ozone nonattainment areas in the United States.

*Comment:* A commenter notes that the September 1994 model evaluation report fails to include modeled versus measured NO<sub>2</sub> concentrations from locations that represent maximum measured ozone concentrations. It is also noted that two-thirds of the modeled-measured data pairs that were documented in the model evaluation report lie outside of the factor-of-two range implying poor agreement between modeled and measured concentrations.

*Response:* LADCO notes that the modeled versus measured NO<sub>2</sub> data were included in the final model evaluation report (October 1994). These data show that there is no discernible bias in the model predictions. Furthermore, only a few data pairs reflect an overprediction by more than a factor of two. Most of the data pairs lie either within the factor-of-two range, or reflect underprediction by more than a factor-of-two (underprediction of NO<sub>2</sub> would favor NO<sub>x</sub> control over VOC control in reducing ozone concentrations). Despite the possible underprediction of some NO<sub>2</sub> concentrations, the model continues to show that NO<sub>x</sub> control provides disbenefits for attainment of the ozone standard in the LMOS domain.

*Comment:* It is noted that Table 7 in the September 1994 model evaluation report contains NO<sub>x</sub> data which differ from those in a February 1994 model evaluation report. It is also noted that

the September 1994 model evaluation report also fails to include data for a critical site (the Mid-Lake Boat) on July 18, 1991.

*Response:* The NO<sub>x</sub> values contained in the February 1994 report did not reflect the final quality-assured data for the boat-based monitors used in the 1991 LMOS field study. The final data were addressed in the September 1994 model evaluation report. Nevertheless, no firm conclusions should be based on the NO<sub>x</sub> data from the boats because these data were found to be suspect.

Table 7 in the September 1994 report did not include the Mid-Lake Boat data for July 18, 1991 because the Boat stopped collecting data on this day after 1600 Central Daylight Time (CDT). The modeling domain-wide peak observed and modeled concentrations, as noted in Table 7, occurred after 1600 CDT. In any case, the peak ozone concentration at the Mid-Lake Boat on this day was 158 parts per billion (1400 CDT). The magnitude of the NO<sub>x</sub> concentration for this hour was still fairly high (13 parts per billion), indicating that the air mass may still have been VOC-limited, which favors VOC control of upwind sources over NO<sub>x</sub> control for the reduction of ozone levels.

*Comment:* The February 1994 model evaluation report contains evidence that the mixing algorithm in UAM-V has serious problems. In particular, the model is overestimating ambient NO<sub>x</sub> concentrations by a factor of three or more during the mid-July 1991 episode.

*Response:* The September 1994 model evaluation report shows that the model performance statistics for NO<sub>2</sub> (as noted above, NO<sub>x</sub> over Lake Michigan is primarily NO<sub>2</sub> with little NO) during the mid-July episode are reasonable. The spatial concentration plots for NO<sub>2</sub> show that the predicted values are highest in the Chicago downtown area and decrease downwind over Lake Michigan. The latest baseline model input data set (Basecase C) produces significantly lower peak NO<sub>2</sub> concentrations than did the earlier baseline model input data set considered by the commenter. The new input data lead to results similar to concentrations measured in aircraft over Lake Michigan during the 1991 field study.

*Comment:* A commenter claims that the September 1994 model evaluation report erroneously claims that 1991 field study NO<sub>y</sub> measurements were not available and that most local afternoon NO<sub>y</sub> is expected to be NO<sub>2</sub>.

*Response:* Contrary to the commenter's claims, NO<sub>y</sub> data were not collected during the 1991 field program. The only nitrogen species for which



ambient data were collected were NO, NO<sub>2</sub>, NO<sub>x</sub>, and peroxyacetyl nitrate (PAN) (collected at only a few sites). LADCO responds and EPA agrees that, while NO<sub>y</sub> reflects many nitrogen compounds, NO<sub>2</sub> is a reasonable surrogate for these analyses.

*Comment:* Commenters note that LADCO has requested and received EPA approval to assume a future modeling domain boundary peak ozone concentration of 60 parts per billion. An analysis of this assumption leads the commenters to conclude that NO<sub>x</sub> transported into the modeling domain would have to be reduced by approximately 66 percent from current emission levels. Given the policy established in the approval of the NO<sub>x</sub> exemption petition, the commenters question the feasibility of this boundary condition assumption.

*Response:* It is true that the EPA has approved the assumption of a future modeling domain boundary ozone concentration not exceeding 60 parts per billion. It should be noted, however, that this is a temporary assumption to be used only in the initial phase of ozone modeling needed to develop the areas' final ozone demonstrations of attainment. Regional modeling over a larger domain will be conducted to better assess the level of ozone transport in the Eastern United States. This regional modeling will also assess the impacts of possible national emission control efforts to generally lower ozone precursor emissions throughout this area. The final phase of local ozone modeling will use ozone boundary conditions based on the regional modeling.

It should also be noted that the EPA, under section 110(a)(2)(D) of the Act, may require additional NO<sub>x</sub> emission controls in the areas exempted from specific NO<sub>x</sub> control requirements under section 182(f) of the Act. The NO<sub>x</sub> emission reduction requirements under section 110(a)(2)(D) may exceed those under section 182(f) if the regional modeling supports the need for such emission reductions. The boundary ozone concentration that will ultimately be used in the final demonstrations of attainment will be backed by adequate ozone precursor emission reductions.

*Comment:* Commenters argue that the NO<sub>x</sub> exemption petition ignores the LMOS States' contribution to their own boundary conditions. Insufficient analyses have been presented that consider the benefits in lowered boundary ozone levels that could be achieved during episodes when locally generated ozone and ozone precursors are transported out of and back into the modeling domain. Exceedances

observed on June 18, 1994 are of note in this regard. On this day, it appears that the Chicago/Gary "plume" actually moved north-northeast only to later reimpose itself on the metropolitan area. The benefits for NO<sub>x</sub> control are not presented for this meteorological phenomenon.

*Response:* Modeling for LMOS considered all high ozone episodes in 1991. Modeling for these episodes will form the basis for the ultimate ozone demonstrations of attainment to be completed in 1997 under current EPA policy. The NO<sub>x</sub> exemption petition is based on modeling for all of these high ozone episodes, and, as such, meets the modeling requirements in the December 1993 EPA guidance. It should be noted that the episodes considered cover a significant range of meteorological phenomena, including ozone transport and recirculation within the LMOS domain. A more complete picture of ozone transport out of and back into the modeling domain will not be available until after the completion of the regional modeling discussed in the response to the previous comment.

*Comment:* A commenter argues that incorporating the Michigan Counties of Saginaw, Bay, Genessee, Shiawassee, Midland, Ingham, Jackson, Lenawee, and Calhoun is an attempt to factitiously expand the domain of LADCO's NO<sub>x</sub> disbenefit analysis. It is also noted that the EPA has included the fictional Michigan County of Hillside. The commenter argues that, if EPA had intended to exempt Hillsdale County rather than "Hillside County," the EPA should publish a correction notice amending the proposed rulemaking notice.

*Response:* When LADCO conducted the modeling analysis of NO<sub>x</sub> control impacts, NO<sub>x</sub> controls were modeled using the LMOS intermediate modeling domain (Grid B). The Counties noted by the commenter are located outside of Grid B. Therefore, LADCO did not determine as part of this modeling effort the potential ozone impacts of NO<sub>x</sub> emission reductions for these Counties. It can be noted, however, that the EPA has received and reviewed base period modeling for the larger domain (Grid A) which did include the Counties in question. Base period (1991) modeling of high ozone episodes in the LMOS domain has been determined by the EPA to be validated based on comparison of monitored and modeled ozone concentrations. Modeling results in Grid A in the Counties in question and in their downwind environs shows that the ozone standard is not violated in these areas. This is confirmed by monitoring data collected in 1991

during the LMOS field study. Based on this observation, it can be concluded that additional NO<sub>x</sub> emission controls in these Counties would not contribute to attainment of the ozone standard. Therefore, under the "contribute to attainment" test of section 182(f), the NO<sub>x</sub> waiver should be approved for these Counties. It should also be noted that emission reductions in the "additional" Counties are not likely to significantly impact peak ozone concentrations in the LMOS modeling domain. (Emission reductions in these Counties, however, may be shown in future regional modeling to lower ozone transport into other ozone nonattainment areas. If such is the case, the State of Michigan may wish to or be requested to consider additional emission controls for these Counties.) A definitive conclusion can not be made here since the ozone and precursors generated by the these Counties are transported out of the modeling domain for most modeled episodes.

The EPA did err in the proposed rulemaking in listing "Hillside County" instead of Hillsdale County. This error is corrected here. This error is not sufficient, in the view of the EPA, to warrant a revised proposed rulemaking. The listing of the covered Counties and the location of Hillsdale County should have led a reviewer (as indeed it did the commenter) of the proposed rulemaking to conclude that the listing of "Hillside County" was a typographical error and that the EPA had intended to list Hillsdale County.

### III. Final Action

The comments received were generally found to warrant no changes from the proposed action on this NO<sub>x</sub> exemption request with the following exceptions: (1) EPA is not taking final action to approve the NO<sub>x</sub> exemption for transportation conformity requirements of the Act for the ozone nonattainment areas in the LMOS domain classified as moderate and above; (2) EPA is correcting the listing of "Hillside County", Michigan to Hillsdale County, Michigan; and (3) in light of the modeling completed thus far and considering the importance of the OTAG process and attainment plan modeling efforts, EPA grants this NO<sub>x</sub> waiver on a contingent basis. As the OTAG modeling results and control recommendations are completed in 1996, this information will be incorporated into attainment plans being developed by the LADCO States. When these attainment plans are submitted to EPA in mid-1997, these new modeling analyses will be reviewed



to determine if the NO<sub>x</sub> waiver should be continued, altered, or removed.

The final attainment plans will supersede the initial modeling results which are the basis of the NO<sub>x</sub> waiver that EPA is granting in this notice. To the extent the attainment plans include NO<sub>x</sub> controls on certain major stationary sources in the LMOS ozone nonattainment areas, EPA will remove the NO<sub>x</sub> waiver for those sources. To the extent the plans achieve attainment without additional NO<sub>x</sub> reductions from certain sources, the NO<sub>x</sub> exemption would continue for those sources. EPA's rulemaking action to reconsider the initial NO<sub>x</sub> waiver may occur simultaneously with rulemaking action on the attainment plans. EPA reserves the right to require NO<sub>x</sub> emission controls in general or on a source-specific basis under section 110(a)(2)(D) of the Act if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas.

This action will become effective on February 26, 1996.

#### IV. Miscellaneous

##### A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any state implementation plan. The EPA shall consider each request for revision to the state implementation plan in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

##### B. Executive Order 12866

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993 memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

##### C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit

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

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning state implementation plans on such grounds. *Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (1976).

##### D. Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations 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.

EPA's final action will relieve requirements otherwise imposed under the Clean Air Act and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

##### E. Petitions for Judicial Review

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 March 26, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the Act.

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

Environmental protection, Air pollution control, Oxides of nitrogen, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: January 18, 1996.

Carol M. Browner,  
Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671(q).

#### Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (k) to read as follows:

##### § 52.726 Control Strategy: Ozone

\* \* \* \* \*

(k) Approval—EPA is approving the section 182(f) oxides of nitrogen (NO<sub>x</sub>) reasonably available control technology (RACT), new source review (NSR), vehicle inspection/maintenance (I/M), and general conformity exemptions for the Illinois portion of the Chicago-Gary-Lake County severe ozone nonattainment area as requested by the States of Illinois, Indiana, Michigan, and Wisconsin in a July 13, 1994 submittal. This approval does not cover the exemption of NO<sub>x</sub> transportation conformity requirements of section 176(c) for this area. Approval of these exemptions is contingent on the results of the final ozone attainment demonstration expected to be submitted in mid-1997. The approval will be modified if the final attainment demonstration demonstrates that NO<sub>x</sub> emission controls are needed in the nonattainment area to attain the ozone standard in the Lake Michigan Ozone Study modeling domain.

#### Subpart P—Indiana

2. Section 52.777 is amended by adding paragraph (i) to read as follows:

##### § 52.777 Control Strategy: Photochemical oxidants (hydrocarbons).

\* \* \* \* \*

(i) Approval—EPA is approving the section 182(f) oxides of nitrogen (NO<sub>x</sub>) reasonably available control technology (RACT), new source review (NSR), vehicle inspection/maintenance (I/M), and general conformity exemptions for the Indiana portion of the Chicago-Gary-Lake County severe ozone nonattainment area as requested by the States of Illinois, Indiana, Michigan, and Wisconsin in a July 13, 1994 submittal. This approval does not cover the exemption of NO<sub>x</sub> transportation conformity requirements of section 176(c) for this area. Approval of these exemptions is contingent on the results

of the final ozone attainment demonstration expected to be submitted in mid-1997. The approval will be modified if the final attainment demonstration demonstrates that NO<sub>x</sub> emission controls are needed in the nonattainment area to attain the ozone standard in the Lake Michigan Ozone Study modeling domain.

\* \* \* \* \*

#### Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (l) to read as follows:

##### § 52.1174 Control Strategy: Ozone

\* \* \* \* \*

(l) Approval—EPA is approving the section 182(f) oxides of nitrogen (NO<sub>x</sub>) reasonably available control technology (RACT), new source review (NSR), vehicle inspection/maintenance (I/M), and general conformity exemptions for the Grand Rapids (Kent and Ottawa Counties) and Muskegon (Muskegon County) moderate nonattainment areas as requested by the States of Illinois, Indiana, Michigan, and Wisconsin in a July 13, 1994 submittal. This approval also covers the exemption of NO<sub>x</sub> transportation and general conformity requirements of section 176(c) for the Counties of Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Gratiot, Genesee, Hillsdale, Ingham, Ionia, Jackson, Kalamazoo, Lenawee, Midland, Montcalm, St. Joseph, Saginaw, Shiawassee, and Van Buren.

#### Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (i) to read as follows:

##### § 52.2585 Control Strategy: Ozone.

\* \* \* \* \*

(i) Approval—EPA is approving the section 182(f) oxides of nitrogen (NO<sub>x</sub>) reasonably available control technology (RACT), new source review (NSR), vehicle inspection/maintenance (I/M), and general conformity exemptions for the moderate and above ozone nonattainment areas within Wisconsin as requested by the States of Illinois, Indiana, Michigan, and Wisconsin in a July 13, 1994 submittal. This approval also covers the exemption of transportation and general conformity requirements of section 176(c) for the Door and Walworth marginal ozone nonattainment areas. Approval of these exemptions is contingent on the results of the final ozone attainment demonstration expected to be submitted in mid-1997. The approval will be modified if the final attainment demonstration demonstrates that NO<sub>x</sub> emission controls are needed in any of

the nonattainment areas to attain the ozone standard in the Lake Michigan Ozone Study modeling domain.

[FR Doc. 96-1413 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 52

[LA-22-1-7184; FRL-5402-7]

#### Approval and Promulgation of Section 182(f) Exemption to the Nitrogen Oxides (NO<sub>x</sub>) Control Requirements for the Baton Rouge Ozone Nonattainment Area; Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** As requested by the State of Louisiana in a petition submitted to the EPA pursuant to section 182(f)(3) of the Clean Air Act (CAA), the EPA is granting an exemption from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of Oxides of Nitrogen (NO<sub>x</sub>), from the vehicle Inspection/Maintenance (I/M) NO<sub>x</sub> requirements, and general conformity NO<sub>x</sub> requirements for the Baton Rouge, Louisiana serious ozone nonattainment area. The EPA is approving the exemption based on a demonstration that additional NO<sub>x</sub> reductions would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone in the nonattainment area. The EPA is not taking final action at this time on the granting of an exemption from the transportation conformity requirements of the CAA for the Baton Rouge area. The EPA is reserving the right to reverse the approval of the exemption if subsequent modeling data demonstrate an ozone attainment benefit from NO<sub>x</sub> emission controls.

**EFFECTIVE DATE:** This action is effective as of January 18, 1996.

**ADDRESSES:** Copies of the exemption request, public comments and EPA's responses are available for inspection at the following address:

United States Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.  
Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Jeanne McDaniels or Mr. Quang Nguyen, Air Planning Section (6PD-L),

Multimedia Planning and Permitting Division, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7214.

**SUPPLEMENTAL INFORMATION:**

#### I. Background

On November 17, 1994, the State of Louisiana submitted a petition to the EPA requesting that the Baton Rouge serious ozone nonattainment area be exempted from requirements to implement NO<sub>x</sub> controls pursuant to section 182(f) of the CAA. The exemption request is based on modeling that demonstrates additional NO<sub>x</sub> emission controls within the nonattainment area will not contribute to attainment of the ozone NAAQS within the area. The Baton Rouge ozone nonattainment area consists of the following parishes: East Baton Rouge, West Baton Rouge, Pointe Coupee, Livingston, Iberville, and Ascension. The State also provided supplemental technical reports pertaining to the modeling as part of the Baton Rouge post-1996 rate-of-progress plan submitted to the EPA on November 15, 1994. In addition, the State submitted several follow-up letters to the petition to: (1) revise a number of tables in the November 17, 1994, petition, and (2) broaden the scope of the original request to also include exemptions under section 182(f) for NO<sub>x</sub> NSR, general conformity, and I/M NO<sub>x</sub> requirements.

On August 18, 1995, the EPA published a rulemaking proposing approval of the NO<sub>x</sub> exemption petition for the six-parish ozone nonattainment area (60 FR 43100). During the 30-day public comment period, the EPA received two letters commenting on the proposal. Both expressed opposition to the exemption. In addition to these comments, in August 1994 three environmental groups submitted joint adverse comments on the proposed approvals of NO<sub>x</sub> exemptions for the Ohio and Michigan ozone nonattainment areas. The comments addressed the EPA's general policy regarding NO<sub>x</sub> exemptions. The commenters requested that these comments be addressed in all EPA rulemakings dealing with section 182(f) exemptions.

#### II. Public Comments

The following discussion summarizes the comments received regarding the State's petition and/or the EPA's proposed rulemaking and presents the EPA's responses to these comments.

*Comment:* Commenters argued that NO<sub>x</sub> exemptions are provided for in two separate parts of the CAA, in sections

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

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

The EPA disagrees with the commenters regarding the process for considering NO<sub>x</sub> exemption requests under section 182(f) and instead, believes that sections 182(f)(1) and 182(f)(3) provide independent procedures by which the EPA may act on NO<sub>x</sub> exemption requests. The language in section 182(f)(1), which indicates that the EPA should act on NO<sub>x</sub> exemptions in conjunction with action on a plan or a plan revision, does not appear in section 182(f)(3). While section 182(f)(3) references section 182(f)(1), the EPA believes that this reference encompasses only the substantive tests in paragraph (1) (and by extension, paragraph (2)), not the procedural requirement that the EPA act on exemptions only when acting on State Implementation Plans (SIPs).

Additionally, section 182(f)(3) provides that "a person" (which section 302(e) of the CAA defines to include a State) may petition for NO<sub>x</sub> exemptions "at any time," and requires the EPA to make its determination within six months of the petition's submission. These key differences lead the EPA to believe that Congress intended the exemption petition process of paragraph (3) to be distinct and more expeditious than the longer plan revision process intended under paragraph (1).

With respect to major stationary sources, section 182(f) requires States to

adopt NO<sub>x</sub> RACT and NSR rules, unless exempted. These rules were generally due to be submitted to the EPA by November 15, 1992. Thus, in order to avoid the CAA sanctions, areas seeking a NO<sub>x</sub> exemption would have needed to submit this exemption request for EPA review and rulemaking action several months before November 15, 1992. In contrast, the CAA specifies that the attainment demonstrations were not due until November 1993 or 1994 (and the EPA may take up to 12 months to approve or disapprove the demonstrations). For marginal ozone nonattainment areas (subject to NO<sub>x</sub> NSR), no attainment demonstrations are called for in the CAA. For areas seeking redesignation to attainment of the ozone NAAQS, the CAA does not specify a deadline for submittal of maintenance demonstrations (in reality, the EPA would generally consider redesignation requests without accompanying maintenance plans to be unacceptable). Clearly, the CAA envisions the submittal of and EPA action on NO<sub>x</sub> exemption requests, in some cases, prior to submittal of attainment or maintenance demonstrations.

With respect to the comment that section 182(b)(1) is the appropriate authority for granting interim period transportation conformity NO<sub>x</sub> exemptions, the EPA agreed with the commenters and published an interim final rule that changed the transportation conformity rule's reference to section 182(b)(1) as the correct authority under the CAA for waiving the NO<sub>x</sub> "build/no-build" and "less-than-1990 emissions" tests for certain areas. See 60 FR 44762, dated August 29, 1995. A related proposed rule (60 FR 44790), published on the same day, invited public comment on how the Agency plans to implement section 182(b)(1) transportation conformity NO<sub>x</sub> exemptions. That proposal has since been finalized. See 60 FR 57179 (November 14, 1995). However, the EPA also notes that section 182(b)(1), by its terms, only applies to moderate and above ozone nonattainment areas. Consequently, the EPA believes that the interim reductions requirements of section 176(c)(3)(A)(iii), and hence the authority provided in section 182(b)(1) to grant relief from those interim reduction requirements, apply only with respect to those areas that are subject to section 182(b)(1). The EPA intends to continue to apply the transportation conformity rule's "build/no-build" and "less-than-1990 emissions" tests for purposes of implementing the requirements of section 176(c)(1). In addition, because

general Federal actions are not subject to section 176(c)(3)(A)(iii), which explicitly references section 182(b)(1), the EPA will also continue to offer relief under section 182(f)(3) from the applicable NO<sub>x</sub> requirements of the general conformity rule.

In order to demonstrate conformity, transportation related federal actions that are taken in ozone nonattainment areas not subject to section 182(b)(1) and, hence, not subject to section 176(c)(3)(A)(iii) must still be consistent with the criteria specified under section 176(c)(1). Specifically, these actions must not, with respect to any standard, cause or contribute to new violations, increase the frequency or severity of existing violations, or delay attainment. In addition, such actions must comply with the relevant requirements and milestones contained in the applicable state implementation plan, such as reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstrations, numerical emission limits, or prohibitions. The EPA believes that the "build/no-build" and "less-than-1990 emissions" tests provide an appropriate basis for such areas to demonstrate compliance with the above criteria.

As noted earlier, the EPA intends to continue to offer relief under section 182(f)(3) from the interim NO<sub>x</sub> requirements of the conformity rules that would apply under section 176(c)(1) for the areas not subject to section 182(b)(1) in the manner described above. The EPA believes this approach is consistent both with the way NO<sub>x</sub> requirements in ozone nonattainment areas are treated under the CAA generally, and under section 182(f) in particular. The basic approach of the CAA 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 the EPA to determine when NO<sub>x</sub> requirements should not apply. 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. Moreover, where the EPA has determined that NO<sub>x</sub> reductions will not benefit attainment or would be counterproductive in an area, the EPA believes it would be unreasonable to insist on NO<sub>x</sub> reductions for purposes of meeting reasonable further progress or other milestone requirements. Thus, even concerning the conformity

requirements of section 176(c)(1), the EPA believes it is reasonable and appropriate to (1) offer relief from the applicable NO<sub>x</sub> requirements of the general and transportation conformity rules in areas where such reductions would not be beneficial, and (2) rely in doing so on the exemption tests provided in section 182(f).

For moderate and above ozone nonattainment areas which are relying on modeling data in petitioning for a transportation conformity NO<sub>x</sub> exemption, the final rule (60 FR 57179) affects the process for applying for such waivers. Unlike section 182(f)(3), section 182(b)(1) requires that the EPA approve a NO<sub>x</sub> waiver (i.e., determine that additional reductions of NO<sub>x</sub> would not contribute to attainment) as part of a SIP revision. Thus, under section 182(b)(1), petitions for transportation conformity NO<sub>x</sub> waivers for areas subject to that section must be submitted as formal SIP revisions by the Governor (or designee) following a public hearing. As explained previously, the EPA will continue to process and approve, under section 182(f)(3), conformity NO<sub>x</sub> waivers for areas not subject to section 182(b)(1) without public hearings or submission by the Governor. The Baton Rouge serious ozone nonattainment area is subject to the requirements of section 182(b)(1). Hence, a transportation conformity NO<sub>x</sub> waiver would have to be submitted as a revision to the SIP. As mentioned previously, in this rulemaking, the EPA is not taking a final action on a NO<sub>x</sub> exemption for transportation conformity for the Baton Rouge area. The State of Louisiana has requested a transportation conformity NO<sub>x</sub> exemption for the Baton Rouge area through a formal SIP revision pursuant to section 182(b)(1) of the CAA. The EPA proposed approval of the revision on October 6, 1995 (60 FR 52348). A final action on the SIP submittal will be taken in a subsequent rulemaking by the EPA.

Finally, as noted earlier, the NO<sub>x</sub> provisions of the general conformity rule would not be affected by this proposal. A NO<sub>x</sub> waiver under section 182(f) removes the NO<sub>x</sub> general conformity requirements entirely and would continue to do so. The CAA's provision for transportation conformity NO<sub>x</sub> waivers stems from section 176(c)(3)(A)(iii), which addresses only transportation conformity, and not general conformity. Therefore, the statutory authority for general conformity NO<sub>x</sub> waivers is not required to be section 182(b) for any areas and may continue to be section 182(f) for all areas.

*Comment:* Commenters argued that waiver of NO<sub>x</sub> control requirements is unlawful if such a waiver would impede attainment and maintenance of the ozone standard in downwind areas.

*Response:* As a result of these comments, the EPA reevaluated its position on this issue and has revised previously issued guidance. See Memorandum, "Section 182(f) Nitrogen Oxides (NO<sub>x</sub>) Exemptions—Revised Process and Criteria," dated February 8, 1995, from John Seitz. As described in this memorandum, the EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO<sub>x</sub> emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO<sub>x</sub> emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be independent of any action taken by the EPA on a NO<sub>x</sub> exemption request under section 182(f). That is, the EPA's action to grant or deny a NO<sub>x</sub> exemption request under section 182(f) for any area would not shield that area from the EPA's action to require NO<sub>x</sub> emission reductions, if necessary, under section 110(a)(2)(D).

Modeling analyses are underway or will soon be conducted in many areas for the attainment demonstration SIP revisions required pursuant to section 182(c)(2)(A). Recent modeling data suggest that certain ozone nonattainment areas may benefit from reductions in NO<sub>x</sub> emissions upwind of the nonattainment areas. For example, the Northeast Corridor States and the Lake Michigan Ozone Study are considering attainment strategies which may rely, in part, on NO<sub>x</sub> emission reductions hundreds of kilometers upwind. The EPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. As the studies progress, the EPA will continue to work with the States and other organizations to develop mutually acceptable attainment strategies.

At the same time as the large scale modeling analyses are being conducted, States have requested exemptions from NO<sub>x</sub> requirements under section 182(f) for certain nonattainment areas in the modeling domains. Some of these nonattainment areas may impact downwind nonattainment areas. The EPA intends to address the transport issue under section 110(a)(2)(D), based on a regional modeling analysis.

Under section 182(f) of the CAA, an exemption from NO<sub>x</sub> requirements may be granted for nonattainment areas outside of an ozone transport region if the EPA determines that "additional reductions of (NO<sub>x</sub>) would not contribute to attainment of the national ambient air quality standard for ozone in the area."<sup>1</sup> As described in section 4.3 of the December 13, 1993, EPA guidance document, "Guideline for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)," the EPA encourages, but does not require, States/petitioners to consider the impacts on the entire modeling domain since the effects of an attainment strategy may extend beyond a designated nonattainment area. Specifically, the guidance encourages States to consider imposition of the NO<sub>x</sub> requirements if needed to avoid adverse impacts in downwind areas, either intra- or interstate. States need to consider such impacts since they are ultimately responsible for achieving attainment in all portions of their State and for ensuring that emissions originating in their State do not contribute significantly to nonattainment in, or interfere with maintenance by, any other State. See section 110(a)(2)(D)(i)(I) of the CAA.

In contrast, section 4.4 of the December 16, 1993, guidance states that the section 182(f) demonstration would not be approved if there is evidence, such as photochemical grid modeling, showing that the NO<sub>x</sub> exemption would interfere with attainment or maintenance in downwind areas. The guidance further explains that section 110(a)(2)(D) (not section 182(f)) prohibits such impacts. Consistent with section 4.3 of the guidance, the EPA believes that the section 110(a)(2)(D) and 182(f) provisions must be considered independently, and hence, has revised section 4.4 of the December 16, 1993, guidance document. Thus, if there is evidence that NO<sub>x</sub> emissions in an upwind area would interfere with attainment or maintenance in a downwind area, that problem should be

<sup>1</sup> There are three NO<sub>x</sub> exemption tests specified in section 182(f). Of these, two are applicable for areas outside of an ozone transport region: the "contribute to attainment" test described above, and the "net air quality benefits" test. EPA must determine, under the latter test, that the net benefits to air quality in an area "are greater in the absence of NO<sub>x</sub> reductions" from relevant sources. Based on the plain language of section 182(f), EPA believes that each test provides an independent basis for receiving a full or limited NO<sub>x</sub> exemption. Consequently, as stated in section 1.4 of the December 16, 1993, EPA guidance, "[w]here any one of the tests is met (even if another test is failed), the section 182(f) NO<sub>x</sub> requirements would not apply or, under the excess reductions provision, a portion of these requirements would not apply."

separately addressed by the State(s) or, if necessary, by the EPA in a section 110(a)(2)(D) action. In addition, a section 182(f) exemption request should be independently considered by the EPA. In some cases, therefore, the EPA may grant an exemption from across-the-board NO<sub>x</sub> RACT controls under section 182(f) and, in a separate action, require NO<sub>x</sub> controls from stationary and/or mobile sources under section 110(a)(2)(D). It should be noted that the controls required under section 110(a)(2)(D) may be more or less stringent than RACT, depending on the circumstances.

The State of Louisiana is being included in one of the new modeling analyses referred to above that is being conducted by the EPA, States, and other agencies as part of the Ozone Transport Assessment Group (OTAG). The OTAG process is a consultative process among the eastern States and the EPA which was initiated by the EPA in a March 2, 1995, policy memorandum.<sup>2</sup> The OTAG assessment process, which is scheduled to end at the close of 1996, will evaluate regional and national emission control strategies using improved regional modeling analyses. The goal of the OTAG process is to reach consensus on additional regional and national emission reductions that are needed to support efforts to attain the ozone standard in the eastern United States. Based on the results of the OTAG process, States have committed to submit plans (SIP revisions) by mid-1997 which show attainment of the ozone standard through local, regional, and national emission controls.

The OTAG plans to complete additional modeling between now and September 1996 using emissions data and emission control strategies currently being developed among OTAG workgroups.

As noted in a prior EPA rulemaking dated November 28, 1994 (59 FR 60709), NO<sub>x</sub> waivers are approved on a contingent basis; the waiver applies only so long as air quality analyses, such as from additional ozone modeling, in an exempted area continue to show an attainment disbenefit or lack of benefit from NO<sub>x</sub> emission reductions. Additionally, in the notice of proposed rulemaking on the Baton Rouge exemption request, 60 FR 43100 (August 18, 1995), the EPA indicated that the NO<sub>x</sub> exemption would remain effective for only as long as modeling continued to show that NO<sub>x</sub> control

activities would not contribute to attainment in the Baton Rouge area.

The State of Louisiana has conducted a number of additional modeling analyses (subsequent to the preparation of the NO<sub>x</sub> waiver request) to assess the impact of specific emission controls on peak ozone concentrations. These additional modeling analyses have been performed to support the State's demonstration of attainment, which is under development. These modeling analyses are well documented and are based on a modeling system which has been accepted by the EPA as being validated for the Baton Rouge modeling domain. EPA continues to believe that the modeling completed thus far supports granting a NO<sub>x</sub> waiver.

As discussed above, the State of Louisiana has been included in the superregional photochemical modeling of the eastern United States (U.S.) by the OTAG. The EPA expects the OTAG to complete their work as scheduled. The EPA will then evaluate the modeling results and their implications concerning NO<sub>x</sub> versus volatile organic compound (VOC) emission controls. The results of this modeling may supersede the urban airshed model (UAM) demonstration that the EPA is using as the basis for granting this waiver. To continue the waiver for all NO<sub>x</sub> source categories, the modeling must continue to show attainment of the ozone standard without the use of additional NO<sub>x</sub> emission controls. The final modeling may demonstrate attainment of the ozone standard using a subset of the possible NO<sub>x</sub> emission controls. In this situation, the EPA may continue the waiver for the remaining "non-controlled" NO<sub>x</sub> sources under section 182(f)(2) of the CAA.

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

waivers until a budget controlling future NO<sub>x</sub> increases is in place.

*Response:* The EPA's transportation conformity rule<sup>3</sup> originally provided a NO<sub>x</sub> transportation conformity waiver if an area received a section 182(f) exemption. As indicated in a previous response, the EPA has changed the reference from section 182(f) to section 182(b)(1) in the transportation conformity rule since that section is specifically referenced by the transportation conformity provisions of the CAA. See 60 FR 44762. The EPA has also consistently held the view that, in order to conform, nonattainment and maintenance areas must demonstrate that the transportation plan and the 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 was not reflected in the transportation conformity rule. The EPA has amended the rule to correct this error. See 60 FR 57179. However, the exemptions that are the subject of this final action do not include transportation conformity NO<sub>x</sub> requirements and are being processed under section 182(f)(3), which requires the EPA to act within 6 months on the submitted petition. The EPA believes it is appropriate to act on received petitions as close to the prescribed 6 month time frame as practicable. Therefore, the EPA intends to process this exemption request without further delay.

*Comment:* Commenters argued that the CAA does not authorize any waiver of the NO<sub>x</sub> reduction requirements until conclusive evidence exists that such reductions are counterproductive.

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

<sup>2</sup>Memorandum, "Ozone Attainment Demonstrations," dated March 2, 1995, from Mary Nichols, Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency.

<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).

determines that, in certain areas, NO<sub>x</sub> reductions would generally not be beneficial towards attainment of the ozone standard. In section 182(f)(1), Congress explicitly conditioned action on NO<sub>x</sub> exemptions on the results of an ozone precursor study required under section 185B of the CAA. Because of the possibility that reducing NO<sub>x</sub> in an area may either not contribute to ozone attainment or may cause the ozone problem to worsen, Congress included attenuating language, not just in section 182(f), but throughout Title I of the CAA, to avoid requiring NO<sub>x</sub> reductions where such would not be beneficial or would be counterproductive. In describing these various ozone provisions, including section 182(f), the House Conference Committee Report states in the pertinent part: "[T]he Committee included a separate NO<sub>x</sub>/VOC study provision in section (185B) to serve as the basis for the various findings contemplated in the NO<sub>x</sub> provisions. The Committee does not intend NO<sub>x</sub> reduction for reduction's sake, but rather as a measure scaled to the value of NO<sub>x</sub> reductions for achieving attainment in the particular ozone nonattainment area." H.R. Rep. No. 490, 101st Cong., 2d Sess. 257-258 (1990).

As noted in the response to an earlier comment, the command in section 182(f)(1) that the EPA "shall consider" the section 185B report taken together with the timeframe the CAA provides for completion of the report and for acting on NO<sub>x</sub> exemption petitions clearly demonstrate that Congress believed the information in the completed section 185B report would provide a sufficient basis for the EPA to act on NO<sub>x</sub> exemption requests, even in the absence of the additional information that would be included in affected areas' attainment or maintenance demonstrations. While there is no specific requirement in the CAA that EPA actions granting NO<sub>x</sub> exemption requests must await "conclusive evidence," as the commenters argue, there is also nothing in the CAA to prevent the EPA from revisiting an approved NO<sub>x</sub> exemption if warranted by additional, current information.

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

(1) In any area, the net air quality benefits are greater in the absence of

NO<sub>x</sub> reductions from the sources concerned;

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

(3) In nonattainment areas within an ozone transport region, additional NO<sub>x</sub> reductions would not produce net ozone air quality benefits in the transport region. Based on the plain language of section 182(f), the EPA believes that each test provides an independent basis for a full or limited NO<sub>x</sub> exemption.

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

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

*Response:* The EPA does not believe that this comment is applicable to the Baton Rouge action because the area has not based its section 182(f) petition on "clean" air monitoring data.

*Comment:* Commenters stated that the modeling required by the EPA is insufficient to establish that NO<sub>x</sub> reductions would not contribute to attainment since only one level of control, "substantial" reductions, is required to be analyzed. As such, the waiver does not provide a complete picture of the effect larger amounts of NO<sub>x</sub> reductions will have on ozone levels. They further explained that an area must submit an approvable attainment plan before the EPA can know whether NO<sub>x</sub> reductions will aid or undermine attainment.

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

The EPA guidance also states that application of UAM should be consistent with techniques specified in the EPA "Guideline on Air Quality Models (Revised)" (December 1993). Further, application of UAM should also be consistent with procedures contained in the EPA "Guideline for Regulatory Application of the Urban

Airshed Model" (July 1991). Thus, episode selection for the section 182(f) demonstration should be consistent with the UAM guidance for SIP attainment demonstrations.

The section 182(f) "contribute to attainment" and "net ozone benefit" demonstrations concern an unspecified "additional reductions" of NO<sub>x</sub>. The EPA's December 1993 guidance specifies that the analysis should reflect three scenarios of "substantial" NO<sub>x</sub> and VOC emission reductions. The guidance states that, in scenario (1), the demonstration should use the VOC reductions needed to attain, as demonstrated by Empirical Kinetic Modeling Approach or UAM analyses. Alternatively, if the attainment demonstration has not been completed, the demonstration may use some other substantial VOC reduction. In any case, the VOC reductions should be substantial and documented as reasonable to expect for the area, due to the CAA requirements. In scenario (2), NO<sub>x</sub> reductions should be modeled without any VOC reductions above the attainment year baseline. The level of NO<sub>x</sub> reductions should reflect the same percent reduction of anthropogenic VOC emissions in scenario (1) above. In scenario (3), a similar level of NO<sub>x</sub> reductions would be modeled along with the level of VOC reductions chosen. That is, if a 40 percent VOC reduction is chosen in scenario (1), then the model for scenario (3) would simulate a 40 percent VOC reduction and approximately a 40 percent NO<sub>x</sub> reduction. It would be inappropriate to select a high level of VOC reductions and a low level of NO<sub>x</sub> reductions since this could artificially favor a finding that NO<sub>x</sub> reductions are not beneficial; thus, the scenarios are constrained to avoid an inappropriate analysis.

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

The State's modeling demonstration reflected substantial NO<sub>x</sub> reductions in addition to substantial VOC reductions in order to more accurately characterize near-term VOC and NO<sub>x</sub> control

scenarios. In fact, for the NO<sub>x</sub> waiver, the State modeled a 100 percent reduction in the point source NO<sub>x</sub> inventory (which represented a 57 percent reduction in total projected NO<sub>x</sub> emissions), along with a 100 percent reduction in point source VOC emissions (which represented a 46 percent reduction in the total projected anthropogenic VOC emissions). The analyses showed that the modeled domain-wide peak ozone concentrations exceeding 120 parts per billion decreased in response to substantial VOC emission reductions and increased in response to substantial NO<sub>x</sub> emission reductions for all episodes.

*Comment:* Commenters argued that the CAA does not authorize delaying implementation of NO<sub>x</sub> controls if attainment modeling is not complete.

*Response:* The EPA believes the modeling analyses submitted are appropriate to determine, in a directional manner, whether or not NO<sub>x</sub> reductions are expected to be beneficial with respect to the air quality in the area/region.

*Comment:* One commenter argued that, while NO<sub>x</sub> controls may be less beneficial than VOC-only controls in reducing ozone concentrations in some areas of the Baton Rouge region on some days, the State has not demonstrated that VOC-only controls will sufficiently reduce ozone concentrations for the majority of episodes, particularly in areas farther downwind.

*Response:* The modeling analyses performed examined the relative benefits of VOC versus NO<sub>x</sub> emissions reductions primarily in the ozone nonattainment and surrounding areas as required by the EPA's NO<sub>x</sub> exemption guidance. An assessment of the impact of VOC versus NO<sub>x</sub> emission reductions in areas farther downwind (beyond the modeling domain) was not required by the EPA and, thus, was not considered in the State analyses submitted in support of the NO<sub>x</sub> exemption. The modeling domain selected, however, was large enough to ensure that it provided resolution of ozone and precursor advection upwind and downwind of the area of interest. The Baton Rouge modeling domain, which includes all or part of 20 parishes in Louisiana, covers both attainment as well as nonattainment parishes. As mentioned earlier, the analyses showed that the modeled domain-wide peak ozone concentrations exceeding 120 parts per billion decreased in response to VOC emission reductions and increased in response to NO<sub>x</sub> emission reductions for all episodes.

As noted in the response to an earlier comment, the State of Louisiana has

been included in the OTAG regional modeling domain to address the impact that transport may have on downwind areas in the eastern U.S. Based on the outcome of the modeling analyses, the EPA may require, pursuant to section 110(a)(2)(D), NO<sub>x</sub> reductions in upwind areas to address the transport issue.

*Comment:* One commenter stated that the EPA must rely on the recent National Academy of Sciences (NAS) report in its review of NO<sub>x</sub> waivers. The commenter pointed out that the NAS report found that to reduce transported ozone NO<sub>x</sub> reductions are needed.

*Response:* The NAS report and the EPA's companion report both support the conclusion that, as a general matter for ozone nonattainment areas across the country, NO<sub>x</sub> reductions in addition to VOC reductions will be needed to achieve attainment. This general conclusion, however, must be assessed in the context of the more detailed analysis provided in those same reports. For example, the NAS report notes that NO<sub>x</sub> reductions can have either a beneficial or detrimental effect on ozone concentrations, depending on the locations and emission rates of VOC and NO<sub>x</sub> sources in a region. The effect of NO<sub>x</sub> reductions depends on the local VOC/NO<sub>x</sub> ratio and a variety of other factors. In its report issued pursuant to section 185B of the CAA, the EPA stated that "[a]pplication of gridded photochemical models on a case by case basis is required to determine the efficacy of NO<sub>x</sub> controls, because the ozone response to precursor reductions is area specific."

The analyses performed in the Baton Rouge area demonstrate a local disbenefit from NO<sub>x</sub> control in the modeling domain. Based on these modeling results, the area meets the test under section 182(f)(1)(A) of the CAA required to support a waiver from the NO<sub>x</sub> requirements of section 182(f). The effect that NO<sub>x</sub> controls in the Baton Rouge area may have on ozone levels in the eastern U.S. will be addressed in the OTAG process.

*Comment:* NO<sub>x</sub> emission reductions will not only reduce transported ozone, but will also improve visibility, especially in downwind Class I areas.

*Response:* The NO<sub>x</sub> control waiver request was submitted based on sensitivity analyses performed on the episodes selected for the attainment demonstration required for moderate and above ozone nonattainment areas. To this end, the focus is on the local ozone problem in the Baton Rouge area. Other air pollution problems will be dealt with as part of separate regulatory activities. Moreover, the NO<sub>x</sub> exemption test Louisiana is relying on (pursuant to

section 182(f)(1)(A)) requires an assessment of only the contribution of NO<sub>x</sub> emissions reductions toward ozone attainment.

*Comment:* One commenter argued that the EPA Administrator has an obligation, under section 110(a)(2)(D), to prohibit any activity in a State which will contribute significantly to nonattainment in, or interfere with maintenance by, any other State. To this end, a "superregional" NO<sub>x</sub> strategy should be adopted before the Administrator grants any section 182(f) NO<sub>x</sub> exemption or, at the very least, NO<sub>x</sub> exemptions should be restricted to expire if the OTAG and the EPA are unsuccessful in completing the requirements outlined in the EPA's March 2, 1995, attainment guidance document.

*Response:* As discussed earlier in the response concerning transport to downwind areas, the EPA intends to use its authority under section 110(a)(2)(D) to require a State to reduce NO<sub>x</sub> emissions from stationary and/or mobile sources where there is evidence, such as photochemical grid modeling, showing that the NO<sub>x</sub> emissions would contribute significantly to nonattainment in, or interfere with maintenance by, any other State or in another nonattainment area within the same State. This action would be independent of any action taken by EPA on a NO<sub>x</sub> exemption request under section 182(f).

*Comment:* One commenter stated that the current ozone standard, 120 parts per billion, may not be adequately protective of public health and even greater reductions in ozone levels could be required.

*Response:* The adequacy of the current ozone standard is not the subject of this rulemaking. The EPA will reserve discussions regarding the adequacy of the ozone standard for future rulemaking actions on that subject.

*Comment:* One commenter argued that biogenic VOC emissions are underestimated, which would cause a bias in the model towards favoring VOC control. The commenter further stated that, in the petition, no mention is made of what an upward revision in the biogenic VOC emissions inventory would mean for the effectiveness of a VOC-based control strategy. The commenter argued that mobile source VOC emissions are significantly underestimated, which would compound with the possible underestimation of biogenic VOC emissions to make VOC controls even less effective in reality than they appear in modeling studies. Also, the commenter asserted that a significant



underestimation of the mobile source VOC inventory has large implications because it comprises the largest portion of the anthropogenic inventory.

*Response:* Depending on the locality, the mobile source inventory could comprise a major portion of the anthropogenic inventory. However, in the case of the Baton Rouge area, the mobile source inventory accounts for only 18 percent of the total VOC inventory, whereas the biogenic emissions inventory, which is the major source of VOC emissions in the Baton Rouge area, accounts for 57 percent of the total VOC emissions inventory.

In calculating the mobile source emissions inventory for the Baton Rouge area, the State used the EPA recommended method (i.e., MOBILE5a for mobile source emission factors and area-specific data for vehicle miles traveled).

Biogenic hydrocarbon emissions have been determined to play an important role in the chemistry of urban ozone formation, especially in warm southern cities. In light of this, the State developed the biogenic emission inventory for the Baton Rouge area based on area-specific data. For instance, the area-specific land use database used in the biogenic emission development was derived from four different sources: the Louisiana Department of Transportation and Development, a study of Baton Rouge's biogenic hydrocarbon emissions by Carlos Cardolino and William Chameides<sup>4</sup> at the Georgia Institute of Technology using Landsat imagery, the U.S. Geological Survey's Geo-ecology database, and the U.S. Forest Service's 1991 Forest Statistics for the Southeast Louisiana Parishes and Forest Statistics of South Delta Louisiana Parishes. Meanwhile, the emission factors used in estimating biogenic emissions in the Baton Rouge area were obtained from the Rasmussen and Khalil<sup>5</sup> and Zimmermann<sup>6</sup> studies of biogenic sources. (The emission factors from the Rasmussen and Khalil and Zimmermann studies were derived from direct measurements of various types of

vegetation in the Baton Rouge and Tampa Bay, Florida areas, respectively.)

The EPA believes that the mobile and biogenic VOC inventories are sufficiently accurate to produce acceptable modeling results. In accordance with the EPA's UAM guidance, the State used the 1990 emissions inventory for developing its modeling demonstration. (The EPA evaluated the State's 1990 base year emissions inventory for Baton Rouge and published a final approval in the Federal Register on March 15, 1995. See 60 FR 13908.)

*Comment:* One commenter stated that uncertainties in meteorology can act as a source of compensating errors for erroneously low VOC inventories. In the Baton Rouge area, the regions of high anthropogenic NO<sub>x</sub> emissions are generally well-separated from the regions of highest biogenic VOC emissions. This creates uncertainty in accurately modeling the transport of a high-NO<sub>x</sub> plume into high biogenic VOC areas under stagnant wind conditions.

*Response:* The EPA believes that the conditions described above (i.e., regions of high-NO<sub>x</sub> emissions generally well-separated from high biogenic VOC emissions under stagnant wind conditions) are not characteristic of the Baton Rouge area, where many major NO<sub>x</sub> point sources are either collocated or located within the regions of highest biogenic VOC emissions. Many of the major NO<sub>x</sub> point sources, which are located within the Baton Rouge modeling domain, were taken into account in the simulations. The model performed well for the episodes selected, providing a good representation of the spatial and temporal characteristics of the episode, and generally simulating the observed peaks well. Also, consistent with EPA guidance, the State performed diagnostic and sensitivity simulations to determine whether compensating errors occurred as a result of meteorology and other inputs and found that no such errors occurred.

*Comment:* One commenter stated that the EPA should place the burden of proof on Louisiana to provide affirmative evidence that no negative impact will occur in downwind areas if NO<sub>x</sub> reductions are not imposed in the Baton Rouge area.

*Response:* Modeling and data analyses addressed in the State's NO<sub>x</sub> waiver request demonstrate the positive benefits of VOC control in the modeling domain. And, as required under section 182(f), the State has demonstrated that implementing NO<sub>x</sub> emission controls will result in greater domain-wide peak

ozone concentrations throughout the Baton Rouge modeling domain. Since the State is relying on the section 182(f)(1)(A) "contribute to attainment" test, it does not also need to demonstrate that no negative impact will occur in downwind areas if NO<sub>x</sub> reductions are not imposed in the Baton Rouge area. (Also, see the EPA's previous response to comment on transport issues.)

*Comment:* One commenter stated that NO<sub>x</sub> reductions have other air quality benefits in addition to their effect on ozone, and that granting a NO<sub>x</sub> waiver will undermine the EPA's efforts to improve a broad range of air and water quality values in several regional efforts to address regional environmental problems (i.e., acid rain and nitrogen deposition into estuaries).

*Response:* The EPA agrees that NO<sub>x</sub> emissions can contribute to air pollution problems independent of their role in ozone formation; however, the EPA disagrees that the NO<sub>x</sub> controls required under section 182(f) of the CAA should be implemented in the Baton Rouge area regardless of their impact on ozone. As noted in the response to an earlier comment, section 182(f)(1)(A) specifically provides for an exemption in cases where NO<sub>x</sub> emission reductions would not contribute to attainment of the NAAQS for ozone in the area. The LDEQ has demonstrated in its petition and in the EPA's proposed action that the NO<sub>x</sub> reductions required by section 182(f) would not contribute to attaining the ozone NAAQS in the Baton Rouge area and, thus, the area qualifies for an exemption from the CAA's NO<sub>x</sub> requirements.

At this time, ambient concentrations of nitrogen dioxide (NO<sub>2</sub>) in the Baton Rouge area are significantly below the federal NAAQS for NO<sub>2</sub>. Therefore, based on the current federal standards, the EPA does not believe the NO<sub>2</sub> levels in Baton Rouge are unsafe. The EPA is mandated to periodically reevaluate the NAAQS for each criteria pollutant based on the best information available. The EPA is currently reviewing the NO<sub>2</sub> standard and will evaluate any potential concerns over the standard through a separate rulemaking process. Additionally, for the purposes of reducing acid rain deposition, certain NO<sub>x</sub> sources will still be required to reduce NO<sub>x</sub> emissions under Title IV of the CAA. Other air pollution problems (i.e., nitrogen deposition into estuaries) will be dealt with as part of separate regulatory activities.

For these reasons, the EPA does not believe that the NO<sub>x</sub> controls required under section 182(f) of the CAA should

<sup>4</sup>Cardelino, C.A., and W.L. Chameides. "A Gridded Inventory of Biogenic Hydrocarbon Emissions for the Baton Rouge Non-attainment Area." October 1989.

<sup>5</sup>Rasmussen, R.A., and M.A.K. Khalil. "Forest Hydrocarbon Emissions: Relationships Between Fluxes and Ambient Concentrations." *Journal of the Air and Waste Management Association*. Volume 42, No. 6 (June 1992), p. 5.

<sup>6</sup>Zimmermann, P.R. "Testing for Hydrocarbon Emissions from Vegetation Leaf Litter and Aquatic Surfaces, and Development of a Methodology for Compiling Biogenic Emission Inventories." EPA-450, 4-4-79-004 (1979).



be implemented in the Baton Rouge area regardless of the impact on ozone.

*Comment:* One commenter argued that, since the OTAG's assessment of the influence of NO<sub>x</sub> on regional transport will not be completed until late-1996, in the interim, the EPA should, at a minimum, cap NO<sub>x</sub> emissions at current levels in the Baton Rouge area, and require offsets for new emission sources to prevent NO<sub>x</sub> emissions increases.

*Response:* The EPA disagrees with this comment as it pertains to this action. The CAA authorizes the EPA to grant NO<sub>x</sub> exemptions for areas, like Baton Rouge, that qualify under section 182(f) and requires that the EPA make such determinations within 6 months of submission of a petition. Also, the EPA anticipates that the State will submit a modeled attainment demonstration for the six-parish Baton Rouge nonattainment area well ahead of the schedule outlined in the EPA's March 2, 1995, attainment guidance. (The State has developed an attainment demonstration submittal for the Baton Rouge area, which was put forth for public comment in the October 20, 1995, edition of the *Louisiana Register*.) The attainment demonstration establishes a target level for both VOC and NO<sub>x</sub> emissions in the area. Additionally, if a NO<sub>x</sub> waiver is approved, major point sources of NO<sub>x</sub> emissions are still subject to Prevention of Significant Deterioration requirements. Moreover, in the section 182(f) modeling demonstration, the State has projected negative growth in point source NO<sub>x</sub> emissions from the base year (1990) out to the attainment year (1999).

As noted previously, the EPA's action to grant or deny a NO<sub>x</sub> exemption under section 182(f) would not shield the area from EPA action, under section 110(a)(2)(D), to require even further NO<sub>x</sub> emission reductions (beyond those modeled in the attainment demonstration) if, through the OTAG process or other subsequent modeling, such reductions are determined to be necessary to address transport to downwind areas.

### III. Effective Date

This rulemaking is effective as of January 18, 1996. The Administrative Procedure Act (APA), 5 U.S.C. 553(d)(1), permits the effective date of a substantive rule to be less than thirty days after publication if the rule "relieves a restriction." Since the approval of the section 182(f) exemption for the Baton Rouge ozone nonattainment area is a substantive rule that relieves the restrictions associated with the CAA Title I requirements to

control NO<sub>x</sub> emissions, the NO<sub>x</sub> exemption approval may be made effective upon signature by the EPA Administrator.

### IV. Final Action

The comments received were found to warrant no significant changes from proposed to final action on this NO<sub>x</sub> exemption request. The primary difference between the proposed and final rulemaking is the addition of the statement that the EPA may require NO<sub>x</sub> emission controls in general or on a source-specific basis under section 110(a)(2)(D) of the CAA if future ozone modeling (for example, the OTAG modeling expected to be completed in late-1996) demonstrates that such controls are needed to achieve the ozone standard in downwind areas. Based on subsequent modeling results, the EPA may rescind all or part(s) of the NO<sub>x</sub> waiver. Approval of the exemption waives the Federal requirements for NO<sub>x</sub> RACT, NO<sub>x</sub> NSR, vehicle I/M NO<sub>x</sub> requirements, and NO<sub>x</sub> general conformity applicable to the Baton Rouge ozone nonattainment area. To maintain the waiver, future modeling must demonstrate attainment of the ozone standard without the use of additional NO<sub>x</sub> emission controls. (The modeling may demonstrate the need for some NO<sub>x</sub> emission controls, necessitating the need for a reduction in the source coverage of the NO<sub>x</sub> waiver under section 182(f)(2) of the CAA.) Should the EPA rescind the exemption, the State would be required to begin implementing applicable NO<sub>x</sub> RACT, NO<sub>x</sub> NSR, vehicle I/M NO<sub>x</sub> requirements, and NO<sub>x</sub> general conformity. (To allow point sources time to purchase NO<sub>x</sub> control equipment, install it, etc., NO<sub>x</sub> RACT compliance would be required as expeditiously as practicable, but no later than two years following the rescission.)

This action stops the mandatory sanctions clock started on July 1, 1994, as a result of the EPA's finding of failure to submit the NO<sub>x</sub> RACT SIP pursuant to section 179(a) of the CAA.

### V. Miscellaneous

#### A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any state implementation plan. The EPA shall consider each request for revision to the state implementation plan in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

#### B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866.

#### C. Regulatory Flexibility

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

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids the EPA to base its actions concerning state implementation plans on such grounds (*Union Electric Co. v. U.S.E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2)).

#### D. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the EPA must assess whether various actions undertaken in association with proposed or final regulations 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.

The EPA's final action will relieve requirements otherwise imposed under the CAA and, hence, does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

#### E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 26, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the

purpose of judicial rule, 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) of the CAA.

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

Environmental protection, Air pollution control, Oxides of nitrogen, Incorporation by reference, Intergovernmental relations, Ozone.

Dated: January 18, 1996.

Carol M. Browner,  
Administrator.

40 CFR part 52 is amended as follows:

#### **PART 52—[AMENDED]**

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

Authority: 42 U.S.C. 7401–7671q.

#### **Subpart T—Louisiana**

2. Section 52.992 is amended by adding paragraph (b) to read as follows:

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

\* \* \* \* \*

(b) The LDEQ submitted to the EPA on November 17, 1994, a petition requesting that the Baton Rouge serious ozone nonattainment area be exempted from the NO<sub>x</sub> control requirements of the CAA. In addition, supplemental information was submitted to the EPA by the LDEQ on January 26, 1995, June 6, 1995, and June 16, 1995. The Baton Rouge nonattainment area consists of East Baton Rouge, West Baton Rouge, Pointe Coupee, Livingston, Iberville, and Ascension Parishes. The exemption request was based on photochemical grid modeling which shows that reductions in NO<sub>x</sub> would not contribute to attainment in the nonattainment area. On January 18, 1996, the EPA approved the State's request for an areawide exemption from the following requirements: NO<sub>x</sub> new source review, NO<sub>x</sub> reasonably available control technology, NO<sub>x</sub> general conformity, and NO<sub>x</sub> inspection and maintenance requirements.

[FR Doc. 96–1288 Filed 1–25–96; 8:45 am]

BILLING CODE 6560–50–P

#### **40 CFR Part 185**

[OPP–300394A; FRL–4983–6]

RIN 2070–AB78

#### **Trifluralin; Revocation of Food Additive Regulation**

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

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking the food additive regulation (FAR) for residues of the herbicide trifluralin in peppermint oil and spearmint oil. EPA is taking this action because peppermint oil and spearmint oil are not ready-to-eat commodities, and residues of trifluralin are not likely to concentrate in ready-to-eat foods containing peppermint and spearmint oil. Therefore, this FAR is not required.

**EFFECTIVE DATE:** This final rule becomes effective January 26, 1996.

**ADDRESSES:** Written objections, requests for a hearing, and/or requests of stays identified by the document control number, OPP-300394A, must be submitted by February 26, 1996, and comments on all of the above must be submitted by March 11, 1996 to the OPP docket: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Hand deliver to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a filing concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the filings that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written (non-CBI) filings will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and

hearing requests will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP-300394A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below in this document.

**FOR FURTHER INFORMATION CONTACT:** By mail: Niloufar Nazmi, Special Review Branch (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Crystal Mall #2, Rm. 1113, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-308-8028; e-mail: nazmi.niloufar@epamail.epa.gov.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Introduction**

EPA is revoking the FAR for residues of the herbicide trifluralin in peppermint oil and spearmint oil (40 CFR 185.5900).

##### **A. Statutory Background**

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are commonly referred to as "tolerances." Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the Federal Food, Drug, and Cosmetic Act (FFDCA) and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. EPA was authorized to establish pesticide tolerances under Reorganization Plan No. 3 of 1970. 5 U.S.C. App. at 1343 (1988). Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). EPA can establish a tolerance in response to a petition (FFDCA sections 408(d)(1) and 409(b)(1)) or on its own initiative (FFDCA sections 408(e) and 409(d)).

The FFDCA has separate provisions for tolerances for pesticide residues on raw agricultural commodities (RACs) and tolerances on processed food. For pesticide residues in or on RACs, EPA establishes tolerances, or exemptions from tolerances when appropriate, under section 408 of the act (21 U.S.C. 346a.) EPA regulates pesticide residues in processed foods under section 409 of

the act, which pertains to "food additives" (21 U.S.C. 348). Maximum residue regulations established under section 409 of the act are commonly referred to as food additive regulations (hereafter referred to as "FARs"). Section 409 FARs are needed, however, only for certain pesticide residues in processed food. Under section 402(a)(2) of the FFDCA, a pesticide residue in processed food generally will not render the food adulterated if the residue results from application of the pesticide to a RAC and the residue in the processed food when ready to eat is below the RAC tolerance. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to the processed food forms. Thus, a section 409 food additive regulation is only necessary to prevent foods from being deemed adulterated when the level of the pesticide residue in a processed food when ready to eat is greater than the tolerance prescribed for the RAC, or if the processed food itself is treated or comes in contact with a pesticide.

#### B. Regulatory Background

In the Federal Register of July 14, 1993 (58 FR 37862) EPA issued a final order, hereafter referred to as "1993 Order", that was subject to objections and requests for a hearing and that revoked the trifluralin FAR for peppermint oil and spearmint oil. The 1993 Order was issued in response to the decision by the U.S. Court of Appeals, Ninth Circuit, in the case of *Les v. Reilly*, 968 F.2d 985 (9th Cir. 1992), cert. denied, 113 S.Ct. 1361 (1993). DowElanco, the manufacturer of trifluralin, filed objections to the revised Order, as well as requests for a hearing on, and a stay of, the revocation Order. In the Federal Register of June 30, 1994 (59 FR 33684), EPA issued a final order (hereafter referred to as "1994 Order") denying DowElanco's objections and requests for a hearing and a stay of the revocation. On July 14, 1994, DowElanco filed an action in the U.S. Court of Appeals, D.C. Circuit, for review of EPA's 1993 Order, and moved for summary reversal or, in the alternative, an emergency stay of the revocation. *E.I. DuPont DeNemours and Co., et al. v. EPA*, Civ. Action No. 94-1504 (D.C. Cir.). On August 24, 1994, the Court denied DowElanco's motion for summary reversal, but issued an emergency stay of the revocation. In the Federal Register of September 12, 1994 (59 FR 46768), EPA reinstated the FAR for trifluralin (as well as for benomyl), and they are currently in effect.

On September 11, 1992, the National Food Processors Association (NFPA) and other organizations filed a petition with EPA challenging, among other things, EPA's interpretation of the phrase "ready to eat" in the Delaney Clause. (Petition to the Environmental Protection Agency, Office of Pesticide Programs, Concerning EPA's Pesticide Concentration Policy (1992)) (hereinafter cited as "NFPA petition"). The petition requested that EPA apply the term "ready to eat" in the flow-through provision according to what NFPA asserts is its plain meaning. EPA sought public comment on the petition (58 FR 7470, Feb. 5, 1993). In the Federal Register of June 14, 1995 (60 FR 31300), EPA issued a partial response to the NFPA petition, addressing the "ready to eat" policy. In that response, EPA agreed that the term "ready to eat" food has a common-sense meaning of food which is consumed without further preparation, and stated its intention to apply that interpretation in future actions.

In the Federal Register of July 28, 1995 (60 FR 38781), EPA issued a proposed rule to revoke the FAR for trifluralin on peppermint and spearmint oils. In the same proposed rule, EPA proposed to withdraw its Order dated July 14, 1993 (58 FR 37862), to the extent that it revoked the FAR for trifluralin in peppermint oil and spearmint oil. Today's document contains a final rule revoking the trifluralin FAR and responds to comments on the July 28, 1995 proposal.

#### II. Revocation of the Food Additive Regulations for Trifluralin in Peppermint Oil and Spearmint Oil

EPA has determined that no section 409 FAR is necessary for mint oils because they are not "ready to eat" processed foods, and because "ready to eat" foods containing mint oils are unlikely to have trifluralin residues greater than the RAC tolerances for peppermint hay and spearmint hay. The proposed rule for this action was published in the Federal Register of July 28, 1995 (60 FR 38781). The Federal Register document and all the supporting documents are in the OPP docket number 300394.

As noted above, under FFDCA section 402(a)(2), processed foods containing pesticide residues are not deemed adulterated if the level of pesticide residues in the processed food "when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity." EPA believes that the common sense meaning of the term "ready to eat" food is food ready for consumption without further

preparation. Mint oils are not consumed "as is" but are used as a flavoring in other foods. As such, peppermint oil and spearmint oil are not "ready to eat."

Mint oils are used as flavoring agents in foods such as beverages, ice cream, candy, and chewing gum. Chewing gum is a ready-to-eat food with the highest concentration of peppermint and spearmint oils. The information available to EPA shows that trifluralin residues are diluted during manufacturing so that there is no concentration over the RAC tolerance in the ready-to-eat chewing gum. Thus, no section 409 FAR is needed for peppermint oil and spearmint oil, and EPA is revoking the existing FAR. (60 FR 38781)

#### III. Response to Comments

EPA received comments on the proposed revocation of the trifluralin FAR. All the commenters support the basis for the revocation of the referenced FAR. In addition, many of the commenters raise other issues that EPA believes are not relevant to EPA's conclusion that mint oils are not ready-to-eat commodities and that as a result, the section 409 FAR covering residues of trifluralin in mint oils are not necessary. However, the following are brief responses to these comments.

#### Comment

The National Food Processor's Association (NFPA), the American Crop Protection Association (ACPA), DowElanco, and Gowan Co. submitted comments in support of the revocation of the proposed FAR and the withdrawal of the July 14, 1993 Order. However, NFPA, ACPA, and DowElanco contend that there are other controlling legal reasons why the 1993 and 1994 Orders must be withdrawn.

The commenters contend that once it has been determined that trifluralin residues in mint oil are subject to the section 402 flow-through provision, the 1993 and 1994 Orders must be withdrawn because those Orders purported to revoke the FAR on the grounds that the pesticide "induces cancer" within the meaning of the Delaney clause. The commenters contend that, as a matter of law, EPA is precluded from revoking a section 409 FAR under the safety standard in section 409(c) if EPA has determined, as it has here, that the FAR is not needed to prevent the adulteration of processed food.

According to the commenters, the flow-through provision prohibits EPA from determining that an agricultural pesticide in a processed food is "unsafe," notwithstanding the

provisions of section 409, if the pesticide residue has been removed to the extent possible in good manufacturing practice and the level of the residue in the processed food when ready to eat is not greater than the applicable section 408 tolerance. Thus, the commenters reason that since EPA has decided that trifluralin residues in mint oil are likely to fall within the protection of the flow-through provision, EPA is barred from revoking the trifluralin FAR on grounds that the pesticide "induces cancer" within the meaning of the Delaney clause in section 409 of the FFDCA. On June 10, 1995, NFPA separately filed a petition with EPA raising this same issue.

#### *EPA's Response*

As will be explained in more detail in EPA's response to the June 10, 1995 NFPA petition, the commenters' argument is without any legal basis. The commenters misunderstand the relationship between a section 409 FAR and the flow-through provision. As a result of the flow-through provision, a FAR only has legal effect as to residues of the pesticide in processed food that exceed the residue levels qualifying under the flow-through provision. Thus, a finding that a pesticide does not meet the safety standard under section 409 and a revocation of a FAR based on such a finding has no effect on residues of the pesticide that are in compliance with the flow-through provision. Such a lack of safety finding under section 409(c) does not render pesticide residues in compliance with the flow-through provision unsafe. If a section 409 FAR is revoked, residues still retain the same legal safe harbor they always had under the flow-through provision. Accordingly, the flow-through provision contains no bar to the revocation of a section 409 FAR on safety grounds.

#### *Comment*

DowElanco further requests that the Agency explicitly acknowledge that DowElanco and other adversely affected parties will not be precluded from challenging any "induce cancer" finding for trifluralin in any future FFDCA tolerance revocation actions. DowElanco insists that without such an acknowledgement, today's Notice will not resolve the underlying controversy in the *Dupont and DowElanco v. Browner* litigation. In addition, DowElanco urges that the EPA should use today's Notice to clarify its position on chemicals classified as Group C carcinogens with quantification by the Reference Dose approach (or found not to be quantifiable). DowElanco further argues that by using the Reference Dose

approach for quantifying risk, EPA is recognizing that the carcinogenic risk is so uncertain that it is disregarded for evaluating risk.

#### *EPA's Response*

EPA believes that there are no additional trifluralin tolerances or FARs that are likely to be revoked on grounds that trifluralin "induces cancer." The trifluralin Reregistration Eligibility Document, which will soon be issued by EPA, indicates that there are no section 409 FARs needed for this chemical. Therefore, EPA does not foresee a situation that would result in any hearings under the FFDCA on whether trifluralin "induces cancer." However, as explained below, EPA will consider future hearing requests raising any evidence relevant and material to a finding that trifluralin "induces cancer" within the meaning of the Delaney clause when that finding serves as the basis for an order issued by EPA under the authority of sections 408 and 409 of the FFDCA.

EPA believes that precluding review of issues that could have and should have been raised in prior proceedings is an appropriate and essential policy and legal position for the Agency to take in FFDCA proceedings because it ensures that such Agency decisions are accorded finality. In the interest of administrative efficiency and economy, final determinations in such administrative proceedings deserve to be treated with the same finality as final determinations in judicial proceedings. Further, under section 409 of the FFDCA, the only way to prevent EPA from according finality to a section 409(f) order, and the legal and factual basis for that order, is to file objections within the time period specified, *Nader v. EPA*, 859 F.2d 747 (9th Cir. 1988), *cert. denied*, 490 U.S. 1931 (1989); and *CNI v. Young*, 773 F.2d 1356 (1985).

EPA found, in its 1990 and 1991 Orders, that trifluralin "induces cancer" but that because the trifluralin cancer risks were *de minimis*, EPA would retain the trifluralin FAR that was the subject of NRDC's petition. However, because EPA retained the FAR, and because this was the first proceeding of this nature under section 409 of the FFDCA, proponents of the FAR and chemicals, including DowElanco, may not have understood that their failure to raise objections to the cancer finding at that time could result in that finding being accorded finality by EPA. Given that such circumstances are not likely to be repeated, EPA believes it is appropriate to assure DowElanco that EPA will not assert in future FFDCA proceedings that the issue of whether

trifluralin "induces cancer" must or will be accorded finality based on EPA's 1990 and 1991 Orders.

Because EPA is providing the assurances requested by commenters, EPA believes there should be no objections to an EPA final order withdrawing the 1993 and 1994 Orders.

#### IV. Procedural Matters

##### *A. Filing of Objections and Requests for Hearings*

Any person adversely affected by this final rule may file written objections to the final rule, and may include with any such objection a written request for an evidentiary hearing on the objection. Such objections must be submitted to the Hearing Clerk on or before February 26, 1996. A copy of the objections and hearing requests filed with the Hearing Clerk shall be submitted to the Office of Pesticide Programs Docket Room. Regulations applicable to objections and requests for hearings are set out at 40 CFR parts 178 and 179. Those regulations require, among other things, that objections specify with particularity the provisions of the final rule objected to, the basis for the objections, and the relief sought. Additional requirements as to the form and manner of the submission of objections are set out at 40 CFR 178.25. The Administrator will respond as set forth in 40 CFR 178.30, 178.35, and/or 178.37 to objections that are not accompanied by a request for evidentiary hearing.

A person may include with any objection a written request for an evidentiary hearing on the objection. A hearing request must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the requestor. Additional requirements as to the form and manner of submission of requests for an evidentiary hearing are set out at 40 CFR 178.27. Under 40 CFR 178.32(c), the Administrator, where appropriate, will make rulings on any issues raised by an objection if such issues must be resolved prior to determining whether a request for an evidentiary hearing should be granted. The Administrator will respond to requests for evidentiary hearings as set forth in 40 CFR 178.30, 178.32, 178.35, 178.37, and/or 179.20. Under 40 CFR 178.32(b), a request for an evidentiary hearing on an objection will be granted if the objection and request have been properly submitted and if the Administrator determines that the material submitted show: (1) There is a genuine and substantial issue of fact for resolution at a hearing; (2) There is a

reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor; and (3) Resolution of one or more of the factual issues in the manner sought by the person requesting the hearing would be adequate to justify the action requested.

Any person wishing to comment on any objections or requests for a hearing may submit such comments to the Hearing Clerk on or before March 11, 1996.

A record has been established for this rulemaking under docket number [OPP-300394A] (including objections and hearing requests submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written objections and hearing requests, identified by the document control number [OPP-300394A], may be submitted to the Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

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

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

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

#### B. Effective Date

EPA is making this final rule effective January 26, 1996 given the lack of

adverse comments on EPA's proposed action. In addition, if EPA does not receive objections to this Order, this Order and the factual and legal basis for this Order become final and are not judicially reviewable. See section 409(g)(1), 21 U.S.C. 348(g)(1), and *Nader v. EPA*: 859 F.2d 747 (9th Cir. 1988), *cert. denied*, 490 U.S. 1931 (1989).

#### C. Request for Stays of Effective Date

A person filing objections to this final rule may submit with the objections a petition to stay the effective date of this final rule. Such stay petitions must be submitted to the Hearing Clerk on or before February 26, 1996. A copy of the stay request filed with the Hearing Clerk shall be submitted to the Office of Pesticide Programs Docket Room. A stay may be requested for a specific time period or for an indefinite time period. The stay petition must include a citation to this final rule, the length of time for which the stay is requested, and a full statement of the factual and legal grounds upon which the petitioner relies for the stay. In determining whether to grant a stay, EPA will consider the criteria set out in the Food and Drug Administration's regulations regarding stays of administrative proceedings at 21 CFR 10.35. Under those rules, a stay will be granted if it is determined that: (1) The petitioner will otherwise suffer irreparable injury; (2) The petitioner's case is not frivolous and is being pursued in good faith; (3) The petitioner has demonstrated sound public policy grounds supporting the stay; and (4) The delay resulting from the stay is not outweighed by public health or other public interests.

Under FDA's criteria, EPA may also grant a stay if EPA finds such action is in the public interest and in the interest of justice.

Any person wishing to comment on any stay request may submit such comments and objections to a stay request, to the Hearing Clerk, on or before March 11, 1996. Any subsequent decisions to stay the effect of this Order, based on a stay request filed, will be published in the Federal Register, along with EPA's response to comments on the stay request.

#### V. Regulatory Requirements

##### A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under the order, a "significant regulatory action" is 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, and the environment, public health or safety, of State, local, or tribal governments or communities"; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this final rule is not a "significant" action under E.O. 12866. EPA is taking this action because it has determined that the food additive regulation for trifluralin is not needed. Therefore, the Agency expects that no economic impact will result.

#### B. Regulatory Flexibility Act

The regulatory action has been reviewed under the Regulatory Flexibility Act of 1980, and, as stated above, EPA expects that it will not have any economic impacts, including impacts on small entities.

#### C. Paperwork Reduction Act

This Order does not contain any information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

#### List of Subjects in 40 CFR Part 185

Environmental protection, Administrative practice and procedures, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping.

Dated: January 19, 1996.

Lynn R. Goldman,  
Assistant Administrator for Prevention,  
Pesticides and Toxic Substances.

Therefore, 40 CFR part 185 is amended as follows:

#### **PART 185—[AMENDED]**

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

#### **§ 185.5900 [Removed]**

2. By removing § 185.5900 *Trifluralin*.

[FR Doc. 96-1402 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-F

**40 CFR Part 271**

[FRL-5402-4]

**New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Review of Immediate Final Rule; Response to Public Comments.

**SUMMARY:** This notice responds to comments received on the immediate final rule published on October 17, 1995 (60 FR 53708), and affirms the agency's decision to authorize the State of New Mexico's revised program pursuant to 40 CFR 271.21(b)(3).

**DATES:** Final authorization for New Mexico's program revisions shall be effective January 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section, (6PD-G), U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Dallas, Texas 75202, phone (214) 665-8533.

**SUPPLEMENTARY INFORMATION:** On October 17, 1995, EPA published an immediate final rule pursuant to 40 CFR 271.21(b)(3) which announced the agency's decision to authorize New Mexico's revisions to its hazardous waste program. Comments were received during the public comment period from one responder. After considering the comments received, the Regional Administrator has decided to affirm her decision to authorize the State of New Mexico for the program revisions. The significant issues raised by the commentor and EPA's responses are summarized below. The comments have been summarized, to the extent possible, according to common areas for ease of response. All comments have been carefully considered in reaching the decision to approve the State's program revision.

*Comment:* The EPA has not provided detailed or specific information regarding how the Regional Administrator arrived at her determination that New Mexico's hazardous waste program is (1) equivalent to the Federal program (2) is consistent with the Federal program, and (3) provides for adequate enforcement of compliance with the requirements of RCRA.

*Response:* The EPA appreciates these comments and certainly has taken these factors into consideration in reaching a decision. The primary standard against which EPA measures the New Mexico Program revision are those set out in

Section 3006(b) of RCRA; namely (1) the State program is equivalent to the federal program, (2) the State program is consistent with the Federal or state programs applicable in other states, and (3) the State provides adequate enforcement of compliance with program requirements.

**1. Equivalent Program**

The State demonstrated equivalency through its legal authorities in their statutes and regulations. The EPA also reviewed the State's Attorney General Statement, Memorandum of Agreement, Program Description and other documents included in the State's application. The State's regulatory authority for the Hazardous and Solid Waste amendments of 1984 (HSWA) is identical to the federal authority. The State adopts EPA hazardous waste regulations by reference. Therefore, the State will enforce equivalent standards for HSWA provisions within the State.

**2. Consistent Program**

The EPA implemented the requirement to be consistent with the federal program at 40 CFR 271.4. This regulation defines an inconsistent State program as: (1) Any aspect of the State program which unreasonably restricts, impedes, or operates as a ban on the free movement across the State border of hazardous waste from or to other States for treatment, storage, or disposal at facilities authorized to operate under the Federal or an approved State program shall be deemed inconsistent. (2) Any aspect of State law or of the State program which has no basis in human health or environmental protection and which acts as a prohibition on the treatment, storage or disposal of hazardous waste in the State may be deemed inconsistent. (3) If the State manifest system does not meet the requirements of this part, the State program shall be deemed inconsistent. After review of the State's program revision application and 40 CFR part 271.4, EPA determined that the State complies with the consistency requirement.

**3. Adequate Enforcement**

The EPA has thoroughly and carefully evaluated the State's hazardous waste management program and is confident that the State does, in fact, have the resources to administer the HSWA program. The State maintains a competent permitting staff who are already actively involved in HSWA permitting.

The EPA and the State are committed to carrying out a quality Resource Conservation and Recovery Act (RCRA)

program in New Mexico. EPA does not require a State to have a specific amount of resources in order to be authorized. A State, though, must have sufficient resources to carry out its responsibilities. EPA is concerned that New Mexico, and all States, have the resources and capabilities to implement the program.

Based on a review of the State's application for program revisions of its hazardous waste program, EPA determined that the State operates a RCRA enforcement program which satisfactorily meets the requirements for compliance evaluation and enforcement authority of 40 CFR 271.15 and 271.16.

The State's compliance and monitoring enforcement strategy contains enforcement timeframes which are at least equivalent to EPA's enforcement timeframes. EPA has evaluated the State's performance with respect to meeting those enforcement timeframes and has found that the State performance has been satisfactory. The EPA, through oversight responsibility, must monitor the State's enforcement program. The Memorandum of Agreement (MOA), Program Description (PD), and the RCRA section 3011 Multiyear grant entered into by the State and EPA, establish the procedures for oversight and the terms of the State's accountability for compliance monitoring and enforcement. These agreements enable EPA to track the State's enforcement process and determine if the State is meeting specific commitments which it agreed to accomplish.

The RCRA section 3011 Multiyear grant awarded to the State will function like a contract between the State and EPA. The EPA agrees to pay the State if the State performs certain program activities. If, through EPA's oversight and grant review, it determines that the State is not meeting its commitments, limited funding and authorization may be withdrawn. Although, the State has primary enforcement responsibility, EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

The EPA believes that the State has demonstrated in its application that it will have adequate funds and staffing. It is EPA's responsibility in the exercise of its oversight role, to insure after the State is authorized, that it maintains adequate funding and staff to operate the program according to the commitments set out in the application. The EPA has conducted extensive training for the staff of the State on the corrective action program.

Also, the commentor expressed a concern regarding the Federal Register notice not listing detailed or specific information on how the Administrator reached a decision. There is no requirement to provide in the public notice detailed or specific information regarding how the Regional Administrator reached her decision. As required by 40 CFR Part 271.21(b), the Federal Register notice did include a summary of New Mexico's program revisions and indicated that EPA intended to approve the State's program revision (See 60 FR 53708 and 53709). The notice also provided that "Copies of the New Mexico program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m., Monday through Friday at the New Mexico Environment Department and EPA" (See 60 FR 53709).

*Comment:* The Work Share Agreement between EPA and the State materially impacts the State's ability to meet the statutory requirements necessary to qualify for authorization.

*Response:* In the spirit of authorization, the State and EPA have agreed to a Work Share Plan to enhance the State's hazardous waste program to ensure that it will be consistent with, equivalent to, and as stringent as the federal requirements. The EPA headquarters encourages the use of Work Share Plan to assist the States. The Work Share Plan is an agreement between EPA Region 6 and the State providing for EPA to give technical assistance to the New Mexico Environment Department's (NMED) hazardous waste management program revision in the review of certain corrective action documents. The Work Share Plan specifically acknowledges that the State is the regulatory authority for the correction action program and EPA will not be making final determinations, thus there is no sharing of regulatory responsibilities in the authorized program. There should be no ambiguity in how EPA and the State function as regulators because the State will make all regulator determinations for those areas that they are authorized for. The continued involvement of EPA at selected facilities should ensure consistency between the State and EPA programs.

#### Decision

The EPA has reevaluated its decision to approve this final authorization for the State's hazardous waste program and all documentation, including the authorization application and several EPA mid-year and end of year

evaluation reports on New Mexico. Additionally, EPA also considered the New Mexico HSWA capability assessment. The EPA hereby affirms its decision to approve this final authorization.

#### Compliance With Executive Order 12866

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

#### Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New Mexico's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. This authorization does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

#### List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This Final Determination is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 14, 1995.

Linda Carroll,

*Acting Regional Administrator.*

[FR Doc. 96-1208 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-P

#### 40 CFR Part 300

[FRL-5403-5]

#### National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

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

**ACTION:** Notice of Deletion of the Anderson Development Company Superfund Site from the National Priorities List (NPL).

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of

the Anderson Development Company site in Michigan from the National Priorities List (NPL). The NPL is Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Michigan have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further response by responsible parties is appropriate. Moreover, EPA and the State of Michigan have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Rita Garner-Davis at (312) 886-2440, Associate Remedial Project Manager, Office of Superfund, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Adrian Public Library, 143 East Maumee, Adrian Michigan 49221, Contact: Jule Foebender, Phone No. (517) 263-2265; and Adrian City Hall, 100 East Church Street, Adrian, MI. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The point of contact for the Regional Docket Office is Jan Pfundheller (H-7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353-5821.

**SUPPLEMENTARY INFORMATION:** The site to be deleted from the NPL is the Anderson Development Company Site located in Adrian, Michigan. A Notice of Intent to Delete was published August 30, 1995 (60 FR 13944) for this site. The closing date for comments on the Notice of Intent to Delete was September 29, 1995. EPA received no comments and therefore a Responsiveness Summary was not prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the



unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

#### List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

#### PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

#### Appendix B—[Amended]

2. Table 1 of appendix B to part 300 is amended by removing the entry for “Anderson Development Co.” at Adrian, Michigan.”

Dated: October 18, 1996.

Michelle Jordan,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 96–1398 Filed 1–25–96; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 21 and 94

[FCC 95–500]

#### Fixed Point-to-Point Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** By this Order portion of the Notice of Proposed Rule Making and Order, the Commission generally holds in abeyance and will not process pending applications for frequency assignments in the 38.6–40.0 GHz (39 GHz) band that are mutually exclusive with other applications or that were still within the 60-day period for filing mutually exclusive applications as of November 13, 1995. Further, the Commission holds in abeyance and will not process modification applications for 39 GHz licenses filed on or after November 13, 1995, unless the application meets certain requirements as discussed in the summary below. The Commission takes this action to stop

processing mutually exclusive or potentially mutually exclusive applications under outdated licensing rules in anticipation of the adoption of new licensing rules.

**EFFECTIVE DATE:** December 15, 1995.

**FOR FURTHER INFORMATION CONTACT:** Tom Mooring, Office of Engineering and Technology, (202) 418–2450.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Order, adopted and released December 15, 1995. The complete *Notice of Proposed Rule Making and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission’s duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington D.C. 20037.

#### Summary of Order

1. In the companion Notice of Proposed Rule Making (“Notice”) in this proceeding, the Commission proposed to amend the licensing and technical rules for fixed point-to-point microwave operations in the 39 GHz band. On November 13, 1995, pursuant to delegated authority, the Wireless Telecommunications Bureau (Bureau) ordered that no additional applications for 39 GHz frequency assignments would be accepted for filing as of the date of the Bureau’s order pending the outcome of this proceeding.<sup>1</sup> The Bureau observed that over 2,100 applications for 39 GHz licenses had been filed since January 1995, and noted that the increasing number of applications filed pursuant to the existing rules was a burden on Commission resources and could inhibit the Commission’s ability to update the regulatory structure of this service in light of today’s marketplace conditions. The Bureau also stated that the freeze does not apply to applications for assignment or transfer of control of license. Likewise, the Commission stresses that the interim policy described below will not apply to assignment or transfer of control applications, which will continue to be processed under existing procedures.

2. With respect to previously filed 39 GHz applications now pending before the Commission, the Commission took the following action. Pending applications will be processed if (1) they were not mutually exclusive with other applications at the time of the Bureau’s

Order, and (2) the 60-day period for filing mutually exclusive applications expired prior to November 13, 1995. The Commission concluded that processing pending applications against which no competing application has been timely filed will not impede the goals of this proceeding and can be accomplished without significant burden on Commission resources. The Commission also proposed to apply to all licenses granted under this procedure the same revised construction threshold and grandfathering requirements that it proposed to apply to incumbent 39 GHz licensees who received license grants prior to this Notice.

3. With respect to all other pending applications (i.e., those that were subject to mutual exclusivity or still within the 60-day period as of November 13), the Commission concluded that processing and disposition should be held in abeyance during the pendency of this proceeding.<sup>2</sup> First, resolving mutually exclusive applications requires greater expenditure of Commission resources than processing uncontested applications. Second, the Commission is concerned that attempting to award licenses in mutually exclusive situations under its current rules could lead to results that are inconsistent with the objectives of this proceeding. Therefore, the Commission will not process these applications (or any amendments thereto filed on or after November 13, 1995) at this time, but intends to determine whether to process or return them, as appropriate, at the conclusion of this proceeding. The Commission solicits comment on how these applications that will be held in abeyance should later be treated if new licensing and service rules are ultimately adopted in this proceeding.

4. Also in regard to pending applications for 39 GHz licenses, amendments received on or after November 13, 1995 will be held in abeyance during the pendency of this proceeding. The Commission will similarly hold in abeyance those applications for modification of existing 39 GHz licenses filed on or after November 13, 1995, or modification

<sup>1</sup> Order, RM-8553, DA 95–2341, released November 13, 1995.

<sup>2</sup> Whenever the 60-day “cut-off” date for an application occurs on or after the processing “freeze” date of November 13, 1995, we will hold the application in abeyance. This will assure fairness to potential applicants who were precluded by the freeze from filing competing applications in time to be entitled to comparative consideration. Accordingly, all 39 GHz applications placed on public notice on or after September 14, 1995, will be treated for purposes of interim processing as if they were mutually exclusive. See 47 C.F.R. §§21.27, 21.31(b).



application amendments filed on or after that date, and will not accept for filing any additional such modification applications and amendments, but for the following limited exception which will afford existing licensees alternative means of meeting the threshold construction requirement. To be acceptable for filing, modification applications or amendments to them must meet both of the following criteria:

- Do not involve any enlargement in any portion of the proposed area of operation; and
- Do not change frequency blocks, other than to delete a frequency block(s).

5. Accordingly, it is ordered, That pending applications for new 39 GHz frequency assignments or for modification to 39 GHz licenses shall be held in abeyance and not processed until further notice, except as otherwise indicated in paragraphs 1 through 4 above. It is further ordered, That applications for modification of 39 GHz licenses or amendments to pending 39 GHz applications shall not be accepted for filing until further notice, except as indicated in paragraphs 1 through 4 above. The imposition of these changes in application processing is procedural in nature and, therefore, is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.<sup>3</sup> In any event, good cause exists for imposing immediately the processing changes without following these requirements because the changes are necessary to avoid impeding the purpose of any new rules adopted in this proceeding.

#### List of Subjects

##### 47 CFR Part 21

Communications common carriers, Radio.

##### 47 CFR Part 94

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96-1246 Filed 1-25-96; 8:45 am]

BILLING CODE 6712-01-P

#### 47 CFR Part 73

[MM Docket No. 95-85; RM-8518]

#### Radio Broadcasting Services; Copeland, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** The Commission, at the request of Greater Plains Christian Radio, Inc., allots Channel \*280C1 to Copeland, Kansas, as a reserved channel for noncommercial use, to provide the community with an additional FM service. See 60 FR 32935, June 26, 1995. Channel \*280C1 can be allotted to Copeland, Kansas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel \*280C1 at Copeland are 37-32-31 and 100-37-45. With this action, this proceeding is terminated.

**DATES:** Effective March 4, 1996. The window period for filing applications will open on March 4, 1996, and close on March 19, 1996.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-85, adopted December 7, 1995, and released January 19, 1996. 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, ITS, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Radio broadcasting.

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

#### PART 73—[AMENDED]

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

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

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Channel \*280C1 at Copeland.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96-1420 Filed 1-25-96; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 95-43; RM-8580]

#### Radio Broadcasting Services; Grand Junction, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

**SUMMARY:** This document allots Channel 264C1 to Grand Junction, Colorado, as that community's fifth local FM transmission service, in response to a petition for rule making filed on behalf of Grand Valley Public Radio Company, Inc. See 60 FR 19560, April 19, 1995. Coordinates used for Channel 264C1 at Grand Junction are 30-04-06 and 108-33-00. With this action, the proceeding is terminated.

**DATES:** Effective March 4, 1996. The window period for filing applications will open on March 4, 1996, and close on March 19, 1996.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180. Questions related to the window application filing process for Channel 264C1 at Grand Junction, Colorado, should be addressed to the Audio Services Division, FM Branch, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95-43, adopted December 11, 1995, and released January 19, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street, NW., Room 246, or 2100 M Street, NW., Suite 140, Washington, DC 20037.

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

Radio broadcasting.

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

#### PART 73—[AMENDED]

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

<sup>3</sup> See *Neighborhood TV Co., Inc. v. FCC*, 742 F.2d 629 (D.C. Cir. 1984); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948 (6th Cir. 1971); *Kessler v. FCC*, 326 F.2d 673 (D.C. Cir. 1963).

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

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Colorado is amended by adding Channel 264C1 at Grand Junction.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96-1422 Filed 1-25-96; 8:45 am]

BILLING CODE 6712-01-F

**47 CFR Part 73**

[MM Docket No. 91-193, RM-7717, RM-7822]

**Radio Broadcasting Services; Corpus Christi, Three Rivers, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** This document denies the petition for reconsideration filed by Reina Broadcasting, Inc., of the *Report and Order*, 58 FR 15423 (March 11, 1993), in which the Commission allotted Channel 233C2 at Three Rivers, Texas, denied Reina's proposal to substitute Channel 234C2 for 234A at Corpus Christi, Texas, and dismissed Reina's alternate proposal, filed after expiration of the comment period, to substitute alternate Channel 228C2 at Three Rivers, Texas, and to either substitute Channel 264A for Channel 228A at Carrizo Springs, Texas, or delete the channel. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 776-1653.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No 91-193 adopted December 7, 1995 and released January 19, 1996. 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.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Douglas W. Webbink,

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

[FR Doc. 96-1424 Filed 1-25-96; 8:45 am]

BILLING CODE 6712-01-F

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 22 and 52**

[Federal Acquisition Circular 90-36 Correction]

**Federal Acquisition Regulation; Correction**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Correction.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing a correction to Federal Acquisition Circular 90-36, FAR Case 95-304, "Uruguay Round", published at 60 FR 67514, December 29, 1995.

**EFFECTIVE DATE:** January 1, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Beverly Fayson at (202) 501-4755, General Services Administration, FAR Secretariat, Washington, DC 20405. Please cite correction to FAC 90-36.

Correction

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**52.225-15 [Corrected]**

1. On page 67518, in the center column, third line from the top following the word "Trade", the word "Agreement" should be inserted.

Dated: January 19, 1996.

Jeremy F. Olson,

*Acting Director, Office of Federal Acquisition Policy Division.*

[FR Doc. 96-1139 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 23**

**RIN 1018-AC70**

**Export of River Otters Taken in Tennessee in the 1995-96 and Subsequent Seasons**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. Exports of animals and plants listed on Appendix II of CITES require an export permit from the country of origin. As a general rule, export permits are only issued after two conditions are met. First, the exporting country's CITES Scientific Authority must advise the permit-issuing CITES Management Authority that such exports will not be detrimental to the survival of the species. Then the Management Authority must make a determination that the animals or plants were not obtained in violation of laws for their protection. If live specimens are being exported, the Management Authority must also determine that the specimens are being shipped in a humane manner with minimal risk of injury or damage to health.

This document announces final findings by the Scientific and Management Authorities of the United States that approve the addition of Tennessee to the list of States and Indian Nations for which the export of river otters is approved. The Service intends to apply these findings to harvests in Tennessee during the 1995-96 season and subsequent seasons, subject to the same conditions applying to States previously approved.

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Scientific Authority Finding—Dr. Marshall A. Howe, Office of Scientific Authority; phone 703-358-1708; fax 703-358-2276.

Management Authority Finding/State Export Programs/Export Permits—Ms. Carol Carson, Office of Management Authority; phone 703-358-2095; fax 703-358-2280.

**SUPPLEMENTARY INFORMATION:** CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are

included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also lists other species that must be subject to regulation in order that trade in currently or potentially threatened species may be brought under effective control (e.g., species difficult to distinguish from currently or potentially threatened species). Appendix III identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

In the January 5, 1984, Federal Register (49 FR 590), the Service announced the decision made at the Fourth Conference of the CITES Parties that certain species of furbearing mammals, including the river otter, should be regarded as being listed in Appendix II of CITES because of similarity in appearance to other listed species or geographically separate populations. The January 5, 1984, notice also contained a rule approving the export of specimens of one or more such furbearing species taken in specified States and Indian Nations and Tribes during the 1983-84 and subsequent harvest seasons. Subsequently, export of specimens taken in several additional States and Indian Nations, Tribes, or Reservations was similarly approved through the rulemaking process.

The January 5, 1984, document described how the Service, as Scientific Authority, planned to monitor annually the population and trade status of each of these species and to institute restrictive export controls if prevailing export levels appeared to be contributing to a long-term population decline. The document also described how the Service, as Management Authority, would require States to assure that specimens entering trade are marked with approved, serially unique tags as evidence that they had been legally acquired.

This is the second Federal Register document concerning the Service's findings on export of river otters, *Lontra* (formerly *Lutra canadensis*) taken in Tennessee. The first document (60 FR 39347; August 2, 1995) announced the Service's proposed findings on the export of river otters taken in Tennessee in the 1995-96 season and subsequent seasons and solicited public comments.

The purpose of this rule is to add Tennessee to the list of States and Indian Nations for which the export of

river otters is approved (50 CFR §23.53). The Service will apply these findings to harvests in Tennessee during the 1995-96 season and subsequent seasons, subject to the same conditions applying to other approved entities.

#### Comments and Information Received

No comments or information were received concerning the August 2, 1995, Federal Register (60 FR 39347) notice proposing export of river otters taken in the State of Tennessee.

#### Scientific Authority Findings

Article IV of CITES requires that, before a permit to export a specimen of a species included in Appendix II can be granted by the Management Authority of an exporting country, the Scientific Authority must advise "that such export will not be detrimental to the survival of that species." The Scientific Authority for the United States must develop such advice, known as a no-detriment finding, for the export of Appendix II animals in accordance with Section 8A(c)(2) of the Endangered Species Act of 1973, as amended (the Act). The Act states that the Secretary of the Interior is required to base export determinations and advice "upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice."

Because the river otter is listed on Appendix II of CITES primarily because of similarity of appearance to other listed species in need of rigorous trade controls, an important component of the no-detriment finding by the Scientific Authority is consideration of the impact of river otter trade on the status of these other species. The Scientific Authority has determined that the dual practice of (1) issuing export permits naming the species being traded and (2) marking pelts with tags bearing the name of the species, country and State of origin, year of harvest, and a unique serial number, is sufficient to eliminate potential problems of confusion with other listed species (see Management Authority Findings for tag specifications).

Primary responsibility for managing river otters lies with wildlife agencies of individual States or Indian Nations. Each export-approved State or Indian Nation in which this animal is harvested (50 CFR §23.53) collects and reports various kinds of information as part of their harvest management programs. In addition to considering the effect of river otter trade on other CITES-listed species, the Service

regularly examines information from these State or Indian Nation harvest management programs. This ongoing monitoring and assessment is in accordance with the January 5, 1984, Federal Register (49 FR 590). Whenever available information indicates a possible problem in a particular State, the Scientific Authority will conduct a comprehensive review of accumulated information to determine whether conclusions about the treatment of these species as listed for similarity of appearance need to be adjusted in the State. Approved entities are requested annually to certify that the best available biological information derived from professionally accepted wildlife management practices indicates that harvest of river otters during the forthcoming season will not be detrimental to the survival of the species.

Natural repopulation of river otters has been occurring in western Tennessee since the 1950's. This increase is consistent with a widespread pattern in the United States and is believed, in part, to reflect colonization of suitable habitat created recently by a rapidly expanding beaver population. The Tennessee Wildlife Resources Agency has supported a study of the demography, food habits, and habitat use of river otters in the State. The results of these studies show that age and sex ratios of river otters in western Tennessee are similar to those of healthy river otter populations elsewhere, including populations experiencing harvest.

The Tennessee Wildlife Resources Agency conducted experimental river otter trapping seasons annually from the 1989-90 season through the 1994-95 season in the western part of the State. Total annual harvest has ranged from 71 (1990-91) to 230 (1994-95). In the central and eastern parts of Tennessee, this species is still classified under State law as threatened and is not legally harvested at this time. The available biological and harvest information leads the Service to conclude that export of river otters legally harvested in Tennessee will not be detrimental to the survival of the species.

All otters taken by trappers are required to be marked with special tags approved by the Tennessee Wildlife Resources Agency. The State also conducts a questionnaire survey of licensed trappers annually. These surveys identify the size and geographic derivation of the river otter harvest and will provide insight into State river otter population trends over time. Analysis of these data should detect population declines symptomatic of either an

unhealthy population or overharvest in time to take corrective action through regulatory adjustments or other means.

Based upon (a) the information presented by the Tennessee Wildlife Resources Agency, including river otter harvest regulations, and (b) the determination that permitting and tagging requirements will eliminate the possibility that other similar-appearing, CITES-listed species in trade will be misrepresented as river otters, the Scientific Authority finds that export of river otters harvested in 1995–96 and subsequent seasons from Tennessee will not be detrimental to the survival of the species or to the survival of other species the river otter is listed to protect.

**Management Authority Findings**

Exports of Appendix II species are allowed under CITES only if the Management Authority is satisfied that the specimens were not obtained in contravention of laws for the protection of the involved species. The Service, therefore, must be satisfied that the river otter pelts, hides, or products being exported were not obtained in violation of State, Indian Nation, Tribal, Reservation, or Federal law in order to allow export. A system based on tagging requirements, to determine whether specimens have been lawfully acquired, was stipulated in the January 5, 1984, Federal Register (49 FR 590). The Service has continued to monitor the implementation of these regulations and considers that these programs provide reasonable assurance that river otter specimens being exported were not obtained in violation of laws established for their protection. The Management Authority finds that the State of Tennessee has demonstrated the capability to manage a tagging program according to these requirements.

**Export Approval**

This document represents the final administrative step in procedures established to authorize export of river otters and other designated furbearing mammals from Service-approved States and Indian Nations and Tribes in accordance with CITES. Accordingly,

the export of Tennessee river otters harvested during the 1995–96 and subsequent harvest seasons is now approved, on the grounds that both Scientific Authority and Management Authority criteria have been satisfied.

The Department has determined, within the meaning of 5 U.S.C. 553(d) (1) and (3) of the Administrative Procedure Act, that there is good cause to make these findings and rule effective immediately. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the export of pelts taken in the harvest season that is about to begin in Tennessee. Such delays could have adverse economic impacts on individual trappers and dealers that are directly affected by the finding. Because Scientific and Management Authority criteria have been satisfied, it follows that making this rule effective immediately will not adversely affect the species involved. This approval is subject to revision prior to any subsequent taking season in any State, Indian Nation, or Indian Tribe, if a review of information reveals that Management Authority or Scientific Authority findings in favor of export should be changed.

**Effects of the Rule and Required Determinations**

The Department has previously determined (48 FR 37494, August 18, 1983) that the export of river otters of various States and Indian Tribes or Nations, taken in the 1983–84 and subsequent harvest seasons, is not a major Federal action that would significantly affect the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347). This action is covered under an existing Departmental categorical exclusion for amendments to approved actions when such changes have no potential for causing substantial environmental impact.

This rule was not subject to Office of Management and Budget review under Executive Order 12866 and will not have significant economic effects on a substantial number of small entities as outlined under the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*). Because the existing rule treats exports on a State-by-State and Indian Nation-by-Indian Nation basis and proposes to approve export in accordance with a State or Indian Nation, Tribe, or Reservation management program, the rule will have little effect on small entities in and of itself. The rule will allow continued international trade in river otters from the United States in accordance with CITES, and it does not contain any Federalism impacts as described in Executive Order 12612.

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements.

This rule is issued under authority of the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*). The authors are Marshall A. Howe, Office of Scientific Authority, and Carol Carson, Office of Management Authority.

**List of Subjects in 50 CFR Part 23**

Endangered and threatened species, Exports, Imports, Treaties.

**Regulation Promulgation**

For reasons set forth in the preamble of this document, Part 23 of Title 50, Code of Federal Regulations, is amended as follows:

**PART 23—ENDANGERED SPECIES CONVENTION**

1. The authority citation for Part 23 is revised to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

2. In Subpart F—Export of Certain Species, revise § 23.53 to read as follows:

**§ 23.53 River otter (*Lontra canadensis*).**

States for which the export of the indicated season's harvest may be permitted under § 23.15 of this part:

(a) States and Harvest Seasons Approved for Export of River Otter From the United States.

	1977–78 <sup>1</sup>	1978–79 <sup>2</sup>	1979–80 <sup>3</sup>	1980–81	1981–82	1982–83	1983–84 and subsequent	1995–96 and subsequent
Alabama .....	Q	+	+	+	+	+	+	+
Alaska .....	+	+	+	+	+	+	+	+
Arkansas .....	Q	+	+	+	+	+	+	+
Connecticut .....	Q	+	+	+	+	+	+	+
Delaware .....	Q	+	+	+	+	+	+	+
Florida .....	Q	+	+	+	+	+	+	+
Georgia .....	Q	+	+	+	+	+	+	+
Louisiana .....	Q	+	+	+	+	+	+	+

	1977-78 <sup>1</sup>	1978-79 <sup>2</sup>	1979-80 <sup>3</sup>	1980-81	1981-82	1982-83	1983-84 and subsequent	1995-96 and subsequent
Maine .....	Q	+	+	+	+	+	+	+
Maryland .....	Q	+	+	+	+	+	+	+
Massachusetts .....	Q	+	+	+	+	+	+	+
Michigan .....	Q	+	+	+	+	+	+	+
Minnesota .....	Q	+	+	+	+	+	+	+
Mississippi .....	Q	+	+	+	+	+	+	+
Montana .....	Q	+	+	+	+	+	+	+
New Hampshire .....	Q	+	+	+	+	+	+	+
New Jersey .....	-	-	-	-	-	+	+	+
New York .....	Q	+	+	+	+	+	+	+
North Carolina .....	Q	+	+	+	+	+	+	+
Oregon .....	Q	+	+	+	+	+	+	+
Penobscot Nation .....	-	-	-	-	-	-	+	+
Rhode Island .....	Q	+	-	-	-	-	-	-
South Carolina .....	Q	+	+	+	+	+	+	+
Tennessee .....	-	-	-	-	-	-	-	+
Vermont .....	Q	+	+	+	+	+	+	+
Virginia .....	Q	+	+	+	+	+	+	+
Washington .....	Q	+	+	+	+	+	+	+
Wisconsin .....	Q	+	+	+	+	+	+	+

<sup>1</sup> For further information see 42 FR 43729, Aug. 30, 1977; 43 FR 11081, Mar. 16, 1978; and 43 FR 29469, July 7, 1978.

<sup>2</sup> For further information see 43 FR 11096, Mar. 16, 1978; 43 FR 13913, Apr. 3, 1978; 43 FR 15097, Apr. 10, 1978; 43 FR 29469, July 7, 1978; 43 FR 35013, Aug. 7, 1978; 43 FR 36293, Aug. 16, 1978; and 43 FR 39305, Sept. 1, 1978.

<sup>3</sup> For further information see 44 FR 25383, Apr. 30, 1979; 44 FR 31583, May 31, 1979; 44 FR 40842, July 12, 1979; 44 FR 52289, Sept. 7, 1979; and 44 FR 55540, Sept. 26, 1979.

Q—Export approved with quota.

+—Export approved.

-—Export not approved.

\*—Export for 1994-95 approved administratively.

(b) Condition on export: Each pelt must be clearly identified as to species, State of origin and season of taking by a permanently attached, serially numbered tag of a type approved by the Service and attached under conditions established by the Service. Exception to tagging requirement: finished furs and fully manufactured fur products may be exported from the United States when the State export tags, removed from the pelts used to manufacture the product being exported, are surrendered to the Service before export. Such tags must be removed by cutting the tag straps on the female side next to the locking socket of the tag, so that the locking socket and locking tip remain joined.

Dated: November 28, 1995.

George T. Frampton, Jr.,  
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96-1338 Filed 1-25-96; 8:45 am]

BILLING CODE 4310-55-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 672**

[Docket No. 951120272-5272-01; I.D. 012296A]

**Groundfish of the Gulf of Alaska; Pollock in Statistical Area 63**

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 63 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), January 23, 1996, until superseded by the final 1996 specifications in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council

under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The interim specification of pollock total allowable catch in Statistical Area 63 was established by Interim 1996 Harvest Specifications (60 FR 61492, November 30, 1995) as 3,250 metric tons (mt), determined in accordance with § 672.20(c)(1)(ii)(A).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1996 interim specification of pollock in Statistical Area 63 soon will be reached. The Regional Director established a directed fishing allowance of 3,050 mt, and has set aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 63, until superseded by the Final 1996 Harvest Specifications of Groundfish in the Federal Register.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 672.20(g) and is exempt from review under E.O. 12866.

**Classification**

This action is taken under 50 CFR 672.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 22, 1996.

Richard W. Surdi,

*Acting Director, Office of Fisheries  
Conservation and Management, National  
Marine Fisheries Service.*

[FR Doc. 96-1425 Filed 1-23-96; 4:40 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 61, No. 18

Friday, January 26, 1996

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.

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## DEPARTMENT OF THE TREASURY

### 27 CFR Parts 5, 19, 24, 25, 70, and 250

[Notice No. 819; Ref: Notice No. 816]

RIN 1512-AB40

#### Registration of Formulas and Statements of Process for Certain Domestically Produced Wines, Distilled Spirits and Beer (95R-019P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

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

**SUMMARY:** This notice extends the comment period for Notice No. 816, a notice of proposed rulemaking, published in the Federal Register on November 27, 1995. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues addressed in the notice.

**DATES:** Written comments must be received on or before February 26, 1996.

**ADDRESSES:** Send written comments to: Chief, Wine, Beer and Spirits Regulations Branch; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091-0221; *ATTN: Notice No. 816.*

**FOR FURTHER INFORMATION CONTACT:** James P. Ficaretta, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-927-8230).

#### SUPPLEMENTARY INFORMATION:

##### Background

On November 27, 1995, ATF published a notice of proposed rulemaking (NPRM) in the Federal Register soliciting comments from the public and industry on a proposal to amend the regulations to require the registration, rather than approval, of formulas and statements of process for certain domestically produced wines,

distilled spirits, and beer (Notice No. 816; 60 FR 58311).

The comment period for Notice No. 816 was scheduled to close on January 26, 1996. Prior to the close of the comment period ATF received a request from a national trade association, the National Association of Beverage Importers, Inc. (NABI), to extend the comment period an additional 30 days. NABI, representing the companies that import most of the alcoholic beverages brought into the United States, stated that the additional time is needed for it to obtain information from its foreign counterparts and suppliers in order to prepare the association's comments.

In consideration of the above, ATF finds that an extension of the comment period is warranted and the Bureau is, therefore, extending the comment period until February 26, 1996.

#### Drafting Information

The author of this document is James P. Ficaretta, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

#### List of Subjects

##### 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

##### 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Reporting requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, U.S. possessions, Warehouses, and Wine.

##### 27 CFR Part 24

Administrative practice and procedure, Authority delegations, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, and Wine.

##### 27 CFR Part 25

Administrative practice and procedure, Authority delegations, Beer, Claims, Electronic funds transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, and Transportation.

##### 27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Appeals, Authority delegations, Cancellations, Claims, Government employees, Informal conferences, Law enforcement, and Law enforcement officers.

##### 27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Customs duties and inspection, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, and Wine.

#### Authority and Issuance

This notice is issued under the authority in 5 U.S.C. 552; 26 U.S.C. 7805; 27 U.S.C. 205.

Signed: January 22, 1996.

John W. Magaw,

*Director.*

[FR Doc. 96-1358 Filed 1-25-96; 8:45 am]

BILLING CODE 4810-31-M

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 925

[SPATS No. MO-025-FOR]

#### Missouri Regulatory Program

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

**ACTION:** Proposed rule; public comment period and opportunity for public hearing.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) is

announcing receipt of a proposed amendment to the Missouri regulatory program (hereinafter the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of a proposed set of revegetation success guidelines and a rulemaking that eliminates the reference to an earlier set of guidelines that was never approved by OSM. The amendment is intended to revise the Missouri program to be consistent with the corresponding Federal regulations.

**DATES:** Written comments must be received by 4:00 p.m., c.s.t., February 26, 1996. If requested, a public hearing on the proposed amendment will be held on February 20, 1996. Requests to speak at the hearing must be received by 4:00 p.m., c.s.t., on February 12, 1996.

**ADDRESSES:** Written comments and requests to speak at the hearing should be mailed or hand delivered to Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, at the address listed below.

Copies of the Missouri program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Mid-Continent Regional Coordinating Center. Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463-6460.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, Missouri 65102, Telephone: (573) 751-4041.

**FOR FURTHER INFORMATION CONTACT:** Brent Wahlquist, Regional Director, Mid-Continent Regional Coordinating Center, Telephone: (618) 463-6460.

**SUPPLEMENTARY INFORMATION:**

**I. Background in the Missouri Program**

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, Federal Register (45 FR 77017). Subsequent actions concerning

Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

**II. Description of the Proposed Amendment**

By letter dated December 14, 1995 (Administrative Record No. MO-633), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment in response to the required program amendment at 30 CFR 925.16(a). The provisions of the Code of State Regulations (CSR) that Missouri proposes to amend are: 10 CSR 40-3.120(6)(B)2.A-H., Specific revegetation success standards for postmining land uses.

Specifically, Missouri proposes revisions to its approved program for evaluating revegetation success. Missouri revises its regulations for the specific standards for each of its approved land uses to delete the reference to an earlier set of guidelines that had not been approved by OSM and reference the guidelines as currently proposed in this amendment. The proposed revegetation success guidelines consist of eight separate guidance documents that establish the revegetation success standards by land use. These documents are titled the: (1) Phase II and Phase III revegetation standards for prime farmland; (2) Phase III revegetation standards for cropland; (3) Phase III revegetation standards for pasture and previously mined areas; (4) Phase III revegetation standards for wildlife habitat; (5) Phase III revegetation standards for woodland; (6) Phase III success standards for industrial/commercial revegetation; (7) Phase III revegetation success standards for residential land use; and (8) Phase III revegetation success standards for recreation land use. Each set of guidelines elaborates by land use type the revegetation success standards, measurement frequency, sampling procedures, data submission and analysis, maps, and mitigation plan. The guidance documents follow the approved Missouri program regulations at 10 CSR 40-3.120(6)/3.270(6).

**III. Public Comment Procedures**

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

*Written Comments*

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Mid-Continent Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

*Public Hearing*

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on February 12, 1996. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

*Public Meeting*

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.



#### IV. Procedural Determinations

##### *Executive Order 12866*

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

##### *Executive Order 12778*

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

##### *National Environmental Policy Act*

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

##### *Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

##### *Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

##### List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 18, 1996.  
Charles E. Sandberg,  
*Acting Regional Director, Mid-Continent  
Regional Coordinating Center.*  
[FR Doc. 96-1318 Filed 1-25-96; 8:45 am]  
BILLING CODE 4310-05-M

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD01-95-139]

RIN 2115-AE84

#### **Safety Zone; Chelsea River, Boston Inner Harbor, Boston, MA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is soliciting public comment as to whether to and, if so, how to amend the safety zone regulation for the waters of the Chelsea River, Boston Inner Harbor. Any proposed amendments should update the safety zone to reflect recent structural changes in the Chelsea Street Bridge and surrounding areas, and should address the rationale regarding vessel size limitations and vessel tug assist requirements.

**DATES:** Comments must be received on or before March 26, 1996.

**ADDRESSES:** Comments should be mailed to Captain of the Port Boston, Coast Guard Marine Safety Office, 455 Commercial Street, Boston, MA 02109-1045. Comments may also be hand-delivered to the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223-3000. Comments will become part of this docket and will be available for inspection or copying at the above address during the hours noted.

**FOR FURTHER INFORMATION CONTACT:** LT Joseph L. Duffy, Coast Guard Marine Safety Office Boston, MA (617) 223-3000.

#### **SUPPLEMENTARY INFORMATION:**

##### Request for Comments

The Coast Guard encourages interested persons to participate in the early stages of this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this specific ANPRM (CGD01-95-139) and the specific issue to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8½" by 11" unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons desiring acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before any proposed rule is drafted. Late submittals will be considered to the extent practicable without delaying the publication of any proposed rule.

At this time the Coast Guard has not scheduled any public hearings. Persons may request a public hearing by writing to the Project Manager at the address listed under **ADDRESSES**. Requests should indicate why a public hearing is considered necessary. If the Coast Guard determines that the opportunity for oral presentations will aid any rulemaking, it will hold a public hearing at a time and place announced by a later notice in the Federal Register.

**Drafting Information:** The principal persons involved in drafting this document are LCDR Mark Grossetti, Marine Safety Office Boston, and CDR John Astley, Project Counsel, First Coast Guard District Legal Office.

##### Background

The Chelsea Street Bridge is a bascule-type bridge owned by the City of Boston and originally constructed in 1939. It spans the Chelsea River providing a means for vehicles to travel between Chelsea, MA and East Boston, MA. Several petroleum-product transfer facilities are located on the Chelsea River, upstream and downstream of the Chelsea Street Bridge. Transit of tank vessels through the bridge is necessary to access the facilities upstream of the bridge. The narrow bridge-span opening creates a very difficult passage through the bridge for larger vessels. Adding to the difficulty are the close proximity of neighboring shore structures and, at times, vessels moored at facilities adjacent to the bridge.

In 1986, the bridge and its fendering system were in a dilapidated condition, which further complicated vessel transits. Additionally, the Northeast Petroleum Terminal (locally referred to as the Jenny Dock) and the Mobil Oil Terminal were located downstream of the bridge on the north and south bank of the river, respectively. If one or more vessels were moored at either of those facilities, the already short and narrow approach to the bridge was further restricted, thus reducing the maneuverability space of vessels during the approach and transit through the bridge. Meetings between the Coast Guard, marine operators, and pilots indicated that restrictions on length and width of particular vessel traffic were necessary to achieve an acceptable level of safety for navigating this difficult area. As a result, on June 27, 1986, (51 FR 23415) the Coast Guard promulgated the safety zone regulations at 33 CFR 165.120. These regulations extend over the waters of the Chelsea River for 100 yards upstream and downstream of the bridge, restrict water traffic transiting the Chelsea Street Bridge, and implement vessel operational constraints. The Coast Guard justified these restrictions and constraints by citing more than 75 marine bridge allisions and other incidents involving vessels transiting the Chelsea Street Bridge during the period from 1978 through 1985.

Since the implementation of those regulations, physical changes have occurred within the confines of the existing safety zone. The Jenny Dock, which is specifically mentioned in the regulations, has since collapsed into the Chelsea River and is no longer an active dock. The bulkhead has since been repaired, but vessels no longer moor at the facility. Also, the dilapidated fendering system on the Chelsea Street Bridge has been completely rebuilt with new wooden-reinforced pilings.

In addition to these physical changes, the Coast Guard has documented sixteen allisions with the bridge or its fendering system since the implementation of the current regulations. Six allisions involved tank vessels, two involved tug/barge combinations over 10,000 gross tons, and eight involved tug/barge combinations under 10,000 gross tons. No allisions have involved integrated tug/barge combinations (ITBs). All but two of the allisions resulted in only minor damage. The exceptions involved the Barge OCEAN STATES in February 1993 (structural damage to the bridge) and the Barge DXE 1640 OS in July 1994 (damaged many pilings).

#### Discussion

Due to the above mentioned changes and casualties, recent informal discussions between the Captain of the Port and the local maritime community have raised concern that changes to the safety zone regulations may be needed. While the current regulations have provided an acceptable level of safety, it may be possible to improve safety while reducing the burden of compliance. The Coast Guard seeks comments on the following specific items, and would welcome input and possible solutions regarding any other Chelsea River-related problems or concerns not addressed in this document.

#### *Vessel Size Restrictions*

Currently, only vessels meeting certain draft and physical dimensions (overall length and overall width) are allowed to enter the safety zone. No vessel greater than 661 feet in length, or greater than 90.5 feet in beam, may transit the safety zone. No vessel greater than 630.5 feet in length, or 85.5 feet or greater in beam, may transit the safety zone between sunset and sunrise. No tankship greater than 550.5 feet in length may transit the safety zone with a draft less than 18 feet forward and 24 feet aft. Current regulations authorize the restrictions to be relaxed with specific approval from the local Captain of the Port.

Is the present practice of using a vessel's physical dimensions as limiting factors satisfactory? If so, are the present size limitations satisfactory? Are there better dimensions and/or dimension ratios, or different operating restrictions, that would increase safety or provide an equivalent level of safety?

#### *Mobil Oil/Jenny Dock*

Currently, when the Chelsea River channel is obstructed by vessel(s) moored at either of the subject terminals certain restrictions apply. When there is a vessel moored at each terminal, no vessel greater than 300.5 feet in length or greater than 60.5 feet in beam may transit the safety zone. When a vessel with a beam greater than 60.5 feet is moored at either terminal, no vessel greater than 630.5 feet in length, or greater than 85.5 feet in beam may transit the safety zone. When a vessel with a beam greater than 85.5 feet is moored at either terminal, no vessel greater than 550.5 feet in length, or greater than 85.5 feet in beam may transit the safety zone.

Since the Jenny Dock is no longer in use, the Coast Guard seeks public comment regarding the possibility of removing the existing vessel size

restrictions that apply when the Chelsea River channel is obstructed by vessel(s) at the Jenny Dock. However, as the Mobil Oil facility remains operational just downstream of the Chelsea Street Bridge, the transiting vessel's length and beam remains a safety concern when certain sized vessels are moored at Mobil Oil. Is the present practice of using a transiting vessel's physical dimensions as limiting factors satisfactory? If so, are the present size limitations satisfactory? Are there better dimensions and/or dimension ratios, or different operating restrictions, that would increase safety or provide an equivalent level of safety?

#### *Tug Assistance Requirements*

Existing tug assistance requirements vary depending on the physical size and the type of the transiting vessel. All tankships greater than 630.5 feet in length or greater than 85.5 feet in beam shall be assisted by at least four tugs of adequate horsepower. All tankships from 450 feet in length up to and including 630.5 feet in length and less than 85.5 feet in beam shall be assisted by at least three tugs of adequate horsepower.

U.S. certificated ITBs shall meet the tug assistance requirements of a tankship of similar length and beam, except that one less assist tug would be required.

All conventional tug/barge combinations over 10,000 gross tons shall be assisted by at least one tug of adequate horsepower.

Are the aforementioned existing tug assistance requirements adequate, too stringent, or not stringent enough for the applicable type of vessel? Are there other applicable type of vessels that the tug assistance requirements should apply to?

Additionally, the Coast Guard is considering deleting one of the required assistance tugs for any transiting vessel equipped with a bow thruster of adequate horsepower. Although bow thrusters are not addressed in the current regulation, this would appear to be an issue for consideration. Bow thrusters are an effective maneuvering aid in certain areas of restricted maneuverability such as this safety zone. Can the presence of an operational bow thruster be considered an adequate equivalent to substitute for one assistance tug? The Coast Guard is specifically seeking input regarding this issue.

#### *Tug/Barge Combinations Under 10,000 Gross Tons*

As stated in the previous paragraphs addressing tug assistance requirements,

conventional tug/barge combinations under 10,000 gross tons do not currently require assistance tugs. A majority of the documented Chelsea Street Bridge allisions since implementation of the existing regulations involved tug/barge combinations under 10,000 gross tons. The Coast Guard is soliciting comment regarding the possibility of applying current or future size restrictions that apply to ITBs to tug/barge combinations under 10,000 gross tons. Should the same draft and size limitations and tug assist requirements that apply to tankships of similar length and beam apply to tug/barge combinations of any tonnage? Should additional, fewer, or the same number of assist tugs be required for tug/barge combinations?

Dated: January 23, 1996.

D.M. Maguire,

*Captain, U.S. Coast Guard, Captain of the Port, Boston, MA.*

[FR Doc. 96-1388 Filed 1-25-96; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

#### Alaska Federal Subsistence Regional Advisory Council Meetings; Subsistence Management Regulations for Public Lands in Alaska

**AGENCY:** Forest Service, USDA; Fish and Wildlife Service, Interior.

**ACTION:** Notice of Meetings.

**DATES AND LOCATIONS:** The Federal Subsistence Board announces the forthcoming public meetings of the Federal Subsistence Regional Advisory Councils. Future Federal shutdowns may require rescheduling these meetings. The Regional Council meetings may last two-three days and will be held in the following Alaska locations, and begin on the specified dates:

- Region 1 (Southeast)—Wrangell—Feb. 8, 1996
- Region 2 (Southcentral)—Cordova—Mar. 4, 1996
- Region 3 (Kodiak/Aleutians)—Kodiak—Feb. 26, 1996
- Region 4 (Bristol Bay)—Naknek—Mar. 18, 1996
- Region 5 (Yukon-Kuskokwim Delta)—Nunapitchuk—Feb. 21, 1996

Region 6 (Western Interior)—Holy Cross—Feb. 22, 1996

Region 7 (Seward Peninsula)—Anchorage—Feb. 15, 1996

Region 8 (Northwest Arctic)—Kotzebue—Feb. 23, 1996

Region 9 (Eastern Interior)—Fort Yukon—Mar. 5, 1996

Region 10 (North Slope)—Barrow—Feb. 8, 1996

**SUMMARY:** This notice informs the public of the Regional Council meetings identified above. The public is invited to attend and observe meeting proceedings. In addition, the public is invited to provide oral testimony before the Councils on proposals to change Subsistence Management Regulations for Public Lands in Alaska for the 1996-97 regulatory year as set forth in a proposed rule on August 15, 1995 (60 FR 42085-42130). A booklet of proposed regulation changes was distributed to the public by mail on December 5, 1995.

**MATTERS TO BE CONSIDERED:** The following agenda items will be discussed at each Regional Council meeting:

- (1) Introduction of Regional Council members and guests
- (2) Old business
- (3) New business
  - a. Charter review
  - b. Member recruitment
  - c. Review, and development of recommendations on proposals to change Subsistence Management Regulations for Public Lands in Alaska

**FOR FURTHER INFORMATION CONTACT:** Chair, Federal Subsistence Board, c/o Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3864. For questions related to subsistence management issues on National Forest Service lands, inquiries may also be directed to Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802-1628; telephone (907) 586-7921.

**SUPPLEMENTARY INFORMATION:** The Regional Councils have been established in accordance with Section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, and Subsistence Management Regulations for Public Lands in Alaska, 36 CFR part 242 and 50 CFR part 100, subparts A, B, and C (57 FR 22940-22964). The Regional Councils advise the Federal Government on all matters related to the subsistence taking of fish and wildlife on public lands in Alaska and operate

in accordance with provisions of the Federal Advisory Committee Act.

The identified Regional Council meetings will be open to the public. The public is invited to attend these meetings, observe the proceedings, and provide comments to the Regional Councils.

Dated: January 12, 1996.

Richard S. Pospahala,

*Acting Chair, Federal Subsistence Board.*

[FR Doc. 96-1253 Filed 1-25-96; 8:45 am]

BILLING CODE 3410-11-P; 4310-55-P

## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 202

[Docket No. RM 95-7]

#### Registration of Claims to Copyright, Group Registration of Photographs

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Extension of comment period.

**SUMMARY:** The Copyright Office is extending the comment period in its consideration of regulations permitting group registration of unpublished or published photographs.

**DATES:** The extended deadline for comments is February 9, 1996, and for reply comments is March 1, 1996.

**ADDRESSES:** If sent by mail, fifteen copies of written comments should be addressed to Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366. If by hand, fifteen copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM-407, First and Independence Avenue, S.E., Washington, D.C. 20540.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Acting General Counsel, Telephone: (202) 707-8380 or Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** On December 4, 1995, the Copyright Office published proposed regulations that permit group registration of unpublished or published photographs without the deposit of copies of the works. 60 FR 62057 (Dec. 4, 1995). The proposed regulations would enable photographers and photography businesses to seek the benefits of registration by making it less burdensome for them to register a claim to copyright in a large number of

photographs taken by a single photographer or photography business.

Due to the inordinate number of government and business closures that occurred during this time period, the Office is extending the period for submitting comments from January 18, 1996, to February 9, 1996, and the deadline for reply comments from February 2, 1996, to March 1, 1996.

Dated: January 23, 1996.

Marilyn J. Kretsinger,  
*Acting General Counsel.*

[FR Doc. 96-1408 Filed 1-25-96; 8:45 am]

BILLING CODE 1410-30-U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[DE26-1-6940b; FRL-5320-2]

#### Approval and Promulgation of Air Quality Implementation Plans; Delaware: Regulation 24, Control of Volatile Organic Compound Emissions (VOC RACT Catch-Ups)

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware on December 19, 1994. The revision consists of Sections 10, 11, 12, 44, 45, 47, 48, and 49 and Appendices I, K, L and M to Regulation 24—"Control of Volatile Organic Compound Emissions". These regulations are necessary to satisfy the Clean Air Act (CAA) and to support attainment and maintenance of the National Ambient Air Quality Standard (NAAQS) for ozone in Delaware. In the Final Rules section of the Federal Register, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be submitted in writing by February 26, 1996.

**ADDRESSES:** Comments may be mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

**FOR FURTHER INFORMATION CONTACT:** Rose Quinto, (215) 597-3164, at the EPA Region III address above.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action of the same title (Regulation 24, Control of Volatile Organic Compound Emissions) which is located in the Rules and Regulations Section of this Federal Register.

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

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Reporting and recordkeeping requirements.

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

Dated: October 18, 1995.

W. Michael McCabe,

*Regional Administrator, Region III.*

[FR Doc. 96-1300 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-M

### 40 CFR Part 52

[IL-18-6-6516b; FRL-5334-3]

#### Approval and Promulgation of Implementation Plan; Illinois

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** On October 21, 1993, and March 4, 1994, the Illinois Environmental Protection Agency (IEPA) submitted to the USEPA volatile organic compound (VOC) rules that were intended to satisfy part of the requirements of section 182(b)(2) of the Clean Air Act (Act) amendments of 1990. Specifically, these rules provide control requirements for certain major sources not covered by a Control Technique Guideline (CTG) document. These non-CTG VOC rules apply to sources in the Chicago ozone nonattainment area which have the potential to emit 25 tons of VOC per year. These rules therefore provide an environmental benefit due to the

imposition of control requirements on sources emitting greater than 25 tons of VOC per year that belong to certain source categories. IEPA estimates that these rules will result in VOC emission reductions, from 119 industrial plants, of 2.78 tons per day. The USEPA proposed to approve these VOC rules for major non-CTG sources. This action lists the State implementation plan revision that USEPA is proposing to approve and provides an opportunity for public comment. A rationale for approving this request is presented in the final rules section of this Federal Register, where USEPA is approving the revision request as a direct final rule without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments the direct final rule will be withdrawn. Any parties interested in commenting on this notice should do so at this time. The final rule on this proposed action will address all comments received.

**DATES:** Comments on this document must be received by February 26, 1996.

**ADDRESSES:** Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulatory Development Section, Regulatory Development Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments should be strictly limited to the subject matter of this proposal.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR-18J) Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

#### FOR FURTHER INFORMATION CONTACT:

Steven Rosenthal, Regulation Development Branch, U.S. Environmental Protection Agency, Region 5, (312) 886-6052, at the Chicago address indicated above.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: November 1, 1995.

Valdas V. Adamkus,

*Regional Administrator.*

[FR Doc. 96-1298 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 70**

[AD-FRL-5404-5]

**Clean Air Act Proposed Interim Approval of Operating Permits Program; Maryland; Extension of the Comment Period****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; extension of the comment period.

**SUMMARY:** EPA reopened the comment period for a notice published on October 30, 1995 (60 FR 55231). In the October 30 notice, EPA proposed an interim approval of the operating permits program submitted by Maryland because the program substantially, but not fully, met the requirements of Part 70.

At the request of the SIERRA CLUB—Maryland Chapter, Maryland Public Interest Research Group, and the American Lung Association of Maryland, EPA reopened the comment period through December 29, 1995. All comments received on or before December 29 were entered into the public record and will be considered by EPA before taking final action on the proposed rule.

**DATES:** Comments were to have been received on or before December 29, 1995.

**ADDRESSES:** Comments were to have been mailed to Marcia L. Spink, Associate Director, Air Programs, Mailcode 3AT00, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

**FOR FURTHER INFORMATION CONTACT:** Enid A. Gerena, U.S. EPA Region III, (215) 597-8239.

Dated: December 8, 1995.

Stanley Laskowski,

*Acting Regional Administrator, Region III.*

[FR Doc. 96-1403 Filed 1-25-96; 8:45 am]

**BILLING CODE** 6560-50-P

**40 CFR Part 136**

[FRL-5404-7]

**Guidelines Establishing Test Procedures for the Analysis of Pollutants; New Methods; Reopening of Comment Period****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The U. S. Environmental Protection Agency (EPA) is reopening

the comment period for the proposed guidelines establishing new analytical methods for use under the Clean Water Act, which were published in the Federal Register on October 18, 1995 (60 FR 53988). The public comment period for the proposed rule was to end on December 18, 1995.

**DATES:** Comments on the proposed guidelines will be accepted until April 2, 1996.

**ADDRESSES:** Comments should be submitted by mail to the 304(h) Docket Clerk (Ben Honaker), Water Docket (MC-4101), U.S. EPA, 401 M. Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Longbottom, Aquatic Research Division, National Exposure Research Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268. Telephone number: (513) 569-7308.

**SUPPLEMENTARY INFORMATION:** The methods proposed for addition on October 18, 1995, (60 FR 53988) include new methods for: preparation of samples for metals analysis, inductively coupled plasma/mass spectrometry (ICP/MS), a stabilized temperature graphite furnace atomic absorption (STGFAA) method for metals, and ion chromatography (IC) methods for anions and hexavalent chromium [Cr(VI)]. A revised EPA inductively coupled plasma atomic emission spectrometry (ICP-AES) method for metals to replace the currently approved method, and an extension of the approved method for the determination of low level total residual chlorine were also proposed. The specific methods included in the rulemaking are as follows: EPA Methods 180.1, 200.7, 200.8, 200.9, 218.6, 300.0, 611, and 625; SMEWW, Method 4500-CL E; and Standard Methods Method 6410B.

All written comments submitted in accordance with the instructions in the Notice of Proposed Rulemaking and received by April 2, 1996, including those received between the close of the comment period on December 18, 1995, and the publication of this notice will be entered into the public record and considered by EPA before promulgation of the final rule.

Dated: January 23, 1996.

Robert Perciasepe,

*Assistant Administrator, Office of Water.*

[FR Doc. 96-1404 Filed 1-25-96; 8:45 am]

**BILLING CODE** 6560-50-P

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Parts 1, 2, 21, and 94**

[FCC 95-500]

**Fixed Point-to-Point Microwave Service****AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule.

**SUMMARY:** By the Notice of Proposed Rule Making (NPRM) portion of this *NPRM and Order*, the Commission proposes to provide a channeling plan and licensing and technical rules for fixed point-to-point microwave operations in the 37.0-38.6 GHz (37 GHz) band and proposes to amend the licensing and technical rules for fixed point-to-point microwave operations in the 38.6-40.0 GHz (39 GHz) band. This action would make available additional channels in the 37 GHz band and would ensure more efficient use of the 39 GHz band in the future. The objectives of this proposal are to provide adequate point-to-point microwave spectrum, including channels for the support of broadband personal communications services (PCS) and other services, and to provide for technical commonality across the bands.

**DATES:** Comments must be submitted on or before February 12, 1996 and reply comments must be submitted on or before February 27, 1996. Written comments by the public on the proposed and/or modified information collections are due February 12, 1996. (The comment and reply dates originally were set for January 16, 1996 and January 31, 1996, respectively. However, the Commission's Office of Engineering and Technology, under delegated authority, extended the comment and reply period due to the exigency caused by the closing of the government; see *Order Extending Time*, DA 96-15, released January 16, 1996.)

Written comments must be submitted by OMB on the proposed and/or modified information collections on or before March 26, 1996.

**ADDRESSES:** Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street NW., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10236

NEOB, 725 17th Street NW., Washington, DC 20503 or via the Internet to [fain\\_\\_t@al.eop.gov](mailto:fain__t@al.eop.gov).

**FOR FURTHER INFORMATION CONTACT:** Tom Mooring, Office of Engineering and Technology, 202-418-2450. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway at 202-418-0217, or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's NPRM, adopted and released on December 15, 1995. The complete NPRM and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

#### Paperwork Reduction Act

This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* N/A.

*Title:* Proposed rule 21.711(b).

*Form No.:* N/A.

*Type of Review:* New collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 300.

*Estimated Time Per Response:* 40 hours.

*Total Annual Burden:* 12,000 hours.

*Needs and Uses:* Rule requires that respondents certify that they have constructed a minimum number of

installed and operating microwave links no later than 18 months from adoption of the Report and Order in this docket. If the Commission does not require this certification then it would not know whether the spectrum is being used effectively.

*OMB Approval Number:* N/A.

*Title:* Proposed rule 21.711(b)(2).

*Form No.:* N/A.

*Type of Review:* New collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 200.

*Estimated Time Per Response:* 80 hours.

*Total Annual Burden:* 16,000 hours.

*Needs and Uses:* Rule requires that respondents not meeting the construction threshold file a list of permanently installed or operating microwave links that they wish to have grandfathered no later than 18 months from adoption of the Report and Order in this docket. If the Commission does not require this filing then it would not be able to protect these incumbent operations from possible harmful interference caused by new systems.

*OMB Approval Number:* N/A.

*Title:* Proposed rule 21.711(a)(4).

*Form No.:* N/A.

*Type of Review:* New collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 500.

*Estimated Time Per Response:* 256 hours.

*Total Annual Burden:* 128,000 hours.

*Needs and Uses:* Rule requires that respondents maintain a computer-readable database. This data would be used to facilitate coordination with Government links that share the 37 GHz band with non-Government licensees.

*OMB Approval Number:* 3060-0064 and 3060-0402.

*Title:* Application for a station authorization in the Private Operational Fixed Microwave Radio Service; Application for a new or modified microwave radio station license under Part 21.

*Form No.:* FCC 402 and FCC 494.

*Type of Review:* New collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 100.

*Estimated Time Per Response:* 2 hours.

*Total Annual Burden:* 200 hours.

*Needs and Uses:* Forms are used by applicants to apply to provide either a common carrier service (FCC 494) or to use the spectrum for private purposes (FCC 402). If the Commission did not require that applicants file one these two forms then it would not know how to regulate the licensees.

#### Summary of MO&O

1. By this action, the Commission proposes to provide a channeling plan and licensing and technical rules for fixed point-to-point microwave operations in the 37 GHz band. Adoption of this proposal would make the band available for point-to-point microwave operations that would provide communications infrastructure such as "backhaul" and "backbone" communications links for services including broadband PCS, cellular radio, and other commercial and private mobile radio operations. The Commission observes that such infrastructure could also facilitate the development of competitive wireless local telephone service. Further, the Commission proposes a channeling plan based on fourteen paired 50 megahertz channel blocks (with a 700 megahertz separation between transmit and receive channel blocks) and four unpaired 50 megahertz channel blocks, to allow licensees to subdivide their channel blocks as they choose, service areas based on Basic Trading Areas (BTAs), licensing by competitive bidding if mutually exclusive applications are filed, and a minimal number of technical rules designed to limit interference. Proposed technical rules include specifications as to frequency tolerance, bandwidth, transmitter power, directional antenna standards, digital modulation, and field strength limitation at service area boundaries. The term of licenses in the 37 GHz band is proposed to be 10 years and comment is sought on the appropriate buildout requirement.

2. With regard to sharing the 37 GHz band between Government fixed and non-Government point-to-point operations, the Commission proposes to share the band on a first-come, first-served basis as follows. Commission licensees would be required to protect incumbent operations when they build out their system. Any new Government fixed operations would be coordinated on a link-by-link basis with the affected Commission licensees through the existing Government/non-Government coordination process. In order for the Commission to process a coordination request, non-Government licensees would be required to maintain a computer-readable database with the coordinates of their sites, frequencies (occupied bandwidth) assigned to their sites, EIRP, and other needed information for all of their links.

3. In addition, comment is requested on whether the 37 GHz band or a portion of it should be made available for a wider array of fixed services, such

as point-to-multipoint systems; whether there is a requirement for mobile operations in the 37 GHz band and, if so, whether such operations should be on a co-primary or secondary basis to the point-to-point operations; and whether the Commission has overestimated demand and, thus whether a portion of the band should be held in reserve for future services. If the permissible use of the 37 GHz and 39 GHz bands (see para. 6, below) is broadened to include other fixed and/or mobile uses, the Commission would not anticipate separately licensing such uses but rather would include them within the uses permitted under our proposed BTA licenses. In response to a request from the National Telecommunications and Information Administration (NTIA), the Commission solicits comment on additionally allocating the 37–38 GHz band to the space research (space-to-Earth) service.

4. If competitive bidding is not adopted for the 37 GHz band, comment is solicited alternatively on licensing the 37 GHz band in the same manner as the 39 GHz band is currently licensed with the following modifications. Service areas would be based on BTAs. Eligibility for Channel Blocks 15 through 20 would be limited to broadband PCS licensees until three months after the last broadband PCS license is issued. Eligibility for Channel Blocks 21 through 28 would be limited to broadband PCS, cellular, and wide-area SMR licensees for three years, commencing with the effective date of the rules adopted in this proceeding. After the expiration of these restrictions, eligibility would be open to all parties. Eligibility for unpaired Channel Blocks 29 through 32 would be unrestricted. Further, the Commission proposes to require that applicants demonstrate a need for each channel requested, that applicants initially be limited to one channel per designated service area, that all licensees, except broadband PCS licensees, construct their system within 18 months and that such construction be defined as the ability to pass communications traffic significantly throughout the service area, and that license transfers of unbuilt systems be prohibited. Additionally, each licensee would be permitted to apply for an additional channel in its service area only when it is operating its previously authorized channel(s) at or near expected capacity. Comment is solicited on whether licensees should be required at some time in the future to provide the Commission with a report of their operations so that a second licensing opportunity could be provided for parties interested in those portions of

licensed service areas that are unused. Comment is specifically requested on what criteria should be applied in determining whether a licensed service area is underused to the point that other applicants should be permitted to propose service in that area. If an additional party is allowed to obtain a license in an existing licensee's BTA, the Commission proposes to require them to coordinate informally on a link-to-link basis.

5. The Commission also proposes to amend the licensing and technical rules for fixed point-to-point microwave operations in the 39 GHz band. Specifically, the Commission proposes that the unlicensed areas be licensed using BTA service areas and that auctions be employed should mutually exclusive applications be filed. In order to accommodate incumbent operations, the Commission proposes that licensees of rectangular service areas be given eighteen months from the adoption of a Report and Order in this proceeding to file with the Commission a certification that they have constructed a minimum average of four permanently installed and operating links per hundred square kilometers (approximately one link per ten square miles) of their licensed service area for each licensed channel block. Further, licensees with more than one channel block must certify that each channel block contains at least four permanently installed and operating links per hundred square kilometers that cannot be reaccommodated in another channel block. If a licensee meets these threshold construction and filing requirements, then the licensee would retain its entire rectangular service area. However, if a licensee does not meet these requirements, then the license would be automatically canceled nineteen months from the adoption of a Report and Order in this proceeding. Further, licensees of rectangular service areas not meeting the above construction threshold must file a list of permanently installed and operating links that they wish to have grandfathered no later than eighteen months from the adoption of a Report and Order in this proceeding. The Commission would then relicense qualifying links individually. Failure to file timely a list of installed and operating links would result in automatic cancellation of the respective licenses. As an alternative to relicensing incumbent facilities on their current frequency, comment is solicited on whether incumbent links should be "repacked" into a portion of the band, e.g., most grandfathered links would be switched to one designated channel pair

provided that mutual interference would not result. The technical rules for the 39 GHz band would be modified to make them consistent with the technical rules that are proposed for the 37 GHz band. Licensees would be limited to six of the 28 paired channel blocks and to two of the four unpaired channel blocks in each BTA in the combined 37–40 GHz band.

6. The Commission notes that the lower portion of the 39 GHz band, 38.6–39.5 GHz, is allocated to the fixed, mobile, and fixed-satellite (space-to-Earth) services and that the upper portion of the 39 GHz band, 39.5–40 GHz, is allocated to these services and to the mobile-satellite (space-to-Earth) service. Comment is solicited on whether the proposed modifications for licensing the 39 GHz band would have any affect on the sharing of this band among these services. Further, comment is solicited on whether the Commission should provide for more flexible use of the 39 GHz band, including whether permissible uses should be broadened to include point-to-multipoint and/or mobile services in this band, perhaps under a broader service category such as GWCS or LMWS.

7. If competitive bidding is not adopted for the 39 GHz band, comment is solicited alternatively on whether to license the 39 GHz band under the current rules with certain modifications. Specifically, the Commission proposes to strengthen and codify the policy guidance given in the Commission's Common Carrier Bureau's *Public Notice*, Mimeo No. 44787, released September, 1994, so that all applicants for channels in the 39 GHz band would be required to make the following showings:

(i) *Consideration of non-radiofrequency (non-RF) solutions.* That the applicant has given detailed consideration to non-RF solutions for satisfying its communications requirements, including but not limited to fiber optic cable and wireline, and explaining why such alternatives are technically unacceptable, as opposed to merely less economically preferable.

(ii) *Clear and present need.* That the applicant has an immediate and real need for the proposed communications. Neither speculation, nor anticipated market development, nor a desire merely to hold a license will be sufficient in this regard. Each narrative must include an implementation schedule with six month benchmarks and will be required to demonstrate system construction and operation within the construction deadline imposed by § 21.43 of the Rules.



(iii) *Frequency and efficiency.*

Normally, only one channel block will be authorized per applicant per geographic area. New assignments will be licensed by BTAs. Current applicants must modify their applications accordingly. A future request for an additional channel block will be considered only if the applicant demonstrates that:

- An immediate requirement exists for simultaneous communications within the licensed service area;
- Frequency re-use is impossible as demonstrated by an engineering showing;
- All previously authorized channel blocks within the licensed service area are constructed, are operational, and are loaded to 100% capacity;
- All frequencies are loaded to a minimum equivalent digital efficiency of 1 bps/Hz;
- All transmitting equipment is operating with a frequency tolerance of 0.001%; and
- Only Category A antennas are employed.

(iv) *Full disclosure.* Applicants must fully disclose the real party (or parties) in interest, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning and/or controlling the applicant. In addition, licensees must construct their facilities and must be passing communications traffic on all of assigned channel blocks throughout their licensed service areas by the end of the eighteenth month since initial license grant. An extension to the 18 month period of construction will not generally be granted. If construction is not timely completed, the licensee's authority to construct additional links will be automatically cancelled and forfeited, and the licensee must notify the Commission as to which links have been constructed so that those links may be grandfathered.

8. For both the 37 GHz and 39 GHz bands, the Commission proposes the following procedure for establishing eligibility to bid at auction. The Commission proposes open eligibility and does not intend to require that applicants prove that they are financially qualified. Applicants must file a "short form," *i.e.*, FCC form 175, by a date specified in the applicable initial public notice. The short forms would be reviewed for compliance with the Commission's rules. Timely-filed applications would be classified as either accepted for filing or incomplete and this result would be announced by public notice. *Ex parte* rules would be waived as they apply to the submission

of amended short-form applications. Applicants would not be permitted to make any major modifications to their applications until after the auction. Applicants could modify their short-form applications to reflect the formation of consortia or changes in ownership at any time before or during the auction, provided such changes would not result in a change in control of the applicant, and provided that parties forming consortia or entering into ownership agreements have not applied for licenses in any of the same geographic license areas. Applications that are not signed would be dismissed as unacceptable. Incomplete applications must be resubmitted by the resubmission deadline to correct minor deficiencies. Late-filed applications would be dismissed without the opportunity to resubmit. If mutually exclusive applications are not filed for a license, then the Commission would by public notice cancel the auction for that license and establish a date for the filing of a "long-form application," *i.e.*, FCC Form 600. Applicants whose application for filing is ultimately approved will tender in advance to the Commission an upfront payment of \$2,500 or \$0.02 per pop per MHz, whichever is greater. Upfront payments generally will be due no later than 14 days before the scheduled auction.

9. The design of the auction process for both the 37 GHz and the 39 GHz bands is proposed to be simultaneous multiple round auctions. The minimum bid increments and stopping rules will be specified by public notice prior to the auction. The Milgrom-Wilson activity rule is tentatively proposed, but an alternative activity rule may be used instead and, if so, would be announced by public notice prior to the start of the auction. The duration of bidding rounds would either be announced by public notice prior to the auction or by announcement during the auction. A down payment of 20 percent must be submitted by a date to be specified by public notice, generally within 5 business days following the close of bidding. All auction winners generally would be required to make full payment of the balance of their winning bids with 5 business days following public notice that the license is ready for grant. Any bidder who withdraws a high bid during an auction before the Commission declares the bidding closed, or defaults by failing to remit the required down payment within the prescribed time, would be required to reimburse the U.S. Treasury in the amount of the difference between its high bid and the amount of the winning

bid the next time the license is offered by the Commission, if the subsequent winning bid is lower. After bidding closes, a defaulting auction winner would be assessed an additional payment of 3 percent of the subsequent winning bid or 3 percent of the amount of the defaulting bid, whichever is less. The Commission proposes to apply the transfer disclosure requirements contained in Section 1.2111(a).

10. The Commission proposes the following provisions for designated entities. A small business is defined as entities with less than \$40 million in average annual gross revenues for the preceding 3 years. Further, the same affiliation and attribution rules for calculating revenues that were adopted in the broadband PCS and GWCS proceedings are also proposed for this service. A 10 percent bidding credit for small businesses is proposed and the bidding credit can be applied to any and all of the 37 and 39 GHz licenses. Small business licensees may elect to pay their winning bid amount (less upfront payments) in installments over 10 years, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten year U.S. Treasury obligations plus 2.5 percent. Installment payments would be due on the anniversary of the day the license was granted. Timely payment of all installments would be a condition of the license grant and failure to make such timely payments would be grounds for revocation of the license. Small business licensees will be permitted to make interest-only installment payments during the first two years of the license. The down payment for small businesses is proposed to be 5 percent of the winning bid due five days after the auction and 5 percent due five days after the public notice that the license is ready for grant. Comment is sought on the appropriate transfer restrictions for small businesses and on the proposal not to adopt an entrepreneurs' block.

11. In addition, the Commission proposes that rural telephone companies be permitted to partition BTAs. Rural telephone companies are defined as local exchange carriers having 100,000 or fewer access lines, including all affiliates. Rural telephone companies would be permitted to acquire partitioned licenses in either of two ways: (1) they may form bidding consortia consisting entirely of rural telephone companies to participate in the auctions, and then partition the licenses won among consortia participants; and (2) they may acquire partitioned licenses from other licenses through private negotiation and agreement either before or after the

auction. The partitioned areas must conform to established geopolitical boundaries and each area must include all portions of the wireline service area of the rural telephone company applicant that lies within the service area.

12. The application processing rules contained in Parts 21 and 94 would be used for the 37 GHz service (as well as the 39 GHz service). Auction winners will be required to file a long form by a specific date, generally within 10 business days after the close of the auction. If the winning bidder intends to provide a common carrier service it would file FCC Form 494, and if it intends to provide a private use it would file FCC Form 402. After the Commission receives the winning bidder's down payment and the long-form application, the long-form application would be reviewed to determine if it is acceptable for filing. Upon acceptance for filing of FCC Form 494, a Public Notice announcing this fact would be released, triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, a Public Notice announcing the grants will be issued. Winning bidders would have five business days after the issuance of the Public Notice to complete payment of their licenses. The Commission would then have ten business days to grant the licenses.

#### List of Subjects

##### 47 CFR Part 1

Administrative practice and procedure, Radio.

##### 47 CFR Part 2

Radio.

##### 47 CFR Part 21

Communications common carriers, Communications equipment, Radio.

##### 47 CFR Part 94

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 96-1247 Filed 1-25-96; 8:45 am]

BILLING CODE 6712-01-P

#### 47 CFR Part 73

[MM Docket No. 95-181, RM-8727]

#### Radio Broadcasting Services; Bagdad and Chino Valley, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by 21st Century Radio Ventures, Inc., permittee of Station KAKP(FM), Channel 280A, Bagdad, Arizona, requesting the substitution of Channel 280C3 for Channel 280A at Bagdad, the reallocation of Channel 280C3 to Chino Valley, Arizona, and modification of the authorization for Station KAKP(FM) to specify Chino Valley as its community of license, pursuant to the provisions of Section 1.420(g) and (i) of the Commission's Rules. Coordinates for Channel 280C3 at Chino Valley are 34-43-46 and 112-29-22. Chino Valley is located within 320 kilometers (199 miles) of the United States-Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government to this proposal.

**DATES:** Comments must be filed on or before March 11, 1996, and reply comments on or before March 26, 1996.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: 21st Century Radio Ventures, Inc., Attn.: James L. Primm, President, 530 Wilshire Blvd., Suite 301, Santa Monica, CA 90401.

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

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 95-181, adopted December 11, 1995, and released January 19, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 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.

John A. Karousos,

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

[FR Doc. 96-1423 Filed 1-25-96; 8:45 am]

BILLING CODE 6712-01-F

#### 47 CFR Part 73

[MM Docket No. 95-180, RM-8730]

#### Radio Broadcasting Services; Ingalls, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Dana J. Puopolo requesting the allotment of Channel 242C1 to Ingalls, Kansas. Channel 242C1 can be allotted to Ingalls, Kansas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 242C1 at Ingalls are 37-49-48 and 100-27-06.

**DATES:** Comments must be filed on or before March 11, 1996, and reply comments on or before March 26, 1996.

**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: Dana J. Puopolo, 37 Martin Street, Rehoboth, Massachusetts 02769 (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. 95-180, adopted December 8, 1995, and released January 19, 1996. 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.

John A. Karousos,

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

[FR Doc. 96-1421 Filed 1-25-96; 8:45 am]

BILLING CODE 6712-01-F

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

RIN 1018-AB80

#### Migratory Bird Hunting: Amended Test Protocol for Nontoxic Shot Approval Procedures for Shot and Shot Coatings

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The principal purpose of this action is to promulgate a rulemaking that will update and amend the current nontoxic shot approval procedures by establishing a 3-tiered approval process. Shot approval will be considered at each tier with the testing becoming progressively more demanding. An environmentally benign shot could be granted approval at the first tier. This process is designed to include both candidate shot and shot coatings.

**DATES:** Comments on this proposal must be received by March 26, 1996.

**ADDRESSES:** Comments regarding this notice should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, 634 ARLSQ, 1849 C St., NW., Washington, DC 20240. Comments received on this notice will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 No. Fairfax Drive, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Paul Schmidt, Chief, or Keith Morehouse, Staff Specialist, Office of Migratory Bird Management, 703/358-1714.

**SUPPLEMENTARY INFORMATION:** The Service is proposing to revise and update the existing nontoxic shot approval procedures by establishing a 3-tiered approval process. Shot approval will be considered at each tier with the testing becoming progressively more demanding. An environmentally benign shot could be granted approval at the first tier. This approval process is designed to include both candidate shot and shot coatings. The Service and applicant have concluded much of the currently identified nontoxic testing required for bismuth-tin shot and the process was shown to be both confusing and cumbersome. The Service believes that this procedure needs to be modified because:

1. From an ecosystem management standpoint, species in addition to waterfowl species need to be considered;

2. Since the original regulations were promulgated, important advances have occurred in the field of ecological risk assessment that can be applied to this process;

3. Time, expense and burden on applicants and the Federal Government can be reduced without risk to wildlife; and

4. From an animal welfare standpoint, the numbers of test animals used can be reduced.

It should be noted, however, that while these procedures were put in place in 1986, the Service had not had any submission requesting approval of nontoxic shot until the bismuth-tin shot application of 1994. From our experience with the bismuth-tin shot approval process, it has been determined that procedures should be modified to accommodate situations where less than full testing is indicated. Thus, the Service and the National Biological Service (NBS) have cooperatively developed an alternative draft set of procedures proposed to be used for approving nontoxic shot as well as coatings that would replace the testing requirements presently contained in § 20.134. As with the current procedures, the proposed set of approval procedures carries the assumption that the applicant has the burden of proof that the candidate coating or shot is nontoxic.

The system proposed is 3-tiered and is meant to gradually increase the difficulty of the level of testing based on a test-in/test-out principle. That is, those candidate materials not approved

as a result of subjecting them to the standards set at Tier 1 would be subjected to the standards of Tier 2, and so forth, i.e., test-in. If the candidate material is approved at Tier 1 there would be no requirement to proceed to Tier 2 or 3, i.e., test-out. The criteria for requiring testing under Tier 2 standards would be met if data is incomplete or inconclusive as a result of review of materials and analyses conducted at Tier 1. Similarly, the criterion for requiring testing under Tier 3 standards would be met if material is found to have some poorly defined level of toxic effects at Tier 2.

As currently proposed by this regulation, Tier 1 would set out comprehensive and detailed requirements that must be provided to the Service in order for the Service to grant approval. Based on the Service's evaluation of whatever Tier 1 information could be gathered, the Service would make a decision to grant approval or require Tier 2 testing. That is, the scope of the new procedures outlined in Tier 1 would include: (1) Statements of use, chemical characterization, production variability and volume of use. The Service would request the specifics on the chemical compound(s) to be used and a complete analysis of potential environmental toxicity, as well as the thickness in the case of coating(s) and percentage of the coating in comparison to the total shot weight; (2) information on the toxicological effects of the material, including an ecological risk assessment on the toxicological effects of the coating and an assessment explaining why the applicant believes the coating or base material(s) does not pose toxicity problems for wildlife; and (3) information on the environmental fate and transport of the material. The Service would seek information on changes, if any, that are produced by firing the shot, the estimated half-life of the material and estimates of the environmental concentrations that are apt to be expected. Tier 1 procedures also contain a set of requirements defining the Service's responsibility in evaluating the submitted data/information.

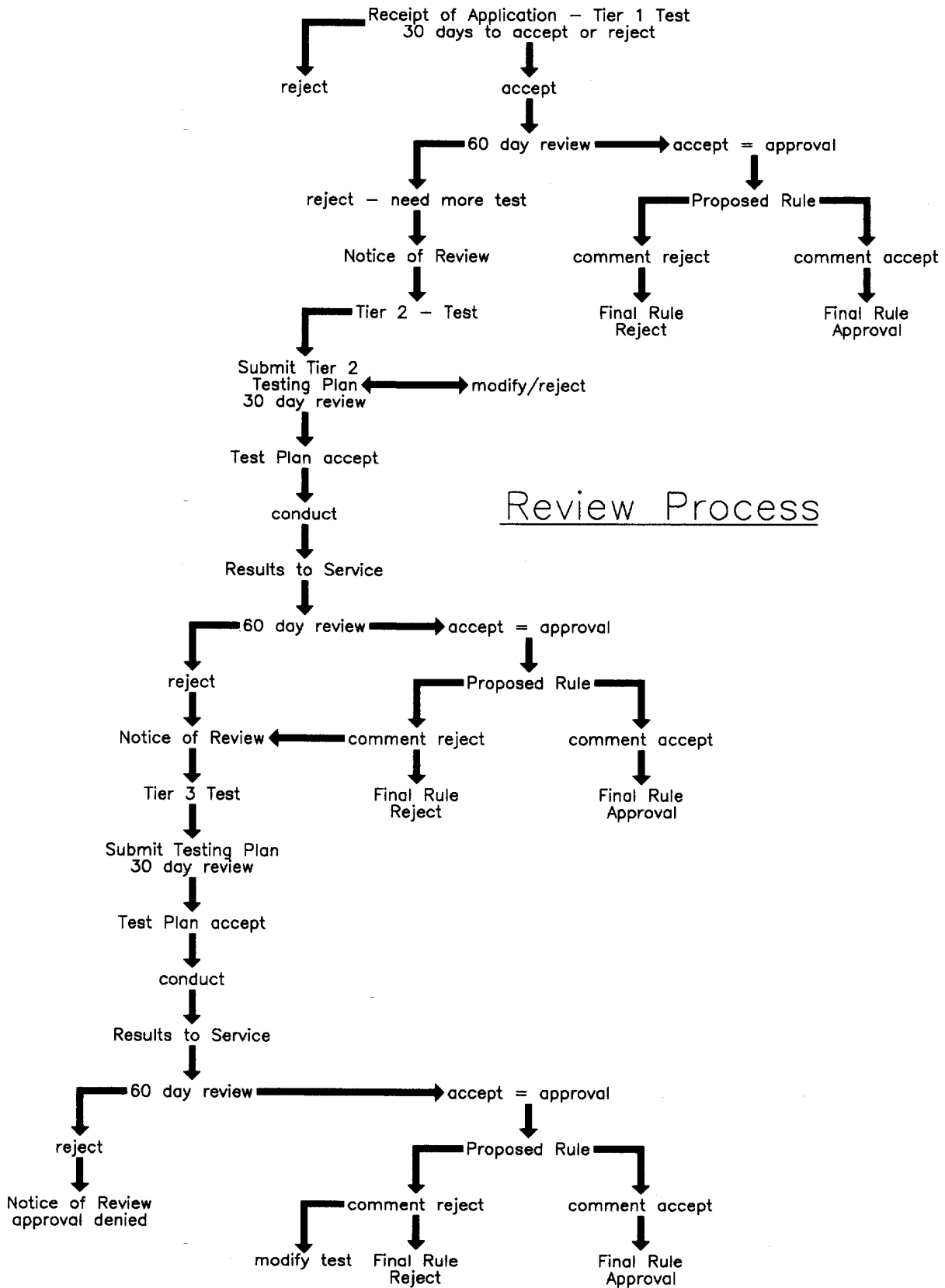
Previously codified candidate shot testing procedures would be divided between Tiers 2 and 3, with the *in vitro* erosion rate testing and the short-term (30-day) acute toxicity testing part of Tier 2, and the chronic exposure under adverse conditions and the chronic exposure reproduction testing part of Tier 3. Tier 2 will also include a test protocol that would assess the potential for the candidate shot to affect aquatic organisms, such as fish and/or

invertebrates, although it may not require *in vivo* testing, *per se*.

Applicants would be required to provide the Service with all the required information at the time of application or processing would be delayed. The information provided by the applicant will allow the Service, or others, to conduct an independent analysis and to make an informed decision on approval.

A schematic representation of the approval process is provided here to aid the reader:

**BILLING CODE 4310-55-P**



Although this new set of proposed approval procedures appears to be more lengthy, the Service feels that it is more flexible and simplifies the approval process. It is intended that these proposed changes will allow materials that are somewhat innocuous, with regard to known toxicity, to be processed more quickly, at lower cost and with less paperwork for both the applicant and the Service while ensuring that natural resources are protected.

In 50 CFR 20.134, the Service provides a procedure for approval of nontoxic shot which has been in effect since 1986; however, it was not clear that this procedure also pertained to the shot coating which is applied to prevent corrosion and potential fusion of the shot. Shot coatings were not given consideration since they are typically quite thinly applied and constitute a small percent of the pellet by weight. Nonetheless, the Service is concerned that the coating, although present in small amounts, may in and of itself be toxic and pose a hazard to migratory birds or other wildlife. Therefore, the Service is proposing by this regulation to codify its informal policy on approval of the types of shot coatings with which a waterfowler may hunt and to establish a process for that approval.

Earlier, the Service responded to a request from industry and approved the use of both copper and nickel coatings for steel shot used in waterfowl hunting. This request specified that coating thickness would be, nominally, 2 ten-thousandths of an inch thick (0.0002") and 1 percent or less of the total weight of the shot. These two coatings had been the only ones approved for waterfowling since May, 1986. More recently, the Service received a request to approve zinc as a coating and learned, in the process of acquiring more information, that one ammunition manufacturer was already marketing a zinc coated steel shot and another had been planning to market a zinc coated steel shot for, what was then, an upcoming season (1993-94). Apparently, despite past efforts to publicize the information, there was no recognition of the Service's role in this aspect of nontoxic shot regulation in some quarters and a definite recognition of that role in others. Thus, the Service perceives there is a need to incorporate into this regulation standards which allow only approved coatings on pellets utilized in waterfowl hunting.

In summary, the principal purpose of this action is to promulgate a rulemaking that will update and amend the current nontoxic shot approval procedures to include both candidate

nontoxic shot and nontoxic shot coatings.

#### NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500-1508), the Service will comply with NEPA prior to adopting a final rule.

#### Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531-1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat \* \* \*"

Consequently, the Service will initiate Section 7 consultation under the ESA for this proposed rulemaking to amend the nontoxic shot and shot coating approval process. When completed, the results of the Service's consultation under Section 7 of the ESA may be inspected at, and will be available from, the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12866, and the Paperwork Reduction Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations and/or governmental jurisdictions. However, since this is an amendment to existing procedures and is designed to reduce the cost and time that is required to determine the toxicity of a candidate shot, this rule will have no significant effect on small entities. No dislocation or other local effects, with regard to hunters and others, are apt to be evidenced. This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. This rule does not contain any additional information collection efforts requiring approval by the OMB under Public Law 104-13. This rule is being promulgated under existing Office of Management and Budget information

collection requirements clearance number 1018-0067.

#### Authorship

The primary authors of this proposed rule are Drs. Keith A. Morehouse, U.S. Fish and Wildlife Service, and Barnett Rattner, Patuxent Environmental Science Center, National Biological Service, Laurel, Maryland.

#### List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, Part 20, Subchapter B, Chapter I of Title 50 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703-711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended (16 U.S.C. 742 a-d and e-j).

2. Section 20.134 is amended by revising paragraph (b) as set forth below and removing paragraph (c):

#### § 20.134 Nontoxic shot.

\* \* \* \* \*

(b) Application and review. *Tiered Strategy for Approval of Nontoxic Shot and Anti-corrosion Thin-Coating for Nontoxic Shot.*

(1) All applications for approval under these sections will be submitted with supporting documentation to the Director in accordance with the following procedures, and will include at a minimum the supporting materials and information covered by Tier 1 in the tiered approval system as follows:

(2) *Tier 1.* (i) (A) Applicant provides statements of use, chemical characterization, production variability, volume of use of material requested to be approved and shot sample as listed in paragraphs (b)(2)(i)(A) (1) through (5) of this section. The candidate shot and/or coating may be chemically analyzed by the Service or an independent laboratory and the results will be compared to the applicant's descriptions of shot composition and composition variability. If the application is incomplete or if the composition of the candidate material, upon analysis, varies from that described by the applicant it will be rejected.

(1) Statement of proposed use, i.e., purpose and types.

(2) Description of the chemical composition of the intact material.

(i) Chemical names, Chemical Abstracts Service numbers, and structures.

(ii) Chemical characterization for organics and organometallics for coating and core (e.g., empirical formula, melting point, molecular weight, solubility, specific gravity, partition coefficients, hydrolysis half-life, leaching rate (in water and soil) degradation half-life, vapor pressure, stability and other relevant characteristics).

(iii) Composition and weight of shot material.

(iv) Thickness, quantity (e.g., mg/shot), and chemical composition of coating per shot.

(3) Statement of the expected variability of shot coating or shot during production.

(4) Estimate of yearly volume of coated shot or shot used for hunting migratory birds in the U.S.

(5) 25 pounds of the candidate shot and/or shot with coating, as applicable, in size equivalent to United States standard size No. 4 (0.17 inches in diameter).

(B) Applicant provides information on the toxicological effects of the shot coating and/or shot as follows:

(1) A brief synopsis of the acute and chronic mammalian toxicity data of the shot coating and/or shot material ranking its toxicity (e.g., LD50 < 5 mg/kg = super-toxic, 5–50 mg/kg = extremely toxic, 50–500 mg/kg = very toxic, 500–5,000 mg/kg = moderately toxic, 5,000–15,000 mg/kg = slightly toxic, >15,000 mg/kg = practically nontoxic).

(2) A summary of known toxicological data of the chemicals comprising the shot and/or shot coating material with respect to birds, particularly waterfowl (include LD50 or LC50 data, and sublethal effects).

(3) A narrative description of the toxic effect of complete erosion and absorption of the shot and/or coating material in a 24-hour period. (Define the nature of toxic effect—e.g., mortality, impaired reproduction, substantial weight loss, disorientation and other relevant associated observations.)

(4) A statement that there is or is not any basis for concern for shot or coated shot material ingestion by fish or mammals. If there is some recognized impact on mammals or fish, the Service may require additional study.

(5) Summarize the toxicity data of the shot and/or shot coating material to aquatic and terrestrial invertebrates, amphibians and reptiles.

(C) Applicant provides information on the environmental fate and transport, if

any, of the shot and/or shot coating material as follows:

(1) A statement that the shot coatings and/or shot is or is not chemically or physically altered upon firing. If so, the statement must describe any alterations.

(2) An estimate of the environmental half-life of the shot and/or shot coating and a description of the chemical form of the breakdown products of the shot coating and/or shot.

(3) Information on the Estimated Environmental Concentration (EEC) assuming 69,000 shot per hectare (Bellrose 1959) for:

(i) A terrestrial ecosystem, assuming complete erosion of material in 5 cm of soil. What would be the EEC and does the EEC exceed existing clean soil standards? (Environmental Protection Agency [EPA] standards for the Use of Disposal of Sewage Sludge; 40 CFR Part 503). What is the estimated EEC and how does that relate to the toxicity threshold for plants, invertebrates, fish and wildlife?

(ii) An aquatic ecosystem, assuming complete erosion of the shot coating and/or shot in 1 cubic foot of water. What is the estimated EEC, and how does it compare to the EPA Water Quality Criteria and toxicity thresholds in plants, invertebrates, fish and wildlife.

(D) Fish and Wildlife Service evaluation of an application.

(1) The Service will conduct a risk assessment using 1 LD50/square foot as the level of concern based on granular pesticides.

(2) In cooperation with the applicant, the Service will conduct a risk assessment using the Quotient Method (Barntouse *et al.* 1982): Risk = EEC/ Toxicological Level of Concern Compare EEC in ppm to an effect level (e.g., LD50 in ppm). If  $Q < 0.1$  = No Adverse Effects; If  $0.1 \leq Q \leq 10.0$  = Possible Adverse Effects; If  $Q > 10.0$  = Probable Adverse Effects.

(ii) Upon receipt of the Tier 1 application, the Director will review it to determine if the submission is complete. If complete, the applicant will be notified within 30 days of receipt that a thorough review of the application will commence. A *Notice of Review* will be published in the Federal Register announcing the initiation of review of a Tier 1 application. Review of a Tier 1 application will be concluded within 60 days of the date published in the *Notice of Review*.

(iii) If after review of the Tier 1 test data materials the Service determines that the information does not conclusively establish that the shot and coating material do not impose a significant danger to migratory birds

and other wildlife and their habitats or that significant data are incomplete, the applicant will be advised to proceed with the additional testing described in Tier 2. The public will be informed by a *Notice of Review* that Tier 1 test results are inconclusive and Tier 2 testing has been recommended.

(iv) If review of the Tier 1 test data results in a preliminary determination that the candidate materials do not impose a significant danger to migratory birds and other wildlife and their habitats, the Director will publish in the Federal Register a proposed rule stating the Service's intention to approve this shot and/or coating. The rulemaking will include a description of the chemical composition of the candidate shot and/or coating and a synopsis of findings under the standards required for Tier 1. If, at the end of the comment period, the Service finds no technical or scientific basis upon which to deny approval, the candidate material will be approved by the publication of a final rule in the Federal Register. If as a result of the comment period, the Service determines that the information does not conclusively establish that the shot and/or coating material do not impose a significant danger to migratory birds and other wildlife and their habitats, Tier 2 testing will be recommended and a *Notice of Review* will be published in the Federal Register. If the applicant chooses not to proceed, the determination denying approval will be published in the Federal Register.

(3) *Tier 2*, (i) Upon determination that Tier 1 information is inconclusive, the applicant will be notified by the Director to submit a Tier 2 testing plan for conducting further testing as outlined in paragraphs (b)(3)(ii), (A), (B) and (C) of this section. The Tier 2 testing plan submitted by the applicant will be reviewed by the Director within 30 days of receipt. The Director may decline to approve the plan, or any part of it, if deficient in any manner with regard to timing, format or content. The Director shall apprise the applicant regarding what parts, if any, of the submitted testing procedures need not be conducted and any modifications that must be incorporated into the Tier 2 testing plan. The Director, or authorized representative, may elect to inspect laboratory facilities to be used. If the plan is accepted, Tier 2 testing will then be conducted, analyzed and reported by the applicant to the Director.

(ii) The candidate shot and/or coating will first be run through a standardized test under *in vitro* conditions (see below) that will assess its erosion in an



environment simulating *in vivo* conditions of a waterfowl gizzard, and any release of components into a liquid medium. Erosion characteristics will be compared to those of lead shot and steel shot of comparable size. Following the erosion rate testing, the candidate shot and/or coating will be subjected to a 30-day acute toxicity test and a test to determine its effects on selected fish and invertebrates.

(A) Conduct a standardized *in vitro* test to determine erosion rate of the candidate shot and/or coating using the general guidelines as follows:

*Standardized Test for Erosion Rate.*

(Ref.: Kimball, W.H., and Z.A. Munir. 1971. The corrosion of lead shot in a simulated waterfowl gizzard. J. Wildl. Manage. 35(2):360-365.)

(1) *Typical Test Materials.*

Atomic absorption spectrophotometer.  
Drilled aluminum block to support test tubes.  
Thermostatically controlled stirring hot plate.  
Small teflon-coated magnets.  
Hydrochloric acid (pH 2.0) and pepsin.  
Capped test tubes.  
Lead, steel and candidate shot (if appropriate).

(2) *Typical Test Procedures.*

Hydrochloric acid and pepsin are added to each capped test tube at a volume and concentration that will erode a single #4 lead shot at a rate of 5 mg/day. Three test tubes, each containing either lead shot, steel shot or candidate shot and/or coating, are placed in the aluminum block on the stirring hot plate. A teflon coated magnet is added to each test tube and the hot plate is set at 42 degrees centigrade and 500 revolutions per minute. Erosion of shot and/or coating will be determined on a daily basis for 14 consecutive days by weighing the shot and analyzing the digestion solution with an atomic absorption spectrophotometer. The 14-day procedure will be replicated five times.

(3) *Typical Test Analyses.* Erosion rates of the three types of shot will be compared by appropriate analysis of variance and regression procedures. The statistical analysis will determine whether the rate of erosion of the candidate shot and/or coating is significantly greater or less than that of lead and steel. This determination is important to any subsequent toxicity testing.

(ii) *Acute Toxicity Test—Tier 2 (Short-term, 30-day acute toxicity test using a commercially available duck food.)* Over a 30-day period, conduct a short-term acute toxicity test that complies with the general guidelines described as follows:

(1) *Typical Test Materials.*

48 male and 48 female hand-reared mallards approximately 6 to 8 months old.

Mallards must have plumage and body conformation that resemble wild mallards. 96 outdoor pens equipped with food containers and water. Laboratory equipped to perform fluoroscopy, required blood and tissue assays. Commercial duck food. Lead, steel and candidate shot.

(2) *Typical Test Procedures.* Mallards will be housed individually in pens and given *ad libitum* access to food and water. After 3 weeks, they will be randomly assigned to 6 groups (8 males and 8 females/group), dosed with 8 pellets of No. 4 lead, steel, or the candidate shot and/or coatings. Birds will be fluoroscoped 1 week after dosage to check for shot retention. Birds will be observed daily for signs of intoxication and mortality over a 30-day period. Body weight will be determined at the time of dosing, and at day 15 and 30 of the test. On days 15 and 30 blood will be collected by venipuncture for determination of hematocrit, hemoglobin concentration and other specified blood chemistries. All survivors will be sacrificed on day 30. The liver and other appropriate organs will be removed from the sacrificed birds and from other birds dying prior to sacrifice on day 30 for histopathological analysis. The organs will be analyzed for lead and compounds contained in the candidate shot and/or shot coatings. All birds will be necropsied to determine any pathological conditions.

(3) *Typical Test Analyses.* Mortality among the specified groups will be analyzed with appropriate chi-square statistical procedures. Physiological data and tissue contaminant data will be analyzed by analysis of variance or other appropriate statistical procedures to include the factors of shot type and sex. Comparison between sacrificed birds and birds dying before sacrifice will be made whenever sample sizes are adequate for meaningful comparison. Procedures should be in compliance with the Good Laboratory Practices Standards (40 CFR Part 160). The applicant will ensure that copies of all the raw data and statistical analyses accompany the laboratory reports and final comprehensive report of this test when they are sent to the Director.

(C) *Daphnid and Fish Early-Life Toxicity Tests.* Determine the toxicity of the shot or shot coating (whole shot and eroded coating) to selected fish and invertebrates subject to the environmental effects test regulations developed under the authority of the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*), as follows:

(1) The first test, the *Daphnid Acute Toxicity Test* (40 CFR Section

797.1300), is a guideline for use in developing data on the acute toxicity of chemical substances. This guideline prescribes an acute toxicity test in which daphnids are exposed to a chemical in a static and flow-through system with the resulting data used by the agencies to assess the hazard that the chemical may present to an aquatic environment.

(2) The second test is the *Daphnid Chronic Toxicity Test* (40 CFR Section 797.1330) and is used to develop data on the chronic toxicity of chemical substances in which daphnia are exposed to a chemical in a renewal or flow-through system. The data from this test are again used to assess the hazard that chemical may present to an aquatic environment.

(3) A third test, *Fish Early Life Stage Toxicity Test* (40 CFR Section 797.1600), is required and is a test to assess the adverse effects of chemical substances to fish in the early stages of their growth and development. Data from this test are also used to determine the hazard a chemical may present to an aquatic environment.

(iii) After the Tier 2 testing is concluded, the applicant will report the results to the Director. Submitted materials will include test results (data analysis reports, lab data) and a written final report. If after review of the Tier 2 test data the Service determines that the information does not conclusively establish that the shot and/or coating material do not impose a significant danger to migratory birds and other wildlife and their habitats or that significant data are missing and/or incomplete, the applicant will be advised to proceed with the additional testing described in Tier 3. The public will be informed by a *Notice of Review* that Tier 2 test results are inconclusive and Tier 3 testing has been recommended.

(iv) If review of the Tier 2 test data results in a preliminary determination that the candidate shot and/or coating materials do not impose a significant danger to migratory birds and other wildlife and their habitats, the Director will publish in the Federal Register a proposed rule stating the Service's intention to approve this shot and/or coating. The rulemaking will include a description of chemical composition of the candidate shot and/or coating and a synopsis of findings under the standards required at Tier 2. If at the end of the comment period, the Service finds no technical or scientific basis upon which to deny approval, the candidate shot and/or coating material will be

approved by publication of a final rule in the Federal Register. If, as a result of the comment period, the Service determines that the information does not conclusively establish that the shot and coating material do not impose a significant damage to migratory birds and other wildlife habitats, Tier 3 testing will be recommended and a *Notice of Review* will be published in the Federal Register. If the applicant chooses not to proceed, the determination denying approval will be published in the Federal Register denying approval of the candidate shot.

(4) *Tier 3.*

(i) Upon determination that the Tier 2 information is inconclusive, the applicant will be notified by the Director to submit a Tier 3 testing plan for conducting further testing as outlined in paragraphs (b)(4)(i) (A) and (B) of this section. The Tier 3 testing plan submitted by the applicant will be reviewed by the Director within 30 days of receipt. The Director may decline to approve the plan, or any part of it, if deficient in any manner with regard to timing, format or content. The Director shall apprise the applicant regarding what parts, if any, of the submitted testing procedure need not be conducted and any modifications that may be necessary to incorporate into the Tier 3 plan. The Director, or authorized representative, may elect to inspect laboratory facilities to be used. If the plan is accepted, Tier 3 testing will then be conducted, analyzed and reported by the applicant to the Director.

(A) *Chronic Toxicity Test—Tier 3 (Long-term, 8–9 week toxicity test under depressed temperature conditions using a nutritionally-deficient diet.)* Conduct a chronic exposure test under adverse conditions that complies with the general guidelines described as follows:

(1) *Typical Test Materials.*

36 male and 36 female hand-reared mallards approximately 6 to 8 months old. The mallards must have plumage and body conformation that resembles wild mallards. 72 elevated outdoor pens equipped with food containers and waterers.

Laboratory equipped to perform fluoroscopy, required blood and tissue assays, and necropsies.

Whole kernel corn.

Lead, steel, and candidate shot with or without coating, or coating, as applicable.

(2) *Typical Test Procedures.* (i) This test will be conducted at a location where the mean monthly low temperature during December through March is between 20 and 40 degrees Fahrenheit (–6.6 and 4.4 degrees centigrade, respectively). Mallards will be individually assigned to elevated outdoor pens during the first week of

December and acclimated to an *ad libitum* diet of whole kernel corn for 2 weeks. Birds will be randomly assigned to 5 groups (lead group of 4 males and 4 females, 4 other groups of 8 males and 8 females/group). The lead group will be dosed with 1 size No. 4 pellet of lead. One group (8 males and 8 females) will be dosed with 8 size No. 4 pellets of steel and the 3 other groups (8 males and 8 females/group) will be dosed with 1, 4 and 8 size No. 4 pellets of candidate shot and/or coating, respectively.

(ii) Birds will be weighed and fluoroscoped weekly. All recovered shot will be weighed to measure erosion. Blood parameters given in the 30-day acute toxicity test will again be determined in this procedure. Body weight and blood parameter measurements will be made on samples drawn at 24 hours after dosage and at the end of days 30 and 60. At the end of 60 days, all survivors will be sacrificed. The liver and other appropriate organs will be removed from the sacrificed birds and birds dying prior to sacrifice on day 60 for histopathological analysis. The organs will be analyzed for lead and other metals contained in the steel and candidate shot and/or coating. All birds dying prior to sacrifice will be necropsied to determine pathological conditions associated with death.

(3) *Typical Test Analyses.* Mortality among the specified groups will be analyzed with appropriate chi-square statistical procedures. Any effects on the previously mentioned physiological parameters caused by the candidate shot and/or coating must be significantly less than those caused by lead shot and must not be significantly greater than those caused by steel shot. Physiological data and tissue contaminant data will be analyzed by analysis of variance or appropriate statistical procedures to include the factors of shot type, dose and sex. Comparisons between sacrificed birds and birds dying before sacrifice will be made whenever sample sizes are adequate for a meaningful comparison. Procedures should be in compliance with the Good Laboratory Practices Standards (40 CFR Part 160). The applicant will ensure that copies of all the raw data and statistical analyses accompany the lab analyses and final comprehensive reports of this test when they are sent to the Director.

(B) *Chronic Dosage Study—Tier 3 (Moderately long-term study that includes reproductive assessment.)* Conduct chronic exposure reproduction trial with the general guidelines described as follows:

(1) *Typical Test Materials.*

60 male and 60 female hand-reared first year mallards. These mallards must have plumage and body conformation that resemble wild mallards.

Pens suitable for quarantine and acclimation and for reasonably holding 5–10 ducks each.

60 elevated, pens equipped with feeders, waterers and nest boxes.

Laboratory equipped to perform fluoroscopy and required blood assays.

Corn and commercial duck breeder mash. Steel and candidate shot and/or coating, as applicable.

(2) *Typical Test Procedures.* (i)

Mallards will be randomly assigned to 2 groups (30 males and 30 females/group) in December and held in same-sex groups until mid-January (dates apply to outdoor test facility only and will reflect where in the U.S. tests are conducted). After a 3-week acclimation period, birds will be provided an *ad libitum* diet of corn for 60 days and are then paired (one pair/pen) and switched to commercial mash. Dosing of the 2 groups with 8 pellets of No. 4 steel (group 1) and candidate shot and/or coating (group 2) will occur after the acclimation period (day 0) and redosed after 30, 60, and 90 days.

(ii) Birds will be fluoroscoped 1 week after dosage to check shot retention. Males and females will be weighed the day of initial dosing (day 0), at each subsequent dosing, and at death. Blood parameters identified in the 30-Day Acute Toxicity Test will again be measured in this test using samples drawn at time of weighing. The date of first egg will be noted as will the mean number of days per egg laid. Laying will be concluded after 21 normal, uncracked eggs are laid or after 150 days, at which time the adults will be sacrificed. The liver and other appropriate organs will be removed from the sacrificed birds and from other birds dying prior to sacrifice for histopathological analysis. The organs and the 11th egg will be analyzed for compounds contained in the candidate shot or shot coatings. All birds will be necropsied to determine any pathological conditions. Nests will be checked daily to collect eggs. Any eggs laid before pairing will be discarded. Eggs will be artificially incubated and the percent shell-less, percent eggs cracked, percent fertility (as determined by candling), and percent hatch of fertile eggs will be calculated for each female. Ducklings will be provided with starter mash after hatching. All ducklings will be sacrificed when reaching 14 days of age. Survival to day 14 and weight of the ducklings at hatching and sacrifice will be measured. Blood parameters identified in the 30-Day Acute Toxicity Test will be

measured using samples drawn when sacrificed.

(3) *Typical Test Analyses.*

Any mortality, reproductive inhibition or effects on the previously mentioned physiological parameters by the candidate shot and/or coating must not be significantly greater than those caused by steel shot. Percentage data will be subjected to an arcsine, square root transformation prior to statistical analyses. Physiological and reproductive data will be analyzed by one-tailed *t*-tests ( $\alpha=0.05$ ), or other appropriate statistical procedures. Procedures should be in compliance with the Good Laboratory Practice Standards (40 CFR Part 160). The applicant will ensure that copies of all raw data and statistical analyses accompany the lab analyses and comprehensive reports of this test when they are sent to the Director.

(ii) After the Tier 3 testing is concluded, the applicant will report the results to the Director. Submitted materials will include test results (data analysis reports, lab data) and a written final report. If after review of the Tier 3 test data (to be completed 60 days after receipt of material) the Service determines that the information does not conclusively establish that the shot and/or coating material do not impose a significant danger to migratory birds and other wildlife and their habitats, or that significant data are incomplete, the applicant will be given the option of repeating the tests in Tier 3 that were deemed inconclusive. If the applicant chooses not to repeat the tests, approval of the candidate shot and/or coating will be denied. The public will be informed by a *Notice of Review* that Tier 3 test results are inconclusive and of the applicant's decision not to repeat Tier 3 testing. The publication will state that approval of candidate shot and/or coating is denied.

(iii) If review of either the initial or repeated Tier 3 test data results in a preliminary determination that the candidate materials do not impose a significant danger to migratory birds and other wildlife and their habitats, the Director will publish in the Federal Register a proposed rule stating the Service's intention to approve this shot and/or coating. The rulemaking will include a description of chemical composition of the candidate shot and/or coating and a synopsis of findings under the standards required by Tier 3. If at the end of the comment period, the Service finds no technical or scientific basis upon which to deny approval, the candidate shot and/or coating material will be approved by publication of a final rule in the Federal Register. If, as

a result of the comment period the Service determines that the information does not conclusively establish that the shot and/or coating material do not impose a significant danger to migratory birds and other wildlife and their habitats, the applicant will be given an opportunity to answer the concerns expressed by the comments with additional testing. The decision to conduct additional testing will be published as a *Notice of Review*. If the applicant chooses not to proceed, the final determination denying approval will be published in the Federal Register.

(iv)(A) The Tier 2 toxicity tests involving invertebrates and early-life stage vertebrates are intended to assess potential impacts on waterfowl habitat. The three toxicity tests with waterfowl described in Tiers 2 and 3 represent an evaluation of the three major categories of toxic effects: short-term periodic exposure; chronic exposure under adverse environmental conditions; and chronic exposure impact on reproduction. In the appropriate situations, the test animals will be exposed to the candidate material: both acutely and chronically; both stressed and non-stressed by diet and temperature; and with comparisons made to lead and steel shot regarding mortality and sublethal effects. The inclusion of lead shot and steel shot control groups in the waterfowl feeding studies is considered necessary for dealing with the experimental variability associated with tests being performed by different laboratories under a variety of conditions beyond control of the experimental protocol. Toxicity tests described in this rule are designed for testing the effects of metal or metalloid shot. The details of the experimental procedures can be modified, if necessary, to address the specific composition and erosion characteristics of the candidate shot. If the candidate shot is not metal or metalloid, other testing procedures will have to be developed and approved to evaluate the effects of the components of the candidate shot and/or coating materials.

(B) Statistical analyses will be performed on all data from each test. For the purpose of this section (20.134) the terms *significant* and *significantly* refer to a ( $P \leq 0.05$ ) finding of significance.

Dated: October 25, 1995.

George T. Frampton, Jr.,  
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 96-1179 Filed 1-25-96; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 646

[I.D. 011696E]

#### Snapper-Grouper Fishery of the South Atlantic; Public Scoping Meetings

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

**ACTION:** Public scoping meetings.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) is holding two public scoping meetings to solicit comments on the sale of fish (all species) caught under the recreational bag limits established by the Council's fishery management plans (FMPs) and on the issue of recreational catch and the commercial bycatch of wreckfish under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (Snapper-Grouper FMP).

**DATES:** The public scoping meetings are scheduled to begin at 6:30 p.m. on Monday, February 12, 1996, in St. Augustine, FL, and will end when all business is completed.

**ADDRESSES:** The public scoping meetings will be held in conjunction with the South Atlantic Fishery Management Council public meetings to be held February 12-14, 1996, at the Ponce de Leon, 4000 US Highway 1 North, St. Augustine, FL 32095; telephone: (800) 228-2821.

Requests for copies of public scoping documents should be sent to the Council at the following address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699.

**FOR FURTHER INFORMATION CONTACT:** Robert K. Mahood, Council Executive Director; telephone: (803) 571-4366; fax: (803) 769-4520.

**SUPPLEMENTARY INFORMATION:** At the first scoping meeting, comments will be solicited on the sale of fish caught under the recreational bag limits for all species as established by the Council's FMPs. The Council has considered this issue on numerous occasions over the past several years, and both commercial and recreational fishermen have expressed concern about this matter. Currently, all of the Council's FMPs allow for the sale of fish taken in a legal bag limit. The issue regarding the sale of fish caught under bag limits involves several considerations, including: (1) The definitions of recreational and

commercial fishermen, (2) the ethical question of a "recreational" fisherman selling his catch, and (3) the impacts of selling fish caught under a recreational bag limit on an established commercial quota for the same species. The Council will consider prohibiting the sale of fish caught by recreational fishermen. The Council is inviting, and will consider, the views of recreational and commercial fishermen and other interested persons on this matter prior to taking any formal and final action. The Council is particularly interested in hearing about the possible impacts of prohibiting the sale of recreationally caught fish.

At the second scoping meeting, comments will be solicited on wreckfish caught by recreational fishermen and on the commercial bycatch of wreckfish outside of the Blake Plateau. Amendments 3 and 4 to the Snapper-Grouper FMP established a management program for wreckfish in the South Atlantic region. A regulatory adjustment framework measure was also included in the Snapper-Grouper FMP, allowing the Council to set total allowable catch each year and at the same time consider other possible management options. Amendment 5 to the Snapper-Grouper FMP established an individual transferrable quota (ITQ) system in the wreckfish fishery that allows only ITQ shareholders to land and sell wreckfish, and allows only permitted dealers to

handle wreckfish and to buy wreckfish from ITQ shareholders.

Recent reports have indicated that wreckfish are being caught by recreational fishermen fishing primarily for red grouper off Key West, FL, and that commercial snapper-grouper fishermen, especially off south Florida, are observing an occasional wreckfish bycatch in their fishery. These reports do not indicate the catch frequency or poundage, catch disposition, nor the number of fishermen targeting wreckfish.

The Council is considering the following management options for regulating this fishery: (1) No action (i.e., continue to prohibit the taking or landing of wreckfish in the South Atlantic region except by ITQ shareholders); (2) set a recreational bag limit of one or two fish per fisherman per trip; (3) set a recreational bag limit of one or two fish per boat per trip; (4) set a recreational bag limit of one or two fish per boat per day; (5) set an undetermined recreational bag limit; (6) set a bag limit of one or two fish per boat per trip for commercial fishermen in the South Atlantic region who are not wreckfish ITQ shareholders; (7) set a bag limit of one or two fish per boat per day for commercial fishermen in the South Atlantic region who are not wreckfish ITQ shareholders; (8) set a bag limit of one or two fish per boat per trip for commercial fishermen in the south

Florida area who are not wreckfish ITQ shareholders; (9) set a bag limit of one to two fish per boat per day for commercial fishermen in the south Florida area who are not wreckfish ITQ shareholders; (10) allow for an undetermined commercial bag limit in the South Atlantic region; and (11) allow for an undetermined commercial bag limit only in the south Florida area.

Written public comments on the subjects of the scoping meetings, as well as any Council scoping documents made available to the public, may be submitted to the Council from the time of the scoping meetings until such time as the Council has prepared appropriate and related public hearing documents that are available for public comment. For copies of the public scoping documents, see **ADDRESSES**.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by February 5, 1996 (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: January 22, 1996.

Richard W. Surdi,

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 96-1426 Filed 1-25-96; 8:45 am]

**BILLING CODE 3510-22-F**

# Notices

Federal Register

Vol. 61, No. 18

Friday, January 26, 1996

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.

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary of Agriculture

#### Waiver of Penalties for Small Business and Reducing the Frequency of Reports

**AGENCY:** Office of the Secretary of Agriculture, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public of the Department of Agriculture's policy for the waiver of penalties for small businesses and the reduction of the frequency of reports required to be made by the public. In April 1995, the President directed heads of executive branch agencies to use their discretion to waive, in appropriate circumstances, the imposition of all or a portion of penalties on small businesses and, where feasible and authorized by law, to cut by one-half the frequency with which regularly scheduled reports are required, by rule or policy, to be provided to the United States Government. The Secretary of Agriculture issued Secretary's Memorandum 3031-1, effective October 10, 1995, implementing the President's directive.

**FOR FURTHER INFORMATION CONTACT:** William Jenson, Senior Counsel, Regulatory Division, Office of the General Counsel, USDA, room 2402, South Building, 14th Street and Independence Avenue SW., Washington, D.C. 20250; (202) 720-2453.

**SUPPLEMENTARY INFORMATION:** On April 21, 1995, the President issued a memorandum to heads of executive branch agencies directing that each: (1) use his or her discretion to waive penalties imposed on small businesses where appropriate; (2) where feasible and authorized by law, cut by one-half the frequency with which regularly scheduled reports are required, by rule or policy, to be provided to the United

States Government; and (3) submit a plan to the Director of the Office of Management and Budget describing the actions the agency will take to implement the President's April 21, 1995, memorandum. The President's memorandum was published in the Federal Register on April 26, 1995, at 60 FR 20621-20622.

The Department of Agriculture's plan to implement the President's April 21, 1995, memorandum was approved by the Director of the Office of Management and Budget, and the Secretary of Agriculture's memorandum implementing the President's directive became effective on October 10, 1995.

This notice serves to notify small businesses and the public of the Department of Agriculture's policy regarding the waiver of penalties for small businesses, and the Department of Agriculture's policy regarding reductions in the frequency with which regularly scheduled reports are required, by rule or policy, to be provided to the Department of Agriculture. These Department of Agriculture policies are set forth in Secretary's Memorandum 3031-1 which reads as follows:

[Secretary's Memorandum 3031-1]

#### *Waiver of Penalties for Small Business and Cutting Frequency of Reports*

##### 1. Background

The Secretary administers a number of statutes that authorize the Secretary to impose penalties for violations of those statutes, of regulations issued under those statutes, and of contracts and agreements executed under those statutes. The Secretary administers a number of programs under which the public is required, by regulation or policy, to provide USDA with regularly scheduled reports. The President issued a memorandum on April 21, 1995, to the heads of executive branch agencies directing that each:

- a. use his or her discretion to waive the imposition of all or a portion of penalties on small businesses;
- b. cut by one-half the frequency with which regularly scheduled reports are required, by rule or policy, to be provided to the United States Government; and
- c. submit a plan to the Director of the Office of Management and Budget describing the actions the agency will take to implement the penalty waiver policy and the reporting frequency policy described in the President's April 21, 1995, memorandum.

##### 2. Purpose

a. This Memorandum implements the President's policy to waive penalties for small businesses and to reduce the frequency of reports required to be made by the public.

b. Neither the President's policy to waive penalties for small businesses and to reduce the frequency of reports required to be made by the public nor this Memorandum applies to:

- (1) matters related to law enforcement, national security, or foreign affairs;
- (2) the importation or exportation of prohibited or restricted items;
- (3) United States Government taxes, duties, fees, revenues, or receipts; or
- (4) USDA agencies whose principal purpose is the collection, analysis, and dissemination of statistical information.

##### 3. Definitions

For the purposes of this Memorandum, the following terms shall have the meanings set forth in this paragraph.

- a. *Administering agency.* The USDA agency that administers the statute, regulation, contract, or agreement under which penalties may be imposed.
- b. *Corrective action.* Action taken by a small business to correct a violation or to achieve compliance.
- c. *Covered penalty.* Any penalty that may be imposed for a violation of a statute, regulation, contract, or agreement for which:
  - (1) the violator has made a good faith effort to comply with the statute, regulation, contract, or agreement that has been violated;
  - (2) the violation does not constitute a violation of criminal law;
  - (3) the violation did not result in a significant threat to health, safety, or the environment;
  - (4) the violation can be corrected or the violator can achieve compliance;
  - (5) an adjudicatory action has not been instituted; and
  - (6) the Secretary is permitted by law or has discretion under applicable statutes, regulations, contracts, or agreements to waive all or a portion of the penalty.

d. *Good faith effort to comply with the statute, regulation, contract, or agreement that has been violated.* Conduct that results in a violation of a statute, regulation, contract, or agreement, but circumstances surrounding the violation indicate that (1) the violator did not know that the conduct constituted a violation and the violator did not intend to commit the violation; (2) the violator made every reasonable effort to comply with the statute, regulation, contract, or agreement; or (3) the violator knew that the conduct constituted a violation, but due to circumstances beyond the violator's control it was impossible for the violator to comply, and the violator brought the violation to the attention of appropriate USDA officials in an expeditious manner. (The term *good faith effort to comply with the statute, regulation, contract, or agreement*

that has been violated does not include any circumstance in which: the violation was malicious; the violator had previously been found to have violated the same statute, regulation, contract, or agreement; or the violator had previously been informed that the conduct that resulted in the violation is prohibited by statute, regulation, contract, or agreement.)

e. *Penalty.* Any sanction that may be imposed directly by the Secretary. (The term *penalty* does not include: liquidated damages; any restitution for damages suffered by USDA; any action that either permanently or temporarily excludes a small business from entering into a transaction with USDA; or any sanction that may be imposed by a USDA grantee or subgrantee even if the sanction may be imposed as a result of conditions required by USDA for the grant.)

f. *Penalty Modification Coordinator.* The individual appointed by a USDA agency in accordance with paragraph 5 of this Memorandum.

g. *Secretary.* The Secretary of the United States Department of Agriculture or any individual to whom the Secretary delegates authority.

h. *Significant threat to health, safety, or the environment.* Any conduct that is likely to result in:

(1) death, injury, illness, or spread of diseases or pests to any human, animal, or plant; or

(2) material harm to the environment.

i. *Small business.* Any sole proprietorship, joint venture, partnership, corporation, association, or other legal entity that:

(1) employed 500 or fewer individuals at the time of the alleged violation; or

(2) in the tax year immediately preceding the alleged violation, had gross receipts of \$1,000,000 or less.

j. *USDA.* The United States Department of Agriculture.

#### 4. Waiver of Penalties

a. If a penalty may be imposed on the small business by the Secretary, the administering agency shall determine whether the penalty is a covered penalty. If the administering agency determines the penalty to be a covered penalty, the administering agency shall:

(1) provide a copy of this Memorandum to the small business on which the penalty may be imposed; and

(2) notify the small business that the imposition of all or a portion of a penalty can be waived as agreed by the small business and the agency, if corrective action can be achieved within the time to be established in the sole discretion of the administering agency. The penalty shall be waived, in whole or in part, if the administering agency and the small business agree in writing as to the waiver of the penalty, the administering agency establishes the time within which correction action is to be taken, and the small business takes corrective action within the time established by the administering agency.

b. If the small business takes corrective action, but fails to do so within the time established in accordance with paragraph 4a(2) of this Memorandum by the administering agency, the administering

agency may reduce the amount of any monetary penalty that may be imposed for the violation up to the amount spent by the small business for corrective action. When determining whether to reduce a monetary penalty in accordance with this subparagraph, the administering agency shall take into account the time in which the small business took corrective action and any difficulties the small business encountered when doing so.

c. Any administering agency that waives a penalty in accordance with paragraph 4a or 4b of this Memorandum shall issue a written statement to the small business stating that corrective action has been taken, that the imposition of all or a portion of the penalty has been waived, the manner in which the penalty has been waived, and the amount or type of any remaining penalty that may be imposed.

d. The use of appropriate alternative dispute resolution techniques to assist in the determination whether a penalty will be waived as authorized by this Memorandum is encouraged.

e. Each Under or Assistant Secretary shall submit a quarterly report, starting January 1, 1996, to the Secretary of Agriculture describing actions taken pursuant to this Memorandum. Each quarterly report must include each penalty that has been waived during the quarter, the manner in which each penalty has been waived, the corrective action taken by the small business, and the amount or type of any remaining penalty.

#### 5. Penalty Modification Coordinator

Each administering agency that administers any program under which the Secretary is permitted by law or has discretion to waive the imposition of a penalty shall appoint a Penalty Modification Coordinator who shall be responsible for the implementation of paragraphs 4 and 6 of this Memorandum in the administering agency.

#### 6. Notification

a. Each Penalty Modification Coordinator shall provide to each employee of the administering agency who has authority to assess penalties or to recommend the assessment of penalties:

(1) a copy of this Memorandum; and

(2) the name, address, and telephone number of the Penalty Modification Coordinator, who shall be available to answer questions concerning the implementation of this Memorandum posed by agency employees.

b. Small businesses shall be notified of this Memorandum by publication of this Memorandum in the Federal Register.

#### 7. Reporting Frequency

a. Except as provided in paragraph 7c of this Memorandum, each agency shall reduce by at least one-half the frequency with which regularly scheduled reports required, by regulation or policy in effect on April 21, 1995, must be provided to USDA.

b. Policy changes necessary to comply with paragraph 7a of this Memorandum shall be implemented no later than November 1, 1995. Regulatory changes necessary to comply with paragraph 7a of this

Memorandum shall be effective no later than January 1, 1996.

c. The frequency with which regularly scheduled reports shall be provided to USDA shall not be reduced pursuant to paragraph 7a of this Memorandum if:

(1) the frequency with which the report is provided to USDA is required by statute;

(2) the report is required to be provided to USDA as a condition of continued employment with USDA, execution of a contract with USDA, or receipt of a loan, grant, guarantee, or benefit from USDA; or

(3) the Secretary of Agriculture determines that the reduction of the frequency with which the regularly scheduled report is provided to USDA—is not legally permissible; would not adequately protect health, safety, or the environment; would be inconsistent with achieving regulatory flexibility or reducing regulatory burdens; or would impede the effective administration of a USDA program.

#### 8. Effective Date

This Memorandum shall be effective on October 10, 1995.

#### 9. Effect on Other Agency Penalty Waiver Policies

To the extent that any administering agency policy regarding the waiver of covered penalties is inconsistent with this Memorandum, the policy shall be revoked or modified to conform to this Memorandum no later than November 1, 1995. To the extent that any administering agency regulations regarding the waiver of covered penalties is inconsistent with this Memorandum, the regulations shall be revoked or modified to conform to this Memorandum no later than January 1, 1996. This Memorandum does not affect any administering agency policy to waive penalties that is not inconsistent with this Memorandum.

#### 10. Termination or Modification

This Memorandum may be terminated or modified by the Secretary of Agriculture at any time.

#### 11. Judicial Review

This Memorandum is intended only to improve the internal management of USDA and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, USDA, the officers or employees of the United States or USDA, or any other person. Neither this Memorandum nor the waiver of any penalty in accordance with this Memorandum shall affect the date on which the imposition of a penalty shall be considered to be final agency action for the purposes of judicial review.

Done in Washington, D.C., this 22nd day of January, 1996.

Dan Glickman,

*Secretary of Agriculture.*

[FR Doc. 96-1415 Filed 1-25-96; 8:45 am]

BILLING CODE 3410-01-M

**Food and Consumer Service****Information Collection Requirements Submitted for Public Comment and Recommendation**

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Food and Consumer Service (FCS) is publishing for public comment a summary of a proposed information collection regarding Form FCS-583, Employment and Training (E&T) Program Report (OMB 0584-0339). Comments will be included in the request for Office of Management and Budget (OMB) approval and will become a matter of public record.

**DATES:** Written comments and recommendations for the proposed information collection must be received by March 26, 1996.

**ADDRESSES:** Send comments and requests for copies of the form and instructions to the Work Program Section, Program Design Branch, Program Development Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 716, Alexandria, VA 22302. 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** The Work Program Section, FCS, at (703) 305-2762.

**SUPPLEMENTARY INFORMATION:** *Type of Information Collection Request:* Extension of an information collection currently approved by OMB that will expire on January 31, 1996. The agency wishes to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, or frequency of collection. Readers should be aware that changes that would impact this

reporting burden are being discussed as part of the welfare reform debate currently underway. Should any of the proposed legislative changes pass soon, it is expected that the reporting burden associated with the Food Stamp Employment and Training Program will change. Unfortunately, it is not known what the changes will be or when they may be effective. The agency would prefer to wait for the legislative changes to be decided before it takes action on the extension of the current reporting burden. However, the current burden will expire too soon for that to happen. Therefore, the agency is proceeding with the activity necessary to extend the current reporting burden, but cautions readers that changes are likely in the near future.

*Title of Information Collection:* E&T Program Report. *Form Number:* FCS-583. *Use:* Title 7 CFR 273.7(c)(6) requires State agencies to submit quarterly E&T Program reports containing monthly figures for participation in the program. The FCS-583 report includes the number of participants newly work registered; work registrants exempted from the E&T Program; participants who volunteered and began an approved E&T component; E&T mandatory participants who began an approved E&T component; work registrants sent a Notice of Adverse Action for failure to comply with E&T Program requirements; and the number of applicants denied food stamp certification or recertification for failure to comply with an E&T Program component. The first quarterly report includes the number of work registered persons in a state as of October of the new fiscal year. The final quarterly report contains the number of work registrants exempted as part of a category of persons during the course of the year separated by the specific reasons for the exemptions; and the number of participants (E&T Program mandatory and volunteers) placed in each E&T component offered by the State agency. This collection of information is used by FCS to determine whether States have met their mandated performance standards. *Frequency:* The FCS-583 report must be completed and submitted to FCS on a quarterly basis by the 45th day following the end of the quarter. *Affected Public:* State and local government. *Number of Respondents:* 3,520,853. *Total Annual Burden Hours:* 258,416.

Dated: January 16, 1996.  
William E. Ludwig,  
*Administrator, Food and Consumer Service.*  
[FR Doc. 96-1418 Filed 1-25-96; 8:45 am]  
BILLING CODE 3410-30-U

**Forest Service****Trails Management Plan—Santa Lucia Ranger District; Los Padres National Forest, San Luis Obispo County, CA**

**ACTION:** Notice of intent to withdraw an environmental impact statement.

**SUMMARY:** A Notice of Intent was published in the Federal Register on May 17, 1990 (Vol. 55, No. 96, pages 20486 and 20487) indicating that an Environmental Impact Statement (EIS) would be prepared to develop a Trails Management Plan for the San Luis Obispo County portion of the Los Padres National Forest. That notice of Intent is hereby withdrawn.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this notice of withdrawal may be directed to Manuel Madrigal, ID Team Leader, Santa Lucia Ranger District, 1616 North Carlotti Drive, Santa Maria, CA 93454, (805) 925-9538.

David W. Dahl,

*Forest Supervisor.*

[FR Doc. 96-1269 Filed 1-25-96; 8:45 am]

BILLING CODE 3410-11-M

**Supplement to the Final Environmental Impact Statement for the Mt. Hood Meadows Ski Area, Mt. Hood National Forest, Hood River County, Oregon**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to supplement a final environmental impact statement.

**SUMMARY:** The USDA, Forest Service, will prepare a supplement to the final environmental impact statement (EIS) for the Mt. Hood Meadows Ski Area on the Hood River Ranger District of the Mt. Hood National Forest. The final EIS and Record of Decision (ROD) for the Mt. Hood Meadows Ski Area were released in May 1991. The ROD was reversed by the Regional Forester in November 1991, based on inadequate cultural analysis. In May 1995, Mt. Hood Meadows Ski Resort submitted a revised application for a new Master Plan. The revised application proposes to expand the existing day use ski area to a full season ski/recreation area with increased capacity and permit area. It also withdraws their previous proposal to establish the ski area as a year-round destination resort with overnight housing. The alternatives will be revised based on the new proposed action and additional analysis that is conducted. The environmental analysis will be documented as a supplement to the existing analysis. The decision on a new master plan will be a conceptual decision that amends the Mt. Hood



National Forest Land and Resource Management Plan (1991). The construction of any improvements or new facilities authorized in the new master plan will be dependent upon future site specific environmental analysis and decisions.

The Federal Highway Administration (FHWA) has requested the Forest Service analyze the improvements to the Mt. Hood Meadows access road through the ski area EIS, rather than through a separate environmental document. As a cooperating agency, FHWA will review the supplemental EIS and sign a ROD for its approval and funding actions related to the access road. The decision on the road improvements will be site-specific, not conceptual, and would authorize construction of any improvements. FHWA decisions would be implemented in accordance with 23 CFR Part 771.

**ADDRESSES:** Submit written comments to Roberta Moltzen, Forest Supervisor, Mt. Hood National Forest, 2955 NW Division Street, Gresham, Oregon 97030.

**FOR FURTHER INFORMATION CONTACT:** Ken Davis, Hood River Ranger District, Mt. Hood National Forest, 6780 Hwy. 35, Mt. Hood-Parkdale, Oregon 97041, Telephone: (541) 352-6002.

**SUPPLEMENTARY INFORMATION:** The *original proposed action* was to establish Mt. Hood Meadows Ski Area as a full-season destination resort with: a capacity of 15,000 persons; 1,500 units of overnight housing on National Forest System lands; 12 lifts and 1,166 developed acres of skiing; 46.3 acres of parking; and miscellaneous winter and summer uses. An expansion of the existing permit area by 855 acres was also proposed.

The May 1995 *Record of Decision* would have authorized expansion of Mt. Hood Meadows from a day-use ski area to a full-season regional resort with: a maximum capacity of 15,000 persons; 500 units of overnight housing on National Forest System lands; 14 lifts and 1,165 developed acres of skiing; parking based upon an average car occupancy and transit ridership formula; and miscellaneous winter and summer uses. An expansion of the permit area by 796 acres would have been authorized.

Since the reversal of the May 1991 decision, additional cultural resource analysis has been conducted; the Northwest Forest Plan has designated portions of the proposed permit expansion area as Late Successional Reserve and Tier II Watershed; and additional facilities authorized under the ski area's 1978 Master plan (Gulch chairlift and Hood River Meadows base

area expansion) have been approved and constructed. In May 1995, Mt. Hood Meadows resort submitted a revised application for a new Master Plan. FHWA has also requested that improvement of the Mt. Hood Meadows access road be analyzed in the ski area EIS, rather than through a separate environmental document.

The *new proposed action* would expand the existing day-use ski area to a full-season ski/recreation area with: a capacity of 15,210 persons; 15 chairlifts, an unspecified number of surface lifts and associated ski terrain; 36.9 acres of parking; overnight use of skier service facilities for ski/snowboard camps; miscellaneous winter uses; and summer recreation facilities and uses. An expansion of the existing permit area by 796 acres is proposed. The new proposed action includes amending the Mt. Hood National Forest Land and resource Management Plan to permit ski area expansion and adoption of a new master plan.

FHWA proposes to improve 0.7 mile of Oregon Highway 35 and 0.6 mile of the Mt. Hood Meadows access road (Forest Road 3555) to improve safety and to accommodate projected growth in traffic levels and expansion of the ski area. These improvements will be analyzed through the supplemental EIS. The FHWA will make a separate ROD for the road improvements.

The supplement will be prepared and circulated in the same manner as the draft and final EIS (40 CFR 1502.9). Comments received on the draft supplemental EIS will be considered in the preparation of the final supplement. The draft supplement is expected to be available for public review and comment in April 1996. The comment period on the draft supplement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft supplement to the EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519.533 (1978). Also environmental objections that could be raised at the draft supplemental stage but that are not raised until after completion of the final Supplemental EIS may be waived or dismissed by the courts. *City of Angoon v. Hodel*, 803 F.2d. 1016, 1022 (9th Cir.

1986) and *Wisconsin Heritages, Inc. v. Harris*, 490f. Supp. 1334, 1338 (E.D. Wis. 1980).

Comments on the draft supplement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplement. Comments may also address the adequacy of the supplement or the merits of the alternatives formulated and discussed in the supplement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

At the end of the comment period on the draft supplement, comments will be analyzed and considered by the Forest Service in preparing the final Supplemental EIS. The final supplement is scheduled to be completed by July 1996.

The Responsible Official, Forest Supervisor Roberta Moltzen will consider the comments, responses, environmental consequences discussed in the final Supplemental EIS, and applicable laws, regulations, and policies. The responsible official will document the decision and rationale for the Mt. Hood Meadows Ski Area in the Record of Decision. The Forest Service decision will be subject to Forest Service Appeal Regulations (36 CFR Part 217).

Dated: January 19, 1996.

Roberta Moltzen,

*Forest Supervisor.*

[FR Doc. 96-1383 Filed 1-25-96; 8:45 am]

BILLING CODE 3410-11-M

### Grain Inspection, Packers and Stockyards Administration

#### Deposting of Stockyard; Crockett Livestock Sales Co., Inc.; Maury City, Tennessee; Correction

On November 29, 1995, a notice was published in the Federal Register (95 FR 29119) giving notice of the deposting for certain stockyards listing their facility number, name, location, and date of posting.

This notice is to correct the notice for deposting of Crockett Livestock Sales, Inc., Maury City, Tennessee. The market below is still posted with the posting number, name, address and posting date.

TN-140—Crockett Livestock Sales Co., Inc.; Maury City, Tennessee, January 28, 1960.

Done at Washington, D.C., this 18th day of January 1996.

Daniel L. Van Ackeren,  
 Director, Livestock Marketing Division.  
 [FR Doc. 96-1416 Filed 1-25-96; 8:45 am]

BILLING CODE 3410-EN-P

**Natural Resources Conservation Service**

**BS-3A Caernarvon Diversion Outfall Management Project, Plaquemines Parish, Louisiana**

**AGENCY:** Natural Resources Conservation Service.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Caernarvon Diversion Outfall Management Project, Plaquemines Parish, Louisiana.

**FOR FURTHER INFORMATION CONTACT:** Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone number (318) 473-7751.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement is not needed for this project.

This project proposes to improve the utilization of fresh water, sediments, and nutrients from the Mississippi River, via the Caernarvon Diversion Structure, on approximately 23,800 acres of intermediate marsh in Plaquemines Parish, Louisiana. Project measures include the construction of variable-crested weirs, earthen plugs, flow-thru culverts, and 12,000 feet of spoil bank maintenance.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Donald W. Gohmert,  
 State Conservationist.  
 [FR Doc. 96-1249 Filed 1-25-96; 8:45 am]

BILLING CODE 3410-16-M

**Rural Utilities Service**

**Barry Electric Cooperative; Finding of No Significant Impact**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request by Barry Electric Cooperative to use its general funds to construct a new headquarters facility in Barry County, Missouri. The FONSI is based on a borrower's environmental report (BER) submitted to RUS by Barry Electric Cooperative. RUS conducted an independent evaluation of the report and concurs with its scope and content. In accordance with RUS Environmental Policies and Procedures, 7 CFR Part 1794.61, RUS has adopted the BER as its environmental assessment for the project.

**FOR FURTHER INFORMATION CONTACT:** Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Ag. Box 1569, Washington, D.C. 20250-1569, telephone (202) 720-1784.

**SUPPLEMENTARY INFORMATION:** The headquarters facility is proposed to be located just north of Cassville adjacent to Highway 37 in Section 17, Township 23 North, Range 27 West. The size of the proposed site for the headquarters

facility is approximately 30 acres of which 10 acres would be developed.

The headquarters facility would consist of a 7,000 square foot office, a 35,000 square foot warehouse and 850 square foot covered storage building, and approximately 36,000 square feet of open storage area for poles, transformers, dumpsters, service and field employee vehicles, radio antenna, and salvage. The facility will also include parking for the cooperative employees and the public and a drive through depository window.

The buildings to be constructed will be pre-engineered metal. The parking and drive lanes will be a hard surface of either asphalt or concrete. The covered and open storage area will be surfaced with crushed rock and surrounded by a chain-link fence.

RUS considered the alternative of taking no action that would approve Barry Electric Cooperative's construction of the proposed headquarters facility.

Copies of the BER and FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. Earle W. Shiveley, Barry Electric Cooperative, P.O. Box 307, 100 Main Street, Cassville, Missouri 65625, telephone (417) 847-2131.

Dated: January 22, 1996.  
 Adam M. Golodner,  
 Deputy Administrator, Program Operations.  
 [FR Doc. 96-1417 Filed 1-25-96; 8:45 am]  
 BILLING CODE 3410-15-P

**DEPARTMENT OF COMMERCE**

**Economic Development Administration**

**Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance**

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

**LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/21/95-01/17/95**

Firm name	Address	Date petition accepted	Product
Chaffin Manufacturing, Inc .....	1001 S. Echo, P.O. Box 975, Holdenville, OK 74848.	11/27/95	Oilfield pumps.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 11/21/95–01/17/95—Continued

Firm name	Address	Date petition accepted	Product
Kno-Mar Tool & Mold, Inc .....	14525 62nd Street, North Clearwater, FL 34620.	11/27/95	Injection Molds for Plastic.
Am-Foam Products Co., Inc .....	P.O. Box 12537, Kansas City, MO 64116	12/04/95	Open cell polyurethane foam and closed cell neoprene rubber.
Lee County Peanut Company, Inc .....	136 South Caldwell Street, Giddings, TX 78942.	12/08/95	Shelled peanuts.
Stanbury Uniforms, Inc .....	P.O. Box 100, Brookfield, MO 64628 .....	01/11/96	Band/orchestra concertware and marching band/military school/uniforms.
West Ridge Design Incorporated .....	1236 NW Flanders Street, Portland, OR 97209.	01/16/96	Computer bags.
Output Technology Corporation .....	2310 North Fancher Road, Spokane, WA 99212.	01/16/96	Matrix and laser printers.
KGI Corporation d.b.a. Kingston Plastics Company.	1311 Rand Road, Desplaines, IL 60016 ..	01/16/96	Custom plastic injection molded components for the automotive, optical and medical industries.
Richard Manufacturing Co .....	6250 Bury Drive, Eden Prairie, MN 55436	01/16/96	Computer disk drive components of metal and valve bodies of metal for anti-locking braking systems.
Frank Stubbs Co., Inc .....	4518 Vanowen St., Burbank, CA 91505 ..	01/17/96	Orthopedic soft goods—supports, slings, collars, etc.
San Francisco Sewing Association .....	510 Third Street, Third Floor, San Francisco, CA 94107.	01/17/96	Women's sportswear—blouses, jackets, pants and skirts.
Klear Knit, Inc .....	P.P. Box 236, Clover, SC 29710 .....	01/17/96	Men's cotton knit shirts and women's cotton knit dresses.
Engraving Design, Inc .....	6840 114th Avenue North, Largo, FL 34643.	01/17/96	Metal stamping tools.
Gemini Corporation of Wisconsin .....	W16 N14280 Taunton Avenue, Cedarburg, WI 53012.	01/17/96	Motor speed controls for exercise treadmills, amplification circuits for sirens and alarms.
Paradise Flower Farms, Inc .....	352-B IHE Place, Kula, HI 96790 .....	01/17/96	Flowers and foliage—carnations, dendrobium orchids, roses plumeria and gladioluses.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceeding may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

January 18, 1996.  
 Lewis R. Podolske,  
*Director, Trade Adjustment Assistance Division.*  
 [FR Doc. 96-1243 Filed 1-25-96; 8:45 am]  
**BILLING CODE 3510-24-M**

**Bureau of Export Administration**

**Public Hearings on the Effects of Lifting the Export Ban on Alaskan North Slope Crude Oil**

**AGENCY:** Bureau of Export Administration, Commerce.  
**ACTION:** Notice of rescheduled public hearings.

**SUMMARY:** The Department of Commerce's Bureau of Export Administration (BXA) is rescheduling public hearings on the effects on the environment and the economy of lifting the ban on the export of Alaskan North Slope (ANS) crude oil that were announced in the Federal Register on December 15, 1995 (60 FR 64412). BXA postponed the January 1996 hearings because of the government shutdown. The Department is conducting the hearings pursuant to the legislation that

the President signed on November 28, 1995 which, among other things, requires him to conduct an environmental review, as well as to examine the effect of exports on jobs, consumers, and supplies of oil. This notice announces the rescheduled hearing dates and sites and the cancellation of the hearing in Bakersfield, California. Persons who have previously requested the opportunity to testify should reconfirm their interest by contacting the Department at the address below. In the event the Department is not open for normal business during the new hearing dates, the hearings will be rescheduled. **DATES:** The hearings will be held in Washington, D.C., on February 7, 1996; Seattle, Washington, on February 9, 1996; and Anchorage, Alaska on February 12, 1996. Requests to speak must be submitted by February 5, 1996. The hearing in Washington, D.C. will be held in Room 6009 of the Herbert Hoover Building, which is located at 14th Street and Pennsylvania Avenue, N.W., Washington, D.C., 20230. The hearing in Seattle will be held in the auditorium of the NOAA Western Regional Center, which is located at 7600 Sand Point Way, N.E., Seattle,

Washington 98115. The hearing in Anchorage will be held in the auditorium of the Anchorage Museum of History and Art, which is located at 121 West 7th Avenue, Anchorage, Alaska.

**ADDRESSES:** Send requests to speak and written copies of the oral presentation to Steven C. Goldman, Director, Office of Chemical and Biological Controls and Treaty Compliance, Room 2093, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, D.C., 20230.

**FOR FURTHER INFORMATION CONTACT:** Bernard Kritzer, Manager, Short Supply Program, Office of Chemical and Biological Controls and Treaty Compliance, Room 2089, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C., 20230, Telephone (202) 482-0894, Fax (202) 482-0751.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On December 15, 1995, the Department of Commerce's Bureau of Export Administration (BXA) published a notice in the Federal Register (60 FR 64412) announcing its intention to hold public hearings on the environmental and economic affects of lifting the ban on the export of Alaskan North Slope (ANS) crude oil. The notice proposed four hearings. The notice also identified the issues on which the Department is interested in obtaining the public's views. It also set forth the procedures for public participation in the hearings. On December 28, BXA canceled the hearings because of the shutdown of the Federal Government. The hearings have been rescheduled as described in Section II of this notice.

The hearings are pursuant to legislation that the President signed (Public Law 104-58) authorizing exports of Alaskan North Slope (ANS) crude oil when transported in U.S.-flag tankers. The statute requires the President to consider the results of an "appropriate environmental review" and other issues prior to making his national interest determination. The Department is soliciting public comments as described in the December 15, 1995 Federal Register notice.

**II. Public Hearings and Comment Procedures**

The hearings will be held in Washington, D.C. on February 7, 1996; Seattle, Washington, on February 9, 1996; and Anchorage, Alaska on February 12, 1996. The hearings will

commence at 8:30 a.m. and end at 5:30 p.m. Requests to speak must be submitted by February 5, 1996. In the event the Department is not open for normal business during the new hearing dates, the hearings will be rescheduled.

The hearing in Washington, D.C. will be held in room 6009 of the Herbert Hoover Building which is located at 14th Street and Pennsylvania Avenue, NW., Washington, D.C. 20230. The hearing in Seattle will be held in Building 9 Auditorium, at the NOAA Western Regional Center which is located at 7600 Sand Point Way, NE, Seattle, Washington 98115. The hearing in the auditorium of the Anchorage Museum of History and Art which is located at 121 West 7th Avenue, Anchorage, Alaska.

The Department encourages interested participants to present their views orally at the hearings. Any person wishing to make an oral presentation at the hearings must submit a brief written request to the Department of Commerce at the address indicated in the **ADDRESS** section of this notice. The written request must be received by BXA no later than February 5, 1996. The written requests to participate in the public hearings should describe the individual's interest in the hearing and, where appropriate, explain why the individual is a proper representative of a group or class of person that has such an interest. In addition, the request to speak should contain a daytime phone number where the person who will be making the oral presentation may be contacted before the hearing. On the day of the hearing, speakers should bring 2 copies of the summary of their oral presentation to the hearing address indicated in the **DATES** section of this notice.

Persons may submit written comments for the record if they are unable to attend the hearings.

Copies of the request to participate in the public hearings will be maintained at the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230, telephone (202) 482-5653. The records in this facility may be copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Information about the inspection and copying of records may be obtained from Mr. Ted Zois, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number between

the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

Each speaker may be limited to 10 or 15 minutes depending on the number of presenters. Comments may respond to the questions posed in Section I of the December 15, 1995 notice or any other related issue.

A Commerce official will preside at the hearings. Representatives from other Federal agencies participating in the review also will attend the hearings. Only those conducting the hearing may ask questions.

Any further procedural rules for the proper conduct of the hearing will be announced by the presiding officer.

Dated: January 23, 1996.

Sue E. Eckert,

*Assistant Secretary for Export Administration*  
[FR Doc. 96-1391 Filed 1-24-96; 8:45 am]

**BILLING CODE 3510-DT-P**

**Bureau of Export Administration  
Information Systems Technical  
Advisory Committee; Notice of  
Partially Closed Meeting**

A meeting of the Information Systems Technical Advisory Committee will be held February 15, 1996, 9:00 a.m., Room 1617M-2, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. This Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

**Agenda**

Closed Session 9:00 a.m.-9:30 a.m.

1. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

General Session 9:30 a.m.-12:00 p.m.

2. Welcome and introductions.
3. Presentation of papers or comments by the public.
4. Review of progress on resolution of action items.
5. Discussion on Committee organization.
6. Discussion on ATM (Asynchronous Transfer Mode) and router issues.

Closed Session 1:00 p.m.-5:00 p.m.

7. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the

meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 10, 1995, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call Lee Ann Carpenter, 202-482-2583.

Dated: January 19, 1996.

Lee Ann Carpenter,  
Director, Technical Advisory Committee Unit.  
[FR Doc. 96-1244 Filed 1-25-96; 8:45 am]  
BILLING CODE 3510-DT-M

## Foreign-Trade Zones Board

[ORDER NO. 798]

### Grant of Authority for Subzone Status Pier 1 Imports, Inc. (Distribution Facility); Grove City, Ohio

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment \* \* \* of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade

zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

*Whereas*, an application from the Rickenbacker Port Authority, grantee of Foreign-Trade Zone 138, for authority to establish special-purpose subzone status for the distribution facility of Pier 1 Imports, Inc., located in Grove City, Ohio, was filed by the Board on February 8, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 4-95, 60 FR 9005, 2/16/95); and,

*Whereas*, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore*, the Board hereby authorizes the establishment of a subzone (Subzone 138B) at the Pier 1 Imports, Inc., facility in Grove City, Ohio, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28. As indicated in the application, no processing or manufacturing will be conducted under zone procedures, including any such activity involving foreign textile products.

Signed at Washington, DC, this 16th day of January 1996.

Susan G. Esserman,  
Assistant Secretary of Commerce for Import  
Administration, Alternate Chairman Foreign-  
Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,  
Executive Secretary.  
[FR Doc. 96-1241 Filed 1-25-96; 8:45 am]  
BILLING CODE 3510-DS-P

[ORDER NO. 797]

### Grant of Authority for Subzone Status, Pier 1 Imports, Inc. (Distribution Facility); Mansfield, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to

grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

*Whereas*, an application from Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone 39, for authority to establish special-purpose subzone status for the distribution facility of Pier 1 Imports, Inc., located in Mansfield, Texas, was filed by the Board on February 7, 1995, and notice inviting public comment was given in the Federal Register (FTZ Docket 3-95, 60 FR 9004, 2/16/95); and,

*Whereas*, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore*, the Board hereby authorizes the establishment of a subzone (Subzone 39D) at the Pier 1 Imports, Inc., facility in Mansfield, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28. As indicated in the application, no processing or manufacturing will be conducted under zone procedures, including any such activity involving foreign textile products.

Signed at Washington, DC, this 16th day of January 1996.

Susan G. Esserman,  
Assistant Secretary of Commerce for Import  
Administration, Alternate Chairman Foreign-  
Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,  
Executive Secretary.  
[FR Doc. 96-1240 Filed 1-25-96; 8:45 am]  
BILLING CODE 3510-DS-P

[Docket 4-96]

### Foreign-Trade Zone 124, Gramercy, Louisiana; Proposed Foreign-Trade Subzone—Shell Oil Company (Oil Refinery/Petrochemical Complex); St. Charles Parish, Louisiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting special-purpose subzone status for the oil refinery and petrochemical complex of Shell Oil Company, located in St. Charles Parish, Louisiana. The application was submitted pursuant to the provisions of

the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 18, 1996.

The refinery/petrochemical complex (983 acres) 1600 employees) consists of 4 sites in St. Charles Parish, Louisiana: *Site 1* (220,000 BPD capacity, 826 acres)—main refinery complex located on the Mississippi River at 15536 River Road and Louisiana Hwy 48, near Norco, including some 40 miles of connecting pipeline ending at the Clovelly Dome Storage Terminal and a dedicated pipeline from the adjacent GATX Tank Terminal; *Site 2* (142 acres)—chemical plant located adjacent to the main refinery at 16122 River Road; *Site 3* (45,000 BPD capacity, 15 acres)—refinery, located at 11842 River Road, 6 miles east of the main complex, near St. Rose; and *Site 4* (13 leased tanks with 1,713,000 barrel capacity)—storage facility within International MATEX Tank Terminals (IMTT), located adjacent to Site 3. The refineries, petrochemical plant, storage facility and pipelines operate as an integral part of the refinery/petrochemical complex.

The refinery is used to produce fuels, petrochemical feedstocks and petrochemical products. Fuels produced include gasoline, jet fuel, distillates, residual fuels, and naphthas. Petrochemical feedstocks include methane, ethane, propane, butane, butylene, ethylene, propylene and butadiene. Refinery by-products include sulfur and petroleum coke. The refinery complex also produces petrochemical products including epoxy resins, epichlorohydrin, methyl ethyl ketone, allyl chloride, secondary butyl alcohol and MTBE. About one-quarter of the crude oil (87 percent of inputs), and some feedstocks and motor fuel blendstocks used in producing fuel products are sourced abroad. In addition, some feedstocks used in chemical manufacturing may be sourced abroad including sulphuric acid and methyl mercaptan.

Zone procedures would exempt the operations involved from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the finished product duty rate (nonprivileged foreign status—NPF) on certain petrochemical feedstocks and refinery by-products (duty-free). The duty on crude oil ranges from duty-free to 10.5/barrel. (The remaining finished products—fuel and petrochemical products—generally have higher duty rates than crude oil, and for those products zone procedures would be primarily used to defer Customs duty

payments.) The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness of the plants involved.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 26, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 10, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, #1 Allen Center, Suite 1160, 500 Dallas, Houston, Texas 77002  
Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, N.W., Washington, DC 20230

Dated: January 19, 1996.  
John J. Da Ponte, Jr.,  
*Executive Secretary.*  
[FR Doc. 96-1307 Filed 1-25-96; 8:45 am]  
BILLING CODE 3510-DS-P

#### [Docket A(27F)-43-95]

#### **Foreign-Trade Zone 115, Beaumont, TX Subzone 115B, Mobil Oil Corporation (Crude Oil Refinery Complex); Request for Minor Modification of Restriction**

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone of Southeast Texas, Inc., grantee of FTZ 115, pursuant to § 400.27(f) of the Board's regulations, for a minor modification of the restrictions in FTZ Board Order 780 authorizing Subzone 115B at the crude oil refinery complex of Mobil Oil Corporation (Mobil) in the Beaumont, Texas, area. The request was formally filed on December 14, 1995.

The FTZ Board approved subzone status for the Mobil refinery in 1995 (Subzone 115B, Board Order 780, 60 FR 54471, 10/24/95). The approval was subject to certain standard restrictions.

The company is now requesting that restriction #2, which allows the election of non-privileged foreign (NPF) status (19 CFR 146.42) on refinery inputs covered under HTSUS Subheadings # 2709.00.1000 - # 2710.00.1050 and #

2710.00.2500, be extended to cover HTSUS Subheading #2710.00.4510—natural gas condensate.

The request indicates that the HTSUS number for this input was omitted from the list of refinery inputs in the original subzone application and that the product functions like crude oil with respect to the refining process.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 26, 1996.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, N.W., Washington, DC 20230.

Dated: January 19, 1996.  
John J. Da Ponte, Jr.,  
*Executive Secretary.*  
[FR Doc. 96-1308 Filed 1-25-96; 8:45 am]  
BILLING CODE 3510-DS-P

#### [Docket 3-96]

#### **Foreign-Trade Zone 147, Reading, Pennsylvania Area; Application for Expansion**

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign Trade Zone Corporation of Southeastern Pennsylvania, grantee of Foreign-Trade Zone 147, requesting authority to expand its zone in Reading, Pennsylvania, to include additional sites in the Counties of Berks and York, adjacent to the Philadelphia and Harrisburg Customs ports of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 17, 1996.

FTZ 147 was approved on June 28, 1988 (Board Order 378, 53 FR 26094, 7/11/88). The zone project currently consists of 3 industrial park parcels (200 acres) at the 865-acre Reading Municipal Airport, operated by the Reading Municipal Airport Authority.

The applicant now requests authority to expand the existing zone to include the entire 865-acre Airport complex (Site 1), and add five new sites. Three of the new sites (Sites 4-6) are being requested as part of a cooperative effort with York County officials. Two of the sites in York County involve a number

of individual parcels which are considered by the applicant to be an integral part of areas within the City of York which have special status in the City's economic development plan.

The new sites are as follows: *Site 2* (6.64 acres) - 2nd Street and Grand Street, Hamburg (Berks County), owned and operated by Hamkm International and KMX International; *Site 3* (160.71 acres) - Excelsior Industrial Park, Maiden Creek Township, Berks County, owned by Can Corporation of America, Inc., and DiGiorgio Mushroom Corp.; *Site 4* consists of 6 separate but related parcels within the International Trade District of York (1,440 acres): *Parcel A* (1.356 acres) - manufacturing facility at 225 North Emigsville Road, York, owned by Baker Refractories; *Parcel B* (26.64 acres) - East Berlin and Zarfoss Roads, York, owned by Pfaltzgraff Co.; *Parcel C* (37.23 acres) - Emons Bids Rail Yard, 2790 West Market Street, West Manchester Township, York, owned by the Emons Transportation Group, Inc.; *Parcel D* (11.69 acres) - 500 Lincoln Street, York, owned and operated by the Precision Components Corp.; *Parcel E* (6.6 acres) - the Industrial Plaza of York, Roosevelt Avenue and West Philadelphia Street, York, owned and operated by the York County Industrial Development Corp.; *Parcel F* (2 acres) - the Central York Warehouse, 100 East Hay Street, York, owned and operated by the Emons Transportation Group, Inc.; *Site 5* consists of 6 separate parcels (54.29 acres) within the Penn Township Industrial Park (PTIP), a project of the York County Industrial Development Authority: *Parcel A* (10.55 acres) - 762 Wilson Avenue, York, owned by PennTown Properties; *Parcel B* (7.88 acres) - adjacent to Parcel A North, York, owned by the York County Industrial Development Authority; *Parcel C* (9.82 acres) - 14 Barnhart Drive, York, owned by PennTown Properties,

within the PTIP; *Parcel D* (2.36 acres) - 16 Barnhart Drive, York, owned by PennTown Properties and used by SmithKline Beecham Health Care-North America; *Parcel E* (15.06 acres) - SmithKline Beecham Health Care-North America, 26 Barnhart Drive, York; *Parcel F* (8.63 acres) - PTIP Lots #32, 34, 37 and 38, adjoins Parcel E, owned by the York County Industrial Development Authority; and, *Site 6* (27.25 acres) - Hanover Terminal, Center Street at CSX Railroad, Hanover.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis. (The application indicates that Baker Refractories and Precision Components Corp. intend to file a request for FTZ manufacturing authority for their operations within proposed Site 4.)

In accordance with the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board. Public comment on the application is invited from interested parties. Submissions (original and 3 copies shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [March 26, 1996.] Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 10, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

- Berks County Chamber of Commerce Offices, 645 Penn Street, Reading, PA 19601
- York County Industrial Development Corporation, One Market Way East, York, PA 17401
- Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S.

Department of Commerce, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: January 18, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96-1312 Filed 1-25-96; 8:45 am]

BILLING CODE 3510-DS-P

**International Trade Administration**

**Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

**BACKGROUND:** Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

**OPPORTUNITY TO REQUEST A REVIEW:** Not later than January 31, 1996, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
<i>Antidumping Duty Proceedings:</i>	
BRAZIL: Brass Sheet & Strip, (A-351-603) .....	01/01/95-12/31/95
BRAZIL: Certain Stainless Steel Wire Rods, (A-351-819) .....	01/01/95-12/31/95
CANADA: Brass Sheet & Strip, (A-122-601) .....	01/01/95-12/31/95
CANADA: Color Picture Tubes, (A-122-605) .....	01/01/95-12/31/95
FRANCE: Anhydrous Sodium Metasilicate, (A-427-098) .....	01/01/95-12/31/95
FRANCE: Certain Stainless Steel Wire Rods, (A-427-811) .....	01/01/95-12/31/95
JAPAN: Color Picture Tubes, (A-588-609) .....	01/01/95-12/31/95
KOREA: Brass Sheet & Strip, (A-580-603) .....	01/01/95-12/31/95
KOREA: Color Picture Tubes, (A-580-605) .....	01/01/95-12/31/95
KOREA: Stainless Steel Cooking Ware, (A-580-601) .....	01/01/95-12/31/95
SINGAPORE: Color Picture Tubes, (A-559-601) .....	01/01/95-12/31/95
SPAIN: Potassium Permanganate, (A-469-007) .....	01/01/95-12/31/95
SOUTH AFRICA: Low-Fuming Brazing Copper Wire and Rod, (A-791-502) .....	01/01/95-12/31/95
TAIWAN: Certain Stainless Steel Wire Rods, (A-583-508) .....	01/01/95-12/31/95
THE PEOPLE'S REPUBLIC OF CHINA: Potassium Permanganate, (A-570-001) .....	01/01/95-12/31/95
<i>Suspension Agreements:</i>	
CANADA: Potassium Chloride, (C-122-701) .....	01/01/95-12/31/95
COLOMBIA: Miniature Carnations, (C-301-601) .....	01/01/95-12/31/95



	Period
COLOMBIA: Roses and Other Fresh Cut Flowers, (C-301-003) .....	01/01/95-12/31/95
HUNGARY: Truck Trailer Axle and Brake Assemblies, (A-437-001) .....	01/01/95-12/31/95
<i>Countervailing Duty Proceedings:</i>	
BRAZIL: Brass Sheet & Strip, (C-351-604) .....	01/01/95-12/31/95
KOREA: Stainless Steel Cooking Ware, (C-580-602) .....	01/01/95-12/31/95
SPAIN: Stainless Steel Wire Rod, (C-469-004) .....	01/01/95-12/31/95
TAIWAN: Stainless Steel Cooking Ware, (C-583-604) .....	01/01/95-12/31/95

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by section 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 C.F.R. 355.22(a) of the Department's Interim Regulations (60 FR 25137 (May 11, 1995)), an interested party 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 it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, 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, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by January 31, 1996. If the Department does not receive, by January 31, 1996, 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: January 22, 1996.

Joseph A. Spetrini,

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 96-1453 Filed 1-25-96; 8:45 am]

BILLING CODE 3510-DS-M

#### [A-588-707]

#### **Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On August 30, 1995, the Department of Commerce (the Department) published in the Federal Register the preliminary results of its 1993-94 administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Japan (60 FR 45141). The review covers one manufacturer/exporter. The review period is August 1, 1993, through July 31, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received we have changed the margin calculation. The final margin for Daikin Industries (Daikin) is listed below in the section "Final Results of Review."

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-4733.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

On August 30, 1995, the Department published in the Federal Register (60 FR 45140) the preliminary results of its 1993-94 administrative review of the antidumping duty order on granular PTFE resin from Japan. There was no request for a hearing. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

##### Applicable Statutes and Regulations

Unless otherwise stated, all citations to the Tariff Act and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

##### Scope of the Review

The antidumping duty order covers granular PTFE resins, filled or unfilled. The order explicitly excludes PTFE dispersions in water and PTFE fine powders. During the period covered by this review, such merchandise was classified under item number 3904.61.90 of the Harmonized Tariff Schedule (HTS). We are providing this HTS number for convenience and Customs purposes only. The written description of scope remains dispositive.

The review covers one manufacturer/exporter of granular PTFE resin, Daikin. The review period is August 1, 1993, through July 31, 1994.

##### Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a case brief from Daikin.

##### Issue Raised by Daikin

Daikin claims that, in calculating foreign market value, the Department incorrectly deducted from the unit price an amount representing a price adjustment. Daikin argues that this



adjustment should have been added to the unit price. Daikin notes that in previous reviews it reported a price decrease, which needed to be deducted from the unit price. However, in the current review, Daikin reported a price adjustment, which can be either a price increase, reported as a positive number, or a price decrease, reported as a negative number. As such, Daikin requests that the Department add the reported price adjustment to the unit price, which effectively adds price increases and deducts price decreases.

*DOC Position:* We agree with Daikin. We erroneously deducted Daikin's reported price adjustment from the unit price. Daikin reported both price increases and price decreases, and, for these final results, we added the price adjustment to the unit price to correctly account for both price increases and price decreases.

Home Market Consumption Tax

Although no party raised this as an issue, in light of the Federal Circuit's decision in *Federal Mogul v. United States*, CAFC No. 94-1097, we have changed our treatment of home market consumption taxes. Where merchandise exported to the United States is exempt from the consumption tax, we will add to the U.S. price the absolute amount of such taxes charged in the comparison sales in the home market. This is the same methodology that we adopted following the decision of the Federal Circuit in *Zenith v. United States*, 988 F. 2d 1573, 1582 (1993), and which was suggested by that court in footnote 4 of its decision. The Court of International Trade (CIT) overturned this methodology in *Federal Mogul v. United States*, 834 F. Supp. 1391 (1993), and we acquiesced in the CIT's decision. We then followed the CIT's preferred methodology, which was to calculate the tax to be added to U.S. price by multiplying the adjusted U.S. price by the foreign market tax rate; we made adjustments to this amount so that the tax adjustment would not alter a "zero" pre-tax dumping assessment.

The foreign exporters in the *Federal Mogul* case, however, appealed that decision to the Federal Circuit, which reversed the CIT and held that the statute did not preclude the Department from using the "Zenith footnote 4" methodology to calculate tax-neutral dumping assessments (*i.e.*, assessments that are unaffected by the existence or amount of home market consumption taxes). Moreover, the Federal Circuit recognized that certain international agreements of the United States, in particular the General Agreement on Tariffs and Trade (GATT) and the Tokyo

Round Antidumping Code, required the calculation of tax-neutral dumping assessments. The Federal Circuit remanded the case to the CIT with instructions to direct the Department to determine which tax methodology it will employ.

We have determined that the "Zenith footnote 4" methodology should be used. First, as we have explained in numerous administrative determinations and court filings over the past decade, and as the Federal Circuit has now recognized, Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code required that dumping assessments be tax neutral. This requirement continues under the new Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. Second, the Uruguay Round Agreements Act (URAA) explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. price, so that no consumption tax is included in the price in either market. The Statement of Administrative Action (p. 159) explicitly states that this change was intended to result in tax neutrality.

While the "Zenith footnote 4" methodology is slightly different from the URAA methodology, in that section 772(d)(1)(C) of the pre-URAA law required that the tax be added to U.S. price rather than subtracted from home market price, it does result in tax-neutral duty assessments. In sum, we have elected to treat consumption taxes in a manner consistent with our longstanding policy of tax neutrality and with the GATT.

Final Results of Review

As a result of the comments received, and the changes in our treatment of consumption taxes, we have revised our preliminary results and determine that the following margin exists:

Manufacturer/exporter	Period	Margin (percent)
Daikin Industries	08/01/93-07/31/94	53.68

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisal instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Daikin will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 91.74 percent, the "all others" rate from the LTFV investigation, for the reasons explained in Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review, 58 FR 50343 (September 27, 1993). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 14, 1995.  
 Susan G. Esserman,  
*Assistant Secretary for Import Administration.*  
 [FR Doc. 96-1310 Filed 1-25-96; 8:45 am]  
 BILLING CODE 3510-DS-P

**Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.  
**ACTION:** Publication of annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

**SUMMARY:** The Department of Commerce (the Department), in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty, imported during the period October 1, 1994 through September 30, 1995. We are publishing the current listing of those subsidies that we have determined exist.

**EFFECTIVE DATE:** January 26, 1996.  
**FOR FURTHER INFORMATION CONTACT:** Brian Albright or Maria MacKay, Office of Countervailing Compliance, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482-2786.

**SUPPLEMENTARY INFORMATION:** Section 702(a) of the Trade Agreements Act of 1979, as amended (the Act), requires the Department to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on cheeses that were imported during the period October 1, 1994 through September 30, 1995.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Due to the partial shutdown of the Federal Government from December 16, 1995 through January 6, 1996, the Department was unable to publish this annual listing by January 1, 1996, as required by the Act. Accordingly, the Department has exercised its discretion to toll this deadline for the duration of the shutdown. This notice is published in accordance with the extended deadline.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: January 18, 1996.  
 Susan G. Esserman,  
*Assistant Secretary for Import Administration.*

APPENDIX—QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross <sup>1</sup> subsidy	Net <sup>2</sup> subsidy
Austria	European Union (EU) Restitution Payments	36.8¢/lb	36.8¢/lb
Belgium	EU Restitution Payments	38.6¢/lb	38.6¢/lb
Canada	Export Assistance on Certain Types of Cheese	25.5¢/lb	25.5¢/lb
Denmark	EU Restitution Payments	39.5¢/lb	39.5¢/lb
Finland	EU Restitution Payments	38.3¢/lb	38.3¢/lb
France	EU Restitution Payments	35.8¢/lb	35.8¢/lb
Germany	EU Restitution Payments	43.4¢/lb	43.4¢/lb
Greece	EU Restitution Payments	0.00¢/lb	0.00¢/lb
Ireland	EU Restitution Payments	35.2¢/lb	35.2¢/lb
Italy	EU Restitution Payments	73.0¢/lb	73.0¢/lb
Luxembourg	EU Restitution Payments	38.6¢/lb	38.6¢/lb
Netherlands	EU Restitution Payments	36.5¢/lb	36.5¢/lb
Norway	Indirect (Milk) Subsidy	19.8¢/lb	19.8¢/lb
	Consumer Subsidy	44.0¢/lb	44.0¢/lb
Portugal	EU Restitution Payments	63.8¢/lb	63.8¢/lb
Spain	EU Restitution Payments	33.3¢/lb	33.3¢/lb
Switzerland	Deficiency Payments	42.0¢/lb	42.0¢/lb
U.K.	EU Restitution Payments	187.9¢/lb	187.9¢/lb
		35.3¢/lb	35.3¢/lb

<sup>1</sup> Defined in 19 U.S.C. 1677(5).  
<sup>2</sup> Defined in 19 U.S.C. 1677(6).

[FR Doc. 96-1242 Filed 1-25-96; 8:45 am]  
BILLING CODE 3510-DS-P

[C-201-810]

**Certain Cut-to-Length Carbon Steel Plate From Mexico; Termination of Countervailing Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Termination of Countervailing Duty Administrative Review.

**SUMMARY:** On September 15, 1995 (60 FR 47930), in response to a request from Altos Hornos de Mexico, S.A. de C.V. (AHMSA), the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico. In accordance with 19 CFR 355.22(a)(3)(1994), the Department is now terminating this review because AHMSA has withdrawn its request for review.

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Lorenza Olivas or Kelly Parkhill, 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

On August 31, 1995, the Department received a request for an administrative review of this countervailing duty order from AHMSA, a Mexican exporter of the subject merchandise, for the period January 1, 1994, through December 31, 1994. No other interested party requested a review of the countervailing duty order. On September 15, 1995, the Department published in the Federal Register (60 FR 47930) a notice of "Initiation of Countervailing Duty Administrative Review" initiating the administrative review of AHMSA for that period. On December 4, 1995, AHMSA withdrew its request for review.

Section 355.22(a)(3) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. In this case, AHMSA has withdrawn its request for review within the 90-day

period. No other interested party requested a review, and we have received no submissions regarding AHMSA's withdrawal of its request for review. Therefore, we are terminating the review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico.

This notice is published in accordance with 19 CFR 355.22(a)(3).

Dated: January 16, 1996.  
Joseph A. Spetrini,  
*Deputy Assistant Secretary for Compliance.*  
[FR Doc. 96-1309 Filed 1-25-96; 8:45 am]  
BILLING CODE 3510-DS-P

[C-201-001]

**Leather Wearing Apparel From Mexico; Amended Final Results of Countervailing Duty Administrative Review in Accordance With Decision on Remand**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Amended Final Results of Countervailing Duty Administrative Review.

**SUMMARY:** On October 20, 1995, the North American Free Trade Agreement (NAFTA) Panel ("Panel") affirmed the Department of Commerce's ("the Department") remand results in *Leather Wearing Apparel from Mexico*, Secretariat File No. USA-94-1904-02 (July 19, 1995). On November 7, 1995, the NAFTA Secretariat, United States Section, provided a Notice of Final Panel Action in this proceeding. As a result, the Department is amending the final results of the 1992 administrative review of the countervailing duty order on leather wearing apparel from Mexico for purposes of the entries subject to the Panel's review.

**EFFECTIVE DATE:** January 26, 1996.

**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

On August 25, 1994 (59 FR 43815), the Department published the final results of its 1992 administrative review of the countervailing duty order on leather wearing apparel from Mexico, covering the period January 1, 1992 through December 31, 1992. These

results were challenged by Maquiladora Pieles Pitic (Pieles Pitic) and Finapiel de Mexico (Finapiel), exporters of the subject merchandise, before a Panel pursuant to Article 1904 of the NAFTA.

The Panel issued its decision on July 19, 1995, and therein remanded the Department to reopen the 1992 administrative review. *Leather Wearing Apparel from Mexico*, Secretariat File No. USA-94-1904-02. In particular, the Panel directed the Department to conduct a review of the 1992 entries of Pieles Pitic and Finapiel. Pursuant to the remand order, the Department submitted to the Panel its final results of redetermination on September 19, 1995, finding that Pieles Pitic and Finapiel did not receive any benefits during 1992 from the programs examined by the Department.

On October 20, 1995, the Panel affirmed the Department's remand results. Therefore, the Department is amending the final results of the 1992 administrative review to reflect a subsidy rate of zero for Pieles Pitic and Finapiel, as determined by the Department in its final remand results.

Amended Final Results of Review

The Department will instruct the Customs Service to liquidate without regard to countervailing duties all shipments of leather wearing apparel from Mexico exported by Pieles Pitic or Finapiel on or after January 1, 1992 and on or before December 31, 1992.

Pursuant to section 753(b)(3)(B) of the Tariff Act of 1930, as amended, the Department revoked this order effective January 1, 1995, and has refunded, with interest, the estimated countervailing duties collected since that date. See *Revocation of Countervailing Duty Orders* (60 FR 40568; August 9, 1995). Therefore, the suspension of liquidation has been lifted, and there is no cash deposit requirement, on all shipments of the subject merchandise exported on or after January 1, 1995.

This amended notice of final results is published in accordance with 19 U.S.C. 1675(a)(1) and 19 CFR § 355.22.

Dated: January 11, 1996.  
Susan G. Esserman,  
*Assistant Secretary for Import  
Administration.*  
[FR Doc. 96-1311 Filed 1-25-96; 8:45 am]  
BILLING CODE 3510-DS-P

### National Oceanic and Atmospheric Administration

[I.D. 011796C]

#### Mid-Atlantic Fishery Management Council; Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council, together with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board will hold a public meeting.

**DATES:** The meeting will be held on January 24, 1996, from 8:00 a.m. until 5:00 p.m.

**ADDRESSES:** The meeting will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610-521-5900.

*Council Address:* Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901.

**FOR FURTHER INFORMATION CONTACT:** David R. Keifer, Executive Director; telephone: 302-674-2331.

**SUMMARY:** The purpose of this meeting is to discuss and take action on the summer flounder recreational fishery management measures for 1996 and hear NMFS proposed revisions to the striped bass management program.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at (302) 674-2331 at least 5 days prior to the meeting dates.

Dated: January 19, 1996.  
Richard W. Surdi,  
*Acting Director, Office of Fisheries  
Conservation and Management, National  
Marine Fisheries Service.*  
[FR Doc. 96-1235 Filed 1-22-96; 4:01 pm]  
BILLING CODE 3510-22-F

[I.D. 011896A]

#### Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of scientific research Permit No. 983 (P772#67)

**SUMMARY:** Notice is hereby given that Dr. Michael F. Tillman, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038 has been issued a permit to take Antarctic pinnipeds for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment, in the following office(s):

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713-2289).

**SUPPLEMENTARY INFORMATION:** On December 13, 1995, notice was published in the Federal Register (60 FR 64028) that a request for a scientific research permit to take southern elephant seal, (*Mirounga leonina*), Antarctic fur seals (*Arctocephalus gazella*) Weddell seals (*Leptonychotes weddellii*), crabeater seals (*Lobodon carcinophagus*), leopard seals (*Hydrurga leptonyx*), and Ross seals (*Ommatophoca rossii*), had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: January 18, 1996.  
Ann D. Terbush,  
*Chief, Permits and Documentation Division,  
Office of Protected Resources, National  
Marine Fisheries Service.*

[FR Doc. 96-1427 Filed 1-25-96; 8:45 am]  
BILLING CODE 3510-22-F

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED PROCUREMENT LIST

#### Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to and Deletions from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies

employing persons who are blind or have other severe disabilities, and to delete a commodity and services previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** February 26, 1996.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

*Additions:* If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

#### Commodities

Tape, Electronic Data Processing

7045-01-240-4951  
NPA: North Central Sight Services, Inc.,  
Williamsport, Pennsylvania

Frame, Picture  
7105-01-408-9957

NPA: Kandu Industries, Inc., Holland,  
Michigan

Mirror, Glass  
7105-00-260-1390

7105-00-264-5997

NPA: Kandu Industries, Inc., Holland,  
Michigan

Can, Gasoline, Military  
7240-01-337-5268

7240-01-337-5269

NPA: Royal Maid Association for the  
Blind, Inc., Hazlehurst, Mississippi

Stamp, Custom  
7520-01-381-8027

NPA: The Lighthouse for the Blind, Inc.,  
Seattle, Washington

#### Services

Janitorial/Custodial  
Department of Energy  
Elverta Maintenance Facility  
Elverta, California

NPA: Yolo Employment Services,  
Woodland, California

Janitorial/Custodial  
USDA Building  
Kalispell, Montana

NPA: Flathead Industries for the  
Handicapped  
Kalispell, Montana

Technical Order and Decal Distribution  
Oklahoma City Air Logistics Center  
Tinker Air Force Base, Oklahoma  
NPA: The Oklahoma League for the  
Blind

Oklahoma City, Oklahoma

Temporary Administrative Service  
General Services Administration  
General Products Commodity Center  
Fort Worth, Texas

NPA: Tarrant County Association for the  
Blind

Fort Worth, Texas

Toner Cartridge Remanufacturing  
Fleet and Industrial Supply Center,  
Puget Sound, Bremerton, Washington  
NPA: The Lighthouse for the Blind, Inc.  
Seattle, Washington.

*Deletions:* I certify that the following  
action will not have a significant impact  
on a substantial number of small  
entities. The major factors considered  
for this certification were:

1. The action will not result in any  
additional reporting, recordkeeping or  
other compliance requirements for small  
entities.

2. The action will not have a severe  
economic impact on future contractors  
for the commodity and services.

3. The action will result in  
authorizing small entities to furnish the

commodity and services to the  
Government.

4. There are no known regulatory  
alternatives which would accomplish  
the objectives of the Javits-Wagner-  
O'Day Act (41 U.S.C. 46-48d) in  
connection with the commodity and  
services deleted from the Procurement  
List. The following commodity and  
services have been proposed for  
deletion from the Procurement List:

#### Commodity

Necktab, Women's Shirt  
8445-01-295-3434

#### Services

Commissary Shelf Stocking and  
Custodial, Griffiss Air Force Base,  
New York

Commissary Shelf Stocking and  
Custodial, Fort Story, Virginia

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 96-1392 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-33-P

#### Procurement List Addition

**AGENCY:** Committee for Purchase From  
People Who Are Blind or Severely  
Disabled.

**ACTION:** Addition to the procurement  
list.

**SUMMARY:** This action adds to the  
Procurement List a commodity to be  
furnished by nonprofit agencies  
employing persons who are blind or  
have other severe disabilities.

**EFFECTIVE DATE:** February 26, 1996.

**ADDRESSES:** Committee for Purchase  
From People Who Are Blind or Severely  
Disabled, Crystal Square 3, Suite 403,  
1735 Jefferson Davis Highway,  
Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:**  
Beverly Milkman (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** On  
October 13, 1995, the Committee for  
Purchase From People Who Are Blind  
or Severely Disabled published notice  
(60 F.R. 53338) of proposed addition to  
the Procurement List.

After consideration of the material  
presented to it concerning capability of  
qualified nonprofit agencies to provide  
the commodity, fair market price, and  
impact of the addition on the current or  
most recent contractors, the Committee  
has determined that the commodity  
listed below are suitable for  
procurement by the Federal Government  
under 41 U.S.C. 46-48c and 41 CFR 51-  
2.4. I certify that the following action  
will not have a significant impact on a  
substantial number of small entities.

The major factors considered for this  
certification were:

1. The action will not result in any  
additional reporting, recordkeeping or  
other compliance requirements for small  
entities other than the small  
organizations that will furnish the  
commodity to the Government.

2. The action will not have a severe  
economic impact on current contractors  
for the commodity.

3. The action will result in  
authorizing small entities to furnish the  
commodity to the Government.

4. There are no known regulatory  
alternatives which would accomplish  
the objectives of the Javits-Wagner-  
O'Day Act (41 U.S.C. 46-48c) in  
connection with the commodity  
proposed for addition to the  
Procurement List.

Accordingly, the following  
commodity is hereby added to the  
Procurement List:

Pencil, Writing, Recycled  
7510-01-357-8952

This action does not affect current  
contracts awarded prior to the effective  
date of this addition or options  
exercised under those contracts.

Beverly L. Milkman,

*Executive Director.*

[FR Doc. 96-1393 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-33-P

#### DEPARTMENT OF DEFENSE

##### Proposed Information Collection Available for Public Comment; Notice

In compliance with Section  
3506(c)(2)(A) of the Paperwork  
Reduction Act of 1995, the Office of the  
Under Secretary of Defense (Personnel  
and Readiness) announces the following  
proposed public information collection  
and seeks public comment on the  
provisions thereof. 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 burden of the  
proposed information collection; (c)  
ways to enhance the quality, utility, and  
clarity of the information to be  
collected; and (d) ways to minimize the  
burden of the information collection on  
respondents, including through the use  
of automated collection techniques or  
other forms of information technology.

Written comments and  
recommendations on the proposed  
information collection should be sent to  
the Office of the Under Secretary of

Defense (Personnel and Readiness) (Requirements and Resources), ATTN: Reports Clearance Officer, Room 3C980, 4000 Defense Pentagon, Washington, DC 20301-4000. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

**TITLE, APPLICABLE FORMS, AND**

**APPLICABLE OMB NUMBER:** Appointment of Chaplains for the Military Services (previously entitled Certificate of Ecclesiastical Endorsement, Nomination of Chaplains for the Three Military Departments (Army, Navy, Air Force)); DD Form 2088 and DD Form x291 (Draft); OMB Control Number 0704-0190.

**SUMMARY:** This information collection is used by the Department of Defense to access chaplains into the Military Services. The collection, which is used by all the Military Services, gathers the necessary data for determining eligibility for religious organizations seeking to endorse chaplains and for clergy persons seeking endorsement as military chaplains.

**NEEDS AND USES:** Title 10 United States Code 532, 591 and DoD Directive 1304.19, requires the Department to ensure that religious organizations seeking to endorse chaplains are eligible and that applicants qualified for the military chaplain services are endorsed by those religious organizations. Two forms are associated with this program to collect the necessary information. The DD Form x291 (Draft), "Ecclesiastical Endorsing Organization Verification/Reverification Information," requests basic demographic information about the religious denominations seeking to supply chaplains. It requests the name of an official authorized to represent the organization to the Military Services, and it requires the organization to certify that it is authorized by its membership to act as the sole agency for the purpose of certifying and endorsing clergy to serve as military chaplains. The DD Form 2088, "Ecclesiastical Endorsing Agent Certification," is used by religious denominations to certify that a member of their clergy is professionally qualified to become a chaplain. It requests information about name, address, professional experience, and previous military experience to be used in determining grade, date of rank, and eligibility for promotion for appointees to the chaplain services.

*Affected Public:* Not-for-profit institutions.

*Annual Burden Hours (Including Record keeping):* 851 hours.

*Number of Respondents:* 818.

*Responses per Respondent:* 1.  
*Average Burden per Response:* 1.187.  
*Frequency:* On occasion/annually.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Office of the Under Secretary of Defense (Personnel and Readiness) Reports Clearance Officer at (703) 614-8989.

Dated: January 22, 1996.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96-1267 Filed 1-25-96; 8:45 am]

**BILLING CODE 5000-04-M**

**Proposed Information Collection Available for Public Comment; Notice**

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Requirements and Resources) (ATTN: Reports Clearance Officer), Room 3C980, 4000 Defense Pentagon, Washington, DC 20301-4000. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

**TITLE AND APPLICABLE OMB NUMBER:** Youth Attitude Tracking Study (YATS) (previously entitled Communications and Enlistment Decisions/Youth Attitude Tracking Study III (CEDS/YATS III), OMB Control Number 0704-0069.

**SUMMARY:** Approximately 10,000 young men and women are interviewed via telephone each Fall to ascertain

attitudes and opinions affecting military recruiting. Occasionally, additional interviews of 3,000 youth are conducted in the Spring or Summer (but not both in the same year), where information requirements preclude waiting for the normally scheduled Fall interviews. Information includes propensity for military service; reasons for serving in the military, or for not serving; awareness of recruiting advertising and other recruiting efforts; perceptions of the military and the sources of those perceptions; and the impact of domestic and international events on enlistment propensity. As enlistment propensity has fallen dramatically since the end of the Cold War, it enables critical evaluation of alternative explanations of declining propensity. It provides information required by Congress on year-to-year changes in enlistment propensity, and reasons for those changes.

**NEEDS AND USES:** The information provided annually to DoD and the Recruiting Services are required to ascertain changes in youth attitudes that affect recruiting budgets, and to support analysis of recruiting incentives and diagnoses of recruiting difficulties. YATS provides an independent measure of youth awareness of DoD and Service recruiting advertising, and an efficient measure of potential incentives, such as increased educational benefits. The information is used to optimize allocation of resources and evaluate the effect of policy changes. It is used in preparing testimony for Congress on the state of recruiting.

*Affected Public:* Individuals or households.

*Annual Burden Hours (Including Recordkeeping):* 5,618 hours.

*Number of Respondents:* 13,050.

*Responses per Respondent:* 1.

*Average Burden per Response:* .4305 hours.

*Frequency:* One time.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call the Office of the Under Secretary of Defense (Personnel and Readiness) Reports Clearance Officer at (703) 614-8989.

Dated: January 22, 1996.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96-1268 Filed 1-25-96; 8:45 am]

**BILLING CODE 5000-04-M**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

[OMB Control No. 9000-0040]

**Clearance Request Entitled Bid Sample  
Disposition Instructions**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000-0040).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Bid Sample Disposition Instructions. A request for public comments concerning this burden estimate was published at 60 FR 53916, October 18, 1995. No public comments were received.

**DATES:** *Comment Due Date:* February 26, 1996.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRs), 18th and F Streets, NW., Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000-0040, Bid Sample Disposition Instructions, in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501-1758.

**SUPPLEMENTARY INFORMATION:****A. Purpose**

Firms submitting bids for Government contracts are occasionally required to submit samples of the product offered to show the characteristics of the item. When bid samples are required, bidders are requested to provide instructions for disposition of the samples after the Government has had a chance to inspect

them. If no instructions are received, the samples are returned, collect, to the bidder.

**B. Annual Reporting Burden**

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, 2,663; responses per respondent, 3; total annual responses, 7,989; preparation hours per response, .167; and total response burden hours, 1,334.

**Obtaining Copies of Justifications**

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRs), Room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0040, Bid Sample Disposition Instructions, in all correspondence.

Dated: January 19, 1996.  
Beverly Fayson,  
FAR Secretariat.  
[FR Doc. 96-1138 Filed 1-25-96; 8:45 am]  
BILLING CODE 6820-EP-P

[OMB Control No. 9000-0039]

**Clearance Request for Descriptive  
Literature**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance (9000-0039).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Descriptive Literature. A request for public comments concerning this burden estimate was published at 60 FR 53915, October 18, 1995. No public comments were received.

**DATES:** *Comment Due Date:* February 26, 1996.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of

this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000-0039, Descriptive Literature, in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501-1758.

**SUPPLEMENTARY INFORMATION:****A. Purpose**

Descriptive literature means information which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. Bidders are not required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

**B. Annual Reporting Burden**

Public reporting burden for this collection of information is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, 2,663; responses per respondent, 3; total annual responses, 7,989; preparation hours per response, .167; and total response burden hours, 1,334.

**Obtaining Copies of Justifications**

Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRs), Room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0039, Descriptive Literature, in all correspondence.

Dated: January 19, 1996.  
Beverly Fayson,  
FAR Secretariat.  
[FR Doc. 96-1137 Filed 1-25-96; 8:45 am]  
BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****Office of the Secretary****Defense Science Board; Meeting**

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board will meet in closed session on February 7-8, May 1-2, and October 9-10, 1996 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition & Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Defense Science Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: January 22, 1996.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96-1266 Filed 1-25-96; 8:45 am]

**BILLING CODE 5000-04-M**

**Defense Science Board FFRDC and UARC Independent Advisory Task Force**

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board FFRDC & UARC Independent Advisory Task Force will meet as follows: on January 31, 1996 at The Aerospace Corporation, 2350 East El Segundo Boulevard, El Segundo, California, in Open session from 0800-1200 and in Closed session from 1300-1600; and on February 1, 1996 at the RAND Corporation, 1700 Main Street, Santa Monica, California, in Open session from 0800-1200 and in Closed session from 1300-1600.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as

they affect the perceived needs of the Department of Defense. At the closed portions of this meeting the Task Force will receive classified plant tours and briefings. For further information or if you would like to attend the open sessions, contact the DSB Secretariat at (703) 695-4157.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c) (1) (1988), and that accordingly portions of this meeting will be closed to the public.

Dated: January 22, 1996.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96-1265 Filed 1-25-96; 8:45 am]

**BILLING CODE 5000-04-M**

**Defense Science Board Task Force on Image-Based Automatic Target Recognition; Meeting**

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Image-Based Automatic Target Recognition will meet in closed session on February 14-15, 1996 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the ability of automatic/aided target recognition technology and systems to support important military missions, principally in the near- and mid-term. The Task Force should concentrate on those technologies and systems that use imagery (EO, IR or radar) as their primary input medium.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force 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: January 22, 1996.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96-1264 Filed 1-25-96; 8:45 am]

**BILLING CODE 5000-04-M**

**Defense Science Board Task Force on Strategic Mobility; Meetings**

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on Strategic Mobility will meet in closed session on February 1-2 and March 5-6, 1996 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will engage in a broad review of strategic mobility under a range of scenarios. The review should include the joint and service processes for planning, executing, protecting, and sustaining force deployments. It should also include the resources and activities that provide command and control, communications and information systems in support of strategic mobility.

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: January 22, 1996.

L. M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96-1263 Filed 1-25-96; 8:45 am]

**BILLING CODE 5000-04-M**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. CP96-142-000]

**Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization**

January 22, 1996.

Take notice that on January 17, 1996, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP96-142-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities necessary to establish four



additional delivery points to existing customers for firm transportation service, under Columbia's blanket certificate issued in Docket No. CP83-76-000 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.

Columbia proposes to construct and operate four delivery points, one residential for Columbia Gas of Ohio, and three residential for Mountaineer Gas Company, in estimated annual quantities of 150 dth and 450 dths, respectively. The quantities to be provided through the new delivery points will be within Columbia's authorized level of services, therefore, as stated by Columbia, there is no impact on Columbia's existing design day and annual obligations to the customers.

Columbia also estimates the cost to install the new taps to be approximately \$150 per tap.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,  
*Secretary.*

[FR Doc. 96-1283 Filed 1-25-96; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP96-139-000]

**Florida Gas Transmission Company;  
Notice of Request Under Blanket  
Authorization**

January 22, 1996.

Take notice that on January 16, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed a request with the Commission in Docket No. CP96-139-000 pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct a new delivery tap,

authorized in blanket certificate issued in Docket No. CP82-553-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

FGT proposes to construct a new delivery tap in Leon County, Florida for West Florida Natural Gas (WFNG). The delivery point will be added to the existing FTS-1 Service Agreement between FGT and the State of Florida, Department of Corrections to allow deliveries of natural gas to the new meter station. FGT states that WFNG reimburse it for all construction costs relating to the electronic flow measurement equipment, which is estimated to be \$13,129. FGT further states that WFNG would construct and operate the WFNG-Leon County Gate meter station and approximately seven miles of 4-inch pipeline connecting to the Wakulla Prison for the State of Florida.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

Lois D. Cashell,  
*Secretary.*

[FR Doc. 96-1282 Filed 1-25-96; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CP96-146-000]

**NorAm Gas Transmission Company;  
Notice of Request Under Blanket  
Authorization**

January 22, 1996.

Take notice that on January 18, 1996, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP96-146-000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate facilities in Logan County, Arkansas under NGT's blanket certificate issued in Docket No. CP82-384-000, *et al.*, pursuant to Section 7 of

the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to construct and operate a 2-inch tap and 1-inch first-cut regulator to deliver gas to NorAm Energy Corp. (ARKLA). The estimated volumes to be delivered are approximately 900 MMBtu annually and 4 MMBtu on a peak day. ARKLA agrees to reimburse NGT for the cost of the tap and first-cut regulator.

Any person or the Commission's staff may, within 45 days after issuance of the instance notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,  
*Secretary.*

[FR Doc. 96-1284 Filed 1-25-96; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. GT96-43-000]

**Northwest Pipeline Corporation; Notice  
of Proposed Changes in Service  
Agreement**

January 22, 1996.

Take notice that on January 16, 1996, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance a replacement Rate Schedule T-1 service agreement between Northwest and Pacific Interstate Transmission Company (PITCO) dated July 24, 1995, to become effective February 1, 1996.

Northwest states that this service agreement reflects the conversion from Mcf to MMBtu for PITCO's contract demand, as more fully explained in Northwest's August 31, 1995 filing in Docket No. RP95-409. It supersedes the service agreement with PITCO dated January 18, 1988.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections

385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96-1285 Filed 1-25-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM96-8-29-000]

**Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff**

January 22, 1996.

Take notice that on January 16, 1996 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track (1) rate changes attributable to storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedules LSS and GSS and (2) fuel changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X-28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S-2. This tracking filing is being made pursuant to Section 4 of Transco's Rate Schedule LSS, Section 3 of Transco's Rate Schedule GSS and Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff.

Transco states that Appendices B and C attached to the filing contain explanations of the rate changes and details regarding the computation of the revised LSS and GSS rates, respectively, and Appendix D contains an explanation of the S-2 fuel percentage change.

Transco states that copies of the filing are being mailed to each of its LSS, GSS and S-2 customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96-1287 Filed 1-25-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-227-001]

**Trunkline Gas Company; Notice of Petition to Vacate Order**

January 22, 1996.

Take notice that on January 4, 1996, Trunkline Gas Company (Trunkline), Post Office Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP94-227-000 a request to vacate an order it received in the above-referenced proceeding on July 21, 1994,<sup>1</sup> all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline states that in this proceeding the Commission granted authorization pursuant to Section 7(b) of the Natural Gas Act to abandon certain facilities, referred to as the Lake Creek Lateral Gathering System, by sale to Winnie Pipeline Company (Winnie). It is indicated that subsequent to the issuance of the Order, Trunkline and Winnie entered into discussions to finalize the sale agreement. It is further indicated that these discussions broke down and that the sale agreement between Trunkline and Winnie has been terminated.

Trunkline indicates that the subject facilities have not been abandoned and are not going to be sold as was contemplated when Trunkline filed its application and when the Commission issued its order.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 12, 1996, file with the Federal Energy

Regulatory Commission, Washington, D.C., 20426, a petition 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 protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition 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 on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the petition to vacate is required by the public convenience and necessity. If a petition 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 Trunkline to appear or be represented at the hearing.

Lois D. Cashell,  
*Secretary.*

[FR Doc. 96-1281 Filed 1-25-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP91-50-003]

**Sumas Cogeneration Company, L.P.; Notice of Amendment**

January 22, 1996.

Take notice that on January 16, 1996, Sumas Cogeneration Company, L.P. (SCCLP), 335 Parkplace, Suite 110, Kirkland, Washington 98033, filed in Docket No. CP91-50-003, an application to amend the Presidential Permit issued by the Commission all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, SCCLP requests that the Commission amend Ordering Paragraph (B) of the May 1, 1991, order and the Presidential Permit (55 FERC ¶ 61,163 (1991)) to allow Boundary Paper, Ltd. (Boundary) to access and utilize

<sup>1</sup> See Order at 68 FERC ¶ 61,107 (1994).

SCCLP's facilities at the international border between the United States and Canada. SCCLP states that Boundary's use of the border facilities will not alter the current operations and ownership except that both SCCLP's gas and Boundary's gas will be transported through the border facilities. SCCLP has requested to amend its Presidential Permit; however, the requested change will also require that the Section 3 authorization be amended as well. Therefore, it is construed that the instant filing requests an amendment of the Presidential Permit and the Section 3 authorization issued in the Commission's May 1, 1991 order.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before February 12, 1996, 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.

Lois D. Cashell,

Secretary.

FR Doc. 96-1280 Filed 1-25-96; 8:45 am]

BILLING CODE 6717-01-M

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## FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. ER95-491-000, et al.]

### New England Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 19, 1996.

Take notice that the following filings have been made with the Commission:

1. New England Power Company

[Docket No. ER95-491-000]

Take notice that on December 5, 1995, New England Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

2. Washington Water Power Company

[Docket No. ER95-1683-000]

Take notice that on December 28, 1995, Washington Water Power Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

3. Boston Edison Company

[Docket No. ER96-341-000]

Take notice that on December 19, 1995, Boston Edison Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

4. American Biomass Corporation

[Docket No. ER96-639-000]

Take notice that on December 11, 1995, American Biomass Corporation tendered for filing a Wholesale Energy Purchase Agreement with West Allegheny Biomass Energy Corporation.

*Comment date:* January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Company

[Docket No. ER96-655-000]

Take notice that on December 21, 1995, Virginia Electric Power Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 110 in the above-referenced docket.

*Comment date:* January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Calpine Newark Cogen, Inc.

[Docket No. ER96-675-000]

Take notice that on January 11, 1996, Calpine Newark Cogen, Inc. tendered for filing an amendment in the above-referenced docket.

*Comment date:* February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company Wisconsin

[Docket No. ER96-698-000]

Take notice that on December 27, 1995, Northern States Power Company tendered for filing a power and energy supply agreement with the city of Rice Lake, Wisconsin.

*Comment date:* January 31, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER96-699-000]

Take notice that on December 27, 1995, Northern Indiana Public Service Company tendered for filing an executed Service Agreement between Northern Indiana Public Service Company and WestPlains Energy-Kansas.

Under the Service Agreement, Northern Indiana Public Service Company agrees to provide services to WestPlains Energy-Kansas under Northern Indiana Public Service Company's Power Sales Tariff, which was accepting for filing by the Commission and made effective by Order dated August 17, 1995 in Docket No. ER95-1222-000. Northern Indiana Public Service Company and WestPlains Energy-Kansas request waiver of the Commission's sixty-day notice requirement to permit an effective date of January 1, 1996.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

*Comment date:* February 1, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas & Electric Company

[Docket No. ER96-705-000]

On December 28, 1995, Southern Indiana Gas & Electric Company ("SIGECO") submitted for filing a Point-To-Point Transmission Service Tariff and a Network Integration Transmission Service Tariff. Under the terms of the tariffs, SIGECO will offer firm and non-firm point-to-point transmission service, network integration service and certain ancillary services to any entity eligible for mandatory transmission service under sections 211 and 212 of the Federal Power Act. The tariffs offer eligible customers transmission services that are comparable to the transmission services that SIGECO provides itself.

SIGECO requests that the Commission permit the tariffs to become effective as of sixty days after filing.

*Comment date:* February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. Dayton Power & Light Company

[Docket No. ER96-708-000]

Take notice that on December 28, 1995, The Dayton Power and Light Company (Dayton), tendered for filing an amendment to its power supply agreement dated December 1, 1986 with American Municipal Power-Ohio, Inc. (Amp-Ohio). The amendment will

enable Dayton to provide Amp-Ohio with a variety of supply services not provided under the 1986 agreement, as well as permit Amp-Ohio to provide Dayton with certain enumerated supply services. Dayton, with the concurrence of Amp-Ohio, requests an effective date of December 29, 1995 and waiver of the Commission's notice requirements.

*Comment date:* February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

#### 11. The Dayton Power and Light Company

[Docket No. ER96-709-000]

Take notice that on December 28, 1995, The Dayton Power and Light Company (Dayton), tendered for filing an executed Master Electric Interchange Agreement between Dayton and Heartland Energy Services, Inc. (Heartland).

Pursuant to the rate schedules attached as Exhibit B to the Agreement, Dayton will provide to Heartland power and/or energy for resale.

*Comment date:* February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

#### 12. Union Electric Company

[Docket No. ER96-710-000]

Take notice that on December 28, 1995, Union Electric Company tendered for filing a letter terminating Connection 6—Rector Delivery Point to the Interchange Agreement between Union Electric and Arkansas Power & Light Company.

*Comment date:* February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

#### 13. Allegheny Power Service Corporation on behalf of West Penn Power Company

[Docket No. ER96-711-000]

Take notice that on December 28, 1995, Allegheny Power Service Corporation, on behalf of West Penn Power Company, submitted Supplement No. 6 to FERC Electric Tariff First Revised Volume No. 1. The Supplement No. 6 changes the service voltage level and provides a voltage discount as a credit to customers taking service under Schedule WS-LV.

Copies of the filing were served upon the jurisdictional customers and the Public Utility Commission.

*Comment date:* February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

#### 14. Commonwealth Edison Company

[Docket No. ER96-712-000]

Take notice that on December 28, 1995, Commonwealth Edison Company

(ComEd) submitted Service Agreements, establishing Cinergy Services Inc. (Cinergy), dated November 7, 1995; Electric Clearinghouse, Inc. (ECI), LG&E Power Marketing, Inc. (LG&E), Heartland Energy Services, Inc. (Heartland), and Enron Power Marketing, Inc. (Enron), dated November 9, 1995; Louisville Gas and Electric Company (Louisville), dated November 13, 1995; Wisconsin Electric Power Company (WEPCO), dated November 20, 1995; and Valero Power Services Company (Valero), dated December 8, 1995, as customers under the terms of ComEd's Transmission Service Tariff FTS-1 (FTS-1 Tariff). The Commission has previously designated the FTS-1 Point to Point Service tariff as FERC Electric Tariff, Second Revised Volume No. 3. Cinergy, Louisville, WEPCO and Valero are new customers. The Service Agreements with ECI, Enron, Heartland and LG&E supersedes transmission Service Agreements already on file with the Commission.

ComEd requests an effective date of November 27, 1995 for the Service Agreements with Cinergy, ECI, LG&E, Heartland, Enron, Louisville, and WEPCO, and an effective date of December 8, 1995 for the Service Agreement between ComEd and Valero, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon Cinergy, ECI, LG&E, Heartland, Enron, Louisville, WEPCO, Valero and the Illinois Commerce Commission.

*Comment date:* February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

#### 15. Public Service Company of Colorado

[Docket No. ER96-713-000]

Take notice that on December 29, 1995, Public Service Company of Colorado, tendered for filing proposed changes in its FERC Electric Rate Schedule Nos. 44, 45, 46, 47, 48, 52, 53, 54, 59, and 82. The proposed changes would increase revenues from jurisdictional sales and service by \$415,000 based on the 12 month period ending December 31, 1996. The Company proposes to increase rates to The City of Burlington, The City of Julesburg, Grand Valley Rural Power Lines, Inc., WestPlains Energy Corporation and Western Area Power Administration. The Company proposes to decrease rates to The Town of Center, Holy Cross Electric Association, Inc., Yampa Valley Electric Association, Inc., and Tri-State Generation and Transmission for its specific facility charge.

In addition, the Company filed a Power Supply Agreement between itself and the City of Glenwood Springs. The Company is also proposing to change the billing demands from 30 minutes to 60 minutes for each of its wholesale customers not already on a 60 minute billing demand basis.

The Company requests an effective date of January 1, 1996, for the rate decreases, the changes in billing demands and the Power Supply Agreement with Glenwood Springs. The Company requests an effective date of February 28, 1996 for the increases.

Copies of the filing were served upon the public utility's affected jurisdictional customers, the Public Utilities Commission of the State of Colorado, and the Colorado Office of Consumer Counsel.

*Comment date:* February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

#### 16. Puget Sound Power & Light Company

[Docket No. ER96-714-000]

Take notice that on December 29, 1995, Puget Sound Power & Light Company, tendered for filing three agreements amending its wholesale for resale power contract with the Port of Seattle (Purchaser). A copy of the filing was served on Purchaser.

Puget states that the agreements extend the term of the wholesale for resale power contract and add stranded cost recovery provisions.

*Comment date:* February 2, 1996, in accordance with Standard Paragraph E at the end of this notice.

#### 17. New York State Electric & Gas Corporation

[Docket No. ER96-715-000]

Take notice that on December 29, 1995, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Regulation's, 18 CFR 35.12, as an initial rate schedule, an agreement with Public Service Electric & Gas Company (PSE&G). The agreement provides a mechanism pursuant to which the parties can enter into separately scheduled transactions under which NYSEG will sell to PSE&G and PSE&G will purchase from NYSEG either capacity and associated energy or energy only as the parties may mutually agree.

NYSEG requests that the agreement become effective on December 30, 1995, so that the parties may, if mutually agreeable, enter into separately scheduled transactions under the

agreement. NYSEG has requested waiver of the notice requirements for good cause shown.

NYSEG served copies of the filing upon the New York State Public Service Commission and PSE&G.

*Comment date:* February 2, 1996, 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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-1279 Filed 1-25-96; 8:45 am]

BILLING CODE 6717-01-P

[Project Nos. 2613, Moxie; 2325, Weston; 2552, Ft. Halifax; 2559, Oakland; 2557, Rice Rips; 2555, Automatic; 2556, Union Gas; 2329, Wyman; 2671, Moosehead; 2389, Edwards; and 11433, Sandy River]

#### Central Maine Power, Kennebec Water Power, Edwards Manufacturing & City of Augusta, Town of Madison; Notice of Intent To Hold Public Meetings in Bingham and Augusta, Maine to Discuss the Draft Environmental Impact Statement (DEIS) for Relicensing of the Kennebec River Basin Hydroelectric Projects

January 22, 1996.

In January, 1996, the Draft Environmental Impact Statement for the Kennebec River Basin Hydroelectric Projects was distributed to all parties on the Commission's mailing list and a notice of availability was published in the Federal Register. The DEIS evaluates the environmental consequences of the proposed relicensing of eleven hydroelectric projects within the Kennebec River Basin. The projects are located on the Kennebec River, Moxie Stream, Sandy River, Sebasticook River, Messalonskee Stream in Central Maine.

Three public meetings have been scheduled to be held in Bingham and Augusta, Maine for the purpose of allowing Commission Staff to present the major DEIS findings and recommendations. Interested parties will have an opportunity to give oral comment on the DEIS for the Commission's public record. Comments will be recorded by a court reporter. Individuals will be given up to five minutes each to present their views on the DEIS.

#### Meeting Dates, Times and Locations

*Tuesday, February 13, from 7 p.m.-11 p.m.*

*Location:* Bingham, ME; Quimby Elementary School.

*Directions:* From Bingham Town Center go ½ mile south on Route 201; school is on the East side of the road.

*Wednesday, February 14, from 12:30 p.m.-3:30 p.m.*

*Location:* Augusta, ME; Augusta Civic Center.

*Directions:* From the Maine Turnpike (Interstate 95) take Exit 31 onto Civic Center Drive; proceed south ½ mile, turn right on Community Drive to Civic Center.

*Wednesday, February 14, from 7 p.m.-11 p.m.*

*Location:* Augusta, ME; Augusta Civic Center.

Comments may also be submitted in writing, addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Reference should be clearly made to the Kennebec River Basin DEIS and the specific project(s) name and project(s) number for which comments are being provided. All comments must be received by March 25, 1996.

For additional information contact: John Blair, DEIS Task Monitor at (202) 219-2845.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96-1286 Filed 1-25-96; 8:45 am]

BILLING CODE 6717-01-M

#### Office of Energy Efficiency and Renewable Energy

#### Federal Energy Management and Planning Programs; Energy Savings Performance Contract Model Solicitations

**AGENCY:** Department of Energy.

**ACTION:** Extension of public comment period.

**SUMMARY:** The Department of Energy gives notice of an extension of the comment period for the summary of proposed changes to its energy savings performance contracting model solicitations. The Notice and invitation to comment on the summary of proposed changes to the model solicitations was published in the Federal Register on December 27, 1995 (60 FR 66961). In response to requests from the public, the Department is extending the comment period.

**DATES:** Comments should be received no later than March 1, 1996.

**ADDRESSES:** All written comments are to be submitted to: U.S. Department of Energy, Office of Federal Energy Management Programs, EE-92, 1000 Independence Avenue, SW, Washington, DC 20595-0121. Fax and e-mail comments will be accepted at (202) 586-3000 and tanya.sadler@hq.doe.gov, respectively.

**FOR FURTHER INFORMATION CONTACT:** Tanya Sadler, EE-92, U.S. Department of Energy, Office of Federal Energy Management Programs, EE-92, 1000 Independence Avenue, SW, Washington, DC 20585-0121, (202) 586-7755.

Issued in Washington, D.C. on this 22nd day of January 1996.

Brian T. Castelli,

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 96-1397 Filed 1-25-96; 8:45 am]

BILLING CODE 6450-01-P

#### Inventions Available for License

**AGENCY:** Department of Energy, Office of General Counsel.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Energy announces that the following inventions are available for license in accordance with 35 U.S.C. 207-209. U.S. Patent No. 5,205,624, "Material Isolation Enclosure" U.S. Patent No. 5,032,657 "Polymerizable 2(2-Hydroxynaphthyl) 2H- Benzotriazole Compounds"

A copy of the patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231. Information describing the patented invention may be found by accessing the internet at <http://www.doe.gov/gencoun/gchome.html>

**FOR FURTHER INFORMATION:** Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000

Independence Avenue, SW.,  
Washington, DC 20585; Telephone (202)  
586- 2802.

**SUPPLEMENTARY INFORMATION:** 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR Part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for license has been announced in the Federal Register.

Issued in Washington, DC, on January 22, 1996.

Agnes P. Dover,

*Deputy General Counsel for Technology Transfer and Procurement.*

[FR Doc. 96-1396 Filed 1-25-96; 8:45 am]

BILLING CODE 6450-01-P

## Western Area Power Administration

### Central Valley Project, National Defense Authorization Act Power Allocation

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of Availability.

**SUMMARY:** The Western Area Power Administration (Western), a Federal Power Marketing Administration of the Department of Energy (DOE), announces the availability of 17.0 megawatts (MW) of power under Section 2929 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160, 107 Stat. 1547, 1935 (1993)) (NDA Act). The power will be allocated under the Final NDA Act Procedures (Procedures). The Procedures were developed by Western and published in 59 FR 61604, December 1, 1994, to fulfill the requirements of the NDA Act.

**DATES:** This additional 17 MW of NDA Act power will be allocated pursuant to the Procedures beginning on February 26, 1996. As stated in the procedures, applications from eligible entities requesting NDA Act Power from Western are being accepted up to November 30, 2003. Requests shall be considered on a first-come, first-served basis consistent with the general allocation and contract principle of the Procedures.

**ADDRESSES:** Information regarding the availability of NDA Act Power, and a copy of the Procedures, are available for public inspection and copying at Western's Sierra Nevada Regional Office located at 114 Parkshore Drive, Folsom, California 95630.

**FOR FURTHER INFORMATION CONTACT:** Zola M. Jackson, Power Marketing Manager, Sierra Nevada Customer Service Regional Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, California 95630-4710, (916) 353-4421.

#### SUPPLEMENTARY INFORMATION:

##### Background

The NDA Act was signed into public law on November 30, 1993. The Procedures, published in 59 FR 61604, on December 1, 1994, explain the process developed by Western to implement the NDA Act. The Procedures identify power classified as NDA Act Power and the types of services and contracts offered. Also set forth under the Procedures are the general eligibility criteria to be applied to all applicants requesting an allocation of NDA Act Power. The Procedures also address the process to be used by applicants when applying for NDA Act Power, which includes demonstration that certain economic development criteria are being met for closed military bases.

Section 2929 of the NDA Act provides that, for a 10-year period beginning on November 30, 1993, the electric power allocations provided as of November 30, 1993, by Western from the Central Valley Project (CVP) to military installations in the State of California that have been closed or approved for closure pursuant to the Defense Base Closure and Realignment Act of 1990 (Title XXIX of Pub. L. 101-510; 104 Stat. 1808) (1990 Act) shall be reserved for sale through long-term contracts to preference entities that agree to use such power to promote economic development at a military installation that is closed or approved for closure pursuant to the 1990 Act. To the extent power reserved by the NDA Act is not disposed of through long-term contracts, it shall be made available on a temporary basis beginning November 30, 1993, for a 10-year period to military installations in the State of California through short-term contracts. By implementing the Procedures, Western established the criteria to allocate the power made available as a result of the NDA Act.

As of the date of this publication, McClellan Air Force Base, a military installation with a CVP contract rate of delivery, is scheduled to close pursuant to the 1990 Act. Western is providing notice that in addition to the 34.209 MW already made available for allocation under 59 FR 61604, that 17.0 MW is available for allocation as NDA Act Power to entities qualifying

pursuant to the final NDA Act Procedures on a first-come, first-served basis beginning 30 days after publication of this Federal Register. Interested parties may contact Western at the address and telephone listed in this Federal Register for more information.

Military installation	Long-term firm power	Type III withdrawable	Total
McClellan Air Force Base, McClellan AFB, CA .....	15.094	1.906	17.0
TOTAL .	15.094	1.906	17.0

#### Regulatory Procedure Requirements

**Environmental Compliance:** The National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations issued by the Council on Environmental Quality, 40 C.F.R. 1500 *et seq.*, and the Department of Energy, 10 C.F.R. 1021, require that the environmental effects of agency decisions be studied and considered by decision makers. Studies were made to determine whether there were significant impacts to the environment as a result of the original allocation of the power to the military installations. These studies and analyses were included in the Revised Environmental Assessment for the Sacramento Area Office, Western Area Power Administration, 1994 Power Marketing Plan (DOE/EA-0467, Revised August, 1992) and related Finding of No Significant Impact. Pursuant to Western's proposal to implement the requirements of Section 2929 of the National Defense Authorization Act, Western determined that the preparation of an environmental impact statement was not required and issued a FONSI on April 12, 1995. This current announcement of available NDA Act Power, under the Procedures, involves the same 529 MW of Power previously analyzed and addressed in the 1994 Power Marketing Plan EA, as well as the April 12, 1995, FONSI and therefore will require no further NEPA documentation.

Issued at Golden, Colorado, January 12, 1995.

J. M. Shafer,

*Administrator.*

[FR Doc. 96-1395 Filed 1-25-96; 8:45 am]

BILLING CODE 6450-01-P

**Office of General Counsel****Unfunded Mandates Reform Act;  
Intergovernmental Consultation****AGENCY:** Department of Energy.**ACTION:** Notice of proposed statement of policy.

**SUMMARY:** The Department of Energy (DOE) is publishing for public comment a proposed statement of policy on intergovernmental consultation under the Unfunded Mandates Reform Act of 1995. DOE's proposed policy reflects the guidelines and instructions that the Director of the Office of Management and Budget (OMB) provided to each agency to develop, with input from State, local, and tribal officials, an intergovernmental consultation process with regard to significant intergovernmental mandates contained in a notice of proposed rulemaking.

**DATES:** Comments on this proposed statement of policy are due on or before March 26, 1996.

**ADDRESSES:** Comments may be submitted to the Office of the Assistant General Counsel for Regulatory Law (GC-74), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** Steve Duarte, Office of the Assistant General Counsel for Regulatory Law, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9507.

**SUPPLEMENTARY INFORMATION:** The President signed the Unfunded Mandates Reform Act of 1995 (the Act) into law as Public Law 104-4 on March 22, 1995. Section 204(a) of the Act requires each agency to develop, to the extent permitted by law, an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments in the development of a regulatory proposal containing a proposed "significant intergovernmental mandate" that is not a requirement specifically set forth in law. 2 U.S.C. 1531, 1534(a). A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that: (1) Would impose an enforceable duty upon State, local, or tribal governments (except as a condition of Federal assistance); and (2) may result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. See 2 U.S.C. 658(5)(A)(i), 1532(a).

Section 204(b) of the Act excepts intergovernmental communications in

certain circumstances from the requirements of the Federal Advisory Committee Act. 5 U.S.C. App. Those circumstances involve meetings: (1) Exclusively between Federal officials and State, local, or tribal elected officials or their designees; and (2) solely for the purposes of exchanging views, information, or advice relating to Federal programs established pursuant to a statute that explicitly or inherently provides for sharing intergovernmental responsibilities or administration. 2 U.S.C. 1534(b).

Section 204(c) of the Act requires the President to issue guidelines and instructions for implementing section 204 (a) and (b). 2 U.S.C. 1534(c). He delegated this authority to the Director of OMB, who published guidelines and instructions on September 29, 1995. 60 FR 50651.

Paragraph I of the OMB guidelines and instructions provides for each agency to develop, in consultation with State, local, and tribal governments, the intergovernmental consultation process under section 204(a) of the Act. Paragraph I further calls for agencies to develop the process by making a proposal for comment by State, local, and tribal governments. Accordingly, DOE is sending copies of today's proposed statement of policy to a list of elected State and tribal officials and of associations representing State, local, and tribal governments compiled by the DOE Office of Intergovernmental and External Affairs. To ensure that all such officials have the opportunity to participate and because there may be wider interest in DOE's process for intergovernmental consultation under the Act, DOE today is publishing for public comment its proposed policy regarding such consultation.

Section 203 of the Act supplements section 204(a). 2 U.S.C. 1533. It requires that, prior to establishing regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals. The Act defines "small government" to mean any small governmental jurisdiction defined in the Regulatory Flexibility Act, 5 U.S.C. 601(5), and any tribal government. 2 U.S.C. 658(11).

Both the Act and the OMB guidelines and instructions appear to assume that agencies must make affirmative efforts to notify State, local, and tribal officials in addition to publishing a notice of proposed rulemaking in the Federal

Register. Today's proposed statement of policy describes the extent and content of pre-proposal notice and opportunity to consult.

The proposed policy differentiates between State and tribal elected officials (or their designees) on the one hand and local elected officials (or their designees) on the other. DOE will attempt to send notices to the former, but the latter are so numerous that DOE proposes to give notice through appropriate associations who represent local governments and through the Federal Register.

The Act requires agencies to estimate the dollar impact of prospective Federal mandates to determine whether they exceed the \$100 million threshold, and therefore warrant full compliance with the intergovernmental consultation and other requirements. The Act requires adjustment of the \$100 million figure for inflation in years after 1995, but it is silent on how to adjust for inflation. Similarly, it is silent on whether and how to adjust estimated future expenditures for the time value of money. Under the proposed policy, DOE would adjust for inflation using the figures provided in the Annual Report of the President's Council of Economic Advisers, and discount to present value using OMB Circular A-94 which currently provides for 7 percent as a discount rate for government-wide use.

State, local and tribal officials, as well as members of the public, are invited to provide comment on the adequacy and practicability of the proposed policy.

Issued in Washington, D.C., on January 19, 1996.

Robert R. Nordhaus,  
*General Counsel.*

On the basis of the foregoing, DOE proposes the following Statement of Policy:

Statement of Policy on the Process for Intergovernmental Consultation Under the Unfunded Mandates Reform Act of 1995

**I. Purpose**

This Statement of Policy implements sections 203 and 204 of the Unfunded Mandates Reform Act of 1995 (Act), 2 U.S.C. 1533, 1534, consistent with the guidelines and instructions of the Director of the Office of Management and Budget (OMB).

**II. Applicability**

This Statement of Policy applies to the development of any regulation (other than a regulation for a financial assistance program) containing a significant intergovernmental mandate under the Act. A significant



intergovernmental mandate is a mandate that: (1) Would impose an enforceable duty upon State, local, or tribal governments (except as a condition of Federal assistance); and (2) may result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. DOE officials may apply this Statement of Policy selectively if there is an exigent need for immediate agency action that would warrant waiver of prior notice and opportunity for public comment under the Administrative Procedure Act, 5 U.S.C. 553.

### III. Intergovernmental Consultation

*When to begin.* As early as possible in the development of a notice of proposed rulemaking (for other than a financial assistance program) that involves an enforceable duty on State, local, or tribal governments, the responsible Secretarial Officer, with the concurrence of the General Counsel, should estimate whether the aggregate compliance expenditures will be in the amount of \$100 million or more in any one year. In making such an estimate, the Secretarial Officer should adjust the \$100 million figure in years after 1995 using the rate of inflation in the Annual Report of the President's Council of Economic Advisers and should discount estimated future expenditures to present value using the discount rate under OMB Circular A-94.

*Content of notice.* Upon determining that a proposed regulatory mandate on State, local, or tribal governments may be a significant intergovernmental mandate, the Secretarial Officer responsible for the rulemaking should provide adequate notice to pertinent State, local and tribal officials: (1) Describing the nature and authority for the rulemaking; (2) explaining DOE's estimate of the resulting increase in their governmental expenditure level; (3) inviting them to participate in the development of the notice of proposed rulemaking by participating in meetings with DOE or by presenting their views in writing on the likely effects of the regulatory requirement or legally available policy alternatives that DOE should take into account. If the authorizing statute for a rule requires publication of an advance notice of proposed rulemaking, then these content requirements may be addressed in that advance notice.

*How to notify State and tribal officials.* With respect to State and tribal governments, actual notice should be given by letter, using a mailing list maintained by the DOE Office of Intergovernmental and External Affairs

that includes elected chief executives (or their designees), chief financial officers (or their designees), the National Governors Association, and the National Congress of American Indians. The Secretarial Officer also should provide constructive notice in the Federal Register.

*How to notify local officials.* With respect to local governments, the Secretarial Officer should provide notice through the Federal Register and by letter to the following associations: the National League of Cities, the National Association of Counties, and the U.S. Conference of Mayors. If a significant intergovernmental mandate might affect local governments in a limited area of the United States, then the Secretarial Officer, in consultation with the Office of Intergovernmental and External Affairs, should give actual notice by letter to appropriate local officials if practicable.

*Exemption from the Federal Advisory Committee Act.* Secretarial Officers are encouraged to meet with State, local, and tribal elected officials (or their designees) to exchange views, information, and advice concerning the implementation of intergovernmental responsibilities or administration. Meetings for this purpose that do not include other members of the public are exempt from the Federal Advisory Committee Act, 2 U.S.C. 1534(b).

*Small government consultation plan.* If the proposed regulatory requirements might significantly or uniquely affect small governments, then the Secretarial Officer should summarize in the Supplementary Information section of the notice of proposed rulemaking its plan for intergovernmental consultation under section 203 of the Act. Unless impracticable, the plan should provide for actual notice by letter to potentially affected small governments.

*Documenting compliance.* The Supplementary Information section of any notice of proposed and final rulemaking involving a significant intergovernmental mandate upon State, local, or Indian tribal governments should describe DOE's determinations and compliance activities under the Act. The Supplementary Information section of the notice of proposed rulemaking should describe the estimated impact of an intergovernmental mandate, the assumptions underlying its calculation, and the resulting determination of whether the rulemaking involves a significant intergovernmental mandate. It should discuss, as appropriate, cost and benefit estimates and any reasonable suggestions received during pre-notice intergovernmental consultations. Any substantive pre-

notice written communications should be described in the Supplementary Information and made available for inspection in the public rulemaking file in the DOE Freedom of Information Reading Room.

*Reporting.* Pursuant to the OMB guidelines and instructions, the Office of General Counsel, with the cooperation of the Secretarial Officers, will prepare the annual report to OMB on compliance with the intergovernmental consultation requirements of the Act (initially due on January 15, 1996, and annually on January 15 thereafter).

[FR Doc. 96-1198 Filed 1-25-96; 8:45 am]

BILLING CODE 6450-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5403-9]

### Agency Information Collection Activities Under OMB Review: National Water Quality Inventory Reports

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 26, 1996.

**FOR FURTHER INFORMATION OR A COPY CALL:** Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR No. 1506.04.

**SUPPLEMENTARY INFORMATION:**

*Title:* National Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e)). (OMB Control No. 2040-0071; EPA ICR No. 1560.04). This is a request for extension of a currently approved collection.

*Abstract:* Section 305(b) of the Clean Water Act (Pub. L. 92-500, 33 U.S.C. 1251 *et seq.*, most recently amended in 1987 by Pub. L. 100-4), requires each State to prepare and submit a biennial water quality report to the EPA Administrator. Regulations for water quality monitoring, planning, management and reporting are found in 40 CFR part 130. Each 305(b) report includes such information as a



description of the quality of waters of the State; an analysis of the extent to which these waters provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water; recommendations for additional action necessary to achieve such uses; an estimate of the environmental impact and economic and social costs as well as the economic and social benefits of such achievement; and a description of the nature and extent of nonpoint sources of pollutants and recommendations as to programs needed to control each category of such sources.

Under the CWA Section 314(a)(2), States must incorporate information regarding Clean Lakes into the 305(b) reports. States are to include the following: an identification and classification according to trophic condition of all publicly owned lakes; a description of the methods to control sources of pollution and restore these lakes; methods to mitigate the harmful effects of high acidity; a list and description of publicly owned lakes for which uses are known to be impaired; and an assessment of the status and trends of water quality in lakes.

Section 303(d)(1) of the CWA requires States to identify and rank water-quality limited waters which will not meet State water quality standards after implementation of required controls, such as, technology-based point source controls.

Reporting under Sections 305(b) and 314 is required of the 50 States. Reporting activities under Section 303(d) may be submitted as part of the 305(b) report or may be submitted under separate cover. Other respondents (Territories, River Basin Commissions, certain Indian Tribes or Tribal Groups) also prepare 305(b) reports to document the quality of their waters to EPA, Congress, and the public and, in some cases, to meet grant conditions.

The 305(b) reporting process is an essential component of the EPA water pollution control program. EPA's Office of Water uses the 305(b) reports as the principal information source for assessing nationwide water quality, progress made in maintaining and restoring water quality, and the extent of remaining water pollution problems. EPA prepares the National Water Quality Inventory Report to Congress and evaluates impacts of EPA's water pollution control programs with the information and data supplied in the State and Tribal 305(b) reports and the corresponding national database, the EPA Waterbody System. The Office of

Water uses the Report to Congress to target persistent and emerging water quality problems with new initiatives and to improve or eliminate ineffective programs.

EPA uses the information submitted under Section 314 to evaluate and to report on trends in the status of lake water quality reports issued by the Section 314 Clean Lakes Program. The Agency also uses this information for a variety of other purposes including to assist in the management of lake projects funded under both the Section 314 and 319 of the Clean Water Act.

Under Section 303(d), EPA must review and approve or disapprove the State lists of water-quality limited waterbodies still requiring total maximum daily loads (TMDLs). Section 303(d) of the CWA establishes the TMDL process to provide for more stringent water-quality based controls when required Federal, State or local controls are inadequate to achieve State water quality standards. TMDLs encourage a holistic view of water quality problems considering all contributions and instream water quality and provide a method to allocate those contributions to meet water quality standards.

The next 305(b) reports and 303(d) lists are due to EPA in April 1996. Prior to each 305(b) reporting deadline, EPA publishes guidelines on the types of information requested of respondents in their 305(b) reports. The current edition is Guidelines for the Preparation of the 1996 State Water Quality Assessments (305(b) Reports), EPA 841-B-95-001, May 1995. (For further information or a copy call: Barry Burgan at EPA, (202) 260-7060).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/6/95 (60 FR 52392). No comments were received.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3,011 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes

of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Respondents/Affected Entities:** States, Territories, and River Basin Commissions.

**Estimated Number of Respondents:** 58.

**Frequency of Response:** Reports every 5 years beginning in 1996; annual electronic updates of water quality assessment data beginning in 1997.

**Estimated Total Annual Hour Burden:** 174,638 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1560.04 and OMB Control No. 2040-0071 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2136), 401 M Street, SW., Washington, DC 20460.

and  
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: January 19, 1996.

Joseph Retzer,

Director, Regulatory Information Division.  
[FR Doc. 96-1405 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5331-3]

**Notice of Transfer and Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation, and Liability Act to EPA Contractors and Subcontractors**

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

**ACTION:** Notice for comment.

**SUMMARY:** EPA Region IV hereby complies with the requirements of 40 CFR 2.301(h) and 40 CFR 2.310(h) and intends to authorize certain contractors and subcontractors access to Confidential Business Information

("CBI") which has been submitted to EPA Region IV, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

**FOR FURTHER INFORMATION CONTACT:** Environmental Protection Agency, Region IV, Andrew N. Hey, 345 Courtland St., N.E., Atlanta, Georgia 30365, (404) 347-2641, ext. 2238.

Notice of Required Determinations, Contract Provisions and Opportunity To Comment

CERCLA, commonly known as "Superfund," requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery and litigation support.

EPA Region IV has determined that disclosure of CBI to its contractors and subcontractors is necessary in order that they may carry out the work requested under those contracts of subcontracts with EPA, including (1) compilation, organization and tracking of litigation support documents and information, (2) review and analysis of documents and information, and (3) provision of computerized database systems and customized reports. Documents include, but are not limited to, responses to CERCLA Section 104(e) information requests, contractor invoices, and progress reports. In performing these tasks, employees of the contractors and subcontractors listed below will be required to sign a written agreement that they: (1) will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information and any abstracts or extracts therefrom: (1) upon completion of the contracts; (b) upon request of the EPA; or (c) whenever the information is no longer required by the contractor or subcontractor for performance of work requested under those contracts. These nondisclosure statements shall be maintained on file with the EPA Region IV Project for CACI. CACI employees will be provided technical direction from their EPA contract management staff.

EPA hereby advised affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(1)(iii) and 40 CFR 2.310(h). Comments should be sent to Environmental Protection Agency, Region IV, Andrew N. Hey, 345

Courtland St., N.E., Atlanta, Georgia 30365.

Patrick M. Tobin,  
*Acting Regional Administrator.*

Contractor, subcontractor	Contract No.
CACI .....	3C-G-ENR-0051

[FR Doc. 96-1406 Filed 1-25-96; 8:45 am]

**BILLING CODE 6560-50-M**

**[FRL-5403-6]**

### Public Water System Supervision Program Revision for the State of California Public Notification Regulations

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

**ACTION:** Notice of decision and opportunity for hearing.

**SUMMARY:** Notice is hereby given that the State of California is revising its approved State Public Water System Supervision Program. California has adopted revised drinking water regulations which require owners or operators of public water systems to notify the persons they serve when certain violations of the National Primary Drinking Water Regulations (NPDWRs) or certain monitoring requirements occur, when variance or exemptions are in effect, and when a system fails to comply with any schedule prescribed pursuant to a variance or exemption. These state regulations correspond to National Primary Drinking Water Regulations promulgated by EPA on October 28, 1987 [52 FR 41534]. EPA has determined that the State program revisions are no less stringent than the corresponding federal rules. Therefore, EPA has tentatively decided to approve the State program revision.

All interested parties are invited to request a public hearing on EPA's decision to approve the State program revisions. A request for a public hearing must be submitted by February 26, 1996, to the Regional Administrator at the address shown below. Insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become effective February 26, 1996.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity

requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at the following offices: California Department of Health Services, Division of Drinking Water and Environmental Management, 601 North 7th Street, P.O. Box 942732, Sacramento, CA 94234-7320; and EPA, Region IX, Water Management Division, Drinking Water Section (W-6-1), 75 Hawthorne Street, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** William M. Robberson, EPA, Region IX, at the San Francisco address given above or by telephone at (415) 744-1857.

[Sec. 1413 of the Safe Drinking Water Act as amended [1986]; and 40 CFR 142.10 of the National Primary Drinking Water Regulations]

Dated: December 18, 1996.

Felicia Marcus,  
*Regional Administrator.*

[FR Doc. 96-1399 Filed 1-25-96; 8:45 am]

**BILLING CODE 6560-50-P**

**[ER-FRL-5231-4]**

### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 OR (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed December 11, 1995 Through December 15, 1995 Pursuant to 40 CFR 1506.9.

\*Due to the federal government furlough and closing in the Washington, DC area due to inclement weather, the 45 and 30 Day Comment Periods are Calculated from the Intended Federal Register Date of December 22, 1995.

*EIS No. 950577, DRAFT EIS, NPS, CA, Lava Beds National Monument, General Management Plan, Implementation, Siskiyou and Modoc Counties, CA, Due: February 21, 1996, Contact: Craig Dorman (916) 667-2282.*

*EIS No. 950578, FINAL SUPPLEMENT, AFS, AK, Central Prince of Wales Ketchikan Pulp Long-Term Time Sale, Additional Information,*

Implementation, Tongass National Forest, Prince of Wales Island, AK, Due: January 22, 1996, Contact: David Arrasmith (907) 228-6304.

*EIS No. 950579*, DRAFT EIS, FAA, MN, Dual Track Airport Planning Process, Construction and Expansion, Minneapolis-St. Paul International Airport, Twin Cities, Hennepin and Dakota Counties, MN, Due: February 13, 1996, Contact: Glen Orcutt (612) 725-4367.

*EIS No. 950580*, DRAFT EIS, SCS, HI, Upcountry Maui Watershed, Implementation, To Address Agricultural Water Shortage, COE Section 404 Permit, Makawao District, Island of Maui, Maui County, HI, Due: February 5, 1996, Contact: Kenneth M. Kaneshiro (808) 541-2600.

*EIS No. 950581*, DRAFT EIS, FHW, FL, Tampa Interstate Project, I-275 to just north of Cypress Street and I-275 from the Howard Frankland Bridge/Kennedy Boulevard ramps north to Dr. Martin Luther King, Jr. Boulevard and I-4 from I-275, Hillsborough County, FL, Due: February 6, 1996, Contact: Mark D. Bartlett (904) 942-9598.

*EIS No. 950582*, REVISED DRAFT EIS, USA, OR, Umatilla Depot Activity, Revise to Disposal of Chemical Agents and Munitions Stored, Construction and Operation, Morrow and Umatilla Counties, OR, Due: February 16, 1996, Contact: Catherine Miller (410) 671-4181.

*EIS No. 950583*, DRAFT EIS, FHW, WA, WA-509 Extension/South Access Road Corridor Project, Construction, Funding and Possible COE Section 404 Permit, the Cities of SeaTac, Des Moines, Kent and Federal Way, King County, WA, Due: February 05, 1996, Contact: Dale Morimoto (206) 440-4548.

*EIS No. 950584*, DRAFT EIS, BLM, AZ, Morenci Land Exchange, Implementation, Exchange of Federal Lands for Private Lands, Safford District, Greenlee, Graham, Cochise and Pima Counties, AZ, Due: February 20, 1996, Contact: Scott Evans (520) 428-4040.

*EIS No. 950585*, DRAFT EIS, AFS, WA, Taneum/Peaches Road Access Project, Issuance of Two Temporary Permits to Plum Creek for Road Construction, Wenatchee National Forest, Cle Elum Ranger District, Kittitas County, WA, Due: February 05, 1996, Contact: Douglas Campbell (509) 674-4411.

*EIS No. 950586*, FINAL EIS, AFS, UT, WY, Wasatch-Cache National Forest, Rangeland Health Forest Management Plan, Implementation, Cache, Box Elders, Davis, Duchesne, Morgan, Rich, Salt Lake, Tooele, Summit, Wasatch and Weber Counties, UT and Uinta County,

WY, Due: January 22, 1996, Contact: Tom Scott (801) 524-5188.

*EIS No. 950587*, FINAL EIS, BLM, WY, Jackpot Underground Uranium Mine Project, Construction and Operation, Plan of Operation Approval, NPDES Permit and COE Section 404 Permit, Fremont and Sweetwater Counties, WY, Due: January 22, 1996, Contact: Larry Kmoch (307) 328-3208.

*EIS No. 950588*, FINAL EIS, USN, TX, Mine Warfare Center of Excellence (MWCE) Establishment, Construction and Operations, Magnetic Silencing Facility (MSF), Aviation Mine Count Measures (AMCM) and Sled Facility, Possible NPDES Permit, COE Section 10 and 404 Permits, Corpus Christi Bay Area, TX, Due: January 22, 1996, Contact: Will Sloger (803) 820-5797.

*EIS No. 950589*, DRAFT EIS, DOE, NM, Medical Isotopes Production Project (MIPP), Establish and Produce a Continuous Supply of Molybdenum-99 and Related Isotopes, Bernalillo County, NM, Due: February 9, 1995, Contact: Wade P. Carroll (301) 903-7731.

*EIS No. 950590*, FINAL EIS, BOP, NY, New York Federal Detention Center, Construction and Operation, Possible Site Selection, Alboin Site and Batavia Site, NY, Due: January 22, 1996, Contact: John W. Clarke (802) 660-1154.

*EIS No. 950591*, DRAFT EIS, COE, CA, San Diego County Water Authority Emergency Water Storage Project, Construction, COE Section 404 Permit, San Diego County, CA, Due: February 5, 1996, Contact: David Voutenbyk (619) 674-5384.

*EIS No. 950592*, DRAFT EIS, FHW, OH, US 50 Highway Improvements between the City of Athens to the Village of Coolville, US 50 18.58 from 4 km (2.5 miles) west of OH-690 to OH-7, US Coast Guard Permit and COE Section 10 and 404 Permits, Athens County, OH, Due: February 5, 1996, Contact: William C. Jones (614) 469-6896.

Dated: January 23, 1996.  
William D. Dickerson,  
*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 96-1465 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-U

#### [ER-FRL-5231-5]

#### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 OR (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed December 25,

1995 Through December 29, 1995 Pursuant to 40 CFR 1506.9.

\*Due to the federal government furlough and closing in the Washington, DC area due to inclement weather, the 45 and 30 Day Comment Periods are calculated from the Intended Federal Register Date of January 5, 1995.

*EIS No. 950604*, FINAL EIS, AFS, NM, Santa Fe Ski Area Master Development Plan, Upgrading and Expansion, Special-Use-Permit, Santa Fe National Forest, Espanola Ranger District, Santa Fe County, NM, Due: February 05, 1996, Contact: Robert Remilland (505) 667-5120.

*EIS No. 950605*, DRAFT SUPPLEMENT, NOA, NC, FL, SC, GA, South Atlantic Region Shrimp Fishery Management Plan, Implementation, Additional Information, Amendment 2 (Bycatch Reduction), Exclusive Economic Zone (EEZ), NC, SC, FL and GA, Due: February 20, 1995, Contact: Rolland A. Schmitt (301) 713-2239.

*EIS No. 950606*, FINAL EIS, FHW, CA, Twin Bridges Replacement across Chorro Creek, South Bay Boulevard, Funding and 404 Permit, City of Morro Bay, San Luis Obispo County, CA, Due: February 5, 1996, Contact: John Schultz (916) 498-5041.

Dated: January 23, 1996  
William D. Dickerson,  
*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 96-1466 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-U

#### [ER-FRL-5231-6]

#### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 OR (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed December 18, 1995 Through December 22, 1995 Pursuant to 40 CFR 1506.9.

\*Due to the federal government furlough and closing in the Washington, DC area due to inclement weather, the 45 and 30 Day Comment Periods are Calculated from the Intended Federal Register Date of December 29, 1995.

*EIS No. 950593*, DRAFT EIS, AFS, CA, Dinkey Allotment Livestock Grazing Strategies, Implementation, Sierra National Forest, Fresno County, CA, Due: February 12, 1996, Contact: Terry Elliott (209) 297-0706.

*EIS No. 950594*, FINAL EIS, COE, UT, Kennecott Tailings Modernization Project, Tailings Impoundment Expansion, COE Section 404 Permit Issuance, Salt Lake County, UT, Due:

January 29, 1996, Contact: Michael Schwinn (801) 295-8380.

*EIS No. 950595*, FINAL EIS, FHWA, CA, CA-180 Freeway and Expressway Construction, Chestnut Avenue to Temperance Avenue, Funding and Possible COE Section 404 Permit, Fresno County, CA, Due: January 29, 1996, Contact: Dennis A. Scovill (916) 498-5034.

*EIS No. 950597*, FINAL EIS, SFW, UT, Washington County Habitat Conservation Plan, Issuance of a Permit for Incidental Take of Mojave Desert Tortoise (*Gopherus agassizii*) Upper Virgin River Recovery Unit, Washington County, UT, Due: January 29, 1996, Contact: Robert D. Williams (801) 524-5001.

*EIS No. 950598*, FINAL SUPPLEMENT, FAA, MA, Worcester Municipal Airport Parallel Taxiway Construction to Runway 11-29, Updated Information, on the 5 Year Plan of Improvements, Worcester County, MA, Due: January 29, 1996, Contact: Eugene Conrad (508) 754-7441.

*EIS No. 950599*, FINAL EIS, TVA, TN, KY, MS, AL, GA, NC, Programmatic EIS—Energy Vision 2020, Integrated Resource Plan, Implementation of Long-Term Plan and Short-Term Action, TN, AL, KY, GA, MS, NC and VA, Due: January 29, 1996, Contact: Lynn Maxwell (615) 751-2539.

*EIS No. 950600*, DRAFT SUPPLEMENT, COE, VA, Lower Virginia Peninsula Regional Raw Water Supply Plan, Permit Approval, Cohoke Mill Creek, King William County, VA, Due: February 12, 1996, Contact: Pamela Painter (804) 441-7654.

*EIS No. 950601*, FINAL EIS, COE, PR, Rio Fajardo Flood Control Feasibility Study for Flood Protection, Implementation, PR, Due: January 29, 1996, Contact: Barbara Cintron (904) 232-1692.

*EIS No. 950602*, DRAFT EIS, COE, WA, Howard A. Hanson Dam Continued Operation and Maintenance Plan, Implementation, Green River, King County, WA, Due: March 01, 1996, Contact: Karen S. Northup (206) 764-3624.

*EIS No. 950603*, DRAFT EIS, AFS, CA, Snowcreek Golf Course Expansion, Construction and Operation, Special Use Permit, Inyo National Forest System lands, Mono County, CA, Due: February 12, 1996, Contact: Robert Hawkins (619) 873-2400.

*EIS No. 960604*, FINAL EIS, FHWA, WA, Elliott Bridge No. 3166 Replacement, from WA-169 (Renton-Maple Valley Highway) across the bridge to the intersection of 154th Place S. E., Funding, U.S. CGD Bridge Permit and COE Section 404 Permit, Cedar

River, City of Renton, King County, WA, Due: January 29, 1996, Contact: Gene Fong (206) 753-2120.

Dated: January 23, 1996.  
William D. Dickerson,  
Director, NEPA Compliance Division, Office of Federal Activities.  
[FR Doc. 96-1467 Filed 1-25-96; 8:45 am]  
BILLING CODE 6560-50-U

#### [ER-FRL-5231-7]

#### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed January 15, 1996 Through January 19, 1996 Pursuant to 40 CFR 1506.9.

*EIS No. 960008*, DRAFT EIS, USN, AZ, CA, Yuma Training Range Complex Management, Operation and Development, Marine Corps Air Station Yuma, Goldwater Range, Yuma and La Paz Cos; and Chocolate Mountain Range, Imperial and Riverside Counties, CA, Due: March 11, 1996, Contact: Ron Pierce (602) 341-3318.

*EIS No. 960009*, DRAFT EIS, AFS, AK, Upper Carroll Timber Sale, Implementation, Tongass National Forest, Ketchikan Administrative Area, Ketchikan Ranger District, Revillagigedo Island, AK, Due: March 11, 1996, Contact: Bill Nightingale (907) 225-2148.

*EIS No. 960010*, DRAFT EIS, COE, LA, Estelle Plantation Partnership Municipal Golf Course and Housing Development, Implementation, Jefferson Parish, LA, Due: March 11, 1996, Contact: Robert Martinson (504) 862-2582.

*EIS No. 960011*, DRAFT EIS, FHWA, OR, U.S. 101/Oregon Coast Highway Reconstruction, Pacific Way in the City of Gerhart to Dooley Bridge in the City of Seaside, Funding and COE Section 404 Permit, Clatsop County, OR, Due: March 11, 1996, Contact: John H. Gernhauser (503) 399-5749.

*EIS No. 960012*, FINAL EIS, AFS, ID, Upper Swiftwater Timber Sale and Road Construction, Implementation, Selway Rangers District, Nez Perce National Forest, Idaho County, ID, Due: February 26, 1996, Contact: Jerome A. Bird (208) 926-4258.

*EIS No. 960013*, REVISED FINAL EIS, DOE, WA, Yakima River Basin Fisheries Project, Updated and Additional Information, Construction, Operation and Maintenance, Funding, COE Section 10/404 Permits and NPDES Permit, Yakima Indian Nation, Yakima

County, WA, Due: February 26, 1996, Contact: Nancy Wientraub (503) 230-5373.

*EIS No. 960014*, FINAL EIS, AFS, CA, Pacific Pipeline Transportation Project, Construction/Operation, Right-of-Way Grant, Special-Use-Permit, COE Section 10 and 404 Permits, Angeles National Forest, Santa Barbara, Ventura, Los Angeles and Kern Counties, CA, Due: February 26, 1996, Contact: Richard Borden (818) 574-1613.

*EIS No. 960015*, DRAFT SUPPLEMENT, FHWA, NB, US 275 Highway Reconstruction on New Alignment west of the existing US 275/N-36 Intersection to west of the existing US 275/N-64 (West Maple Road) Interchange near Waterloo, Funding, Douglas County, NB, Due: March 11, 1996, Contact: Philip E. Barnes (402) 437-5521.

*EIS No. 960016*, FINAL EIS, DOE, WA, ID, WY, NV, OR, MT, CA, AZ, Delivery of the Canadian Entitlement by the United States Entity of power benefits, Implementation, WA, OR, ID, MI, WY, CA, NV, AZ and British Columbia, Due: February 26, 1996, Contact: Kathy Pierce (503) 230-3962.

*EIS No. 960017*, DRAFT EIS, OSM, TN, Fern Lake Petition Area for Surface Coal Mining Operations, Designation or Undesignation as Unsuitable for Coal Mining Operations, Claiborne County, TN, Due: March 25, 1996, Contact: Willis L. Gainer, (615) 545-4065.

*EIS No. 960018*, DRAFT EIS, FRC, NV, Blue Diamond South Pumped Storage Hydroelectric (FERC. No. 10756) Project, Issuance of License for Construction, Operation and Maintain, Right-of-Way Grant and Possible COE Section 404 Permit, Clark County, NV, Due: March 11, 1996, Contact: Dianne E. Rodman, (202) 219-2830.

*EIS No. 960019*, DRAFT SUPPLEMENT, FHWA, VA, DC, MD, Woodrow Wilson Bridge Improvements, Updated Information, 1-95 from the Telegraph Road/Capital Beltway Interchange in Alexandria, VA to the MD-210 Capital Beltway Interchange in Oxon Hill, MD, Funding COE 10 and 404 Permits and CGD Bridge Permit, Fairfax County, VA; Prince George's County, MD and DC, Due: March 11, 1996, Contact: David C. Lawton, (410) 962-2542.

*EIS No. 960020*, DRAFT EIS, MMS, AK, 1997 Outer Continental Shelf Oil and Gas Lease Sale 158, Yakutat Planning Area, Implementation, Gulf of Alaska, AK, Due: March 11, 1996, Contact: George Valiulis, (703) 787-1662.

*EIS No. 960021*, DRAFT EIS, COE, VA, Vint Hill Farms Station Disposal and Reuse, Implementation, Fauquier

and Prince William Counties, VA, Due: March 11, 1996, Contact: Susan Rees, (334) 694-4141.

#### Amended Notices

*EIS No. 950576*, DRAFT EIS, SFW, CA, Programmatic EIS—Natural Community Conservation Plan/Habitat Conservation Plan, Implementation and Associated Incidental Take Permit Issuance, Central and Coastal Subregion, Orange County, CA, Due: January 29, 1996, Contact: Linda R. Dawes, (714) 834-2252.

Published FR—12-15-95 Correction to Agency Contact and Telephone Number.

Dated: January 23, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96-1468 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-5231-8]

#### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 OR (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed January 01, 1996 Through January 05, 1996 Pursuant to 40 CFR 1506.9.

\*Due to the federal government furlough and closing in the Washington, DC area due to inclement weather, the 45 and 30 Day Comment Periods are Calculated from the Intended Federal Register Date of January 12, 1995.

*EIS No. 960000*, DRAFT EIS, FHW, MO, IA, US 61, US 218 and IA-394 Highway Improvements, Construction, Funding, US Army COE Section 404 Permit, Lewis and Clark Counties, MO and Lee and Henry Counties, IA, Due: February 26, 1996, Contact: Donald Neumann (314) 636-7104.

*EIS No. 960001*, DRAFT EIS, FRC, ME, Kennebec River Basin Hydroelectric Projects, Changes in Operations and Minor Construction, Licensing of 11 Hydroelectric Projects, (FERC Project Nos. 2671, 2555, 2613, 2556, 2329, 2557, 2325, 2559, 11433, 2552 and 2389), Kennebec, Somerset and Piscataquis Counties, ME, Due: March 11, 1996, Contact: John Blair (202) 219-2845.

*EIS No. 960022*, FINAL EIS, DOE, OR, Columbia River System Operation Review (SOR), Multiple Use Management, Long-Term System Planning By Interested Parties Other than Management Agencies, Canadian Entitlement Allocation Agreement

Renewal or Modification and Pacific NW Coordination Agreement Renewal or Renegotiation, OR, Due: February 12, 1996, Contact: Philip Thor (BPA) (503) 230-4235.

The US Department of Energy's, Bonneville Power Admin. (BPA); US Army Corps of Engineers (COE) and US Department of the Interior's, Bureau of Reclamation (IBR) are Joint Lead Agencies for this project. Other agency contacts are: Ray Jaren (COE) (503) 326-5194 and Cathy Konrath (IBR) (503) 872-2795.

Dated: January 23, 1996.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 96-1469 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-5231-9]

#### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 OR (202) 564-7153.

Weekly receipt of Environmental Impact Statements Filed January 08, 1996 Through January 12, 1996 Pursuant to 40 CFR 1506.9.

\*Due to the federal government furlough and closing in the Washington, DC area due to inclement weather, the 45 and 30 Day Comment Periods are Calculated from the Intended Federal Register Date of January 19, 1995.

*EIS No. 960002*, FINAL EIS, UAF, OH, Gentile Air Force Station (AFS) Disposal and Reuse, Implementation, COE Section 404 Permit and EPA Permits, Issuance, Montgomery, County, OH, Due: February 20, 1996, Contact: George H. Gauger (210) 536-3069.

*EIS No. 960003*, DRAFT SUPPLEMENT, USA, CA, Fort Ord Disposal and Reuse Installation, Implementation, Additional Information, Establishment of Presido of Monterey (POM) Annex, Cities of Marina and Seaside, Monterey County, CA, Due: March 04, 1996, Contact: Bob Verkade (916) 558-7423.

*EIS No. 960004*, FINAL EIS, GSA, WA, Pacific Highway Port of Entry (POE) Facility Expansion, Construction of WA-543 in Blaine, near the United States/Canada Border in Blaine, Whatcom County, WA, Due: February 20, 1996, Contact: Donna M. Meyer (206) 931-7675.

*EIS No. 960005*, DRAFT EIS, AFS, NM, El Cajete Pumice Mine Project, Implementation, Plan of Operation and COE Section 404 Permit, Jemez National Recreation Area. Santa Fe National

Forest, Jemez Ranger District, Sandoval County, NM, Due: March 11, 1996, Contact: Bob Crostic (505) 829-3535  
*EIS No. 960006*, DRAFT EIS, USN, PA, Philadelphia Naval Base, Disposal and Reuse, Implementation, Philadelphia, PA, Due: March 04, 1996, Contact: Tina A. Deininger (610) 595-0759.

*EIS No. 960007*, DRAFT EIS, GSA, DC, Central and West Heating Plants (CHP/WHP) Construction and Operation, Air Quality Improvement Project, District Heating System (DHS), City of Washington, DC, Due: March 31, 1996, Contact: Frank L. Thomas (202) 708-5334.

Dated: January 23, 1996.

William D. Dickerson,

Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 96-1470 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-U

[OPP-34086; FRL-4993-8]

#### Certain Chemicals; Availability of Reregistration Eligibility Decision Documents for Comment

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

**ACTION:** Notice of availability of Reregistration Eligibility Decision documents; opening of public comment period.

**SUMMARY:** This notice announces the availability of the Reregistration Eligibility Decision (RED) documents for the following List A active ingredients: Fenitrothion, Diquat Dibromide, Picloram, and Asulam. This notice starts a 60-day public comment period. The REDs for the chemicals listed above are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

**DATES:** Written comments on these decisions must be submitted by March 26, 1996.

**ADDRESSES:** Three copies of comments identified with the docket number "OPP-34086" and the case number (noted below), should be submitted to: By mail: OPP Pesticide Docket, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: OPP Pesticide Docket, Rm. 1132, Crystal Mall

2 (CM#2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP-34086". No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many

Federal Depository Libraries. Additional information on electronic submissions can be found in SUPPLEMENTARY INFORMATION of this document.

**FOR FURTHER INFORMATION CONTACT:** Technical questions on the above listed decisions should be directed to the appropriate Chemical Review Managers:

Chemical Name	Case No.	Chemical Review Manager	Telephone No.	E-mail Address
Fenitrothion .....	(0445) .....	Dennis McNeilly .....	(703) 308-8066 .....	McNeilly.dennis@epamail.epa.gov
Diquat Dibromide .....	(0288) .....	Kylie Rothwell .....	(703) 308-8055 .....	Rothwell.kylie@epamail.epa.gov
Picloram .....	(0096) .....	Venus Eagle-Kunst .....	(703) 308-8045 .....	Eagle-kunst.venus@epamail.epa.gov
Asulam .....	(0265) .....	Karen Jones .....	(703) 308-8047 .....	Jones.karen@epamail.epa.gov

Information submitted as a comment in response to this Notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

To request a copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Response and Program Resources Branch, in Rm. 1132 at the address given above or call (703) 305-5805.

**SUPPLEMENTARY INFORMATION:** The Agency has issued RED documents for the pesticidal active ingredients listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt.

Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the Federal Register.

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at 703-308-7224, and also can be reached on the Internet via fedworld.gov and EPA's gopher server, gopher.epa.gov.

Electronic comments can be sent directly to EPA at:  
opp-docket@epamail.epa.gov

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

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

"ADDRESSES" at the beginning of this document.

#### List of Subjects

Environmental protection.

Dated: January 17, 1996.

Lois Rossi,

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 96-1401 Filed 1-25-96; 8:45 am]

BILLING CODE 6560-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to OMB for Emergency Review and Approval

January 19, 1996.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995. Comments concerning the Commission's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated information techniques, are requested. The Commission has requested an emergency OMB review of this collection with an approval by January 26, 1996.

**DATES:** Persons wishing to comment on this information collection should submit comments on or before January 26, 1996.

**ADDRESSES:** Direct all comments to Timothy Fain, Office of Management and Budget, Room 10236 NEOB,

Washington, DC 20503, (202) 395-3561 or via internet at [fain-t@a1.eop.gov](mailto:fain-t@a1.eop.gov), and Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to [dconway@fcc.gov](mailto:dconway@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Dorothy Conway at 202-418-0217 or via internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

**SUPPLEMENTARY INFORMATION:** On September 21, 1995 the Commission published the Seventh Report and Order in PR Docket No. 89-553, PP Docket No. 93-253, GN Docket 93-252, FCC No. 95-395. Due to an administrative oversight the information collections contained in this order were not submitted to OMB with the Commissions request for approval of the FCC Form 175 and Form 600. This information collection will require 900 MHZ Specialized Mobile Radio (SMR) Service auction prospective licensees to file information on whether they are entitled to bidding credits or installment payment plans as a small business; it also requires information regarding joint bidding agreements and license transfers to ensure the integrity of the market structure; it also requires information from licensees to determine whether they are meeting their population coverage requirements. Additionally, incumbent operators may also exchange multiple site licenses for a single site license. The Commission is requesting OMB approval by January 26, 1996 to allow timely issuance of licenses upon completion of the auction.

*OMB Approval Number: New Collection.*

*Title:* Amendments to Parts 2 and 90 of the Commission's Rules to Provide for the use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHZ Bands Allotted to the Specialized Mobile Radio Pool, Second Order on Reconsideration and Seventh Report and Order.

*Form No.:* N/A.

*Type of Review:* New Collection.

*Respondents:* Business or other for-profit; Small businesses or organizations.

*Number of Respondents:* 1,020.

*Estimated Time Per Response:* 2-7 hours.

*Total Annual Burden:* 820 hours.

*Needs and Uses:* The information will be used by the Commission to determine whether the applicant is legally, technically and financially qualified to be a licensee. Without such information the Commission could not

determine whether to issue the licenses to the applicants that provides telecommunications services to the public and therefore fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The information will also be used to ensure the market integrity of the auction.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96-1245 Filed 1-25-96; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Marlins Consolidators, Inc. d/b/a

International Cargo Service, 8333 NW 66th Street, Miami, FL 33166,

Officers: Nicholas Cedano, President, Sara F. Dion, Vice President/Secretary

Dated: January 23, 1996.

Joseph C. Polking,

*Secretary.*

[FR Doc. 96-1382 Filed 1-25-96; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review

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

**ACTION:** Correction; delay of reporting date.

**SUMMARY:** In notice document 95-31456 beginning on page 67357 in the issue of Friday, December 29, 1995, correct the following statement regarding proposed revisions to the Reports of Condition for Foreign Subsidiaries of U.S. Banking Organizations and Financial Information for Foreign Subsidiaries of U.S. Banking Organizations (FR 2314a, b and c):

On page 67358 in the second column, the statement that proposed revisions would be effective as of the December 31, 1995, reporting date should be

corrected to read "The proposed revisions to the reporting form and instructions would be effective as of the March 31, 1996, reporting date. Respondents should use the current form and instructions for the December 31, 1995, reporting date."

Board of Governors of the Federal Reserve System, January 22, 1996.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 96-1301 Filed 1-25-96; 8:45AM]

Billing Code 6210-01-F

## Farmers Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 9, 1996.



A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Farmers Bancshares, Inc.*, Hardinsburg, Kentucky; thru its subsidiary, Farmers Bancshares Finance Corp, Inc., Hardinsburg, Kentucky, to acquire the assets and assume the liabilities of Breckinridge Loan, Inc., Hardinsburg, Kentucky, an existing consumer finance company, and thereby engage in consumer finance activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Banque Nationale de Paris*, Paris, France, and BancWest Corporation, San Francisco, California; to acquire Northbay Savings Bank, F.S.B., Petaluma, California; and thereby engage in owning, controlling or operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96-1328 Filed 1-25-96; 8:45 am]

BILLING CODE 6210-01-F

**Patapsco Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12

CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 20, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Patapsco Bancorp, Inc.*, Dundalk, Maryland; to become a bank holding company by acquiring 100 percent of the voting shares of The Patapsco Bank, Dundalk, Maryland. The Patapsco Bank is the proposed successor by charter conversion of Patapsco Federal Savings and Loan Association.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBE Bancshares, Inc.*, Earlville, Illinois; to acquire 100 percent of the

voting shares of Pinnacle Bancshares, Incorporated, Paw Paw, Illinois, and thereby indirectly acquire State Bank of Paw Paw, Illinois, Paw Paw, Illinois.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *West Texas Bancshares, Inc.*, Kermit, Texas; to merge with Monahans Bancshares, Inc., Monahans, Texas, and thereby indirectly acquire First State Bank, Monahans, Texas.

Board of Governors of the Federal Reserve System, January 22, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96-1329 Filed 1-25-96; 8:45 am]

BILLING CODE 6210-01-F

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

Proposed Project(s)

*Title:* Report on Claims of Good Cause for Refusing to Cooperate in Establishing Paternity and Security Child support.

*OMB No.:* 0970-0073.

*Description:* This report enables the Secretary, of HHS to comply with section 452(a)(10) of the Social Security Act which requires the Secretary to provide an annual report to Congress on the Child Support Enforcement program.

*Respondents:* State governments

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF-4680 .....	54	2	8	432

*Estimated Total Annual Burden Hours:* 432.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described below. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to The Administration for Children and

Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Atten: ACF Reports Clearance Officer. All requests should be identified by title. Electronic comments must be submitted as an ASCII file without special characters or encryption.

*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 or other forms of information technology. Consideration will be given



to comments and suggestions submitted within 60 days of this publication.

Dated: January 22, 1996.  
 Roberta Katson,  
 Director, Division of Information, Resource Management Services.  
 [FR Doc. 96-1341 Filed 1-25-96; 8:45 am]  
**BILLING CODE 4184-01-M**

**Proposed Information Collection Activity; Comment Request**

Proposed Project(s)  
*Title:* Welfare Reform Demonstration: Special Application Form.  
*OMB No.:* 0970-0134.  
*Description:* The form will be used by State welfare agencies to apply for federal waivers for certain welfare reform demonstrations under section

115(a) of the Social Security Act. Requests for waivers of federal law for demonstration projects falling within any of 5 broad policy areas outlined by the President in his 7/31/95 speech to the National Governors' association and submitted with the information requested on this form will be approved by the federal government within 30 days of receipt of the request.  
*Respondents:* State governments

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Special Form .....	54	1	0.75	40.5.

*Estimated Total Annual Burden Hours:* 40.5  
 In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described below. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title. Electronic comments must be submitted as an ASCII file without special characters or encryption.

*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 or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.  
 Dated: January 22, 1996.  
 Roberta Katson,  
 Director, Division of Information, Resource Management Services.  
 [FR Doc. 96-1340 Filed 1-25-96; 8:45 am]  
**BILLING CODE 4184-01-M**

**Proposed Information Collection Activity; Comment Request**  
 Proposed Project(s)  
*Title:* Statistical Report on Recipients Under Public Assistance.  
*OMB No.:* 0970-0003.  
*Description:* This report is basic to the proper administration and monitoring of the AFDC program. It provides quarterly information on applications, disposition of applications and reasons for discontinuances. The information is aggregated, analyzed and published in "Quarterly Public Assistance Statistics" by the Office of Family Assistance.  
*Respondents:* State governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
AFC-3800 .....	54	4	4	864

*Estimated Total Annual Burden Hours:* 864.  
 In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described below. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to The Administration for Children and Families, Office of Information Services,

Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by title. Electronic comments must be submitted as an ASCII file without special characters or encryption.  
 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 or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 22, 1996.

Roberta Katson,

*Director, Division of Information Resource Management Services.*

[FR Doc. 96-1339 Filed 1-25-96; 8:45 am]

BILLING CODE 4184-01-M

## Centers for Disease Control and Prevention

### Injury Research Grant Review Committee: Conference Call 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 conference call committee meeting.

*Name:* Injury Research Grant Review Committee (IRGRC).

*Time and Date:* 2 p.m.-5 p.m., February 12, 1996.

*Place:* National Center for Injury Prevention and Control (NCIPC), CDC, Koger Center, Vanderbilt Building, 1st Floor, Conference Room 1006, 2939 Flowers Road, South, Atlanta, Georgia 30341. (Exit Chamblee-Tucker Road off I-85.)

*Status:* Open: 2 p.m.-2:15 p.m., February 12, 1996. Closed: 2:15 p.m.-5 p.m., February 12, 1996.

*Purpose:* This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications relating to the support of injury control research projects and injury prevention research centers.

*Matters To Be Discussed:* Agenda items for the meeting will include announcements, discussion of review procedures, future meeting dates, and review of grant applications.

Beginning at 2:15 p.m., through 5 p.m., February 12, the Committee will meet to conduct a review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92-463.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:*

Richard W. Sattin, M.D., Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341-3724, telephone (770) 488-4580.

Dated: January 23, 1996.

Julia M. Fuller,

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96-1495 Filed 1-25-96; 8:45 am]

BILLING CODE 4163-18-M

### Savannah River Site Environmental Dose Reconstruction Project: Public Workshops

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Savannah River Site Environmental Dose Reconstruction Project: Public Workshops.

*Date:* Wednesday, February 14, 1996.

*Time:* 7 p.m.-9 p.m.

*Place:* Holiday Inn Express, 1350 Whiskey Road, Aiken, South Carolina 29803.

*Date:* Thursday, February 15, 1996.

*Time:* 7 p.m.-9 p.m.

*Place:* Hilton—The DeSoto, 15 East Liberty Street, Savannah, Georgia 31401.

*Status:* Open to the public for observation and comment, limited only by the space available. The meeting room will accommodate approximately 50 people.

*Background:* Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE), the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE site required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

*Purpose:* The purpose of these meetings is to support research which evaluates past releases of radioactive materials and chemicals from the SRS to the surrounding environment. The Project has already undergone a first phase. Phase I involved searching the site to identify and retrieve important documents to be used for dose reconstruction. Phase II will use this information to calculate chemical and radiological source terms and identify possible intake pathways (eating, drinking, and inhalation) for people who have lived in the SRS area.

Agenda items are identical for each meeting, and subject to change as priorities dictate.

*Contact Person for More Information:* Paul G. Renard, Project Manager, Radiation

Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F-35), Atlanta, Georgia 30341-3724, telephone 770/488-7040, FAX 770/488-7044.

Dated: January 22, 1996.

Julia M. Fuller,

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96-1365 Filed 1-25-96; 8:45 am]

BILLING CODE 4163-18-M

## Food and Drug Administration

[Docket No. 96N-0012]

### Animal Drug Export; ANIPRYL® Tablets

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Deprenyl Animal Health, Inc., has filed an application requesting approval for export of the animal drug ANIPRYL® (l-selegiline hydrochloride, l-deprenyl hydrochloride) tablets to Canada.

**ADDRESSES:** Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of nonfood animal drugs under the Drug Export Amendments of 1986 should also be directed to the contact person.

#### FOR FURTHER INFORMATION CONTACT:

Gregory S. Gates, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1617.

**SUPPLEMENTARY INFORMATION:** The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the

application. To meet this requirement, the agency is providing notice that Deprenyl Animal Health, Inc., 10955 Lowell, suite 710, Overland Park, KS 66210, has filed application number 8008 requesting approval for export of the animal drug ANIPRYL® (l-selegiline hydrochloride, l-deprenyl hydrochloride) tablets to Canada. The drug is administered orally for the treatment of uncomplicated canine pituitary dependent hyperadrenocorticism. The tablets are not indicated for treatment of other forms of Cushing's syndrome. The application was received and filed in the Center for Veterinary Medicine on January 4, 1996, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by February 5, 1996, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: January 18, 1996.

Robert C. Livingston,  
*Director, Office of New Animal Drug Evaluation, Center of Veterinary Medicine.*  
[FR Doc. 96-1321 Filed 1-25-96; 8:45 am]  
BILLING CODE 4160-01-F

## Health Care Financing Administration [ORD-078-N]

### Medicare Program; Announcement of Funding Availability for a Cooperative Agreement for an End-Stage Renal Disease (ESRD) Managed Care Demonstration

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

**ACTION:** Notice.

**SUMMARY:** This notice is to inform interested parties of an opportunity to

apply for funds for a cooperative agreement from HCFA's Office of Research and Demonstrations for the "End-Stage Renal Disease (ESRD) Managed Care Demonstration."

**FOR FURTHER INFORMATION, CONTACT:** Bonnie Edington (410) 786-6617.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 2355 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) required the Secretary to grant demonstration waivers for social health maintenance organization (SHMO) projects that provide for the integration of health and social services at a fixed annual prepaid capitation rate.

Section 4207(b)(4)(B) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) amended section 2355 of Pub. L. 98-369 to include a requirement that the Secretary conduct up to four additional SHMO projects to demonstrate the effectiveness and feasibility of innovative approaches to refining current targeting and financing methodologies and benefit design for SHMOs.

Section 13567(b) of the Omnibus Budget Reconciliation Act (OBRA) of 1993 (Pub. L. 103-66) further amended section 2355 of Pub. L. 98-369, requiring the Secretary to include the integration of acute and chronic care management for patients with end-stage renal disease through expanded community care case management services in at least one of the four additional SHMO projects.

##### II. Provisions of this Notice

This notice is to inform interested parties of the opportunity to apply for funds for a cooperative agreement to operate an "End-Stage Renal Disease (ESRD) Managed Care Demonstration," involving the treatment of Medicare-eligible ESRD patients in a managed care setting as required by OBRA 1993. Interested parties are required to submit an official application for consideration for grant funding and commencement of site development activities. Subject to funds availability, a one-time award of approximately \$175,000 is expected to be given to each selected awardee. HCFA expects to award one or more demonstrations through the application process.

Any organizational entity may apply. However, the applicant must be capable of assuring that the service delivery system under the demonstration will integrate acute and chronic care services, through expanded community care case management services, for ESRD patients. In addition, the

applicant must meet all applicable State requirements for bearing financial risk.

Awardees are expected to have a 9 to 12-month development period subsequent to award and prior to service delivery. In the three-year service delivery phase of the demonstration, awardees will be paid on a capitation basis in which the capitation amount will be adjusted to reflect treatment status (that is, maintenance dialysis, transplant, or functioning graft).

Potential applicants who wish to request the full solicitation and application packet should call Ms. Edington at the above telephone number, send an E-mail message to BEDINGTON@HCFA.GOV, or write to the following address: Bonnie Edington, Health Care Financing Administration, Office of Research and Demonstrations, Mail Stop C3-24-07, 7500 Security Boulevard, Baltimore, MD 21244-1850. These packets will be mailed to all requestors within approximately 10 days from the date of this notice.

Completed applications, including full proposals, will be due approximately 70 days following the date of this notice. The exact due date for applications will be specified in the application packet. Awards are expected to be made in 1996.

Authority: Section 402 of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b-1); section 222(a) of the Social Security Amendments of 1972, as amended (42 U.S.C. 1395-1(note)); section 2355 of the Deficit Reduction Act of 1984, as amended; section 4207(b)(4)(B) of the Omnibus Budget Reconciliation Act of 1990; section 13567(b) of the Omnibus Budget Reconciliation Act of 1993.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.779 Health Financing Research, Demonstrations and Experiments)

Dated: October 3, 1995.

Bruce C. Vladeck,  
*Administrator, Health Care Financing Administration.*

[FR Doc. 96-1261 Filed 1-25-96; 8:45 am]

BILLING CODE 4120-01-P

## [BPO-134-NC]

### Medicare Program; Revised Criteria and Standards for Evaluating Durable Medical Equipment, Prosthetics, Orthotics, and Supplies Regional Carriers' Performance Beginning February 1, 1996

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

**ACTION:** Notice with comment period.

**SUMMARY:** This notice revises the criteria and standards we use to evaluate the performance of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies regional carriers in administering the Medicare program under their contracts with us.

These revisions are necessary to make the performance standards consistent with HCFA's current expectations and to improve service to Medicare beneficiaries.

**DATES:** *Effective Date:* This notice is effective on February 1, 1996.

*Comment Date:* Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 26, 1996.

**ADDRESSES:** Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO-134-NC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Room C5-09-26, 7500 Security Boulevard, Baltimore, MD 21244-1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPO-134-NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690-7890).

**FOR FURTHER INFORMATION CONTACT:** Sue Lathroum, (410) 786-7409 or Rich Morrison, (410) 786-7142.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 1842(a) of the Social Security Act (the Act) authorizes contracts with carriers for the payment of Part B claims for Medicare-covered services and items. Section 1842(b) of the Act requires us to publish in the Federal Register criteria and standards for the effective and efficient performance of contract obligations before implementing them. On June 18, 1992, we published in the Federal Register (57 FR 27302) the criteria and standards

to be used for evaluating the performance of regional carriers for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) under their contracts with us. The criteria and standards measure the effectiveness and efficiency of the DMEPOS regional carriers in carrying out the requirements of their contracts. The initial evaluation period for the DMEPOS regional carriers was from October 1, 1993 through September 30, 1994. We announced that we will consider the results of these evaluations in entering into, renewing/extending, or terminating contracts or contract amendments with the DMEPOS regional carriers. We also announced that we may revise the criteria and standards if changes are needed because of administrative mandate, congressional action, or performance expectations.

The criteria and standards were included in the current contracts with the DMEPOS regional carriers, which were effective beginning January 1, 1993, with option periods extending to September 30, 1996. The criteria and standards are subject to possible revision if the contracts or contract amendments are renegotiated, new contracts are awarded, or different carrier contracts are amended to provide for the performance of the DMEPOS functions. In accordance with section 1842(b) of the Act, we must publish in the Federal Register any revisions to these criteria and standards before their implementation.

The criteria and standards published in the June 1992 final rule (57 FR 27302) are structured into six criteria to evaluate the overall performance of the DMEPOS regional carriers. They include: (1) Quality; (2) efficiency; (3) service; (4) fraud and abuse; (5) National Supplier Clearinghouse; and (6) Statistical Analysis DMEPOS regional carrier. The six criteria contain a total of 12 standards. There are two for quality, four for efficiency, three for service, one for fraud and abuse, one for the National Supplier Clearinghouse, and one for the Statistical Analysis DMEPOS regional carrier.

## II. Provisions of this Notice

A. *Changes to the June 1992 Criteria and Standards*

We used the June 1992 criteria and standards to evaluate the performance of the DMEPOS regional carriers for the period October 1, 1993 through September 30, 1994. We have determined through our experience that revisions to the "Efficiency" and "Service" criteria are necessary to reflect current needs. We also believe

that some minor clarifications to the "Quality" and "National Supplier Clearinghouse" criteria are appropriate. Therefore, as described below, we will revise the criteria and standards we use to evaluate the performance of our DMEPOS regional carriers. The revised criteria and standards will be effective February 1, 1996. These criteria will replace those listed in the June 1992 final rule (57 FR 27302).

## Efficiency Criterion

We will retain Standard 1 under the "Efficiency" criterion. We will no longer use Standards 2 through 4. Standard 2 for Electronic Media Claims (EMC) is no longer included since DMEPOS regional carriers are no longer assigned specific EMC goals previously measured under this standard. Now that specific goals are no longer being assigned, more focus can be placed on standardization of file formats. Standards 3 and 4 relating to expenditures and costs under these contracts no longer apply because contracts are awarded or contract amendments are entered into on the basis of proposed costs related to the entire DMEPOS regional carrier workload. Consequently, under the "Efficiency" criterion, beginning February 1, 1996, the DMEPOS regional carrier is required to: (1) Process 95.0 percent of clean claims within mandated timeframes, and (2) process 97.0 percent of all claims within 60 days.

## Service Criterion

We will retain Standard 1 under the Service criterion. Under Standard 2, we will retain the requirement for DMEPOS regional carriers to ensure that 95 percent of written inquiries are responded to timely and accurately. We will revise the standard to require DMEPOS regional carriers to respond to 97.5 percent of telephone inquiries timely and accurately to increase our ongoing efforts to improve services to Medicare beneficiaries.

We will revise Standard 3 regarding responses to beneficiaries and supplier education and training needs. When this standard was established, it was necessary for carriers to publish, as well as update, a supplier manual that explains the program requirements. Now that carriers have a supplier manual in place, they only need to *update* the manual. Therefore, we will remove the requirement for publishing the manual and retain only the requirement to update the supplier manual.

### Quality Criterion

In Standard 2, concerning measures to improve program effectiveness, we will clarify that the DMEPOS regional carrier is not limited to performing only the listed activities.

### National Supplier Clearinghouse Criterion

We will also clarify under the National Supplier Clearinghouse criterion that the National Supplier Clearinghouse DMEPOS regional carrier function is assigned to one of the DMEPOS regional carriers.

### B. Complete List of Revised Criteria and Standards

The complete list of the criteria and standards for evaluating the performance of DMEPOS regional carriers beginning February 1, 1996 follows:

We will use six criteria to evaluate the overall performance of DMEPOS regional carriers. They are: (1) Quality; (2) efficiency; (3) service; (4) fraud and abuse; (5) National Supplier Clearinghouse; and (6) Statistical Analysis DMEPOS regional carrier.

The six criteria contain a total of 9 standards. There are two for quality, one for efficiency, three for service, one for fraud and abuse, one for the National Supplier Clearinghouse, and one for the Statistical Analysis DMEPOS regional carrier.

#### 1. Quality Criterion

A DMEPOS regional carrier must pay claims accurately and in accordance with program instructions. The DMEPOS regional carrier is required to:

*Standard 1.* Process claims at an accuracy rate of 98.5 percent.

Claims are processed accurately with respect to coverage determinations, secondary payer consideration, supplier enrollment, and the correct payment amount.

*Standard 2.* Implement measures to improve program effectiveness.

The DMEPOS regional carriers must undertake actions to promote effective program administration with respect to DMEPOS claims. These activities include, but are not limited to the following: overpayment recovery and offsetting of claim payment; assuring the proper submission of certificates of medical necessity; review of the implementation of fee schedules and reasonable charge updates; medical review activities; and implementation of coverage policy.

#### 2. Efficiency Criterion

*Standard 1.* The DMEPOS regional carrier is required to process 95.0

percent of clean claims within mandated timeframes and 97.0 percent of all claims within 60 days.

#### 3. Service Criterion

Beneficiaries and suppliers are served by prompt and accurate administration of the program in accordance with all applicable laws, regulations, and general instructions. The DMEPOS regional carrier is required to:

*Standard 1.* Ensure that 95.0 percent of reviews and hearings are accurate and timely.

We evaluate the reviews and hearings to determine that decisions are accurate and communicated to the appropriate party within 45 days for reviews and 120 days for hearings.

*Standard 2.* Ensure that 97.5 percent of telephone inquiries and 95 percent of written inquiries are responded to accurately and timely.

The DMEPOS regional carriers must answer calls within 120 seconds, callers do not get a busy signal more than 20 percent of the time, and responses are accurate. Written responses must be accurate and prepared within 30 calendar days of date of receipt.

*Standard 3.* Respond to beneficiary and supplier education and training needs.

The DMEPOS regional carriers must undertake actions that serve the beneficiary and supplier communities by explaining program requirements through up-to-date information, periodic educational training and bulletins, updating the supplier manual, meeting with trade associations, and coordinating with local contractors on DMEPOS issues.

#### 4. Fraud and Abuse Criterion

*Standard 1.* The DMEPOS regional carrier is required to conduct an effective program integrity program.

We evaluate the DMEPOS regional carriers on a number of activities including: effectiveness in identifying and developing cases of fraud and abuse, bringing the cases to conclusion and collecting inappropriate payments, promoting beneficiary education in referring questionable suppliers or practices, and searching out supplier practices that are inappropriate.

#### 5. National Supplier Clearinghouse Criterion

(The National Supplier Clearinghouse DMEPOS regional carrier function is assigned to one of the DMEPOS regional carriers. It performs the functions measured under this criterion.)

*Standard 1.* The National Supplier Clearinghouse DMEPOS regional carrier is required to properly administer the National Supplier Clearinghouse.

We review the National Supplier Clearinghouse activities to ensure the National Supplier Clearinghouse DMEPOS regional carrier meets various requirements such as: processing new and renewal applications for billing numbers, maintaining supplier files, matching Office of the Inspector General sanctioned suppliers, and enforcing supplier standards. In addition, we evaluate the National Supplier Clearinghouse DMEPOS regional carrier's performance in conducting statistical analysis of data to identify potential areas of overutilization, overpayments, fraudulent or abusive claims practices, and other areas of concern we identify.

#### 6. Statistical Analysis DMEPOS Regional Carrier Criterion

(The Statistical Analysis DMEPOS regional carrier function is assigned to one of the DMEPOS regional carriers. It performs the functions measured under this criterion.)

*Standard 1.* The Statistical Analysis DMEPOS regional carrier is required to properly administer the Statistical Analysis DMEPOS regional carrier program.

We review the activities of the Statistical Analysis DMEPOS regional carrier to ensure it meets various requirements such as: Analyzing national reports to identify trends, aberrancies, and utilization patterns; generating reports according to our specifications; serving as the HCFA Common Procedure Coding System definition resource center; and developing national parental and enteral nutrition pricing and national floors and ceiling for DME prices.

#### III. Response To Comments

Because of the large number of items of correspondence we normally receive on Federal Register documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

#### IV. Waiver of Prior Notice and 30-Day Delay in the Effective Date

We are publishing this notice as a final notice without prior publication of a proposed notice for public comment. For the reasons discussed below, we believe that publishing a proposed notice is unnecessary.

This notice only makes minor revisions to the criteria for evaluating

DMEPOS regional carriers' performance and has no major impact on public interest. Therefore, we believe that publication of a proposal is unnecessary, and we find good cause to waive the procedure.

We also normally provide a delay of 30 days in the effective date. However, if adherence to this procedure would be impractical, unnecessary, or contrary to public interest, we may waive the delay in the effective date. As a practical matter, if we allowed a 30-day delay in the effective date of this notice, those DMEPOS regional carriers would not be in compliance with the performance standards for fiscal year 1996. This would be contrary to public interest. Therefore, we find good cause to waive the usual 30-day delay in the effective date.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Section 1842(b) of the Social Security Act (42 U.S.C. 1395u). (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 14, 1995.

Bruce C. Vladeck,

*Administrator, Health Care Financing Administration.*

Note: This document was received at the Office of the Federal Register on January 22, 1996.

[FR Doc. 96-1262 Filed 1-25-96; 8:45 am]

BILLING CODE 4120-01-P

## Health Resources and Services Administration

### Program Announcement for Grants for Family Medicine Training for Fiscal Year 1996

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1996 Grants for Family Medicine Training funded under the authority of section 747 (a) and (b), title VII of the Public Health Service Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992, Pub. L. 102-408, dated October 13, 1992. These grant programs include:

Grants for Predoctoral Training in Family Medicine

Grants for Establishment of Departments of Family Medicine

This program announcement is subject to reauthorization of the

legislative authority and to the appropriation of funds. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal years. At this time, given a continuing resolution and the absence of FY 1996 appropriations for title VII programs, the amount of available funding for these specific grant programs cannot be estimated.

#### Grants for Predoctoral Training in Family Medicine

*Purpose:* Section 747(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

*Eligibility:* Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine.

#### Grants for Establishment of Departments of Family Medicine

*Purpose:* Section 747(b) of the PHS Act authorizes support to meet the costs of projects to establish, maintain, or improve family medicine academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine. Funds awarded will be used to: (1) plan and develop model educational predoctoral, faculty development and graduate medical education programs in family medicine which will meet the requirements of section 747(a), by the end of the project period of section 747(b) support; and (2) support academic and clinical activities relevant to the field of family medicine.

The program may also assist schools to strengthen the administrative base and structure that is responsible for the planning, direction, organization, coordination, and evaluation of all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for actual operation of family medicine training programs under section 747(a).

*Eligibility:* To be eligible to receive support for this grant program, the applicant must be a public, or nonprofit private, accredited school of medicine or osteopathic medicine.

#### National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock No. 017-001-00474-0) or *Healthy People 2000* (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325 (Telephone 202-783-3238).

#### Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

#### Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products and Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

#### Review Criteria

The following review criteria were established in 42 CFR part 57, subparts Q and R, and following public comment at 60 FR 2976, dated January 12, 1995.

1. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner.

2. The potential of the project to continue on a self-sustaining basis after the period of grant support.

3. The degree to which the proposed project adequately provides for the project requirements.

4. Potential effectiveness of the proposed project in carrying out the training purposes of section 747 of the PHS Act.

Weighted indicators were also established for these review criteria following public comment at 60 FR 2976, dated January 12, 1995.

#### Other Considerations

In addition, funding factors may be applied in determining funding of approved applications. A funding preference is defined as the funding of a specific category or group of approved applicants ahead of other categories or

groups of approved applications in a discretionary program, or favorable adjustment of the formula which determines the grant award in a formula grant program. It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

#### Statutory General Preference

All of the Family Medicine Training grant programs are subject to the statutory general preference. As provided in section 791(a) of the PHS Act, statutory preference will be given to any qualified applicant that—

(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or  
(B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

This statutory preference will only be applied to applications that rank above the 20th percentile of proposals recommended for approval by the peer view group.

For Grants for Predoctoral Training in Family Medicine, the following definitions apply: "High rate" is defined as a minimum of 20 percent of graduates of the medical school in academic year 1990-91 or 1991-92.

"Significant increase in the rate" means that the rate of placing academic year 1991-92 graduates in the specified settings is at least 50 percent higher than the rate of placing academic year 1990-91 graduates in such settings and that not less than 15 percent of academic year 1991-92 graduates are working in these areas. Academic years 1990-91 and 1991-92 are used because they are the two most recent years that medical school graduates would have entered practice following the completion of residency training.

For Grants for the Establishment of Departments of Family Medicine, the following definitions apply: "High rate" means that 20 percent of all graduates of the medical school in 1991 or 1992, whichever is greater, are spending at least 50 percent of their work time in clinical practice in the specified settings.

"Significant increase in the rate" means that, between academic years 1993-94 and 1994-95, the rate of placing 1991 or 1992 graduates in the specified settings has increased by at least 50 percent and that not less than 15 percent of graduates from the most

recent year (1992) are working in these settings.

Additional general information regarding the implementation of the statutory general preference has been published in the Federal Register at 59 FR 15741, dated April 4, 1994.

#### Additional Statutory Funding Preference for Grants for the Establishment of Departments of Family Medicine

An additional statutory funding preference applies only to Grants for the Establishment of Departments of Family Medicine. Under section 747(b), a funding preference is provided for qualified applicants that agree to expend the award for the purpose of: (1) Establishing an academic administrative unit defined as a department, division, or other unit, for programs in family medicine; or (2) substantially expanding the programs of such a unit.

#### Information Requirements Provision

All of the Family Medicine Training grant programs are subject to the information requirements provision. Under section 791(b) of the Act, the Secretary may make an award under certain title VII grant programs only if the applicant for the award submits to the Secretary the following required information:

1. A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.
4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the

Federal Register at 58 FR 43642, dated August 17, 1993, and will be provided in the application materials.

#### Application Availability

Application materials are available on the World Wide Web at address: <http://www.os.dhhs.gov/hrsa/>. Click on the file name you want to download to your computer. It will be saved as a self-extracting WordPerfect 5.1 file. Once the file is downloaded to the applicant's PC, it will still be in a compressed state. To decompress the file, go to the directory where the file has been downloaded and type in the file name followed by a <return>. The file will expand to a WordPerfect 5.1 file. Applicants are strongly encouraged to obtain application materials from the World Wide Web via the Internet.

However, for applicants which do not have Internet capability, application materials are also available on the BHPPr BBS. Use your computer and modem to call (301) 443-5913. Set your modem parameters to 2400 baud, parity to none, data bits to 8, and stop bits to 1. Set your terminal emulation to ANSI or VT-100.

Once you have accessed the BHPPr Bulletin Board, you will be asked for your first and last name. It will also ask you to choose a password. **REMEMBER YOUR PASSWORD!** The first time you log on you "register" by answering a number of other questions. The next time you log on, BHPPr's Bulletin Board will know you.

Press (F) for the (F)iles Menu and (L) to (L)ist Files. Press (L) again to see a list of numbered file areas. To see a list of files in any area, type the number corresponding to that area. Competitive application materials for grant programs administered by the Bureau of Health Professions are located in the File Area item "B" title Grants Announcements.

To (R)ead a file or (D)ownload a file, you need to know its exact name as listed on BHPPr's Bulletin Board. Press (R) to (R)ead a file and type the name of the file. Press (D) to (D)ownload a file to your computer. You need to know how your communications software accomplishes downloading.

When you have completed your tour of BHPPr's Bulletin Board for this session, press (G) for (G)oodbye and press <enter>.

If you have difficulty accessing the BHPPr BBS, please try the Internet address listed above. If you do not have Internet capability and need assistance in accessing the BHPPr BBS or technical assistance with any aspect of the BHPPr BBS, please call Mr. Larry DiGiulio, Systems Operator for BHPPr BBS at (301) 443-2850 or "ldigiuli@hrsa.ssw.dhhs.gov".



Questions regarding grants policy and business management issues should be directed to Mrs. Brenda Selser, Chief, Residency and Advanced Grants Sections (bselser@hrsa.ssw.dhhs.gov), Grants Management Branch, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857. If you are unable to obtain the application

materials electronically, you may obtain application materials in the mail by sending a written request to the Grants Management Branch at the address above. Written requests may also be sent via FAX (301) 443-6343 or via the Internet address listed above. Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact the Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 9A-20, 5600 Fishers Lane, Rockville, Maryland 20857. Please see Table 1 for specific names and phone numbers for each grant program.

TABLE 1

PHS title VII section number/program title CFDA No. program regulations	Period of support	Grants management contact/ Phone No. (e-mail: bselser@hrsa.ssw.dhhs.gov) (FAX: 443-6343)	Programmatic contact/ phone No. (FAX: 443-8890)	Deadline date for competing applications
747: Predoctoral Training in FM, 93.896, 42 CFR part 57, subpart Q.	3 years .....	Mrs. Brenda Selser, (301) 443-6960.	Mrs. Betty Ball, (301) 443-1467.	Mar. 15, 1996.
747: Departments of FM, 93.984, 42 CFR part 57, subpart R.	3 years .....	Mrs. Brenda Selser, (301) 443-6960.	Mrs. Shelby Biedenkapp, (301) 443-1467.	Mar. 29, 1996.

#### Paperwork Reduction Act

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for these grant programs have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB Clearance Number is 0915-0060.

#### Deadline Dates

The deadline date for receipt of applications for each of these grant programs is shown in Table 1. Applications will be considered to be "on time" if they are either:

- (1) Received on or before the established deadline date, or
- (2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant. In addition, applications which exceed the page limitation and/or do not follow format instructions will not be accepted for processing and will be returned to the applicant.

These Grants for Family Medicine Training are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). Also, these grant programs are not subject to the Public Health System Reporting Requirements.

Dated: January 11, 1996.

Ciro V. Sumaya,  
*Administrator.*

[FR Doc. 96-1319 Filed 1-25-96; 8:45 am]

BILLING CODE 4160-15-M

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

##### Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR-3778-N-69]

##### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-1226; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify

Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the



interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ed Guilford, Federal Property Resources Services, GSA, 18th and F Streets NW, Washington, DC 20405; (202) 501-2059; U.S. Army: Derrick Mitchell, CECPW-FP, U.S. Army Center for Public Works, 7701 Telegraph Road, Alexandria, VA 22310-3862; (703) 355-0083; U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332-2300; (703) 325-0474; U.S. Air Force: Barbara Jenkins, Air Force Real Estate Agency (Area/MI), Bolling AFB, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332-8020; (202) 767-4184; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000

Independence Ave. SW, Washington, DC 20585; (202) 586-1191; (These are not toll-free numbers).

Dated: January 19, 1996.

Jacque M. Lawing,  
*Deputy Assistant Secretary for Economic Development.*

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 01/26/96

Suitable/Available Properties

*Buildings (by State)*

Alabama

Bldgs. 832, 834

Fort McClellan

Fort McClellan Co: Calhoun AL 36205-5000

Landholding Agency: Army

Property Number: 219540010

Status: Underutilized

Comment: 4425 sq. ft. each, most recent use—barracks w/o mess, off-site use only.

Florida

Alpha Site

Naval Security Group Activity

Homestead Co: Dade FL 33018-

Landholding Agency: GSA

Property Number: 219540009

Status: Excess

Comment: 51,674 sq. ft., 2-story, concrete block, most recent use military operations, and approximately 760 acres, incorrectly published on 12/1/95.

GSA Number: 4-N-FL-1079

Hawaii

Bldg. P-125

Tripler Army Medical Center

Honolulu Co: Honolulu HI 96859-5000

Landholding Agency: Army

Property Number: 219540013

Status: Excess

Comment: 7987 sq. ft., need major repairs, most recent use—boiler Plant, off-site use only.

Maryland

Bldg. E4144

Aberdeen Proving Ground

Aberdeen Co: Harford MD 21005-5001

Landholding Agency: Army

Property Number: 219540001

Status: Unutilized

Comment: 1632 sq. ft., concrete frame bath house, 1 story, presence of asbestos and lead paint.

New Jersey

Bldg. 3305

Armament Research, Dev. & Eng. Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 219540002

Status: Underutilized

Comment: 12000 sq. ft., 1 story, most recent use—admin and R&D activities.

Bldg. 1104

Armament Research, Dev. & Eng. Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 219540003

Status: Unutilized

Comment: 1320 sq. ft., 2 story, fire/electrical/safety code violations, need repairs, most recent use—family housing.

Bldg. 1105

Armament Research, Dev. & Eng. Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 219540004

Status: Unutilized

Comment: 2806 sq. ft., 3 story, fire/electrical/safety code violations, needs repairs, most recent use—family housing.

Bldg. 1113

Armament Research, Dev. & Eng. Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 219540005

Status: Unutilized

Comment: 1580 sq. ft., 2 story, fire/electrical/safety code violations, need repairs, most recent use—family housing.

Bldg. 1117

Armament Research, Dev. & Eng. Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 219540006

Status: Unutilized

Comment: 1784 sq. ft., 2 story, fire/electrical/safety code violations, need repairs, most recent use—family housing.

Bldg. 1118

Armament Research, Dev. & Eng. Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 219540007

Status: Unutilized

Comment: 648 sq. ft., 1 story, fire/electrical/safety code violations, need repairs, most recent use—family housing.

Bldg. 1392

Armament Research, Dev. & Eng. Center

Picatinny Arsenal Co: Morris NJ 07806-5000

Landholding Agency: Army

Property Number: 219540008

Status: Unutilized

Comment: 1128 sq. ft., 1 story, fire/electrical/safety code violations, need repairs, most recent use—family housing.

New York

Bldg. P-1

Glen Falls Reserve Center

Glen Falls Co: Warren NY 12801-

Location: 67-73 Warren Street

Landholding Agency: Army

Property Number: 219540015

Status: Unutilized

Comment: 19613 sq. ft., 2 story w/basement, concrete block/brick frame on .475 acres.

Bldgs. P-1 & P-2

Elizabethtown Reserve Center

Corner of Water and Cross Streets

Elizabethtown Co: Essex NY 12932-

Landholding Agency: Army

Property Number: 219540016

Status: Unutilized

Comment: 4316 sq. ft. reserve center/1325 sq. ft. motor repair shop, 1 story each, concrete block/brick frame, on 5.05 acres.

Bldgs. P-1 & P-2

Olean Reserve Center

423 Riverside Drive

Olean Co: Cattaraugus NY 14760-

Landholding Agency: Army

- Property Number: 219540017  
Status: Unutilized  
Comment: 4464 sq. ft. reserve center/1325 sq. ft. motor repair shop, 1 story each, concrete block/brick frame, on 3.9 acres.
- North Carolina  
Bldg., 222 Bayshore Drive  
Elizabeth City Co: Pasquotank NC 27909–  
Landholding Agency: GSA  
Property Number: 549540011  
Status: Excess  
Comment: 1173 sq. ft., wood frame, most recent use—residence, off-site use only.  
GSA Number: 4–U–NNC–714  
Bldg., 224 Bayshore Drive  
Elizabeth City Co: Pasquotank NC 27909–  
Landholding Agency: GSA  
Property Number: 549540012  
Status: Excess  
Comment: 3487 sq. ft. wood frame, most recent use—residence, off-site use only.  
GSA Number: 4–U–NC–715  
Bldg., 226 Bayshore Drive  
Elizabeth City Co: Pasquotank NC 27909–  
Landholding Agency: GSA  
Property Number: 549540013  
Status: Excess  
Comment: 3576 sq. ft. wood frame, most recent use—residence, off-site use only.  
GSA Number: 4–U–NC–716  
Bldg., 228 Bayshore Drive  
Elizabeth City Co: Pasquotank NC 27909–  
Landholding Agency: GSA  
Property Number: 549540014  
Status: Excess  
Comment: 3697 sq. ft. wood frame, most recent use—residence, off-site use only.  
GSA Number: 4–U–NC–717  
Bldg., Consolidated Road  
Elizabeth City Co: Pasquotank NC 27909–  
Landholding Agency: GSA  
Property Number: 549540015  
Status: Excess  
Comment: 1388 sq. ft., brick residence, off-site use only.  
GSA Number: 4–U–NC–718
- Oklahoma  
Bldg. T–2405, Fort Sill  
2405 Darby Loop  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540019  
Status: Excess  
Comment: 114 sq. ft., 1 story steel frame, possible asbestos/lead paint, off-site removal only, most recent use—flammable material storage.  
Bldg. T–2645, Fort Sill  
2645 Tacy Street  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540020  
Status: Excess  
Comment: 3135 sq. ft., 1 story, wood frame, possible/asbestos/lead paint, off-site removal only, most recent use—vehicle maintenance shop.  
Bldg. T–2646, Fort Sill  
2646 Tacy Street  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540021  
Status: Excess  
Comment: 3212 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—vehicle maintenance shop.  
Bldg., T–2648, Fort Sill  
2648 Tacy Street  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540022  
Status: Excess  
Comment: 9407 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general purpose warehouse.  
Bldg. T–3150, Fort Sill  
3150 Hoskins Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540023  
Status: Excess  
Comment: 9359 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—warehouse.  
Bldg. T–2649, Fort Sill  
2649 Tacy Street  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540024  
Status: Excess  
Comment: 9374 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—general storehouse.  
Bldg. T–2741, Fort Sill  
Miner Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540025  
Status: Excess  
Comment: 8288 sq. ft., 2 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—enlisted barracks.  
Bldg. T–3727, Fort Sill  
3727 Webster Street  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540026  
Status: Excess  
Comment: 4524 sq. ft., 2 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—enlisted barracks.  
Bldg. T–2742, Fort Sill  
2742 Miner Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540027  
Status: Excess  
Comment: 8116 sq. ft., 2 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—transient barracks.  
Bldg. T–2744, Fort Sill  
2744 Miner Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540028  
Status: Excess  
Comment: 8116 sq. ft., 2 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—transient barracks.  
Bldg. T–2747, Fort Sill  
2747 Miner Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540029  
Status: Excess  
Comment: 8192 sq. ft., 2 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—transient barracks.  
Bldg. T–2748, Fort Sill  
2748 Miner Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540030  
Status: Excess  
Comment: 8116 sq. ft., 2 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—transient barracks.  
Bldg. T–2749, Fort Sill  
2749 Miner Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540031  
Status: Excess  
Comment: 8116 se. ft., 2 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—transient barracks.  
Bldg. T–2754, Fort Sill  
2754 Miner Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540032  
Status: Excess  
Comment: 4992 sq. ft., 2 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—transient barracks.  
Bldg. T–2940, Fort Sill  
2940 Currie Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540033  
Status: Excess  
Comment: 4397 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—recreation building.  
Bldg. T–4036, Fort Sill  
4036 Currie Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540034  
Status: Excess  
Comment: 4532 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—classroom.  
Bldg. T–5043, Fort Sill  
5043 Coune Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540035  
Status: Excess  
Comment: 1563 sq. ft., 1 story wood frame, possible asbestos/lead paint, off-site removal only, most recent use—PX Branch.  
Bldg. T–5050, Fort Sill  
5050 Rumble Road  
Lawton Co: Comanche OK 73503–5100  
Landholding Agency: Army  
Property Number: 219540036  
Status: Excess



Annville Co: Lebanon PA 17003-5011  
Landholding Agency: Army  
Property Number: 219540061  
Status: Excess  
Comment: 8022 sq. ft., 1 story wood frame, off-site removal only, most recent use—admin.

Bldg. T9-55  
Fort Indiantown Gap  
Annville Co: Lebanon PA 17003-5011  
Landholding Agency: Army  
Property Number: 219540062  
Status: Excess  
Comment: 1918 sq. ft., 1 story wood frame, off-site removal only, most recent use—admin.

Bldg. T4-121  
Fort Indiantown Gap  
Annville Co: Lebanon PA 17003-5011  
Landholding Agency: Army  
Property Number: 219540063  
Status: Excess  
Comment: 600 sq. ft., 1 story wood frame, off-site removal only, most recent use—garage.

Bldg. T4-133  
Fort Indiantown Gap  
Annville Co: Lebanon PA 17003-5011  
Landholding Agency: Army  
Property Number: 219540064  
Status: Excess  
Comment: 7670 sq. ft., 2 story wood frame, off-site removal only, most recent use—officer's quarters.

Bldg. T16-151  
Fort Indiantown Gap  
Annville Co: Lebanon PA 17003-5011  
Landholding Agency: Army  
Property Number: 219540066  
Status: Excess  
Comment: 224 sq. ft., 1 story wood frame, off-site removal only.

Bldg. T16-165  
Fort Indiantown Gap  
Annville Co: Lebanon PA 17003-5011  
Landholding Agency: Army  
Property Number: 219540067  
Status: Excess  
Comment: 124 sq. ft., 1 story wood frame, off-site removal only.

#### Texas

Bldg. 832, Fort Hood  
Ft. Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219540068  
Status: Excess  
Comment: 3983 sq. ft., 2 story, off-site removal only, most recent use—admin.

Land, Fort Hood  
Ft. Hood Co: Bell TX 76544-  
Landholding Agency: Army  
Property Number: 219540069  
Status: Excess  
Comment: 4.808 acres of unimproved land, potential utilities.

Bldg. T-2654, Fort Sam Houston  
2334 Harney Road  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219540070  
Status: Excess  
Comment: 992 sq. ft., 1 story concrete frame, off-site removal only, need repairs, most recent use—machine shop.

#### Land (by State)

New York  
Land—6.965 Acres  
Dix Avenue  
Queensbury Co: Warren NY 12801-  
Landholding Agency: Army  
Property Number: 219540018  
Status: Unutilized  
Comment: 6.96 acres of vacant land, located in industrial area, potential utilities.

North Dakota  
Trailer Lots 1-6  
Stromquist 1st Addition  
Devils Lake Co: Ramsey ND 58301-  
Landholding Agency: GSA  
Property Number: 419530001  
Status: Excess  
Comment: 45720 sq. ft. in trailer park.

#### Suitable/Unavailable Properties

#### Buildings (by State)

##### Texas

Bldg. T-2656, Fort Sam Houston  
2326 Harney Road  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219540071  
Status: Excess  
Comment: 2040 sq. ft., 1 story concrete frame, off-site removal only, needs repairs, most recent use—supply warehouse.

Bldg. T-2732, Fort Sam Houston  
2081 Schofield Road  
San Antonio Co: Bexar TX 78234-5000  
Landholding Agency: Army  
Property Number: 219540072  
Status: Excess  
Comment: 8478 sq. ft., 1 story wood/concrete frame, off-site removal only, most recent use—fire station.

##### Virginia

Bldg. 589  
Fort Story  
Ft. Story Co: Princess Ann VA 23459-  
Landholding Agency: Army  
Property Number: 219540073  
Status: Excess  
Comment: 1200 sq. ft., 1 story, most recent use—service station.

#### Land (by State)

##### Florida

Woodland Tract  
Elgin AFB, AF Enlisted Widows' Home  
Ft. Walton Beach Co: Okaloosa FL 32542-5000  
Landholding Agency: Air Force  
Property Number: 219540020  
Status: Unutilized  
Comment: 3.43 acres, easement.

#### Unsuitable Properties

#### Buildings (by State)

##### Alabama

Sand Island Light House  
Gulf of Mexico  
Mobile AL  
Landholding Agency: GSA  
Property Number: 549610001  
Status: Excess  
Reason: Other  
Comment: Inaccessible

GSA Number: 4-U-AL-763

##### California

Bldg. 122  
Naval Air Weapons Station  
Point Mugu Co: Ventura CA 93042-  
Landholding Agency: Navy  
Property Number: 779610001  
Status: Unutilized  
Reason: Secured Area; Extensive deterioration.

Bldg. 1468  
Naval Construction Battalion Center  
Port Hueneme Co Ventura CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610002  
Status: Underutilized  
Reason: Secured Area.

Bldg. 1469  
Naval Construction Battalion Center  
Port Hueneme Co: Ventura CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610003  
Status: Underutilized  
Reason: Secured Area.

##### Colorado

Bldg. 2  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 419610039  
Status: Unutilized  
Reason: Other; Secured Area  
Comment: Contamination

Bldg. 7  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 419610040  
Status: Unutilized  
Reason: Other; Secured Area  
Comment: Contamination

Bldg. 31-A  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 419610041  
Status: Unutilized  
Reason: Other; Secured Area  
Comment: Contamination

Bldg. 33  
Grand Junction Projects Office  
Grand Junction Co: Mesa CO 81503-  
Landholding Agency: Energy  
Property Number: 419610042  
Status: Unutilized  
Reason: Other; Secured Area  
Comment: Contamination

##### Idaho

Bldg: PBF-621  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 419610001  
Status: Unutilized  
Reason: Secured Area

Bldg: CPP-1609  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 419610002  
Status: Unutilized  
Reason: Secured Area  
Bldg: CPP-691



Status: Unutilized  
Reason: Secured Area  
Bldg. CF-665  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 419610035  
Status: Unutilized  
Reason: Secured Area  
Bldg. CF-691  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 419610036  
Status: Unutilized  
Reason: Secured Area  
Bldg. CF-606  
Idaho National Engineering Laboratory  
Scoville Co: Butte ID 83415-  
Landholding Agency: Energy  
Property Number: 419610037  
Status: Unutilized  
Reason: Secured Area  
Louisiana  
Weeks Island Facility  
New Iberia Co: Iberia Parish LA 70560-  
Landholding Agency: Energy  
Property Number: 419610038  
Status: Underutilized  
Reason: Secured Area  
North Carolina  
Bldg. 8525  
Marine Corps Air Station, Cherry Point Co:  
Jones NC 28585-  
Landholding Agency: Navy  
Property Number: 779610013  
Status: Unutilized  
Reason: Secured Area; Extensive  
deterioration  
Virginia  
Bldg. 79  
Norfolk Naval Shipyard  
Portsmouth VA 23079-5000  
Landholding Agency: Navy  
Property Number: 779610014  
Status: Unutilized  
Reason: Within 2000 ft. of flammable or  
explosive material; Secured Area.  
*Land (by State)*  
California  
Lease Parcel #2  
Naval Construction Battalion Center  
Port Hueneme Co: Ventura CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610004  
Status: Underutilized  
Reason: Secured Area  
N. 1/2 of Lease Parcel #3  
Naval Construction Battalion Center  
Port Hueneme Co: Ventura CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610005  
Status: Underutilized  
Reason: Secured Area  
Lease Parcel #4  
Naval Construction Battalion Center  
Port Hueneme Co: Ventura CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610006  
Status: Underutilized  
Reason: Secured Area  
Lease Parcel #6

Naval Construction Battalion Center  
Port Hueneme Co: Ventura, CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610007  
Status: Underutilized  
Reason: Secured Area  
Lease Parcel #7  
Naval Construction Battalion Center  
Port Hueneme Co: Ventura, CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610008  
Status: Underutilized  
Reason: Secured Area  
Lease Parcel #8  
Naval Construction Battalion Center  
Port Hueneme Co: Ventura, CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610009  
Status: Underutilized  
Reason: Secured Area  
Lease Parcel #9  
Naval Construction Battalion Center  
Port Hueneme Co: Ventura, CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610010  
Status: Underutilized  
Reason: Secured Area  
Lease Parcel #10  
Naval Construction Battalion Center  
Port Hueneme Co: Ventura, CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610011  
Status: Underutilized  
Reason: Secured Area  
Lease Parcel #11  
Naval Construction Battalion Center  
Port Hueneme Co: Ventura, CA 93043-4301  
Landholding Agency: Navy  
Property Number: 779610012  
Status: Underutilized  
Reason: Secured Area

[FR Doc. 96-969 Filed 1-25-96; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID-020-1200-00]

#### Idaho; Closure of Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closures of public lands in Cassia and Twin Falls Counties, Idaho.

**SUMMARY:** Notice is hereby given that certain public lands in Idaho, within Cassia and Twin Falls Counties, shall be closed to prevent erosion and rutting of the roads traveled by motor vehicles during wet or snowy conditions. The roads will be closed immediately and remain closed through March 15, 1996. All roads will be posted at the entrance to public lands. The legal land descriptions for the road closures are as follows:

The Indian Springs Road (BLM road #4214), from the Foothill Road to the U.S.

Forest Service boundary, a distance of approximately 4.5 miles. The road is located at T. 12 S., R. 18 E., section 4 in Twin Falls County.

The Cherry Springs Road (BLM road #4213), from the Rock Creek Road southwest to its intersection with the Indian Springs Road, just north of the U.S. Forest Service boundary. This is a distance of approximately 6 miles. The road is located at T. 12 S., R. 18 E. section 2 in Twin Falls County.

The North Cottonwood Road (BLM road #4221) has two entrances, one on the east side and one on the west. The east entrance of North Cottonwood Creek Road starts at the Foothill Road and goes to the junction of the North Cottonwood Creek Road, approximately 6 miles. The west entrance to North Cottonwood Road starts at the Foothill Road and goes to the U.S. Forest Service boundary, a distance of approximately 5 miles, and back to the Foothill Road, a loop of approximately 11 miles total. The legal description is T. 12 S., R. 17 E., section 11 (for the west entrance), and T. 12 S., R. 18 E., section 06 (for the east entrance), in Twin Falls County.

The Curtis Spring Road (BLM road #42163), begins at the Foothill Road and goes for approximately 3.5 miles. The legal description is T. 12 S., R. 17 E., section 02, in Twin Falls County.

The Squaw Joe Road (BLM road #4220), south of the Nat-Soo-Pah Warm Springs, to the U.S. Forest Service boundary, approximately 3.5 miles. The legal description is T. 12 S., R. 17 E., section 02, in Twin Falls County.

The West Fork of Dry Creek Road (BLM road #1610), from the Tugaw Ranch southwest to the U.S. Forest Service boundary, a distance of approximately 6 miles. The legal description is T. 12 S., R. 19 E., section 01, in Cassia County.

The East Fork of Dry Creek, off Foothill Road (BLM road #1609), southeast to the U.S. Forest Service boundary, a distance of approximately 7 miles. The legal description is T. 12 S., R. 19 E., section 01, in Cassia County.

No person may use, drive, move, transport, let stand, park, or have charge or control over any type of motorized vehicle on closed routes.

Exceptions to this order are granted to the following: Law enforcement patrol and emergency services and administratively approved access for actions such as monitoring, research studies, grazing activity, and access to private lands.

Employees of valid right-of-way holders in the course of duties associated with the right-of-way.

Holders of valid lease(s) and/or permit(s) and their employees in the course of duties associated with the lease and/or permit.

Other actions would be considered on a case-by-case basis.

**EFFECTIVE DATE:** This closure is effective immediately, and shall remain effective until March 15, 1996 or until rescinded by the Authorized Officer.

**FOR FURTHER INFORMATION CONTACT:** Tom Dyer, Snake River Resource Area Manager, 200 South 15 East, Burley, ID 83318. Telephone (208) 677-6641. A map showing vehicle routes of travel is available from the Burley BLM Office.

**SUPPLEMENTARY INFORMATION:** Authority for this closure and restriction order may be found in 43 CFR 8364.1. Violation of this closure is punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months.

Dated: January 16, 1996.

Tom Dyer,

*Snake River Resource Area Manager.*

[FR Doc. 96-1256 Filed 1-25-96; 8:45 am]

BILLING CODE 4310-GG-P

[OR-130-1330-04; GP6-0055]

**Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Midnite Uranium Mine (MUM) Reclamation**

**AGENCY:** Bureau of Land Management, Spokane District.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Section 102 (2)(c) of the National Environmental Policy Act (NEPA) of 1969, The Bureau of Land Management (BLM), Spokane District, as the lead federal agency, will be directing the preparation of an EIS for final reclamation of the Midnite Uranium Mine located on the Spokane Indian Reservation, in Washington State. The EIS will evaluate the environmental impacts of alternative plans for mitigating the affects of past mining activities. The reclamation objective is to ensure that a physically stable condition is achieved whereat environmental impacts are mitigated or controlled and public safety is protected. This notice initiates the scoping process for the EIS and also serves as an invitation for other potential cooperating parties. Potential cooperating parties include the Spokane Tribe of Indians, the U.S. Bureau of Indian Affairs (BIA), the U.S. Environmental Protection Agency (EPA) and the Washington State Department of Health (WADOH).

**DATES:** Comments concerning the scope of the analysis should be received by March 29, 1996, to receive full consideration in the development of alternatives. Three public scoping meetings will be held: February 26, 1996 at the Spokane Tribal Longhouse, Sherwood Loop Road, Wellpinit, Washington from 2:00 p.m. to 4:30 p.m. and from 7:00 p.m. to 10:00 p.m.; February 27, 1996 at the Davenport Community Memorial Hall, 511 Park

Street, Davenport, Washington from 7:00 p.m. to 10:00 p.m.; and February 28, 1996 at the Spokane County Agricultural Center at 222 N. Havana Spokane, Washington from 7:00 p.m. to 10:00 p.m.. Additional briefing meetings may also be held as appropriate.

**ADDRESSES:** Comments should be sent to the District Manager, Bureau of Land Management, Spokane District Office, 1103 N. Fancher, Spokane, Washington, 99212-1275, ATTENTION: Midnite Uranium Mine.

**FOR FURTHER INFORMATION CONTACT:** Kelly Courtright, Project Manager, or Gary Yeager, Planning & Environmental Coordinator, Bureau of Land Management, Spokane District Office, 1103 N. Fancher, Spokane, Washington, 99212-1275; or call (509) 536-1200.

**SUPPLEMENTARY INFORMATION:** The Midnite Uranium Mine is located on the Spokane Indian Reservation, Stevens County, about 45 miles northwest of Spokane, Washington, and about 3.5 miles upstream of the Spokane River arm of Lake Roosevelt. Dawn Mining Company (DMC) leased the property and operated the Midnite Uranium Mine from 1955 to 1964 and again from 1968 to 1981. Active mining ceased on the site in 1981 and the mine has remained inactive since that time, except for construction and operation of internal drainage channels, collection of seepage below the mined area, and operation of a mine water treatment plant.

Approximately 320 acres have been directly affected by mining and waste disposal and will require reclamation. Mine workings and waste dumps span over 1,000 feet of topographic relief within the one mile length of the highly disturbed area. About 33 million tons of waste rock remain on-site. Two of the mine pits— Pits 3 and 4—totaling about 70 surface acres remain open. Another multiple pit area (Pit 2) was backfilled with mine waste rock during active operations in the 1970's.

Leases for the mining activities were issued by the Bureau of Indian Affairs. The Bureau of Land Management assumed responsibility for regulating mining activities in 1983 as a result of Interior Department reorganization. The Department has determined that BLM will have primary authority for overseeing preparation of the EIS and that the decision authority on the proposed action rests by delegation with BLM.

DMC started treating mine water in 1992. The solid product of mine water treatment, a semi-solid sludge or filter cake, is classified as "source material" and must be disposed of according to

Nuclear Regulatory Commission (NRC) regulations. This material is transported by covered truck to DMC's mill, 25 miles to the east in Ford, Washington, and off of tribal land, where uranium is extracted and the by-product, known within NRC regulations as 11.e.2. material, is piped to the nearby licensed and lined tailings pond. It is important to note that BLM and BIA have no jurisdiction at the mill site. The Washington Department of Health has regulatory jurisdiction at the mill site (off-reservation on private land) and also at the water treatment plant at the mine. That authority covers the water treatment plant's generation, handling and disposal of the regulated source material. Environmental data has been collected at the Midnite Mine for over ten years. A significant amount of data has been collected, compiled and analyzed by the U.S. Bureau of Mines (USBM). Because that agency has been eliminated by legislative action, the large body of data developed by USBM has been transferred to BLM for maintenance and management. The responsibility for site clean-up lies with DMC. Reclamation standards and reasonable alternatives will be addressed by the NEPA process initiated by this scoping action. DMC will be developing a reclamation proposal that will be considered as one approach to site reclamation, but other approaches will also be evaluated.

The Bureau of Land Management's NEPA scoping process for the EIS will include: (1) identification of issues of concern that will need to be addressed in the EIS process; (2) identification of ideas for reclamation alternatives; (3) identification of additional scientific and creditable site data that may not be reflected in the existing database; and (4) notification of interested groups, individuals, and agencies so that additional information concerning these issues can be obtained.

The scoping process will consist of news releases announcing the start of the NEPA process; and newsletters inviting the public to participate in the scoping process. A scoping summary report will be prepared at the close of scoping that will summarize the findings. This report will be made available to the public through local public libraries, and offices of the lead and cooperating agencies.

Dated January 19, 1996.

Joseph Buesing,

*Spokane District Manager.*

[FR Doc. 96-1164 Filed 1-25-96; 8:45 am]

BILLING CODE 4310-33-P

[Docket No. 4310-DN; MT-060-06-1020-00]

**Notice of Public Meeting****AGENCY:** Bureau of Land Management, Lewistown District Office, Montana.**ACTION:** Notice of meeting.

**SUMMARY:** The Lewistown District Resource Advisory Council will meet February 26 and 27, 1996, at the Best Western Ponderosa Inn, 220 Central Avenue, in Great Falls, Montana. The meeting will begin at 8 a.m. on the 26th and will include background information from the BLM and US Forest Service concerning oil and gas development along the Rocky Mountain front. Beginning around 10 a.m. that day, the council will hear comments offered by spokespersons for the variety of organizations and entities interested in this topic. Beginning at 7 p.m. that evening, there will be a public comment period to afford the council the opportunity to hear concerns from the general public. The evening session will end around 9 p.m.

On February 27, the council's business meeting will begin at 7:30 a.m. and will end around 5:30 p.m. The topics of the day will include: using calling cards; discussing the council's charter; discussing standards and guidelines; a public comment period beginning at 11:30 a.m.; a presentation about the Little Rocky Mountains; a discussion of prairie dogs; a meeting evaluation; other topics the council deems necessary; and, selecting the date and location for the next meeting.

**DATES:** February 26 and 27, 1996.**LOCATION:** Best Western Ponderosa Inn, 220 Central Avenue, Great Falls, Montana.**FOR FURTHER INFORMATION CONTACT:** District Manager, Lewistown District Office, Bureau of Land Management, Box 1160, Lewistown, MT 59457.**SUPPLEMENTARY INFORMATION:** The meeting is open to the public and there will be public comment periods as detailed above.

Dated: January 19, 1996.

Gary Slagel,

*Acting District Manager.*

[FR Doc. 96-1384 Filed 1-25-96; 8:45 am]

BILLING CODE 4310-84-M

[AK-020-1430-01-P; F-91549]

**Realty Action: Non-Competitive Lease of Public Land in Alaska****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of realty action.

**SUMMARY:** The Fairbanks North Star Borough has requested a lease of certain lands at the intersection of Badger and Holmes Roads near Fairbanks, Alaska. The purpose of the lease would be to construct, operate and maintain a solid waste transfer station site.

**DATES:** Comments must be received by Effective Date: March 11, 1996.**ADDRESSES:** Written comments on this Notice should be submitted to the District Manager, Bureau of Land Management, Northern District Office, 1150 University Avenue, Fairbanks, Alaska 99709.**FOR FURTHER INFORMATION CONTACT:** Victor Wallace, Realty Specialist, at the address given above or at telephone (907) 474-2363.**SUPPLEMENTARY INFORMATION:** The following public land near Fairbanks, Alaska is being considered for lease to the Fairbanks North Star Borough for solid waste transfer station purposes pursuant to Section 302(b) of the Federal Land Policy and Management Act of 1976 (96 Stat. 2763; 43 U.S.C. 1732):

Fairbanks Meridian, Alaska

T.1S., R.1E.,

That portion of the S<sup>1</sup>/<sub>2</sub> Sec. 16 located south and east of Badger Road and south and west of Holmes Road.

The area described contains 13 acres, more or less.

The above described lands have been withdrawn for military purposes by Public Land Order 1760; however, the Department of the Interior retains jurisdiction to manage the surface and subsurface resources and may dispose of such resources under applicable public land laws with the concurrence of the proper military authorities.

An environmental assessment will be prepared for this action; public comment is requested. The analysis will be available for public review at the address above.

Dated: January 19, 1996.

Dee Ritchie,

*District Manager.*

[FR Doc. 96-1316 Filed 1-25-96; 8:45 am]

BILLING CODE 4310-JA-M

[ID-933-1430-01; IDI-30525]

**Opening of Land in a Proposed Withdrawal; Idaho****AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice.

**SUMMARY:** The temporary 2-year segregation of a proposed withdrawal of 40.00 acres of National Forest System

land for the Forest Service's Monarch Mine Stamp Mill Site (Kirby Dam) expires March 9, 1996, after which the land will be opened mining. The land is located in the Boise National Forest. The land has been and will remain open to surface entry and mineral leasing.

**EFFECTIVE DATE:** March 9, 1996.**FOR FURTHER INFORMATION CONTACT:**

Larry R. Lievsay, BLM Idaho State Office, 3380 American Terrace, Boise, Idaho 83706-2500, (208) 384-3166.

**SUPPLEMENTARY INFORMATION:** A Notice of Proposed Withdrawal was published in the Federal Register (59 FR 47, March 10, 1994), which segregated the land described therein for up to 2 years from the mining laws, subject to valid existing rights, but not from the general land laws and the mineral leasing laws. The 2-year segregation expires March 9, 1996. The withdrawal application will continue to be proposed unless it is canceled or denied. The land is described as follows:

Boise Meridian

T.5 N., R.11 E.,

Sec. 5, lot 8.

The area described contains 40.00 acres in Elmore County.

At 9 a.m. on March 9, 1996, the land shall be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: January 18, 1996.

Jimmie Buxton,

*Supervisory Realty Specialist, Lands and Minerals.*

[FR Doc. 96-1252 Filed 1-25-96; 8:45 am]

BILLING CODE 4310-GG-M

**National Park Service****Pictured Rocks National Lakeshore; Availability of Final Environmental Impact Statement****AGENCY:** National Park Service, Interior.



**ACTION:** Availability of final environmental impact statement for the proposed Beaver Basin Rim Road at Pictured Rocks National Lakeshore, Alger County, Michigan.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the National Park Service (NPS) announces the availability of a final environmental impact statement (FEIS) for the proposed Beaver Basin Rim Road in Pictured Rocks National Lakeshore. The draft environmental impact statement for the proposal was on 60-day public review from January 20 to March 20, 1995.

The NPS proposes to construct a paved road in Pictured Rocks National Lakeshore along the Beaver Basin Rim. The action is being proposed in response to a mandate by Congress in section 6 of the Act of October 15, 1966, 16 U.S.C. 460s-5(b)(1), establishing Pictured Rocks National Lakeshore, directing the development of a scenic shoreline drive. The proposed action is also consistent with and would implement the management directions of the 1981 general management plan for the national lakeshore. The FEIS was prepared by the NPS.

The NPS's preferred alternative for the Beaver Basin Rim Road is identified in the FEIS as Alternative B: Shoreline Zone Alignment. Under the preferred alternative, a 13-mile long paved road would be constructed in the shoreline zone of Pictured Rocks National Lakeshore. The proposed road would connect on both ends with Alger County Road H-58. Two spur roads would be constructed off the main road to two overlooks. These overlooks would provide views of Beaver Basin, Beaver Lake, Grand Portal Point, the Sevenmile Creek area, and Lake Superior. Two other alternatives are also considered: The no action alternative, and an alternative under which a new paved road would be constructed within the inland buffer zone of the national lakeshore.

**DATES:** The 30-day no action period for review of the FEIS will end on March 2, 1996. A record of decision will follow the no action period.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Pictured Rocks National Lakeshore, Grant Petersen, P.O. Box 40, Munising, Michigan 49862 or telephone 906-387-2607.

Dated: January 16, 1996.

William W. Schenk,

*Field Director, Midwest Field Area.*

[FR Doc. 96-1429 Filed 1-25-96; 8:45 am]

**BILLING CODE 4310-70-P**

### **Sleeping Bear Dunes National Lakeshore Advisory Commission; Meeting**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets the schedule for the forthcoming meeting of the Sleeping Bear Dunes National Lakeshore Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (P.L. 92-463).

**MEETING DATE AND TIME:** Friday, March 15, 1996; 9:30 a.m. until 12 noon.

**ADDRESS:** Glen Arbor Township Hall, 6394 W. Western, Glen Arbor, Michigan.

**AGENDA TOPICS INCLUDE:** The Chairman's welcome; minutes of the previous meeting; update on park activities; old business; new business; public input; next meeting date; adjournment. The meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The Advisory Commission was established by the law that established the Sleeping Bear Dunes National Lakeshore, P.L. 91-479. The purpose of the commission, according to its charter, is to advise the Secretary of the Interior with respect to matters relating to the administration, protection, and development of the Sleeping Bear Dunes National Lakeshore, including the establishment of zoning by-laws, construction, and administration of scenic roads, procurement of land, condemnation of commercial property, and the preparation and implementation of the land and water use management plan.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Sleeping Bear Dunes, Ivan Miller, 9922 Front Street, Empire, Michigan 49630; or telephone 616-326-5134.

Dated: January 16, 1996.

William W. Schenk,

*Field Director, Midwest Field Area.*

[FR Doc. 96-1428 Filed 1-25-96; 8:45 am]

**BILLING CODE 4310-70-P**

### **Keweenaw National Historical Park Advisory Commission Meeting**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces an upcoming meeting of the Keweenaw National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92-463).

**MEETING DATE AND TIME:** Tuesday, February 6, 1996; 8:30 a.m. until 4:30 p.m.

**ADDRESSES:** Keweenaw National Historical Park Headquarters, 100 Red Jacket Road (2nd floor), Calumet, Michigan 49913-0471.

**AGENDA TOPICS INCLUDE:** The Chairman's welcome; minutes of the previous meeting; update on the general management plan; update on park activities; old business; new business; next meeting date; adjournment. This meeting is open to the public.

**SUPPLEMENTARY INFORMATION:** The Keweenaw National Historical Park was established by Public Law 102-543 on October 27, 1992.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Keweenaw National Historical Park, William O. Fink, P.O. Box 471, Calumet, Michigan 49913-0471, 906-337-3168.

Dated: January 16, 1996.

William W. Schenk,

*Field Director, Midwest Field Area.*

[FR Doc. 96-1430 Filed 1-25-96; 8:45 am]

**BILLING CODE 4310-70-P**

### **Mississippi River Corridor Study Commission; Meeting**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92-463).

**MEETING DATE AND TIME:** February 12, 1996, 12 noon until 5 p.m.; February 13, 1996, 8 a.m. until 5 p.m.

**ADDRESS:** Radisson Hotel Saint Paul, 350 Market Street, St. Paul, Minnesota 55102.

This meeting replaces the postponed January 9 and 10, 1996, meeting in St. Paul, Minneapolis. This business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission on Tuesday, February 13, 1996, beginning at 1 p.m. An agenda will be available from the National Park Service, Midwest Field Area, one week prior to the meeting.

**FOR FURTHER INFORMATION CONTACT:**

Alan M. Hutchings, Assistant Field Director, Planning, Legislation, and WASO Coordination, National Park Service, Midwest Field Area, 1709 Jackson Street, Omaha, Nebraska 68102, or call 402-221-3082.

**SUPPLEMENTARY INFORMATION:** The Mississippi River Corridor Study Commission was established by Public Law 101-398, September 29, 1990.

Dated: January 16, 1996.

William W. Schenk,

*Field Director, Midwest Field Area.*

[FR Doc. 96-1431 Filed 1-25-96; 8:45 am]

BILLING CODE 4310-70-M

### Office of Surface Mining Reclamation and Enforcement

#### Availability of Draft Petition Evaluation Document/Environmental Impact Statement

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

**ACTION:** Notice of Availability of the Draft Petition Evaluation Document/Environmental Impact Statement (PED/EIS) for Fern Lake, Tennessee.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior is making available for public comment, the draft PED/EIS for a petition to designate certain lands in the Little Yellow Creek (Fern Lake) watershed, Claiborne County, Tennessee as unsuitable for all surface coal mining operations.

**DATES:** *Written comments:* OSM will accept written comments on the draft PED/EIS until March 26, 1996.

*Public Hearing:* A public hearing will be held at 7 p.m. on Tuesday, March 12, 1996, at the address given below.

**ADDRESSES:** *Copies of the PED/EIS:* Single copies of the draft PED/EIS may be obtained by contacting Willis L. Gainer at the address and telephone number listed under **FOR FURTHER INFORMATION CONTACT**. A copy of the PED/EIS is available for inspection at that address, and also at the Claiborne County, Tennessee, and Bell County, Kentucky Courthouses.

*Written comments:* Written comments may be hand delivered or mailed to Willis L. Gainer, Chief, Branch of Technical Assistance, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902.

*Public hearing:* A public hearing will be held at Middlesboro High School Gymnasium, Middlesboro, Kentucky at the date and time listed under **DATES**.

**FOR FURTHER INFORMATION CONTACT:**

Willis L. Gainer, Chief, Branch of Technical Assistance, Office of Surface Mining Reclamation and Enforcement, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902. Telephone: 615-545-4074. E-Mail/Internet: wgainer@osmre.gov.

**SUPPLEMENTARY INFORMATION:** The City of Middlesborough, Kentucky and the National Parks and Conservation Association filed a petition with OSM to designate certain lands in the Little Yellow Creek (Fern Lake) watershed, Claiborne County, Tennessee, as unsuitable for all surface coal mining operations. OSM has prepared a draft PED/EIS as required by Section 522(d) of the Surface Mining Control and Reclamation Act of 1977 and the National Environmental Policy Act of 1969. The draft PED/EIS evaluates the potential coal resources of the area, the demand for coal resources, and the impacts of alternative unsuitability decisions on the human environment, the economy, and the supply of coal.

A public hearing has been scheduled as indicated above. Anyone who wishes to comment will be given the opportunity to do so, but initial comments will be limited to 10 minutes of oral testimony. Time limits may be extended at the discretion of the presiding official. Persons wishing to present testimony are encouraged to contact OSM at the address given above. OSM would appreciate receiving a written copy of the testimony four days prior to the public hearing, if possible. The hearing will be transcribed. Filing a written statement at the time of oral testimony is encouraged as this will facilitate the job of the court reporter. A transcript of the hearing will be available at a nominal fee approximately seven days after the hearing.

Dated: January 22, 1996.

Mary Josie Blanchard,

*Assistant Director, Program Support.*

[FR Doc. 96-1317 Filed 1-25-96; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

#### Bureau of Justice Statistics; Information Collection Under Review

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the Federal Register. Request written comments and suggestions from the

public and affected agencies concerning the proposal collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need additional information please contact Dr. Brian Reaves (202-616-3287), Bureau of Justice Statistics, U.S. Department of Justice, 633 Indian Avenue, NW, Washington, DC 20531.

If a copy of the proposed collection instrument with instructions is not published in this notice please contact the agency representative listed above if you wish to receive a copy.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement, with change, or a previously approved collection for which approval has expired.

(2) The title of the form/collection: 1996 Directory Survey of Law Enforcement Agencies.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form number: CJ-38. Sponsored by the Bureau of Justice Statistics, United States Department of Justice.

(4) Who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal Government. Others: None. This information collection is a census of law enforcement agencies that provides statistics on the number of sworn officers and nonsworn employees for State police departments, local police departments, sheriffs' departments, and special police agencies. This data will provide a means of assessing law enforcement employment trends nationwide when compared with

previous data collected in 1986 and 1992.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 17,500 respondents at 0.25 hours, or 15 minutes.

(6) An estimate of the total public burden (in hours) associated with the collection: 4,375 total burden hours for this information collection.

If additional information is required contact: Mr. Robert B. Briggs, Department Clearance Officer, United States Department of Justice, Justice Management Division, Information Management and Security Staff, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Public comment on this information collection is strongly encouraged.

Dated: January 22, 1996.

Robert B. Briggs,

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 96-1260 Filed 1-25-96; 8:45 am]

BILLING CODE 4410-18-M

### **Disability Rights Section, Civil Rights Division; Information Collection Under Review**

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" from the date listed at the top of this page in the Federal Register. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need additional information please contact Janet L. Blizard, Supervisory Attorney, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, P.O. Box 66738, Washington, DC 20035-6738, or at (800) 514-0301 (voice), (800) 514-0383 (TDD) (the Division's ADA Information Line).

A complete copy of this notice and the Department of Justice regulations are available in the following alternate formats: large print, Braille, electronic file on computer disk, and audio-tape. Copies may be obtained by calling (800) 514-0301 (Voice) or (800) 514-0383 (TTY). The rule is also available on electronic bulletin board at (202) 514-6193. These telephone numbers are not toll-free numbers.

The complete notice and the proposed rule is also available on the Internet. They can be accessed with gopher client software ([gopher.usdoj.gov](http://gopher.usdoj.gov)), through other gopher servers using the University of Minnesota master gopher (under North America, USA, All, Department of Justice), with World Wide Web software (<http://www.usdoj.gov>), or through the White House WWW server (<http://whitehouse.gov>).

Supplementary Information: The revised information collection that will be submitted to OMB for review will amend the requirement now found at 28 CFR 35.150(d), the Department of Justice (Department) regulation implementing title II of the Americans With Disabilities Act of 1990, Public Law 101-336, 42 U.S.C. 12131-12134 (ADA). Title II provides that a public entity may not deny the benefits of its programs, activities, and services to individuals with disabilities because its facilities are inaccessible. 28 CFR 35.149. Public entities are required to make changes in their facilities when it is necessary to ensure that individuals with disabilities are not excluded from participating in programs because public entities' facilities are inaccessible. This concept is known as "program accessibility." Under 28 CFR 35.150(d), a public entity that employs 50 or more persons is required to develop a transition plan for the implementation of title II if structural changes to facilities will be undertaken to achieve program accessibility. Transition plans were required to be completed within six months of January 26, 1992.

The maintenance of pedestrian walkways by public entities is a covered program that is required to be made accessible by the installation of curb ramps where pedestrian walkways cross

curbs. Because of the unique and significant capital expense involved in the installation of curb ramps where existing pedestrian routes cross curbs, the Department is proposing to amend the title II regulation to provide additional time for public entities to meet their obligation to provide access to public pedestrian walkways and to require public entities that elect to take advantage of this extension to revise their current transition plans to establish a revised schedule for the installation of curb ramps to existing pedestrian walkways. The proposed rule would amend 28 CFR 35.150 to revise paragraphs 35.150.(c) and (d)(2) to read as follows:

#### *§ 35.150 Existing Facilities*

\* \* \* \* \*

(c)(1) *Time period for compliance.* Except as provided in paragraph (2), where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made no later than January 26, 1995, but in any event as expeditiously as possible.

(2)(i) A public entity shall comply with the obligations of this section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at locations serving State and local government offices and facilities, transportation, places of public accommodation, employers, and the residences of individuals with disabilities no later than January 26, 2000, but in any event as expeditiously as possible.

(ii) A public entity shall comply with the obligations of this section relating to provision of curb ramps or other sloped areas where existing public pedestrian walkways cross curbs at areas not subject to paragraph (i) of this section no later than January 26, 2005, but in any event as expeditiously as possible.

(d)(1) \* \* \*

(d)(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a specific schedule for the installation of curb ramps or other sloped areas where pedestrian walkways cross curbs that complies with the requirements of paragraphs (c)(2)(i) and (c)(2)(ii).

Transition plans are required to identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities; describe in detail the methods that will be used to make the facilities accessible; specify the schedule for taking the steps necessary to achieve compliance with

this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and indicate the official responsible for implementation of the plan. If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, or it has previously developed a transition plan to implement title II, the revised transition plan requirements apply only to those policies and practices that were not included in the previous transition plan(s).

Public entities are required to provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of transition plans and they are required to make a copy of the transitions plan available for public inspection.

Overview of this information collection:

(1) Type of Information Collection: *Revision of a currently approved collection.*

(2) Title of the Form/Collection: Nondiscrimination on the Basis of Disability in State and Local Government services. (Transition Plan).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: None. Disability Rights Section, Civil Rights Division, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local or Tribal Government. Other: None. Under title II of the Americans with Disabilities Act (ADA), State and Local governments cannot discriminate against individuals with disabilities in operating services, programs, and activities. If physical changes to existing facilities are required to achieve program access, public entities that have 50 or more employees must prepare a transition plan and make it available for public inspection. This proposed amendment to the current transition plan requirement applies only to those public entities that have 50 or more employees, that have responsibility or authority over streets, roads, walkways, and that choose to take advantage of the extensions of time provided by the proposed rule.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 10,000 responses (public entities) at 2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 20,000 annual burden hours at \$10 per hour for a total burden cost of \$200,000.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Systems Policy Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: January 22, 1996.

Robert B. Briggs,  
*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 96-1259 Filed 1-25-96; 8:45 am]

BILLING CODE 4410-13-M

## DEPARTMENT OF LABOR

### Office of the Secretary

#### President's Committee on the International Labor Organization; Notice of Closed Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (Public Law 92-463), announcement is hereby given of a meeting of the President's Committee on the ILO:

*Name:* President's Committee on the International Labor Organization.

*Date:* Tuesday, January 30, 1996.

*Time:* 10:30 am.

*Place:* U.S. Department of Labor, Third & Constitution Ave., NW., Room S-2508, Washington, DC 20210.

*Purpose:* The meeting will include a review and discussion of current issues relating to United States' negotiating positions with member nations of the International Labor Organization. The meeting will concern matters the disclosure of which would seriously compromise the Government's negotiating objectives and bargaining positions. Accordingly, the meeting will be closed to the public, pursuant to Section 9(b) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B).

Due to the furlough of Labor Department employees and other complications, we are unable to provide the full 15 days of prior notice of this meeting.

*For Further Information Contact:* Mr. Joaquin F. Otero, President's Committee on the International Labor Organization, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-2235, Washington, DC 20210; Telephone (202) 219-6043.

Signed at Washington, DC, this 22nd day of January 1996.

Robert B. Reich,  
*Secretary of Labor.*

[FR Doc. 96-1367 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-23-M

#### Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Public Forum on the Effects of Sudden Plant Closings and the Impact on the Principle of Freedom of Association and the Right of Workers To Organize

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Notice of public forum.

**SUMMARY:** The purpose of this notice is to announce a public forum on Submission 9501 filed under the North American Agreement on Labor Cooperation

Submission 9501, filed with the Mexican National Administrative Office (Mexican NAO) by the Telephone Workers of The Republic of Mexico, involves labor law matters in the United States, and was filed for review on February 9, 1995. The Mexican NAO issued a public report on May 31, 1995 requesting ministerial consultations on the matter, pursuant to Article 22 of the North American Agreement on Labor Cooperation (NAALC). Pursuant to these ministerial consultations an agreement was reached on December 15, 1995, between the United States Secretary of Labor Robert B. Reich and his Mexican counterpart, Secretary Javier Bonilla Garcia. This agreement provides, *inter alia*, for a public forum in San Francisco, California to allow interested parties an opportunity to convey to the public their concerns on the effects of the sudden closing of a plant on the principle of freedom of association and the right of workers to organize. This public forum will be held on February 27, 1996, commencing at 9:30 a.m. and ending at 6:00 p.m.

Persons wishing to present their views on these matters may do so by registering their requests with the U.S. National Administrative Office (U.S. NAO) no later than February 16, 1996. Only those individuals registered in advance may address the forum.

**ADDRESSES:** The public forum will be held at the ANA Hotel San Francisco, located at 50 Third Street, San Francisco, California, 94103. The hotel telephone number is 415-974-6400. Registration to make an oral statement may be mailed or faxed to the U.S. NAO at the U.S. Department of Labor, 200 Constitution Avenue N.W., Room C-4327, Washington, D.C. 20210, Fax # 202-501-6615.

**FOR FURTHER INFORMATION CONTACT:** Irasema T. Garza, Secretary, U.S. National Administrative Office, 200 Constitution Avenue, N.W., Room C-4327, Washington, D.C. 20210,

Telephone number—202/501/6653.  
(This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

**1. Nature and Conduct of the Public Forum**

The public forum will be conducted by an officer of the U.S. Department of Labor. There will be limited audience capacity, and participation from the public will be based on a first-come, first-served basis. Simultaneous translation between English and Spanish will be provided. Disabled persons should contact the Secretary of the U.S. NAO, by February 16, if special accommodations are needed.

**2. Oral or Written Statements and Requests To Present Oral Statements**

Requests to present oral statements shall include name, address, and telephone and fax numbers of the presenter, the organization represented, if any, and any other information pertinent to the request. Such request must be received by February 16, 1996. The U.S. NAO will notify each requester of the disposition of their request to present an oral statement. Presenters may submit written statements in lieu of a request to make an oral statement. Such written statements will be entered into the record but will not be read at the forum.

Oral statements at the public forum will normally be limited to ten minutes. Additional time may be allowed based on the number of speakers. The number of oral presenters may be limited, based on considerations of available time, on a first-come, first-served basis. There will be no general audience participation nor questioning of presenters by members of the audience.

This is a public forum open to members of the press.

Signed at Washington, DC, on January 22, 1996.

Irasema T. Garza,  
Secretary, U.S. National Administrative  
Office.

[FR Doc. 96-1366 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-28-M

**Employment Standards Administration**

**Proposed Information Collection Request Submitted for Public Comment and Recommendations**

1. Payment of Compensation Without Award (LS-206);
2. Certification of Funeral Expenses (LS-265);
3. Notice of Controversion of Right to Compensation (LS-207);
4. Application for Authority to Employ Full-Time Students at Subminimum Wages

in Retail or Service Establishments or Agriculture (WH-200-MIS)

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of: (1) Payment of Compensation Without Award; (2) Certification of Funeral Expenses; (3) Notice of Controversion of Right to Compensation; (4) Application for Authority to Employ Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture.

Copies of the proposed information collection requests can be obtained by contacting the employee listed below in the ADDRESSES section of this notice.

**DATES:** Written comments must be submitted on or before April 1, 1996. Written comments should address whether the proposed information collection is necessary for the proper performance of the functions of the agency; the accuracy of the burden (time and financial resources) estimates; ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology; and other relevant aspects of the information collection request.

**ADDRESSES:** Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., N.W., Room S-3201, Washington, D.C. 20210, telephone (202) 219-7601 (this is not a toll-free number), fax 202-219-6592.

**SUPPLEMENTARY INFORMATION:**

Payment of Compensation Without Award

*I. Background*

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act, which provides benefits to workers injured in maritime employment on the navigable waters of the United States or

in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. Under the Act, a self-insured employer or insurance carrier is required to pay compensation within 14 days after the employer has knowledge of the injury or death. Upon making the first payment, the employer or carrier must immediately notify the deputy commissioner of the payment. This form has been designated as the form on which report of first payment is to be made.

*II. Current Actions*

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to monitor the payment status of a given case.

Certification of Funeral Expenses

*I. Background*

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act, which provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. The Act provides that reasonable funeral expenses not to exceed \$3,000 shall be paid in all compensable death cases. Form LS-265 has been provided for use in submitting the funeral expenses for payment.

*II. Current Actions*

The Department of Labor seeks the extension of this information collection in order to carry out its responsibility for monitoring and processing death cases. It is used to certify the amount of funeral expenses incurred in the case.

Notice of Controversion of Right to Compensation

*I. Background*

The Office of Workers' Compensation Programs administers the Longshore and Harbor Workers' Compensation Act, which provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. Pursuant to the Act, if an employer controverts the right to compensation he/she shall file with the deputy commissioner in the affected compensation district on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary of

Labor, stating that the right to compensation is controverted. This form is used for that purpose.

## II. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to determine the basis for not paying benefits in a case, and to inform the injured claimant of the reason(s) for not paying compensation benefits.

Application for Authority To Employ Full-Time Students at Subminimum Wages in Retail or Service Establishments or Agriculture

### I. Background

The Fair Labor Standards Act (FLSA) requires the Secretary of Labor to provide certificates authorizing the employment of full-time students at 65% of the applicable minimum wage in retail or service establishments and in agriculture to the extent necessary to prevent curtailment of opportunities for employment. These provisions set limits on such employment and prescribe safeguards to protect full-time students so employed and full-time employment opportunities of other workers. 29 CFR Part 519 sets forth the application requirements, the terms and conditions for the employment of students at subminimum wages. This voluntary use form is prepared and signed by an authorized representative of an employer applying for authorization to employ full-time students at subminimum wages. The completed form is reviewed by the Wage and Hour Division of the Department of Labor to determine whether to grant or to deny subminimum wage authority to the applicant.

### II. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to provide employers with the certification necessary to pay students at subminimum wages, to protect full-time students so employed, and to protect the full-time opportunities of other workers.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Payment of Compensation Without Award.

*OMB Number:* 1215-0022.

*Agency Number:* LS-206.

*Frequency:* On occasion.

*Affected Public:* Businesses or other for-profit.

*Total Estimated Cost:* Unknown.

*Total Burden Hours:* 8,550.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Certification of Funeral Expenses.

*OMB Number:* 1215-0027.

*Agency Number:* LS-265.

*Frequency:* Annually.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 195.

*Estimated Time per Respondent:* 15 minutes.

*Total Estimated Cost:* \$68.00.

*Total Burden Hours:* 49.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Notice of Controversion of Right to Compensation.

*OMB Number:* 1215-0023.

*Agency Number:* LS-207.

*Frequency:* On occasion.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 900.

*Estimated Time per Respondent:* 15 minutes.

*Total Estimated Cost:* \$7,040.00.

*Total Burden Hours:* 4,725.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Application for Authority to Employ Full-Time Students at Subminimum Wage in Retail or Service Establishments or Agriculture.

*OMB Number:* 1215-0032.

*Agency Number:* WH-200-MIS.

*Frequency:* Annually.

*Affected Public:* Individuals or households; Businesses or other For-Profit; Not-for-Profit Institutions; Farms.

*Number of Respondents:* 5,000.

*Estimated Time per Respondent:* 10-30 minutes.

*Total Estimated Cost:* Unknown.

*Total Burden Hours:* 1,100.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 22, 1996.

Cecily A. Rayburn,

Chief, Division of Financial Management, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. 96-1368 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-27-M

## Employment Standards Administration Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any

modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S-3014, Washington, D.C. 20210.

#### New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and State.

#### Volume III

Georgia  
 GA950085 (Jan. 26, 1996)  
 GA950086 (Jan. 26, 1996)  
 GA950087 (Jan. 26, 1996)  
 GA950088 (Jan. 26, 1996)

#### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

#### Volume I

New Jersey  
 NJ950002 (Feb. 10, 1995)

#### Volume II

Virginia  
 VA950005 (Feb. 10, 1995)  
 VA950007 (Feb. 10, 1995)  
 VA950021 (Feb. 10, 1995)  
 VA950023 (Feb. 10, 1995)  
 VA950033 (Feb. 10, 1995)  
 VA950036 (Feb. 10, 1995)

VA950049 (Feb. 10, 1995)  
 VA950065 (Feb. 10, 1995)  
 VA950067 (Feb. 10, 1995)  
 VA950085 (Feb. 10, 1995)  
 VA950087 (Feb. 10, 1995)  
 VA950088 (Feb. 10, 1995)  
 VA950108 (Feb. 10, 1995)

#### Volume III

##### Alabama

AL950007 (Feb. 10, 1995)  
 AL950008 (Feb. 10, 1995)  
 AL950017 (Feb. 10, 1995)  
 AL950042 (Feb. 10, 1995)  
 AL950044 (Feb. 10, 1995)  
 AL950052 (Feb. 10, 1995)

##### Georgia

GA950003 (Feb. 10, 1995)  
 GA950022 (Feb. 10, 1995)  
 GA950065 (Feb. 10, 1995)  
 GA950073 (Feb. 10, 1995)  
 GA950084 (Feb. 10, 1995)  
 GA950085 (Feb. 10, 1995)  
 GA950086 (Feb. 10, 1995)  
 GA950087 (Feb. 10, 1995)  
 GA950088 (Feb. 10, 1995)

#### Volume IV

##### Illinois

IL950001 (Feb. 10, 1995)  
 IL950002 (Feb. 10, 1995)  
 IL950003 (Feb. 10, 1995)  
 IL950005 (Feb. 10, 1995)  
 IL950006 (Feb. 10, 1995)  
 IL950007 (Feb. 10, 1995)  
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 IL950032 (Feb. 10, 1995)  
 IL950034 (Feb. 10, 1995)  
 IL950040 (Feb. 10, 1995)  
 IL950043 (Feb. 10, 1995)  
 IL950046 (Feb. 10, 1995)  
 IL950051 (Feb. 10, 1995)  
 IL950063 (Feb. 10, 1995)  
 IL950065 (Feb. 10, 1995)  
 IL950067 (Feb. 10, 1995)  
 IL950068 (Feb. 10, 1995)  
 IL950069 (Feb. 10, 1995)  
 IL950071 (Feb. 10, 1995)  
 IL950073 (Feb. 10, 1995)  
 IL950078 (Feb. 10, 1995)  
 IL950082 (Feb. 10, 1995)  
 IL950084 (Feb. 10, 1995)  
 IL950090 (Feb. 10, 1995)  
 IL950092 (Feb. 10, 1995)  
 IL950095 (Feb. 10, 1995)  
 IL950096 (Feb. 10, 1995)  
 IL950098 (Feb. 10, 1995)

#### Volume V

None

#### Volume VI

None

#### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487-4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 19th day of January 1996.

Philip J. Gloss,  
 Chief, Branch of Construction Wage Determinations.

[FR Doc. 96-958 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-27-M

#### Employment and Training Administration

#### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA-W) issued during the period of December.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility



requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

#### Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-31,489; *Kenton Custom Molding (A Div. of Ripley Industries, Inc.), Kenton, TN*

TA-W-31,480; *Meehan Tooker, East Rutherford, NJ*

TA-W-31,491; *Henry Vogt Machine Co., Sapulpa, OK*

TA-W-31,609; *Empire Stamp & Seal Co., New York, NY*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA-W-31,576; *BW/IP International, Inc., Bryon Jackson Pump Div., Fresno, CA*

TA-W-31,523; *Wallace & Tlernan, Belleville, NJ*

TA-W-31,484; *Compac Industries, North Bergen, NJ*

TA-W-31,616; *Ozone Industries, Inc., Ozone Park, NY*

TA-W-31,540; *American Banknote Co., Bedford Park, IL*

TA-W-31,527; *M & M/Mars, Inc., Burr Ridge, IL*

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-31,641; *Sons Transportation, Springfield, MA*

TA-W-31,635; *Distribution & Auto Service, Inc., Seattle, WA*

TA-W-31,606; *Kerr-McGee Refining Corp., Houston, TX*

TA-W-31,551; *Gleason Sales & Service, Lansing, MI*

TA-W-31,522; *Transco Energy Co., Including Transcontinental Gas Pipe Line Corp and Transco Gas Marketing Co., Houston, TX*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-31,619; *Destec Energy, Inc., Houston, TX*

The investigation revealed that criterion (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-31,519; *National Fiber Technology (Formerly National Hair Technology), Lawrence, MA*

The investigation revealed that criterion (1) and criterion (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Sales or production did not decline during the relevant period as required for certification.

#### Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location for each determination references the impact date for all workers for such determination.

TA-W-31,559; *Hettick International, Harrisonville, MO: October 11, 1994.*

TA-W-31,604; *Fernbrook & Co., Plant #3, Neffs, PA: October 23, 1994.*

TA-W-31,586; *Benton Fashions, Benton, PA: October 17, 1994.*

TA-W-31,594; *Reservoirs, Inc., Midland, TX: October 19, 1994. October 20, 1994.*

TA-W-31,578; *SCI Systems, Inc., (Formerly Digital Equipment Corp), Augusta, ME: October 12, 1994.*

TA-W-31,643; *Inland Steel Co., East Chicago, IN: November 7, 1994.*

TA-W-31,499; *General Electric Co., GE-Transmission Systems, Fort Edward, NY: September 18, 1994.*

TA-W-31,554 & A; *Wondermaid, Inc., Washington, MO, MA & New York, NY: October 4, 1994.*

TA-W-31,585; *FAD Manufacturing, Inc., Swoyersville, PA: September 17, 1994.*

TA-W-31,507; *Howden Fan Co., Buffalo, NY: September 26, 1994.*

TA-W-31,505; *General Electro Mechanical Corp., Buffalo, NY: September 27, 1995.*

TA-W-31,512; *TAP Enterprises, Red Oak, IA: October 1, 1994.*

TA-W-31,600; *Palm Beach Co., Eastaboga, AL: October 20, 1994.*

TA-W-31,685; *Lee Apparel Co., St. Joseph, MO: November 6, 1994.*

TA-W-31,541; *Mud Systems, Inc., Wichita, KS: October 4, 1994.*

TA-W-31,428; *Shorewood Packaging Corp., Pittsford, NY: September 5, 1995.*

TA-W-31,663; *J. Lamb, Inc., Engelwood, NJ: November 14, 1994.*

TA-W-31,657; *Jos A. Bank, Carroll Street, Hampstead, MD: November 13, 1994.*

TA-W-31,496; *PQ Corp., Butler, NJ: September 15, 1994.*

TA-W-31,614; *Christian Fashions, El Paso, TX: October 25, 1994.*

TA-W-31,423 & A; *Astor Knitting Mills, Inc., Reading, PA & Astor Industries, Inc., Reading, PA: September 7, 1994.*

TA-W-31,571; *Carl E. Smith, Inc., Sandyville, WV: October 7, 1994.*

TA-W-31,225 & A; *Mason Shoe Manufacturing Co., Chippewa Falls, WI and F & F Shoe, Chippewa Falls, WI: June 27, 1994.*

TA-W-31,621; *Aquatech, Inc., AKA Greenwood Mills, East West Apparel, El Paso, TX: October 23, 1994.*

TA-W-31,513, TA-W-31,514, TA-W-31,515, TA-W-31,516, TA-W-31,517; *Phillips-Van Heusen Co., Ozark, AL, Clayton, AL, Hartford, AL, Opp, AL, Geneva, AL: September 27, 1994.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of December, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA-TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,



(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

#### Negative Determinations NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-00644; *Shanklin Shasta Landclearing Co., Klamath Falls, OR*

NAFTA-TAA-00658; *Fernbrook and Co., Plant #3, Neffs, PA*

NAFTA-TAA-00661; *Fruit of the Loom, Greensburg, KY*

NAFTA-TAA-00674; *Wondermaid, Inc., Washington, MO*

NAFTA-TAA-00695 & A; *Colebrook-Terry, Inc., Colebrook Plant, Colebrook, PA & The York Plant, York, PA*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA-TAA-00678; *Sons Transportation, Springfield, MA*

The investigation revealed that the workers of the subject firm do not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

#### Affirmative Determinations NAFTA-TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA-TAA-00651; *SCI Systems, Inc., (Formerly Digital Equipment Corp), August, ME; October 12, 1994.*

NAFTA-TAA-00665; *American Meter Co., Industrial Products Div., Erie, PA; October 27, 1994.*

NAFTA-TAA-00655; *Pacific Power & Light Co., Centralia Plant, Centralia, WA; October 24, 1994.*

NAFTA-TAA-00646; *Pacific Power, Casper, WY & Other Locations Within Wyoming; October 16, 1994.*

NAFTA-TAA-00680; *Inland Steel Co., East Chicago, IN; November 7, 1994.*

NAFTA-TAA-00639; *Carl E. Smith, Inc., Sandyville, WV; October 7, 1994.*

NAFTA-TAA-00670; *Bausch & Lomb Personal Products Div., Tucker, GA; October 31, 1994.*

NAFTA-TAA-00643; *Kenetech Windpower, Portland, OR; October 10, 1994.*

NAFTA-TAA-00667; *Diesel Recon Co., Santa Fe Springs, CA; October 25, 1994.*

NAFTA-TAA-00663; *Selmet, Inc., Golf Products Div., Albany, OR; October 23, 1994.*

NAFTA-TAA-00671; *Aquatech, Inc., A.K.A. Greenwood Mills/East-West Apparel, El Paso, TX; October 30, 1994.*

I hereby certify that the aforementioned determinations were issued during the month of December, 1995. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 14, 1995.

Russell Kile,

*Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1377 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-30-M

#### [TA-W-31,225, 225A, 225B, 225C]

#### Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Mason Shoe Manufacturing Company Chippewa Falls, Wisconsin; F&F Shoe, Chippewa Falls, Wisconsin; and the shoe outlets of Mason Shoe Manufacturing Company and F&F shoe operating in various locations within: The State of Wisconsin and the State of Minnesota

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 21, 1995, applicable to all workers of Mason Shoe Manufacturing Company and F&F Shoe, located in Chippewa Falls, Wisconsin. The workers are engaged in employment related to the production of ladies' and men's shoes.

At the request of the State Agency, the Department reviewed the certification

for workers of Mason Shoe and F&F Shoe. New information received from the State shows that workers at the outlets of the subject firms operating in various locations within the States of Wisconsin and Minnesota have experienced layoffs.

The intent of the Department's certification is to include all workers of Mason Shoe and F&F Shoe who were adversely affected by increased imports.

The amended notice applicable to TA-W-31,225 is hereby issued as follows:

"All workers of Mason Shoe Manufacturing Company, F&F Shoe, Chippewa Falls, Wisconsin, and at the outlets of the subject firms operating in various locations within the States of Wisconsin and Minnesota who became totally or partially separated from employment on or after June 27, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 15th day of December 1995.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1369 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-30-M

#### [TA-W-30,089; TA-W-30,089E]

#### Sara Lee Knit Products; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 26, 1994, applicable to all workers of Sara Lee Knit Products at plants in Martinsville, Virginia. The certification was subsequently amended to include Sara Lee Knit Product workers at the subject firm plants at various locations in, Virginia and North Carolina. The amended notices were issued September 16, 1994, February 25, 1995, and September 19, 1995 and published in the Federal Register on September 27, 1994 (59 FR 49257), March 10, 1995 (FR 60 13179), and October 2, 1995 (60 FR 51501), respectively.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The Department is again amending the certification to cover the workers separated from the Sara Lee Knit Product production facility located in Eastman, Georgia. The workers produce T-shirts. The company reports that the plant closed November 16, 1995.

The intent of the Department's certification is to include all workers of Sara Lee Knit Products who were adversely affected by imports.

The amended notice applicable to TA-W-30,089 is hereby issued as follows:

"All workers at Sara Lee Knit Products, Martinsville, Virginia (TA-W-30,089), and Eastman, Georgia (TA-W-30,089E) who became totally or partially separated from employment on or after June 27, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 15th day of December 1995.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1370 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-31,643]

**Inland Steel Company, East Chicago, IN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 1, 1995, applicable to all workers at Inland Steel Company, located in East Chicago, Indiana. The notice will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Findings show that only the workers involved in the production of carbon and high strength low alloy steel plates were the subject of the investigation.

Accordingly, the Department is limiting its certification to only those workers at Inland Steel, East Chicago, Indiana engaged in the production of carbon and high strength low alloy steel plates.

The intent of the Department's certification is to include any and all workers affected by increased imports, and separated as a result of the decline in sales or production of carbon and high strength low alloy steel plates produced at Inland Steel Company.

The amended notice applicable to TA-W-31, 643, is hereby issued as follows:

"All workers of Inland Steel Company, East Chicago, Indiana, engaged in employment related to the production of carbon and high strength low alloy steel plate who became totally or partially separated from employment on or after November 7, 1994 are eligible to apply for adjustment

assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 15th day of December 1995.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1374 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-29,037]

**Simonds Industries, Incorporated; Newcomerstown, OH; Notice of Revised Determination on Reconsideration**

The Department, on its own motion, has reconsidered its negative determination in *Former Employees of United States Steel Workers of America, Locals 2391 & 3225 v. Robert Reich*, No. 94-02-00125, U.S. Court of International Trade. As a result of this reconsideration, the Department is now certifying the workers of Simonds Industries, Incorporated ("Simonds"), in Newcomerstown, Ohio, as eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974.

The Department's December 3, 1993, negative determination for workers of the subject firm was issued on the basis that the survey of Simonds customers showed increased imports by respondents with reduced purchases from the subject firm were not important in relation to the sales decline during the periods under investigation. New investigation findings, however, show that Simonds' major declining customers in 1991 to 1992, and in the January-June 1992-1993 time periods increased their reliance on imports of industrial files. The declining customers' purchases of imported industrial files as a percent of the Simonds' sales decline was negligible from 1991 to 1992, but increased significantly in January-June 1993 compared to January-June 1992.

Other new findings in the investigation show that while the value of aggregate U.S. imports of files and rasps, including rotary type declined in 1992 compared to 1991 and in the twelve-month period ending June 1993 compared to the same time period in 1992, the quantity of imports increased.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with industrial files produced at Simonds Industries, Incorporated,

Newcomerstown, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers at subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Simonds Industries, Incorporated, Newcomerstown, Ohio who became totally or partially separated from employment on or after September 8, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 15th day of December 1995.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1376 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-30-M

**Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance**

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than February 5, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than February 5, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S.

Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 11th day of December 1995.  
Russell Kile,  
*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

APPENDIX  
[Petitions instituted on 12/11/95]

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,709	AT and T Network Cable (Wkrs)	Phoenix, AZ	11/28/95	Copper Cable.
31,710	P and K Dress Corp. (UNITE)	Little Falls, NY	11/29/95	Ladies' Dresses.
31,711	Alcoa Fujikura LTD (Wkrs)	El Paso, TX	11/20/95	Automotive Electronics.
31,712	Southwestern Cutting (Wkrs)	El Paso, TX	11/29/95	Textiles.
31,713	Ellingson Lumber Co. (Wkrs)	Baker City, OR	11/29/95	Dimension Lumber.
31,714	OSRAM/Sylvania (IAM)	Warren, PA	11/29/95	Electronic Connectors.
31,715	Avison Lumber Company (Co.)	Molalla, OR	11/28/95	Softwood Lumber.
31,716	Avison Wood Specialties (Co.)	Molalla, OR	11/28/95	Softwood Lumber.
31,717	Carole Cable Co. (USWA)	Pawtucket, RI	11/21/95	Wire & Cable.
31,718	Controlled Power Corp. (Wkrs)	Canton, OH	11/26/95	Metal Clad Switchgears.
31,719	Cleburne Manufacturing (Wkrs)	Heflin, AL	11/20/95	Athletic Shirts, Shorts.
31,720	DL Banite (Co.)	Buffalo, NY	11/28/95	Hand Cleaner.
31,721	ERC Barton Wood (Co.)	Shawnee, OK	11/27/95	Valves & Wellhead Equipment.
31,722	Gen. Automotive Speciality (Co.)	North Brunswick, NJ	11/27/95	Automotive Switches.
31,723	H and H Strandflex (Co.)	Oriskany, NY	11/27/95	Wire Rope.
31,724	Kentucky Manufacturing (UNITE)	Uniontown, KY	11/24/95	Baseball Caps.
31,725	Miller-Picking Corp. (USWA)	Johnstown, PA	11/19/95	HVAC Equipment & Heat Exchange Coils.
31,726	Missoula White Pine Sash (Wkrs)	Missoula, MT	11/30/95	Softwood Lumber.
31,727	Owens-Brockway Glass (Co.)	Zanesville, OH	11/03/95	Glass Containers.
31,728	Phoenix Diversified (Wkrs)	Buckannon, WV	11/29/95	Oil & Natural Gas.
31,729	RDL Acoustics, Inc. (Co.)	Bellingham, MA	11/14/95	Hi-Fi Speakers.
31,730	United Technologies (Co.)	West Olive, MI	11/07/95	Automotive Insulation & Acoustics.
31,731	Oxford Industries, Inc. (Co.)	Atlanta, GA	11/21/95	Men's Dress Shirts.
31,732	Oxford Industries (Co.)	Vidalia, GA	11/21/95	Men's Dress Shirts.

[FR Doc. 96-1378 Filed 1-25-96; 8:45 am]  
BILLING CODE 4510-30-M

[TA-W-31,611]

**Plains Blouse Company, Plains, PA; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 6, 1995 in response to a worker petition which was filed by the northeastern Pennsylvania District Council of Union of Needletrades, Industrial and Textile Employees, on behalf of workers and former workers at Plains Blouse Company, located in Plains, Pennsylvania (TA-W-31,611).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of December 1995.  
Arlene O'Connor,  
*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1379 Filed 1-25-96; 8:45 am]  
BILLING CODE 4510-30-M

[TA-W-31,233 and 233B]

**Jos. J. Pietrafesa Company, Carrollton, GA, and Jos J. Pietrafesa Company, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 25, 1995, applicable to all workers of Jos J. Pietrafesa Company located in Carrollton, Georgia. The notice was published in the Federal Register on September 19, 1995 (60 FR 48526).

At the request of the State Agency, the Department reviewed the certification

for workers of the subject firm. The workers are engaged in employment related to the production of ladies' and men's suits, jackets, pants, vest and skirts. New information shows that worker separations have occurred at the subject firm's New York City location. Based on this information, the Department is amending the certification to include worker separations at Jos J. Pietrafesa Company in New York City, New York.

The intent of the Department's certification is to include all workers of Jos J. Pietrafesa Company who were adversely affected by increased imports of apparel.

The amended notice applicable to TA-W-31, 233 is hereby issued as follows:

"All workers of Jos J. Pietrafesa Company, Carrollton, Georgia (TA-W-31,233), and New York City, New York (TA-W-31,233B) who became totally or partially separated from employment on or after July 7, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 8th day of December 1995.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1380 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-30-M

**[NAFTA-00711]**

**Sara Lee Knit Products, Eastman, GA; Notice of Termination of Investigation**

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103-182) concerning transitional adjustment assistance, hereinafter called (NAFTA-TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on December 4, 1995 in response to a petition filed on behalf of workers at Sara Lee Knit Products located in Eastman, Georgia. The workers produce T-shirts.

The petitioning group of workers are covered under an existing NAFTA certification (NAFTA-00168E). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of December 1995.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1371 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-30-M

**[NAFTA-00168; NAFTA-00168E]**

**Sara Lee Knit Products; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance**

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 5, 1994, applicable to all workers of the several plants and facilities of the Sara Lee Knit Products, in Martinsville, Virginia.

The certification was subsequently amended to cover workers at the subject firm locations Virginia and North Carolina. The notices were published in the Federal Register on March 10, 1995 (60 FR 13182), and October 2, 1995 (60 FR 51502), respectively.

At the request of the company, the Department reviewed the certification

for workers of the subject firm. The Department is again amending the certification to cover the workers separated from the Sara Lee Knit Product production facility located in Eastman, Georgia. The workers produce T-shirts. The company reports that the plant closed November 16, 1995.

The intent of the Department's certification is to include all workers who were adversely affected by increased imports from Mexico. The amended notice applicable to NAFTA-00168 is hereby issued as follows:

"All workers of Sara Lee Knit Products plants located in Martinsville, Virginia (NAFTA-00168), and Eastman, Georgia (NAFTA-00168E) who became totally or partially separated from employment on or after December 8, 1993 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC, this 15th day of December 1995.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1372 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-30-M

**[NAFTA-00680]**

**Inland Steel Company, East Chicago, IN; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance**

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on December 1, 1995, applicable to all workers of Inland Steel Company located in East Chicago, Indiana. The notice will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Findings show that only the workers involved in the production of carbon and high strength low alloy steel plates were the subject of the investigation. Accordingly, the Department is limiting its certification to only those workers at Inland Steel, East Chicago, Indiana engaged in the production of carbon and high strength low alloy steel plates.

The intent of the Department's certification is to include any and all workers affected by increased imports from Mexico, and separated as a result of the decline in sales or production of carbon and high strength low alloy steel plates produced at Inland Steel Company.

The amended notice applicable to NAFTA-00680 is hereby issued as follows:

All workers of Inland Steel Company, East Chicago, Indiana, engaged in employment related to the production of carbon and high strength low alloy steel plate who became totally or partially separated from employment on or after November 7, 1994 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of December 1995.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1373 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-30-M

**[NAFTA-00120]**

**Walker Manufacturing Company, Hebron, Ohio; Notice of Revised Determination on Reconsideration**

Pursuant to a voluntary remand in *UAW Local 1927 and Employees and Former Employees of Walker Manufacturing Co. v. Secretary of Labor*, No. 94-10-00584 (Ct. Int'l Trade), the Department is revising its initial denial of certification of eligibility to workers of Walker Manufacturing Company, located in Hebron, Ohio, to apply for NAFTA-Transitional Adjustment Assistance (NAFTA-TAA).

As a result of further consideration in this case, the Department has determined that the shift in production to Mexico of articles like or directly competitive with products manufactured at the subject firm contributed importantly to worker separations.

Other findings show that the workers at Hebron were used interchangeably and are not separately identifiable by product. Accordingly, since the worker separations resulting from the shift in production to Mexico indirectly affected all lines of production, the Department is recommending that all of the workers of the Hebron, Ohio plant Walker Manufacturing Company be certified as eligible to apply for NAFTA-TAA.

**Conclusion**

After careful review of the facts obtained in the investigation, I conclude that there was a shift in production of the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Walker Manufacturing Company, Hebron, Ohio, who became totally

or partially separated from employment on or after May 20, 1993 are eligible to apply for NAFTA-TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of December 1995.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-1375 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-30-M

## Bureau of Labor Statistics

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Response Analysis Survey of BLS 790 and ES-202 Reporters

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the "Response Analysis Survey."

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the address section of this notice.

**DATES:** Written comments must be submitted on or before March 26, 1996.

**ADDRESSES:** Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue NE., Washington, DC 20212.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kurz on 202-606-7628 (this is not a toll free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This survey is a continuation of BLS' long-term efforts to improve data quality in the Current Employment Statistics (CES) and Covered Employment and Wages (ES-202) programs. The CES program (also known as the BLS 790

program) collects employment, payroll, and hours information from over 380,000 nonagricultural establishments each month. The ES-202 program processes employment and wage information from approximately 6.5 million nonagricultural establishments covered by State Unemployment Insurance (UI) laws on a quarterly basis, and provides a virtual universe count of employment. These covered employers report their employment and wages each quarter on State Quarterly Contribution Reports (QCR). Employers who have multiple locations or industrial activities also complete the Multiple Worksite Report (MWR) each quarter. The MWR disaggregates the employment and wage data collected on the QCR to its proper geographical locations and industry.

The employment estimates from the CES are generally published about 3 weeks after the reference period each month. Data from the ES-202 program are generally available 6 months after the end of the reference quarter. Once each year, BLS adjusts or "benchmarks" the CES employment estimates to the ES-202 levels. Traditionally, benchmark revisions have been relatively small. Over the past 10 years, the revision has averaged approximately 200,000 or +/- 0.2 percent. However, there are isolated instances where revisions have been larger. In 1994 the preliminary benchmark revision was estimated at 760,000. In 1991 the revision was 640,000, and in 4 other years since 1980 the revision has exceeded 300,000.

In general, the ES-202 figures are regarded as more accurate since they represent a virtual universe count. However, there are many potential sources of error associated with both CES and ES-202 figures, such as coverage, response and processing errors.

The CES estimates are widely used by policymakers, researchers and private industry to measure current economic activity. Data from the ES-202 program provide similar information on a lagged basis. Because of the potential impact on policy decisions that can result from large benchmark revisions, it is important to understand and evaluate with greater precision the various components of nonsampling error in both data series.

Since 1981, BLS has undertaken a series of special quality measurement studies of CES respondents to determine the accuracy of the reported data, and to identify sources of possible error. The most recent of these was approved under Office of Management and Budget (OMB) approval number 1220-0089.

Improvements have also been made in the review of the ES-202 data.

The data collected by these surveys are usually available from the respondents' payroll records. These records can be kept by a variety of methods, such as hand calculation, internal or external software, or by a payroll processing firm. However, the reported employment figures may not be in accordance with the exact definitions used by the CES and ES-202 programs. The reported employment figures also can differ between the two programs for each respondent, and may be reported by different individuals within the firm. The Response Analysis Survey (RAS) provides a structured approach to identifying the sources of these differences whether they be definitional or due to processing methods. It will also contribute to an overall error profile for the CES and ES-202 programs.

The questionnaire that will be used for the RAS already has been approved through March 1996. It focuses on the reporting of employment data in terms of timing, method, source and content. A pilot test of 9 interviews, in each of the original 9 States involved, was conducted. This test was approved under the last submission. The results of this test were used to refine the questionnaire and procedures, from which the rest of the interviews (approximately 8,000) are being conducted. One State (New Jersey) was added because they expressed an interest in the project and have previous experience in this area.

##### II. Current Actions

We are requesting an extension of approval from March 1996 through September 1996. The Department of Labor Inspector General has recommended additional quality assurance testing and participating States require more time for collection of data. Public comments may be provided on the accuracy of the burden estimates and ways to minimize burden, including the use of automated collection techniques or other types of information technology.

*Type of Review:* Extension.

*Agency:* Bureau of Labor Statistics.

*Title:* Response Analysis Survey.

*OMB Number:* 1220-0089.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 8,000.

*Estimated Time Per Response:* 30 minutes.

*Total Burden Hours:* 4,000 hours.

Comments submitted in response to this notice will be summarized and/or

included in the request for Office of Management and Budget approval of the ICR; they also will become a matter of public record.

Signed at Washington, DC, this 23rd day of January 1996.

Peter T. Spolarich,  
Chief, Division of Management Systems,  
Bureau of Labor Statistics.

[FR Doc. 96-1381 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-24-M

## Mine Safety and Health Administration

### Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers; Appointment of Advisory Committee Members; Meeting

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of appointment of members to the Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers; and notice of meeting.

**SUMMARY:** This notice announces the appointment of members to the Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, and announces the date, time, and place for the first meeting.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, room 631, Arlington, Virginia 22203; phone 703-235-1910.

#### SUPPLEMENTARY INFORMATION:

##### A. Appointment of Members

This notice announces the appointment of members to the Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers, established pursuant to sections 101(a) and 102(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), and the Federal Advisory Committee Act.

The Secretary of Labor appointed this advisory committee to develop recommendations for improved standards or other appropriate actions addressing: permissible exposure limits to eliminate black lung disease and silicosis; the means to control respirable coal mine dust levels; improved monitoring of respirable coal dust levels and the role of the miner in that monitoring; and the adequacy of operator sampling programs to determine the actual levels of dust concentrations to which miners are exposed (60 FR 5947). The Advisory

Committee is chartered through September 30, 1996 (60 FR 55284).

The members were selected on the basis of their experience and knowledge in mine health and safety and related fields. Consistent with the Mine Act, the membership of the committee and the categories of interest represented are as follows:

#### Neutrals

Dr. David Wegman (Chair of the Advisory Committee), Chairman of the Department of Work Environment at the University of Massachusetts Lowell, Lowell, Massachusetts.

Dr. John Dement, Associate Professor in the Division of Occupational and Environmental Medicine, Duke University Medical Center, Durham, North Carolina.

Dr. Kathleen Kreiss, Director of the Occupational and Environmental Medicine Division at the National Jewish Center for Immunology and Respiratory Medicine, Denver, Colorado.

Dr. Raja Ramani, Head of the Department of Mineral Engineering at Pennsylvania State University, State College, Pennsylvania.

Dr. Carol Rice, Associate Professor of Environmental Health at Kettering Laboratory, University of Cincinnati, Cincinnati, Ohio.

#### Labor

Joseph Main, Administrator of the Department of Occupational Health and Safety at the United Mine Workers of America, Washington, DC.

Dr. James Weeks, Associate Research Professor in the Division of Occupational and Environmental Medicine at the George Washington University, Washington, DC.

#### Industry

Dr. John Gibbs, Vice-President of Health Management and Corporate Medical Director of the Kerr-McGee Corporation, Oklahoma City, Oklahoma.

Joseph Lamonica, Vice-President for Health, Safety, and Training at the Bituminous Coal Operators' Association, Inc., Washington, DC.

##### B. Notification of First Meeting

Under sections 101(a) and 102(c) of the Mine Act, a public meeting of the advisory committee will be held between the hours of 9 a.m. and 5 p.m. on February 21 and 22, 1996 at the Quality Hotel—Arlington (Madison Room) located at 1200 North Courthouse Road, Arlington, Virginia 22201; phone 703-524-4000.

The purpose of the meeting is: (1) to give a historical overview on the

respirable coal mine dust program and the risk to miners of coal workers' pneumoconiosis; (2) to allow the committee members to become familiar with the issues involved; and (3) to set an agenda for the committee to follow during its six-month tenure.

The public is invited to attend. The chairperson will provide an hour at the end of the meeting to allow interested persons to make comments. Official records of the meeting will be available for public inspection at the above address.

Dated: January 19, 1996.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 96-1407 Filed 1-25-96; 8:45 am]

BILLING CODE 4510-43-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration, Office of Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

**DATES:** Request for copies must be received in writing on or before March 11, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESSES:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters

must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and that happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

#### Schedules Pending

1. Department of Interior, Bureau of Land Management (N1-40-90-1). Routine records relating to property use and disposal.

2. Department of Interior, Bureau of Mines (N1-70-95-1). Hazardous waste management administrative records.

3. Department of Justice (N1-60-95-4). Electronic index to audiovisual records maintained by the National Park Service relating to the Exxon Valdez incident.

4. Department of State, Bureau of Near Eastern Affairs (N1-59-95-17,-18,-19, and -20). Routine, facilitative, and duplicative records of component offices of the bureau. Policy records scheduled as permanent.

5. Bureau of Public Debt (N1-53-96-3). Historical loan records.

6. National Institute for Literacy (N1-220-95-14). Grant case files and administrative correspondence.

7. Office of Government Ethics (N1-522-96-1). Records of the Office of General Counsel and Legal Policy.

8. Tennessee Valley Authority (N1-142-95-15). Automated telephone directory (the printed version of the directory is designated for permanent retention).

9. United States Information Agency, Office of Administration (N1-306-95-3). Routine, facilitative, and duplicative budget files.

Dated: January 17, 1996.

James W. Moore,  
*Assistant Archivist for Records Administration.*

[FR Doc. 96-1251 Filed 1-25-96; 8:45 am]

BILLING CODE 7515-01-M

#### Senior Executive Service (SES) Performance Review Board; Members

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the appointment of members of the National Archives and Records Administration (NARA) Performance Review Board.

#### FOR FURTHER INFORMATION CONTACT:

Steven G. Rappold, Human Resources Services Division (ADM-HRS), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740-6001, (301) 713-6760 (voice/TDD).

**SUPPLEMENTARY INFORMATION:** Section 4314(c) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review the initial appraisal of a senior executive's performance by the supervisor and recommendations regarding the recertification of senior executives, and recommend final action to the appointing authority regarding matters related to senior executive performance.

The members of the Performance Review Board for the National Archives and Records Administration are: Adrienne C. Thomas, Assistant Archivist for Administrative Services; Richard L. Claypoole, Director of the Federal Register; and Michael J. Kurtz, Assistant Archivist for the National Archives. These appointments supersede all previous appointments.

Dated: January 18, 1996.

John W. Carlin,

*Archivist of the United States.*

[FR Doc. 96-1250 Filed 1-25-96; 8:45 am]

BILLING CODE 7515-01-M

#### NATIONAL EDUCATION GOALS PANEL

##### National Education Goals Panel Meeting

**AGENCY:** National Education Goals Panel.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

**DATES:** February 3, 1996 from 8:00 a.m.-9:45 a.m.

**ADDRESS:** J.W. Marriott Hotel, Salon I, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The "E" Street entrance to the hotel is accessible for persons with disabilities.

#### FOR FURTHER INFORMATION CONTACT:

Cindy Dixon, Program Assistant, 1255-22nd Street, N.W., Suite 502, Washington, D.C. 20037. Telephone: (202) 632-0952.

**SUPPLEMENTARY INFORMATION:** The National Education Goals Panel, a bipartisan panel of governors, members of the Administration, members of Congress and state legislators, was created to monitor and report annually to the President, Governors and Congress on the progress of the nation toward meeting the National Education Goals adopted by the President and Governors in 1989.

The meeting of the Panel is open to the public. The agenda includes: consideration of a long-term strategic data plan; announcement of a new Goals Panel initiative, A Report on State Assessments and Results; discussion of the Education Summit and its implications for the Goals Panel; presentation and discussion of the relation between academic standards and charter schools; and, presentation and discussion of international world-class standards as benchmarks.

Records are kept of all proceedings and are available for inspection at the Goals Panel office, 1255-22nd Street, N.W., Suite 502, Washington, D.C. 20037.



Dated: January 23, 1996.

Ken Nelson,

*Executive Director, National Education Goals Panel.*

[FR Doc. 96-1359 Filed 1-25-96; 8:45 am]

BILLING CODE 4010-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting XXXV

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 President's Committee on the Arts and the Humanities will be held on February 9, 1996 from 9:15 a.m. to 5:00 p.m. This meeting will be held in the Mumford Room of the Library of Congress Madison Building, 101 Independence Avenue, S.E., Washington, DC.

This meeting will be open to the public on a space available basis and will feature a discussion of possible recommendations to be adopted by the Committee in a report to the President on providing adequate financial support to the arts and the humanities.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the IMS on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited in meeting rooms and it is suggested that individuals wishing to attend notify the staff of the President's Committee in advance at (202) 682-5409 or write to the Committee at 1100 Pennsylvania Avenue, NW., Suite 526, Washington, DC 20506.

Dated: January 22, 1996.

Kathy Plowitz-Worden,

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 96-1343 Filed 1-25-96; 8:45 am]

BILLING CODE 7537-01-M

### National Endowment for the Arts; Media Arts Advisory Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Radio/Television Section) to the National Council on the Arts will be held on January 31, 1996 from 9:00 a.m. to 5:30 p.m. This meeting will be held in Room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506.

A portion of this meeting will be open to the public from 5:00 p.m. to 5:30 p.m. for a policy discussion.

The remaining portion of this meeting from 9:00 a.m. to 5:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of June 22, 1995, this session will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682-5532, TDY-TDD 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682-5691.

Dated: January 22, 1996.

Kathy Plowitz-Worden,

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 96-1342 Filed 1-25-96; 8:45 am]

BILLING CODE 75-37-01-M

### Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** Sharon I. Block, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

**SUPPLEMENTARY INFORMATION:** The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4) and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 5-6, 1996.

*Time:* 8:00 a.m. to 5:00 p.m.

*Room:* 315.

*Program:* This meeting will review applications for Humanities Focus Grants submitted to the Division of Research and Education, Education Development and Demonstration Projects for projects beginning after May 1, 1996.

2. *Date:* February 7-8, 1996.

*Time:* 8:00 a.m. to 5:00 p.m.

*Room:* 315.

*Program:* This meeting will review applications for Humanities Focus Grants submitted to the Division of Research and Education, Education Development and Demonstration



Projects for projects, beginning after May 1, 1996.

3. *Date:* February 8–9, 1996.

*Time:* 8:00 a.m. to 5:00 p.m.

*Room:* 315.

*Program:* This meeting will review applications for Humanities Focus Grants submitted to the Division of Research and Education, Education Development and Demonstration Projects for projects, beginning after May 1, 1996.

Sharon I. Block,

*Advisory Committee Management Officer.*

[FR Doc. 96–1335 Filed 1–25–96; 8:45 am]

BILLING CODE 7536–01–M

## NATIONAL SCIENCE FOUNDATION

### Collection of Information Submitted for OMB Review

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, on October 24, 1995, Federal Register No. 205, page 54522, the National Science Foundation (NSF) published, for public comment, a proposed collection of information, "Evaluation of the Experimental Program to Stimulate Competitive Research (EPSCoR)." *No public comments were received.* The collection of information is now being forwarded to the Office of Management and Budget for consideration. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, Call Herman Fleming, NSF Clearance Officer at (703) 306–1243, or send comments to: National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230. Written comments should be received by February 28, 1996.

*Abstract:* EPSCoR is an ongoing initiative of the National Science Foundation (NSF)—and, in parallel, of six other Federal agencies—to increase the research competitiveness of faculty and universities in selected states. The design calls for five substudies drawn from the broader framework of the program's objectives, structure, and strategies, which was developed in conjunction with several workgroups. New, non-archival data collections in substudies 3, 4, and 5 are being submitted for OMB Review. Substudy No. 1, "Has There Been an Increase in Funded Research?" Substudy No. 2, "How Competitive Was EPSCoR Research at the Time of Award?" Substudy No. 3, "How Competitive Was EPSCoR-Funded Research Later On?" Substudy No's. 4 and 5, "Have Universities Implemented Research-

Supporting Changes? and Have States Initiated Research-Supporting Changes?"

Dated: January 22, 1996.

Herman G. Fleming,

*NSF Clearance Officer.*

[FR Doc. 96–1270 Filed 1–25–96; 8:45 am]

BILLING CODE 7555–01–M

### Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name and Committee Code:* Special Emphasis Panel in Electrical and Communications Systems (1196).

*Date and Time:* February 15, 1996; 8:30 a.m. to 5:00 p.m.

*Place:* Room 680, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Chanan Singh, Program Director, Power Systems, Division of Electrical and Communications Systems, Room 675, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1340.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Power Systems Career proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 22, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–1238 Filed 1–25–96; 8:45 am]

BILLING CODE 7555–01–M

### Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Astronomical Sciences

*Date and Time:* February 15, 1996 8:00 AM–5:00 PM

*Place:* Room 365, National Science Foundation, 4201, Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed

*Contact Person:* Benjamin B. Snavelly, Program Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone 703/306–1820

*Purpose of Meeting:* To provide advice and recommendations on proposals submitted to the National Science Foundation for financial support.

*Agenda:* To review and evaluate proposals for facilities instrumentation submitted to the Advanced Technologies and Instrumentation Program.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 22, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96–1237 Filed 1–25–96; 8:45 am]

BILLING CODE 7555–01–M

### Special Emphasis Panel in Materials Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Materials Research will be holding panel meetings for the purpose of reviewing proposals submitted to the Office of Multidisciplinary Activities in the area of Optical Science and Engineering. In order to review the large volume of proposals, panel meetings will be held on February 15–16, 1996 (11). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:00 a.m. to 5:00 p.m. each day.

*Contact Person:* Dr. John Weiner, Head, Office of Multidisciplinary Activities, Office of the Assistant Director for Mathematical and Physical Sciences, National Science Foundation, Room 1005, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1800.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 22, 1996.  
 M. Rebecca Winkler,  
*Committee Management Officer.*  
 [FR Doc. 96-1236 Filed 1-25-96; 8:45 am]  
 BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes; Meeting Notice

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. Nuclear Regulatory Commission will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on February 21-22, 1996. The ACMUI will review the National Academy of Sciences, Institute of Medicine (IOM), report and provide comments on the possible impacts of the report, including any policy, legislative, rulemaking, and guidance issues. The meeting will take place at the address provided below. All sessions of the meeting will be open to the public.

**DATES:** The meeting will begin at 8:30 a.m., on February 21 and 22, 1996.

**SUPPLEMENTARY INFORMATION:** In January 1994, the NRC contracted with the IOM, to conduct an external review of the NRC's medical regulatory program, which included a review of the basic regulatory rules, policies, practices, and procedures. There were three major goals of the study: (1) examination of the overall risk associated with the use of ionizing radiation in medicine; (2) examination of the broad policy issues that underlie the regulation of the medical uses of radioisotopes; and (3) a critical assessment of the current framework for the regulation of the medical uses of byproduct material. The NRC was seeking specific recommendations on two major issues. First, it requested recommendations on a uniform national approach to the regulation of ionizing radiation in all medical applications, including consideration of how the regulatory authority and responsibility for medical devices sold in interstate commerce for application of radiation to human beings should be allocated among Federal Government agencies and between the Federal and State Governments. Secondly, it requested recommendations on appropriate criteria to measure the effectiveness of regulatory program(s) needed to protect public health and safety. The IOM report provides recommendations to

Congress, the NRC, the States and the Conference of Radiation Control Program Directors. The agenda will include a summary of the IOM findings and recommendations; a summary of the staff plan, to date, for analysis of the report; and a discussion of the implications and impacts of the eight recommendations.

**ADDRESSES:** U.S. Nuclear Regulatory Commission, Two White Flint North, 11545 Rockville Pike, Room T2B3, Rockville, MD 20852-2738.

**FOR FURTHER INFORMATION, CONTACT:** Josephine M. Piccone, Ph.D., U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T8F5, Washington, DC 20555, Telephone (301) 415-7270. For administrative information, contact Torre Taylor, (301) 415-7900.

#### Conduct of the Meeting:

Barry Siegel, M.D., will chair the meeting. Dr. Siegel will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Josephine M. Piccone (address listed previously), by February 16, 1996. The transcript of the meeting will be kept open until February 26, 1996, for inclusion of written comments submitted after February 16, 1996. Statements must pertain to the topics on the agenda for the meeting.
2. At the meeting, questions from members of the public will be permitted at the discretion of the Chairman.
3. The transcript and written comments will be available for inspection, and copying, for a fee, at the NRC Public Document Room, 2120 L Street, NW, Lower Level, Washington, DC 20555 (202) 634-3273, on or about March 8, 1996. Minutes of the meeting will be available on or about April 5, 1996.
4. Seating for the public will be on a first-come, first-served basis.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, Part 7.

Dated: January 22, 1996.  
 Andrew L. Bates,  
*Advisory Committee Management Officer.*  
 [FR Doc. 96-1326 Filed 1-25-96; 8:45 am]  
 BILLING CODE 7590-01-P

### Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 8-10, 1996, in Conference Room T-2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the Federal Register on Monday, November 27, 1995 (60 FR 58393).

Thursday, February 8, 1996

*8:30 A.M.-8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)*

The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

*8:45 A.M.-10:45 A.M.: Adequacy of Individual Plant Examinations (IPEs) (Open)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the adequacy of the IPEs for regulatory applications.

Representatives of the nuclear industry will participate, as appropriate.

*11:00 A.M.-2:45 P.M. (LUNCH 12:30 P.M.-1:30 P.M.): Recirculation Sump Strainer Clogging Events (Open)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff and BWR Owners Group (BWROG) regarding the recirculation sump strainer clogging events, including those that occurred at Barseback, Perry, and Limerick Nuclear Power Plants, and the associated regulatory actions.

*3:00 P.M.-5:00 P.M.: Westinghouse COBRA/TRAC Best-Estimate Thermal Hydraulic Code (Open/Closed)*

The Committee will hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation and the NRC staff regarding the Westinghouse COBRA/TRAC best-estimate code to be used in support of the AP600 passive plant design certification.

A portion of this session may be closed to discuss Westinghouse proprietary information applicable to this matter.

*5:15 P.M.–6:45 P.M.: Preparation of ACRS Reports (Open)*

The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as a proposed ACRS report to Congress on the NRC Safety Research Program, and a proposed report on the resolution of Multiple System Responses Program (MSRP) Issues.

Friday, February 9, 1996

*8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)*

The ACRS Chairman will make opening remarks regarding conduct of the meeting.

*8:35 A.M.–10:00 A.M.: Human Performance Program Plan (Open)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the human performance program plan developed by the staff to integrate all NRC activities in this area.

Representatives of the nuclear industry will participate, as appropriate.

*10:15 A.M.–11:45 A.M.: Implementation Guidance for License Renewal (Open)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding updated implementation guidance for license renewal.

Representatives of the nuclear industry will participate, as appropriate.

*11:45 A.M.–12:00 Noon: Reconciliation of ACRS Comments and Recommendations (Open)*

The Committee will discuss responses of the NRC Executive Director for Operations (EDO) to comments and recommendations included in ACRS reports on: NUREG-0700, Revision 1, "Human-System Interface Design Review Guideline," dated November 13, 1995; proposed Final Regulatory Guide 1.164, "Time Response Design Criteria for Safety-Related Operator Actions, to Resolve Generic Safety Issue B-17," dated November 14, 1995; "Proposed Modifications to the BWR Owners Group Emergency Procedure Guidelines to address Reactor Core Instabilities," dated November 14, 1995; and proposed Final Generic Letter, "Testing of Safety-Related Logic Circuits," dated December 13, 1995. The Committee will also discuss other responses expected to be received from the EDO before the meeting.

*1:00 P.M.–2:30 P.M.: Proposed Final Revision 2 to Regulatory Guide 1.149, Nuclear Power Plant Simulation Facilities for Use in Operator License Examinations (Open)*

The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed Final Revision 2 to Regulatory Guide 1.149.

Representatives of the nuclear industry will participate, as appropriate.

*2:30 p.m.–3:00 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)*

The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS staff members.

A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and matters the release of which would constitute a clearly unwarranted invasion of personal privacy.

*3:15 p.m.–3:45 p.m.: Future ACRS Activities (Open)*

The Committee will select topics for consideration during future ACRS meetings.

*3:45 p.m.–6:45 p.m.: Preparation of ACRS Reports (Open)*

The Committee will discuss proposed ACRS reports on matters considered during this meeting as well as a proposed ACRS report to Congress on the NRC Safety Research Program, and a proposed ACRS report on the resolution of Multiple System Responses Program (MSRP) Issues.

Saturday, February 10, 1996

*8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)*

The Committee will continue its discussion of proposed ACRS reports on matters considered during this meeting as well as the proposed reports on other matters noted above.

*11:45 a.m.–1:30 p.m.: Strategic Planning (Open)*

The Committee will discuss items that are of significant importance to NRC, including rebaselining of the Committee activities for fiscal year 1996-1997.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on September 27, 1995 (60 FR 49925). In accordance with these procedures, oral

or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) P.L. 92-463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), to discuss Westinghouse proprietary information per 5 U.S.C. 552b(c)(4), and to discuss matters the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Chief, Nuclear Reactors Branch (telephone 301/415-7364), between 7:30 a.m. and 4:15 p.m. EST.

ACRS meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303-9672; the local direct dial number is 703-321-3339.

Dated: January 22, 1996.

Andrew L. Bates,

*Advisory Committee Management Officer.*  
[FR Doc. 96-1325 Filed 1-25-96; 8:45 am]

BILLING CODE 7590-01-P

**OFFICE OF MANAGEMENT AND BUDGET****Final Sequestration Report**

**AGENCY:** Office of Management and Budget, Budget Analysis Branch.

**ACTION:** Notice of Transmittal of Final Sequestration Report to the President and Congress.

**SUMMARY:** Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

**FOR FURTHER INFORMATION CONTACT:** Arthur W. Stigile, Budget Analysis Branch—202/395-3945.

Dated: January 22, 1996.

John B. Arthur,

*Associate Director for Administration.*

[FR Doc. 96-1239 Filed 1-25-96; 8:45 am]

**BILLING CODE 3110-01-P**

**PRESIDENTIAL ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES****Meeting**

**AGENCY:** Presidential Advisory Committee on Gulf War Veterans' Illnesses.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice is hereby given to announce an open meeting of a panel of the Presidential Advisory Committee on Gulf War Veterans' Illnesses. The panel will discuss clinical syndromes and will receive comment from members of the public. Dr. Philip J. Landrigan will chair this panel meeting.

**DATE:** February 27, 1996, 8:30 a.m.-4:30 p.m.

**PLACE:** Sheraton Gunter, 205 East Houston Street, San Antonio, TX 78205.

**SUPPLEMENTARY INFORMATION:** The President established the Presidential Advisory Committee on Gulf War Veterans' Illnesses by Executive Order 12961, May 26, 1995. The purpose of this Committee is to review and provide recommendations on the full range of government activities associated with Gulf War veterans' illnesses. The Advisory Committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. Advisory Committee members have expertise relevant to the

functions of the Committee and are appointed by the President from non-Federal sectors.

**Tentative Agenda**

*Tuesday, February 27, 1996*

- 8:30 a.m. Call to order and opening remarks
- 8:40 a.m. Public comment
- 10:00 a.m. Break
- 10:15 a.m. Public comment (cont.)
- 11:30 a.m. Briefing and discussion on multiple chemical sensitivity (MCS)
- 12:10 p.m. Lunch
- 1:15 p.m. Briefing and discussion on chronic fatigue syndrome (CFS)
- 1:55 p.m. Briefing and discussion on fibromyalgia and overlap in clinical presentations among MCS, CFS, and fibromyalgia
- 2:35 p.m. Break
- 2:50 p.m. Briefing and discussion on bacteriuria and antibiotic treatment
- 3:30 p.m. Briefing and discussion on Mycoplasma infection and antibiotic treatment
- 4:10 p.m. Committee discussion
- 4:30 p.m. Adjourn

A final agenda will be available at the meeting.

**Public Participation**

The meeting is open to the public. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed below at least five business days prior to the meeting. Reasonable provisions will be made to include on the agenda presentations from individuals who have not yet had an opportunity to address the Committee. Priority will be given to Gulf War veterans and their families. The panel chair is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. People who wish to file written statements with the Advisory Committee may do so at any time.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. McDaniels, Jr., Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street NW., suite 1000, Washington, DC 20005, Telephone: (202) 761-0066, Fax: (202) 761-0310.

Dated: January 23, 1996.

C.A. Bock,

*Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.*

[FR Doc. 96-1303 Filed 1-25-96; 8:45 am]

**BILLING CODE 3610-76-M**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 35-26458]

**Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")**

January 19, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 12, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

EUA Energy Investment Corporation  
(70-8283)

EUA Energy Investment Corporation ("EEIC"), P.O. Box 2333, Boston, Massachusetts 02107, a wholly owned subsidiary company of Eastern Utilities Associates, a registered holding company, has filed a post-effective amendment under section 12(b) of the Act and rule 45 thereunder to its application-declaration filed under Sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By orders dated January 24, 1994 (HCAR No. 25976), March 1, 1995 (HCAR No. 26242) and June 20, 1995 (HCAR No. 26312), EEIC was authorized, among other things, to provide up to \$3 million of capital contributions and/or advances or loans ("Investments") without interest or at EEIC's effective cost of capital to TransCapacity L.P., through December

1997. TransCapacity L.P. will use the Investments for the research, development and commercialization of an energy-related computer software and hardware system for the collection, compilation and distribution of an information database composed of information regarding natural gas pipeline capacity and capacity rights.

EEIC now requests authorization to increase the interest rate charged on investments up to the: (1) Prime rate published from time to time by the First National Bank of Boston or other similar financial institution ("Prime"), plus 6% with respect to any Investments made prior to the conversion date; and (2) Prime plus 2%, with respect to any Investments made on or after the conversion date.

National Fuel Gas Co., et al. (70-8541)

National Fuel Gas Company ("NFG"), a registered holding company, its wholly owned gas utility subsidiary company, National Fuel Gas Distribution Corporation ("Distribution"), and NFG's wholly owned nonutility subsidiary companies, National Fuel Gas Supply Corporation ("Supply"), Seneca Resources Corporation ("Seneca"), National Fuel Resources, Inc. ("Resources"), Utility Constructors, Inc. ("Constructors") (collectively, together with Distribution, "Subsidiaries"), and Horizon Energy Development, Inc. ("Horizon"),<sup>1</sup> all located at 10 Lafayette Square, Buffalo, New York 14203, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b) and 32 of the Act, and rules 42, 43, 45 and 53 thereunder, to the application-declaration previously filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act, and rules 42, 43, 45 and 53 thereunder. The original notice of the filing of the application-declaration was issued by the Commission January 20, 1995 (HCAR No. 26219).

By the initial order in this file, dated April 20, 1995 (HCAR No. 26276) ("Initial Order"), the Commission authorized NFG to issue and sell from time to time through December 31, 1997, in one or more transactions, up to an aggregate principal amount of \$350 million of debt securities in any combination of debentures ("Debentures") and medium-term notes ("MTNs"), not to mature in over forty

years.<sup>2</sup> Further, NFG was authorized to lend the proceeds from the issuance of Debentures or MTNs to one or more of its Subsidiaries at an all-in cost that is equal to the coupon on the debt plus the amortization of the underwriters' or agents' fees.

By a supplemental order in this file dated October 19, 1995 (HCAR No. 26393) ("Supplemental Order"), the Commission authorized NFG to enter into one or more interest rate swap agreements in notional amounts not to exceed, aggregated, \$350 million at any one time outstanding, plus derivative instruments such as interest rate caps, collars and floors tied to the swaps (together with swaps, "Swaps and Derivative Transactions"), with one or more counterparties from time to time through December 31, 1997. NFG also was authorized to allocate the gains and losses of Swaps and Derivative Transactions to any one or more of the Subsidiaries on whose behalf the underlying debt was issued.

NFG now proposes to lend from time to time through December 31, 1997, up to \$100 million to Horizon from the proceeds of the sale of Debentures and/or MTNs in exchange for unsecured subsidiary notes. The total amount lent by NFG to the Subsidiaries, including Horizon, will not exceed the proceeds received by NFG from the issuance of the Debentures and/or MTNs. NFG also proposes to include Horizon among the Subsidiaries to which NFG may allocate gains and losses from Swaps and Derivative Transactions. All other terms and conditions in the application-declaration remain unchanged.

Arkansas Power & Light Company (70-8761)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol Avenue, 40th Floor, P.O. Box 551, Little Rock, Arkansas 72201, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

By order dated November 28, 1947 (HCAR No. 7869), the Commission authorized the acquisition by AP&L, Oklahoma Gas & Electric Company ("OG&E") and Southwestern Electric Power Company (formerly Southwestern Gas and Electric Company) ("SWEPCO"), respectively, of 170, 170 and 160 shares of common stock of The Arkklahoma Corporation ("Arkklahoma"). Arkklahoma was formed jointly by AP&L, OG&E and SWEPCO

and currently owns certain facilities consisting of a 161 KV transmission line extending for 166 miles from Lake Catherine, Arkansas to Boudinot Tap, near Tahlequah, Oklahoma, the Lake Catherine substation at a terminus of said transmission line and certain property incidental thereto.

Such facilities are jointly leased to AP&L, OG&E and SWEPCO pursuant to an Agreement and Indenture, dated as of December 9, 1947, as extended by an Extension of Agreement and Indenture, dated September 6, 1977 (collectively, the "Lease") and are jointly operated by AP&L, OG&E and SWEPCO pursuant to an Operating Agreement, dated December 9, 1947 ("Operating Agreement"). In accordance with the terms of the Operating Agreement, (a) each party is entitled to use up to but not in excess of one-third of the capacity of such facilities without payment to the other parties, and (b) all advances, costs and other charges incurred under the Lease are borne equally by the parties.

AP&L now proposes to purchase 68 shares of common stock of Arkklahoma, from OG&E for an aggregate purchase price of approximately \$47,328. OG&E has represented to AP&L that, in order to facilitate the formation by OG&E of a holding company system exempt from the registration requirements of the Act, OG&E desires to reduce its percentage ownership of Arkklahoma common stock to less than 5% by selling 68 shares to AP&L and 78 shares to SWEPCO.

Upon completion of the aforementioned stock sale transactions, AP&L's ownership of Arkklahoma common stock would increase from 34% to 47.6%, SWEPCO's ownership would increase from 32% to 47.6% and OG&E's ownership would be reduced from 34% to 4.8%. The sale of the shares will not affect the rights and obligations of the parties under the Lease and the Operating Agreement. Although each party has an option to purchase the facilities and terminate the Lease, AP&L states that it has no current intention to do so and knows of no current intention on the part of either OG&E or SWEPCO to do so.

The purchase price for the shares will be based on the book value of Arkklahoma common stock immediately prior to the proposed sale. It is estimated that the book value of Arkklahoma common stock immediately prior to the sale will be approximately \$348,000 (or \$696 per share), resulting in a purchase price of approximately \$47,328 for the 68 shares to be acquired by AP&L.

<sup>1</sup> By order dated August 29, 1995 (HCAR No. 26364), NFG was authorized to acquire and finance Horizon, a wholly owned subsidiary created to invest in various project activities, including the acquisition of or investment in exempt wholesale generators and foreign utility companies.

<sup>2</sup> The Commission reserved jurisdiction over the issuance and sale of \$130 million of Debentures and/or MTNs pending completion of the record.

Southwestern Electric Power Company (70-8763)

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71101, an electric public-utility subsidiary company of Central and South West Corporation, a registered holding company under the Act, has filed an application under sections 9(a) and 10 of the Act.

By order dated November 28, 1947 (HCAR No. 7869), the Commission authorized the acquisition by SWEPCO, Arkansas Power & Light ("AP&L") and Oklahoma Gas & Electric Company ("OG&E"), respectively, of 160, 170 and 170 shares of common stock of The Arklaohma Corporation ("Arklaohma"). Arklaohma was formed jointly by AP&L, OG&E and SWEPCO and currently owns certain facilities consisting of a 161 KV transmission line extending for 166 miles from Lake Catherine, Arkansas to Boudinot Tap, near Tahlequah, Oklahoma, the Lake Catherine substation at a terminus of said transmission line and certain property incidental thereto.

Such facilities are jointly leased to AP&L, OG&E and SWEPCO pursuant to an Agreement and Indenture, dated as of December 9, 1947, as extended by an Extension of Agreement and Indenture, dated September 6, 1977 (collectively, the "Lease") and are jointly operated by AP&L, OG&E and SWEPCO pursuant to an Operating Agreement, dated December 9, 1947 ("Operating Agreement"). In accordance with the terms of the Operating Agreement, (a) each party is entitled to use up to but not in excess of one-third of the capacity of such facilities without payment to the other parties, and (b) all advances, costs and other charges incurred under the Lease are borne equally by the parties.

SWEPCO now proposes to purchase 78 shares of common stock of Arklaohma, from OG&E for an aggregate purchase price of approximately \$54,288. OG&E has represented to SWEPCO that, in order to facilitate the formation by OG&E of a holding company system exempt from the registration requirements of the Act, OG&E desires to reduce its percentage ownership of Arklaohma common stock to less than 5% by selling 68 shares to AP&L and 78 shares to SWEPCO.

Upon completion of the aforementioned stock sale transactions, AP&L's ownership of Arklaohma common stock would increase from 34% to 47.6%, SWEPCO's ownership would increase from 32% to 47.6% and OG&E's ownership would be reduced from 34% to 4.8%. The sale of the

shares will not affect the rights and obligations of the parties under the Lease and the Operating Agreement. Although each party has an option to purchase the facilities and terminate the Lease, SWEPCO states that it has no current intention to do so and knows of no current intention on the part of either OG&E or AP&L to do so.

The purchase price for the shares will be based on the book value of Arklaohma common stock immediately prior to the proposed sale. It is estimated that the book value of Arklaohma common stock immediately prior to the sale will be approximately \$348,000 (or \$696 per share), resulting in a purchase price of approximately \$54,288 for the 78 shares to be acquired by SWEPCO.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-1273 Filed 1-25-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36743; File Nos. SR-SCCP-95-04 and SR-Philadep-95-06]

**Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company; Order Approving Proposed Rule Changes Authorizing the Release of Clearing Data Relating to Participants**

January 19, 1996.

On July 7, 1995, the Stock Clearing Corporation of Philadelphia ("SCCP") and the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") proposed rule changes (File Nos. SR-SCCP-95-04 and SR-Philadep-95-06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On August 17, 1995, SCCP and Philadep each filed an amendment to its proposed rule change to clarify the parties to whom SCCP and Philadep will release clearing data and to define the term clearing data.<sup>2</sup> On September 25, 1995, SCCP and Philadep each filed a second amendment to its proposed rule change to supersede the prior amendments.<sup>3</sup> On November 16, 1995, SCCP and Philadep each filed a

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Letters from Sharon S. Metzker, Staff Counsel, SCCP and Philadep, to Peter R. Geraghty, Senior Counsel, Division of Market Regulation ("Division"), Commission (August 15, 1995).

<sup>3</sup> Letter from Sharon S. Metzker, Staff Counsel, SCCP and Philadep, to Peter R. Geraghty, Senior Counsel, Division, Commission (September 22, 1995).

third amendment to its proposed rule change to make certain technical corrections.<sup>4</sup> Notice of the proposals as amended was published in the Federal Register on November 29, 1995.<sup>5</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule changes.

**I. Description of the Proposal**

The purpose of the respective proposed rule changes is to modify SCCP Rule 28 and to add Rule 32 to Philadep's rules to authorize SCCP and Philadep to release data relating to their respective participants' clearance and settlement activities to authorized parties for risk monitoring and regulatory purposes. SCCP and Philadep receive transaction data and other data relating to their participants in the normal course of business. The rule changes set forth SCCP's and Philadep's obligations to preserve their participants' rights with respect to such data and the conditions under which SCCP and Philadep will disclose such data.

The rules will permit SCCP and Philadep to disclose such data to regulatory organizations, self-regulatory organizations, clearing organizations affiliated with or designated by contract markets trading specific futures products under the oversight of the Commodity Futures Trading Commission, and others under certain conditions. The rule changes generally provide that the release of a participant's clearing data shall be conditioned upon either the submission of a written request or the execution of a written agreement.<sup>6</sup> The rules also define "clearing data" to mean transaction and other data which is received by SCCP and Philadep in the clearance and/or settlement process or such data, reports, or summaries which may be produced as a result of processing such data.

The rule changes also will facilitate SCCP's and Philadep's participation in the National Securities Clearing Corporation's ("NSCC") Collateral Management Service ("CMS").<sup>7</sup> The

<sup>4</sup> Letter from Sharon S. Metzker, Staff Counsel, SCCP and Philadep, to Christopher Concannon, Division, Commission (November 10, 1995).

<sup>5</sup> Securities Exchange Act Release No. 36506 (November 22, 1995), 60 FR 61281.

<sup>6</sup> As self-regulatory organizations, SCCP and Philadep are authorized to cooperate and share data with other regulatory or self-regulatory organizations for regulatory purposes.

<sup>7</sup> Generally, the CMS will provide participating participants and clearing agencies with access to information regarding clearing fund, margin, and other similar requirements and deposits. For a

proposals will enable SCCP and Philadep to provide information regarding their respective participants funds, including excess or deficit amounts, and to provide comprehensive data on underlying collateral to NSCC for inclusion in the CMS. Participants of SCCP or Philadep that desire access to the CMS data will be required to execute a CMS participation application.

## II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>8</sup> The Commission believes the proposed rule changes are consistent with SCCP's and Philadep's obligations under Section 17A(b)(3)(F) because the proposals set forth SCCP's and Philadep's responsibilities and obligations with regard to the release of participants' clearing data and facilitate SCCP's, Philadep's, and their participants' participation in NSCC's CMS by enabling SCCP and Philadep to provide information regarding their participants to NSCC for the CMS. The participation of SCCP, Philadep, and their participants in NSCC's CMS should help SCCP, Philadep and other clearing agencies to better monitor clearing fund, margin, and other similar required deposits that protect clearing agencies against loss should a member default on its obligations to the clearing agency.<sup>9</sup>

complete description of the CMS, refer to Securities Exchange Act Release No. 36091 (August 5, 1995), 60 FR 30912 [File No. SR-NSCC-95-06] (order approving the CMS).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

<sup>9</sup> NSCC's CMS will be especially beneficial to those participating clearing entities that have executed cross-guaranty agreements or have other cross-guarantee arrangements. Currently, SCCP and Philadep have a cross-guarantee arrangement between themselves but not between themselves and other clearing entities. The Commission supports the use of cross-guaranty agreements and other similar arrangements among clearing agencies as a method of reducing clearing agencies' risk of loss due to a common participant's default and encourages SCCP and Philadep to explore such agreements or arrangements with other clearing entities.

Generally, a cross-guaranty agreement, as the one between The Depository Trust Company ("DTC") and NSCC, provides that in the event of a default of a common member, any resources remaining after the failed common member's obligations to the guaranteeing clearing agency have been satisfied will be made available to the other clearing agency. The guaranty is not absolute but rather is limited to the extent of the resources relative to the failed member remaining at the guaranteeing clearing agency. The principal resources will be the failed member's settlement net credit balances and deposits to the clearing agencies' clearing funds. For a complete description of DTC's and NSCC's

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of Section 17A(b)(3)(F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-SCCP-95-04 and SR-Philadep-95-06) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 96-1274 Filed 1-25-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36740; File No. SR-MCC-95-05]

### **Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Contingency Plan for Participants in Connection With Midwest Clearing Corporation's Decision to Withdraw From the Securities Clearing Business**

January 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 26, 1995, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by MCC. On January 11, 1996, MCC filed an amendment to the proposed rule change to clarify certain provisions in the proposal.<sup>2</sup> The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

MCC proposes to add an Article XI, Sponsored Accounts, to its rules to limit the types of persons and entities that are eligible to be participants at MCC and to provide for a contingency, to be

agreement, refer to Securities Exchange Act Release No. 33548 (January 31, 1994), 59 FR 5638 [File Nos. SR-DTC-93-08 and SR-NSCC-93-07].

<sup>10</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> Letter from David T. Rusoff, Foley & Lardner, to Peter Geraghty, Division of Market Regulation, Commission (January 11, 1996).

implemented solely at MCC's discretion, in the event that certain MCC participants have not made arrangements with alternate service providers by January 19, 1996.<sup>3</sup>

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, MCC 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. MCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.<sup>4</sup>

##### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

On January 5, 1996, the Commission approved a proposed rule change filed by MCC relating to its withdrawal from the securities clearance and settlement business in conjunction with an agreement with the National Securities Clearing Corporation ("NSCC").<sup>5</sup> Under the agreement with NSCC, MCC and its parent, the Chicago Stock Exchange ("CHX"), will provide certain floor members and member organizations of the CHX with access to the services offered by NSCC through sponsored accounts with NSCC. This filing implements that portion of the transaction and provides a contingency plan, to be implemented solely at MCC's discretion, for current participants of MCC that are unable to find alternative clearance and settlement services by January 19, 1996.

Pursuant to its agreement with NSCC, MCC will become a member of NSCC and may sponsor Temporary Sponsored Participants ("TSP") and Sponsored Participants ("SP") at NSCC. MCC will maintain subaccounts at NSCC for each TSP and SP. The purpose of the TSP membership category is to provide existing participants of MCC temporary

<sup>3</sup> MCC's filing refers to January 15, 1996, as the date by which MCC participants must have made arrangements with alternate service providers. This date was postponed to January 19, 1996. Telephone conversation between J. Craig Long, Foley & Lardner, [counsel to MCC], and Jerry Carpenter, Assistant Director, Peter Geraghty, Senior Counsel, and Cheryl Tumlin, Staff Attorney, Division of Market Regulation, Commission (January 18, 1996).

<sup>4</sup> The Commission has modified the text of the summaries prepared by MCC.

<sup>5</sup> For a description of the agreement, refer to Securities Exchange Act Release No. 36684 (January 5, 1996), [File No. SR-MCC-95-04] (order approving proposed rule change).



clearing arrangements if they are unable to find appropriate alternative clearing arrangements by the January 19, 1996 deadline.<sup>6</sup> The purpose of the SP category is to provide a mechanism for specialists, market makers, and floor brokers of the CHX who are not members of any registered clearing agency other than MCC to have access to the services of a registered clearing agency. The only services that MCC will provide to TSPs and SPs is access to the facilities of a Qualified Clearing Agency ("QCA").<sup>7</sup>

MCC and CHX will guarantee the obligations of TSPs and SPs to NSCC to the extent provided in an agreement between CHX and NSCC. Only entities that are participants of MCC as of January 19, 1996 will be eligible to be TSPs. Only entities that are members or member organizations of CHX, that are registered as specialists, market makers, or floor brokers, and that meet the other eligibility standards of financial responsibility, operational capacity, experience, and competence will be eligible to be SPs.<sup>8</sup> If implemented, the TSP category will terminate on or before March 31, 1996, at which time MCC will definitively cease to act for all TSPs.

Under the proposed arrangement for SPs, CHX will transmit compared trade information to NSCC so that NSCC can determine each SP's net settlement obligation. NSCC then will transmit SPs' settlement obligations to MCC. Based on NSCC's final settlement figures, MCC will use funds received from an SP or will initiate payments against an SP's bank account to satisfy an SP's payment obligation. In this regard, each SP is required to maintain funds that are sufficient for purposes of settlement and that are accessible to MCC. If an SP has a credit balance, NSCC will forward the credit to MCC, and MCC will make available to such SP the amount of the credit balance.<sup>9</sup>

Each SP that maintains a sponsored account will be permitted to utilize the

sponsored account only for the clearance of transactions in issues traded on the CHX trading floor which are effected by the SP in its capacity as a specialist, market maker, or floor broker, as the case may be. SPs will be required to contribute to a sponsored account fund as provided in proposed Article XI, Rule 11. Each SP's required contribution will consist of the greater of its minimum contribution or its alternative contribution. The minimum contribution for an SP will be \$15,000. The alternative contribution will be 110% of the SP's required contribution to the participant's fund of any registered clearing agency that has entered into appropriate agreements with MCC as a QCA. As of the date of this filing, only NSCC has entered into such an agreement. MCC also may require an SP to deposit a supplemental contribution not based on an SP's usage of MCC's services. All contributions to the sponsored account fund must be in cash. All sponsored account fund contributions not forwarded to a QCA by MCC may be invested by MCC. The sponsored account fund may be used to cover losses in a manner similar to that provided for in the current MCC participants fund rules.

While SPs will not be obligated to comply with all of MCC's rules, SP's will be obligated to comply with the MCC rules designated in Article XI as being applicable to SPs. Among other things, Article XI provides that SPs must comply with MCC's rules relating to losses, indemnification, and ceasing to act.<sup>10</sup> SPs also must comply with the rules of any QCA.<sup>11</sup>

In the event that MCC ceases to act for an SP, proposed Article XI, Rule 10 provides that MCC may buy-in a security position of the SP.<sup>12</sup> This will be the case even if the QCA does not issue a buy-in notice to MCC for the SP's account.

Under the proposed arrangement for TSPs, NSCC will determine each TSP's net settlement obligation. Upon notice to and with authorization from MCC, a TSP may elect to have NSCC transmit its settlement obligations directly to it instead of to MCC. If the TSP so elects, NSCC will transmit the settlement figures directly to the TSP, and the TSP will effect money settlement directly

with NSCC. The TSP must comply with NSCC's rules regarding cutoff times and the use of settlement banks. If the TSP has a credit balance, NSCC will forward the credit directly to the TSP's bank account. If the TSP elects to have NSCC transmit its final settlement figures to MCC, MCC will use the funds it receives from the TSP or will initiate payments against the TSP's bank account to satisfy the TSP's payment obligation. If a TSP has a credit balance under this arrangement, NSCC will forward the credit to MCC, and MCC will make available to the TSP the amount of the credit balance.

Each TSP will be permitted to utilize the temporary sponsored account only for the clearance of issues eligible for clearance and settlement at NSCC. In addition, each TSP will be required to contribute to the sponsored account fund in a manner and amount that is similar to SPs.

Because TSPs are existing participants, they will be required to comply with all existing MCC rules for activity occurring prior to becoming a TSP, and they will be required to comply with the MCC rules designated in Article XI as being applicable to TSPs. Under proposed Rule 10, in the event that MCC ceases to act for a TSP, MCC may buy-in a security position of the TSP. Such a buy-in may occur even if NSCC does not issue a buy-in notice to MCC for the TSP's account.

MCC believes the proposed rule change is consistent with Section 17A of the Act in that it is designed to promote the accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in MCC's control or for which MCC is responsible.

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

MCC does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposal have not been solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)<sup>13</sup> of the Act requires the rules of a clearing agency be

<sup>6</sup>By an Important Notice dated November 17, 1996, MCC informed its participants that it intended to cease providing clearing services on January 15, 1996, and that participants should make arrangements for alternate clearing services by that date. The date was postponed to January 19, 1996. Note 3, *supra*.

<sup>7</sup>As set forth in proposed Article XI, Rule 5, the term Qualified Clearing Agency refers to a registered clearing agency which has entered into an agreement with CHX and MCC pursuant to which it will, among other things, act as a securities clearing agency for SPs and TSPs and provide such services to CHX, CHX members, and MCC as CHX, MCC, and the QCA shall from time to time agree.

<sup>8</sup>Proposed Article XI, Rule 2(a) sets forth the requirements for eligibility as a sponsored participant.

<sup>9</sup>Proposed Article XI, Rule 7 governs the settlement of sponsored accounts and temporary sponsored accounts.

<sup>10</sup>Proposed Article XI, Rule 2(a).

<sup>11</sup>Proposed Article XI, Rule 2(b).

<sup>12</sup>MCC also may buy-in a position of an SP if the SP has voluntarily ceased to be a participant in MCC but has not closed out all of its positions or if MCC determines that such action is necessary and proper in order to protect MCC or its participants or to satisfy its obligations to safeguard securities and funds and to assure the prompt and accurate clearance and settlement of securities transactions. Proposed Article XI, Rule 10.

<sup>13</sup>15 U.S.C. 78q-1(b)(3)(F) (1988).



designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes the proposal is consistent with MCC's obligations under Section 17A of the Act because it should help ensure that MCC participants will have access to safe and efficient securities clearing services and should protect against disruption in their businesses upon MCC's withdrawal from the securities clearing business. Furthermore, MCC's coordination with NSCC in establishing clearing services for TSPs and SPs through sponsored accounts and temporary sponsored accounts and the requirement of a sponsored account fund to cover possible losses by MCC incident to the operation of the sponsored and temporary sponsored accounts should help MCC safeguard the securities and funds which are in its custody or control or for which it is responsible.

MCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because the proposal is critical to MCC's orderly withdrawal from the securities clearing business by its announced deadline of January 19, 1996. Furthermore, the Commission received only one comment letter<sup>14</sup> during the comment period of MCC's proposal to withdraw from the clearing business.<sup>15</sup> Thus the Commission does not believe it will receive negative comment letters on this proposal.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of MCC. All submissions should refer to the file number SR-MCC-95-05 and should be submitted by February 16, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MCC-95-05) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Margaret H. McFarland,  
Deputy Secretary.

FR Doc. 96-1272 Filed 1-25-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36739; File No. SR-MSTC-95-11]

#### **Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to a Contingency Plan for Participants in Connection With Midwest Securities Trust Company's Decision to Withdraw From the Securities Depository Business**

January 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 26, 1995, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MSTC-95-11) as described in Items I and II below, which items have been prepared primarily by MSTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

MSTC proposes to add Article VIII to its rules to provide for a contingency

plan, to be implemented in MSTC's sole discretion, in the event that certain MSTC participants have not made arrangements for alternate service providers by January 19, 1996.<sup>2</sup>

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, MSTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.<sup>3</sup>

#### **(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

On January 5, 1996, the Commission approved a proposed rule change filed by MSTC relating to its withdrawal from the securities depository business in conjunction with an agreement with The Depository Trust Company ("DTC").<sup>4</sup> This filing provides for a contingency plan for current participants of MSTC that are unable to find alternative securities depository services by January 19, 1996.

Pursuant to MSTC's proposed contingency plan, MSTC in its sole discretion may become a member of DTC for the limited purpose of temporarily enabling Temporary Sponsored Participants ("TSPs") to utilize the depository services of DTC. If implemented, only entities that are depository participants of MSTC as of January 19, 1996 will be eligible to be TSPs. The purpose of the TSP membership category is to provide existing MSTC depository participants that are unable to find appropriate alternative arrangements by the January 19, 1996 deadline, temporary securities depository arrangements.<sup>5</sup> This TSP

<sup>2</sup> MSTC's filing refers to January 15, 1996, as the date by which MSTC participants must have made arrangements with alternate service providers. This date was postponed to January 19, 1996. Telephone conversation between J. Craig Long, Foley & Lardner, [counsel to MSTC], and Jerry Carpenter, Assistant Director, Peter Geraghty, Senior Counsel, and Cheryl Tumlin, Staff Attorney, Division of Market Regulation, Commission (January 18, 1996).

<sup>3</sup> The Commission has modified the text of the summaries prepared by MSTC.

<sup>4</sup> For a description of the agreement, refer to Securities Exchange Act Release No. 36684 (January 5, 1996), [File No. SR-MSTC-95-10] (order approving proposed rule change).

<sup>5</sup> By an Important Notice dated November 17, 1996, MSTC informed its participants that it

<sup>14</sup> Letter from Leland W. Hutchinson, Jr., Freeborn & Peters, [counsel for Scattered Corporation and Laura Bryant, members of CHX] to Richard R. Lindsey, Director, Division of Market Regulation, Commission (December 15, 1995).

<sup>15</sup> See, Securities Exchange Act Release No. 36684 (January 5, 1996), [File No. SR-MCC-95-04] (order approving MCC's proposal to withdraw from the securities clearing business).

<sup>16</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

membership category will terminate on or before March 31, 1996, at which time MSTC will definitively cease to act for all TSPs. The only services that MSTC will provide to TSPs is to provide access to the facilities of DTC.

Under the proposed arrangement, MSTC will maintain subaccounts at DTC for each TSP. DTC will transmit the settlement obligations of TSPs to MSTC. Based on DTC's final settlement figures, MSTC will use funds received by MSTC from a TSP or will initiate payments against a TSP's bank account to satisfy a TSP's payment obligation. In this regard, each TSP will be required to maintain funds that are sufficient for purposes of settlement and that are accessible to MSTC. If a TSP has a credit balance, DTC will forward the credit to MSTC, and MSTC will make available to the TSP the amount of the credit balance. Alternatively, upon notice to and authorization by MSTC, TSPs can settle directly with DTC.

TSPs will be required to contribute to a temporary sponsored account fund. The required contribution will consist of the greater of \$15,000 or 110% of the required contribution to the participants fund of DTC. MSTC also may require a TSP to deposit a supplemental contribution not based on a TSP's usage of MSTC's services. All contributions to the temporary sponsored account fund must be in cash. All temporary sponsored account fund contributions not forwarded by MSTC to DTC may be invested by MSTC. The sponsored account fund may be used to cover losses in a manner similar to that provided for in the current MSTC participants fund rules.

While TSPs will not be obligated to comply with all of MSTC's current rules, TSPs will be obligated to comply with the MSTC rules designated in Article VIII as being applicable to TSPs. Among other things, Article VIII provides that TSPs must comply with MSTC's rules relating to losses, indemnification, and MSTC's ceasing to act. TSPs also must comply with the rules of DTC.

MSTC believes the proposed rule change is consistent with Section 17A of the Act in that it is designed to promote the accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in MSTC's custody or control or for which MSTC is responsible.

intended to cease providing depository services on January 15, 1996, and that participants should make arrangements for alternate depository services by that date. The date was postponed to January 19, 1996. Note 2, *supra*.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

MSTC does not believe the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposal have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)<sup>6</sup> of the Act requires the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes the proposal is consistent with MSTC's obligations under Section 17A of the Act because it should help ensure that MSTC participants unable to find alternative securities depository services by January 19, 1996, will have access to safe and efficient securities depository services for a period of time that should be sufficient to enable such participants to obtain permanent alternate services. This should help protect against disruption in these participants' businesses upon MSTC's withdrawal from the securities depository business. Furthermore, MSTC's coordination with DTC in establishing securities depository services for TSPs through temporary sponsored accounts and the requirement of a temporary sponsored account fund to cover losses that could be suffered by MSTC incident to the operation of the temporary sponsored accounts should help MSTC safeguard the securities and funds which are in its custody or control or for which it is responsible.

MSTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because the proposal is critical to MSTC's orderly withdrawal from the securities depository business with minimal business disruption by its announced deadline of January 19, 1996. Furthermore, because the Commission received only one

comment letter<sup>7</sup> during the comment period of MSTC's proposal to withdraw from the securities depository business,<sup>8</sup> the Commission does not believe it will receive negative comment letters on this proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of MSTC. All submissions should refer to the file number SR-MSTC-95-11 and should be submitted by February 16, 1996.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MSTC-95-11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-1271 Filed 1-25-96; 8:45 am]

BILLING CODE 8010-01-M

<sup>7</sup> Letter from Leland W. Hutchinson, Jr., Freeborn & Peters, [counsel for Scattered Corporation and Laura Bryant, members of CHX] to Richard R. Lindsey, Director, Division of Market Regulation, Commission (December 15, 1995).

<sup>8</sup> See, Securities Exchange Act Release No. 36684 (January 5, 1996), [File No. SR-MSTC-95-10] (order approving MSTC's proposal to withdraw from the securities depository business).

<sup>9</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

[Release No. 34-36748; File No. SR-Amex-96-01]

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Adoption of Rule 428 ("Telephone Solicitation—Recordkeeping") and an Interpretation With Respect to Proposed Rule 428**

January 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 4, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to adopt new Rule 428 ("Telephone Solicitation—Recordkeeping") and a new interpretation thereunder concerning telephone solicitation and recordkeeping.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

In 1994, an industry Task Force, comprised of representatives from the Commission, the New York Stock

Exchange, Inc. ("NYSE"), and the National Association of Securities Dealers, Inc. ("NASD") was formed to review broker-dealer telemarketing practices and compliance with the Telephone Consumer Protection Act of 1991 ("TCPA"), the Federal Communications Commission ("FCC") rules and regulations implementing that law, and the Telemarketing and Consumer Fraud and Abuse Act ("Prevention Act"). The TCPA, FCC rules, and the Prevention Act address telemarketing practices and the rights of telephone consumers. One of the requirements contained in this regulatory framework is that businesses, including broker-dealers, that make telephone solicitations to residential telephone subscribers must institute written policies and have procedures in place for maintaining "do-not-call" lists. The Prevention Act also requires the Commission to engage in its own additional rulemaking, or, alternatively, to require the self-regulatory organizations ("SROs") to promulgate telemarketing rules consistent with the legislation.

After reviewing the TCPA, FCC rules, and the Prevention Act, the Task Force recommended that the SROs adopt "cold-calling" rules. The NYSE and NASD adopted such rules in June 1995, while the Chicago Board Options Exchange adopted such a rule in December 1995.<sup>2</sup> Similarly, the Exchange is proposing to adopt new Rule 428 that will require members and member organizations to make and maintain a centralized list of persons who have informed the member or member organization that they do not want to receive telephone solicitations. The proposed interpretation to Rule 428 will be issued in an Information Circular and will remind members and member organizations that they are subject to compliance with the requirements of the relevant rules of the FCC and the Commission relating to telemarketing practices and the rights of telephone consumers.

**2. Statutory Basis**

The proposed rule change is consistent with Section 6(b) of the Act<sup>3</sup> in general and furthers the objectives of Section 6(b)(5)<sup>4</sup> in particular because it is designed to promote just and equitable principles of trade, and, in

general, to protect investors and the public interest, by addressing the practices of Exchange members and member organizations who make telemarketing calls and the protection of customers who have indicated a desire not to receive such calls.

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange believes the proposed rule change will not impose any burden on competition.

**C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others**

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for thirty days from January 4, 1996, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>5</sup> and Rule 19b-4(e)(6)<sup>6</sup> thereunder.

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

<sup>2</sup> See Securities Exchange Act Release Nos. 35821 (June 7, 1995), 60 FR 31337 (approving File No. SR-NYSE-95-11); 35831 (June 9, 1995), 60 FR 31527 (approving File No. SR-NASD-95-13); and 36588 (Dec. 13, 1995), 60 FR 56624 (approving File No. SR-CBOE-95-63).

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>6</sup> 17 CFR 240.19b-4(e)(6).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

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 in Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-96-01 and should be submitted by February 16, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-1360 Filed 1-25-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36752; File No. SR-Phlx-95-77]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Rules of the Allocation, Evaluation and Securities Committee.**

January 22, 1996.

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 December 22, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to update its rules relating to the Allocation, Evaluation and Securities Committee ("Committee"). Specifically, Rules 500, 501, 505, 506, 508 and 511 are being amended as well as By-Law Article X, Section 10-7. The text of the proposed rule change is available at the Exchange and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included

statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

The purpose of the proposed rule change is to update the Exchange's 500 Series of rules, which govern the allocation of specialist privileges. The rules that are currently in place have not been significantly amended since they were adopted in 1987 as a pilot program.<sup>1</sup> as described below, almost all of the rules are being revised in order to address issues that have come up over the past eight years. All of the proposed changes are described below.

**Composition of Allocation, Evaluation and Securities Committee**

Currently, the Committee has a minimum nine member requirement but has no maximum requirement. For competitive reasons, the Committee is often called upon to meet on short notice and meets more frequently than other committees that may only hold monthly meeting. Having a large committee makes it difficult to obtain a quorum, and thus, conduct business.

Accordingly, By-Law Article X, Section 10-7 and Rule 500 are being amended to revise the Committee size and structure. The By-Law section will still require a minimum of nine members on the Committee but would add that a quorum will always be five members. The Committee would also be structured differently. Pursuant to proposed new subsection (b) to Rule 500, for each meeting, the Committee will be composed of five core committee members and four members of a 20 member allocation panel. The core committee, whose members would serve for three year terms (no more than two consecutive terms), would be created to

<sup>1</sup>The rules initially were approved by the Commission as an eight month pilot program on May 21, 1987. See Securities Exchange Act Release No. 24496 (May 21, 1987), 52 FR 20183 (May 29, 1987). On February 23, 1988, the pilot program was extended indefinitely until further action was taken by the Commission. See Securities Exchange Act Release No. 25388 (Feb. 23, 1988), 53 FR 6725 (Mar. 2, 1988). The rules were permanently approved on June 26, 1991. See Securities Exchange Act Release No. 29369 (June 26, 1991), 56 FR 30604 (July 3, 1991).

assure some continuity of membership on the Committee. The allocation panel would also be created, whose members would serve for one-year terms, to allow for new persons with fresh perspectives.

Rule 500 would be amended to provide who may serve on the core committee and allocation panel and how many members of each must attend meetings in order for a quorum to be reached. Specifically, the core committee would have five members: three who conduct a public securities business, one from the equity floor, and one from the options floor. The allocation panel would have twenty members: six who conduct a public securities business, five from the equity floor, five from the options floor, and four from the foreign currency options ("FCO") floor.

For each meeting, the Committee will be composed of the five core committee members and four members of the 20 member panel chosen on a rotating alphabetical basis. The Chairman will, however, have the discretion to also specifically invite any other members of the panel who he believes would have particular knowledge or expertise respecting the subject matter of the meeting. For example, if a FCQ is being allocated and the four alphabetically chosen panel members for the meeting happen to all be from the equity and equity options floors, the Chairman could also invite any or all of the four FCO panel members to the meeting. Additionally, all other members of the panel will always be notified of meetings and may attend and vote if they so chose even if they are not at the top of the rotation list. Finally, at least two of the core committee members must be part of the quorum at every meeting in order to assure that there are some experienced committee members in attendance.<sup>2</sup>

**Transfers of Specialist Privileges**

Currently, a specialist does not have to seek Committee approval when it proposes to transfer all of its specialist privileges, but it must do so in order to transfer less than all of its privileges. The Exchange has determined to amend Rule 508 to now require that all proposed transfers of specialist privileges be subject to prior Committee approval so that the Committee has the ability to consider the qualifications of all proposed transferees. The criteria provided in Rule 511 that is currently used for making allocation and reallocation decisions would now also

<sup>2</sup>At least one of the core committee members in attendance must conduct a public securities business.

<sup>7</sup> 17 CFR 200.30-3(a)(12).

be applicable to transfer approval decisions.

Often, when option specialist privileges are transferred, the physical trading location on the floor is also moved. In the past, the Exchange has often been requested to effect a move of screens and equipment overnight. Not only is this difficult for the staff to accomplish but it could also cause problems for the market makers in the trading crowd who may have part of their assigned classes of options moved.<sup>3</sup> Thus, new Commentary .01 would also be added to Rule 508 in order to impose a 45 day moratorium on trading floor location moves in order to give the staff and the traders in the crowd time to prepare for the move.

#### *Specialist Unit Performance Reviews*

Currently, the Committee conducts two kinds of reviews of specialist units pursuant to Exchange Rule 511. First, the Committee performs routine quarterly reviews of any specialist unit. Second, special reviews are conducted within 60 days after a transfer has been effected or a material change in a specialist unit has occurred. The Committee will still conduct the routine reviews, except that now the Quality of Markets Subcommittee will perform the initial stage of the review.<sup>4</sup>

In the cases of transfers of specialist privileges and material changes to the units, the Exchange proposes to commence the reviews after 90 days rather than 60 days because the Exchange has found that 60 days is not enough time in which to determine the adequacy of performance. The second proposed change to these types of reviews is that in the case of transfer reviews, if the new unit's performance is below minimum standards, the unit will be given 30 days in which to improve prior to beginning reallocation proceedings. This review provision will be renumbered as new subsection (d)(2) to Rule 511.

Finally, a new type of review will be instituted regarding new allocations of specialist privileges in new proposed subsection (d)(1) to Rule 511. When a specialist unit applies for a new equity book or options class, it is required to

fill out an application and sometimes to have a representative appear before the Committee. The Committee makes allocation decisions, in part, based on representations made by the applicant either orally or in writing. For instance, an options specialist might commit to being 100 up on all displayed markets or an equity specialist might commit to a volume guarantee on PACE significantly larger than the minimum. In order to help ensure that the Committee is making allocations based on realistic expectations of performance, the Exchange proposes to now commence reviews of specialist units that are awarded books within 90 days thereafter to specifically consider whether the unit has attempted to comply with the information that it gave to the Committee when applying. If the Committee finds that the unit is not in compliance, they will be given 30 days in which to comply prior to instituting reallocation proceedings.

#### *Registration of Specialist Privileges*

Presently, equity books and options classes may be registered in the name of either the specialist unit, the individual specialist or both. There is no requirement, however, in the rules that the registrant be an Exchange member or approved specialist. The Exchange proposes to add this language into Rule 505. Also, where a specialist unit has leased its specialist privileges to another unit, the Exchange will now require that both the lessor and the lessee be noted on the Registration form.

#### *Specialist Applications*

Exchange Rule 501 only presently addresses the contents of applications to become specialist units. The Committee's practice has been, however, to require both specialist units and individual specialists to apply in writing to the Committee for approval. Therefore, Rule 501 is being amended to specify that both specialists and specialist units must apply in writing to the Committee and to note what information must be in the applications.

Exchange Rule 506 will also be amended to require that when five or more specialist units apply for a particular equity book or options class, personal appearances before the Committee will be required. Currently, appearances are discretionary with the Committee. Finally, various amendments have been made to the rules to include references to the Foreign Currency Options Committee where appropriate.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be

<sup>3</sup>Registered Options Traders ("ROTs") are assigned one or more classes of options by the Exchange and have affirmative obligations to make markets in such options pursuant to Exchange Rule 1014. ROTs, thus, usually request assignments in options classes that are physically traded in the same general area of the floor.

<sup>4</sup>The Exchange is concurrently filing SR-PHLX 95-91, which proposes to revise the options specialist evaluation form and review procedure. The proposed amendments to Rule 511(c) herein are the same as those proposed in that filing and are explained in more detail.

available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-Phlx-95-77 and should be submitted by February 16, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-1361 Filed 1-25-96; 8:45 am]

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[Release No. 34-36747; File No. SR-PHLX-95-87]

**Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Advice F-15 and the Expanded Equity Option Hedge Exemption**

January 19, 1996.

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 December 7, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is approving this proposal on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PHLX proposes to amend paragraph (b) of Floor Procedure Advice ("Advice") F-15, "Minor Infractions of Position/Exercise Limits and Hedge Exemptions," to indicate that the maximum allowable position for each option contract "hedged" by 100 shares of stock or securities convertible into the stock will be three times, instead of twice, the standard position and exercise limit of the option.<sup>1</sup> The proposed amendment to Advice F-15 will make Advice F-15 consistent with

<sup>1</sup> Position limits impose a ceiling on the aggregate number of option contracts on the same side of the market that an investor, or group of investors acting in concert, may hold or write. Exercise limits impose a ceiling on the aggregate long positions in option contracts that an investor, or group of investors acting in concert, can or will have exercised within five consecutive business days.

a proposal approved previously by the Commission which expands the maximum allowable hedge exemption for equity options to three times the standard limit of the option.<sup>2</sup>

The text of the proposal is available at the Office of the Secretary, the PHLX, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

Recently, the Commission approved proposals by various options exchanges, including the PHLX, to create two additional tiers of equity option position and exercise limits and to expand the equity option hedge exemption from two times to three times the applicable position limit for the option.<sup>3</sup> The PHLX's equity option hedge exemption, which is contained in Commentary .07 to PHLX Rule 1001, "Position Limits," was adopted originally on a pilot basis, and recently was permanently approved by the Commission.<sup>4</sup> The equity hedge exemption applies where each option contract is "hedged" by 100 shares of stock or securities convertible into such stock, (in the case of an adjusted option, the number of shares at option), as follows: (1) long call and short stock; (2) short call and long stock; (3) long put and long stock; and (4) short put and short stock.

Advice F-15 was adopted in 1993.<sup>5</sup> Paragraph (a) of Advice F-15 provides

<sup>2</sup> See Securities Exchange Act Release No. 36409 (October 23, 1996), 60 FR 55399 (October 31, 1995) (order approving File Nos. SR-NYSE-95-31; SR-PSE-95-25; SR-Amex-95-42; and SR-PHLX-95-71) ("Hedge Exemption Order"). See also Securities Exchange Act Release No. 36371 (October 13, 1995), 60 FR 54269 (October 20, 1995) (order approving File No. SR-CBOE-95-42).

<sup>3</sup> *Id.*

<sup>4</sup> See Securities Exchange Act Release No. 35738 (May 18, 1995), 60 FR 27573 (May 24, 1995) (order approving File Nos. SR-Amex-95-13; SR-CBOE-95-13; SR-NYSE-95-04; SR-PSE-95-05; and SR-PHLX-95-10).

<sup>5</sup> Securities Exchange Act Release No. 32423 (June 7, 1993), 58 FR 32976 (June 14, 1993) (order approving File No. SR-PHLX-92-21).

for a fine for violations of the Exchange's position and exercise limits which do not exceed the position and exercise limits by more than 5%. Paragraph (b) of Advice F-15 governs the equity option hedge exemption, with paragraph (b)(1) requiring the filing of a hedge exemption report and paragraph (b)(ii) providing for a fine if an option position is not reduced when the stock side to a hedge exemption is decreased.

The PHLX proposes to amend Advice F-15(b) to reflect the recent expansion of the equity option hedge exemption,<sup>6</sup> which was inadvertently omitted from the PHLX's proposal to expand the equity option hedge exemption. Specifically, the PHLX proposes to amend Advice F-15 to provide that the equity hedge exemption permits positions up to three times the applicable equity option position limit, rather than two times the applicable equity option position limit.

The PHLX notes that because Advice F-15 contains a fine schedule which is administered pursuant to the PHLX's minor rule violation enforcement and reporting plan ("Minor Rule Plan"),<sup>7</sup> the proposal necessarily amends the Exchange's Minor Rule Plan. Since the equity option hedge exemption has already been expanded to three times the position limit,<sup>8</sup> the PHLX believes that the proposal does not raise new regulatory issues; rather, the Exchange believes that the proposal enhances investors' hedging abilities by correcting Advice F-15 to correspond to PHLX Rule 1001, as amended by the Hedge Exemption Order.

The PHLX believes that increasing the maximum levels of the automatic hedge exemption should provide greater depth and liquidity, and, hence, greater protection to investors against market declines. Because the proposal codifies the expanded exemption in Advice F-

<sup>6</sup> See Hedge Exemption Order, *supra* note 2.

<sup>7</sup> The PHLX's Minor Rule Plan, codified in PHLX Rule 970, "Floor Procedure Advices: Violations, Penalties, and Procedures," contains Advices with accompanying fine schedules. Pursuant to paragraph (c)(1) of Rule 19d-1 under the Act, a self-regulatory organization ("SRO") is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d-1, any disciplinary action taken by the SRO for violation of an SRO rule that has been designated a minor rule violation pursuant to the plan shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding \$2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic (quarterly), as opposed to immediate, basis.

<sup>8</sup> See Hedge Exemption Order, *supra* note 2.

15, the PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by incorporating the new, broader equity hedge exemption in to the Exchange's Minor Rule Plan.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose an inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act in order to promptly correct Advice F-15 to reflect the expanded equity option hedge exemption approved in the Hedge Exemption Order and to clarify the application of the Minor Rule Plan to the exemption.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) in that it is designed to protect investors and the public interest and to facilitate transactions in securities.<sup>9</sup> Exchange Rule 1001, Commentary .07 and Advice F-15(b) set forth an exemption from equity option position and exercise limits for equity options hedge by 100 shares of stock or securities convertible into the stock. In the Hedge Exemption Order, the Commission approved a proposal to amend PHLX Rule 1001, Commentary .07, to expand the maximum allowable hedged position for equity options to three times the standard position and exercise limit of the option. However, a corresponding amendment to Advice F-15(b) was inadvertently omitted from the PHLX's proposal to amend PHLX Rule 1001, Commentary .07.

The Commission believes that the proposal protects investors and the

public interest by making Advice F-15(b) consistent with PHLX Rule 1001, Commentary .07, as amended by the Hedge Exemption Order, thereby clarifying the Exchange's rules and eliminating potential confusion. Specifically, the proposal amends Advice F-15(b) to indicate that the maximum allowable position for each option contract hedge by 100 shares of stock or securities convertible into the stock, will be three times, instead of twice, the standard position and exercise limit of the option.

As the Commission found in the Hedge Exemption Order, the Commission believes that the proposal to expand the hedge exemption is an appropriate method to accommodate the needs of options market participants. By increasing the hedge exemption, the Commission continues to believe that large hedge funds and institutional accounts will be provided with the means necessary to adequately hedge their stock holdings without adding risk to the options market. Based on the PHLX's experience, the Commission believes, as it concluded in the Hedge Exemption Order, that the increased equity option hedge exemption should result in little or no additional risk to the marketplace.<sup>10</sup>

In addition, the Commission believes that it is appropriate to continue to administer Advice F-15, as amended, pursuant to the PHLX's Minor Rule Plan. Under the proposal, violations of the hedge exemption continue to be objective in nature and easily verifiable; therefore, the enforcement of the expanded hedge exemption should not entail the complicated factual and interpretive inquiries associated with more sophisticated disciplinary actions. Accordingly, the Commission believes that violations of the equity option hedge exemption continue to lend themselves to the use of the PHLX's Minor Rule Plan and the fines provided for in Advice F-15.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that the proposal clarifies the PHLX's rules by making Advice F-15(b) consistent with PHLX Rule 1001, Commentary .07. In addition,

<sup>10</sup>The Commission notes that to the extent the potential for manipulation increases because of the expanded hedge exemption, the Commission believes that the PHLX's surveillance programs will be adequate to detect as well as to deter attempted manipulative activity. The Commission will, of course, continue to monitor the PHLX's surveillance programs to ensure that problems do not arise.

the proposal does not raise any new regulatory issues since the Commission previously approved an identical amendment to PHLX Rule 1001, Commentary .07. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 16, 1996.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (SR-PHLX-95-87) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

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<sup>11</sup> 15 U.S.C. § 78s(b)(2) (1982).

<sup>12</sup> 17 CFR 200.30-3(a)(12) (1995).

<sup>9</sup> 15 U.S.C. § 78f(b)(5) (1988 & Supp. V 1993).



[Release No. 34-36745; File No. SR-Phlx-95-38]

**Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Increase in Position and Exercise Limits on the Phlx National Over-the-Counter Index**

January 19, 1996.

**I. Introduction**

On September 25, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to increase the position<sup>3</sup> and exercise limits<sup>4</sup> for options ("XOC") on the Phlx's National Over-the-Counter Index ("Index")<sup>5</sup> from 17,000 to 25,000 contracts.

The proposed rule change appeared in the Federal Register on November 14, 1995.<sup>6</sup> No comments were received on the proposed rule change. This order approves the Phlx's proposal.

**II. Background and Description**

On May 17, 1985, the Commission approved the Exchange's proposal to list and trade options on the Index.<sup>7</sup> According to the Phlx, trading volume on the Index has increased sharply since 1991, and consistently since 1993.<sup>8</sup>

The Exchange recently conducted a "two-for-one split" of the Index, which effectively reduced the value of the Index to one-half of its previous value.<sup>9</sup> In accounting for the split, the Phlx doubled the position and exercise limits

applicable to the XOC from 17,000 contracts<sup>10</sup> to 34,000 contracts until the last expiration then trading, which is the June 1996 expiration.

In the absence of the proposed rule change, following the expiration of the June 1996 option series, the XOC's position limit would revert to the 17,000 contract level. At this limit, with the Index at a post-split value of 424,<sup>11</sup> the aggregate dollar value of the maximum permissible XOC position would be approximately \$721 million.<sup>12</sup> In comparison, with the limit raised to 25,000 contracts, the aggregate dollar value of the maximum permissible XOC position would be approximately \$1 billion.<sup>13</sup> The Exchange believes that even with the increased position limit, the Index's value compares with the values of other exchanges' broad-based index options,<sup>14</sup> as well as its own.<sup>15</sup> Moreover, as most broad-based index options have position limits of at least 25,000 contracts,<sup>16</sup> with certain products trading with higher limits,<sup>17</sup> the proposed rule change is intended to keep the Phlx in line with the position limits of index options traded on other exchanges.

**III. Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5),<sup>18</sup> in that

it should help to remove impediments to and perfect the mechanism of a free and open market, promote just and equitable principles of trade, and protect investors and the public interest.

In analyzing and reviewing specific position and exercise limits proposed by the options exchanges, the Commission has attempted to balance two competing concerns. First, limits must be sufficiently low to prevent investors from disrupting the underlying cash market. Second, limits must not be established at levels that are so low as to unnecessarily discourage participation in the options market by institutions and other investors who have substantial hedging needs or to prevent specialists and market makers from adequately meeting their obligations to maintain fair and orderly markets.

The Commission believes that the proposed increase in position and exercise limits to 25,000 contracts<sup>19</sup> should increase the depth and liquidity of the XOC market without significantly increasing concerns regarding intermarket manipulations or disruptions of the markets for the options or the underlying securities. The Commission has previously stated that markets with active and deep trading, as well as broad public ownership, are more difficult to manipulate or disrupt than less active markets with smaller public floats.<sup>20</sup> In this regard, the Commission notes that the Index is a broad-based index consisting of the 100 largest capitalized stocks trading over-the-counter ("OTC"). Moreover, the Phlx's maintenance requirements ensure that the Index will not contain a large number of thinly-capitalized, low-priced securities with small public floats and low trading volumes.<sup>21</sup> Accordingly, given the size and breadth of the Index, the Commission does not believe that increasing the position and exercise limits for the Index will substantially increase the Index's susceptibility to manipulation or increase the potential for disruption in the markets for the underlying securities.

In addition, the Exchange's surveillance program will continue to be applicable to the trading of XOC options and should detect and deter any trading

<sup>19</sup> The Commission again notes that the Exchange's proposal will not be implemented until after the June 1996 expiration.

<sup>20</sup> See, e.g., Securities Exchange Act Release No. 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992).

<sup>21</sup> See Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 (May 15, 1985).

<sup>10</sup> See Securities Exchange Act Release No. 33634 (February 17, 1994), 59 FR 9263 (February 25, 1994) (order approving increase in position and exercise limits on Index from 10,000 to 17,000 contracts) (File No. SR-Phlx-93-07).

<sup>11</sup> This value of the Index was recorded on December 19, 1995.

<sup>12</sup> The aggregate dollar value of the maximum permissible XOC position is calculated by multiplying the Index value by the multiplier by the position limit as follows:

$$424 \times 100 \times 17,000 = \$720,800,000$$

$$13 \quad 424 \times 100 \times 25,000 = \$1,060,000,000$$

<sup>14</sup> These values were recorded on June 27, 1995:

$$\text{CBOE: OEX } 520 \times 100 \times 25,000 = \$1,300,000,000$$

$$\text{CBOE: SPX } 545 \times 100 \times 45,000 = \$2,452,500,000$$

$$\text{CBOE: RUT } 281 \times 100 \times 50,000 = \$1,405,000,000$$

$$\text{CBOE: NDX } 534 \times 100 \times 25,000 = \$1,335,000,000$$

$$\text{Amex: XMI } 477 \times 100 \times 34,000 = \$1,621,800,000$$

$$\text{PSE: WSX } 363 \times 100 \times 37,500 = \$1,361,250,000$$

$$\text{NYSE: NYA } 292 \times 100 \times 45,000 = \$1,314,000,000$$

$$15 \quad \text{VLE } 518 \times 100 \times 25,000 = \$1,295,000,000$$

$$\text{TPX } 482 \times 100 \times 25,000 = \$1,205,000,000$$

<sup>16</sup> See, e.g., American Stock Exchange, Inc.'s ("Amex") EUR—25,000 contracts, HKO—25,000 contracts, JPN—25,000 contracts; and Chicago Board Options Exchange, Inc.'s ("CBOE") NDX—25,000 contracts.

<sup>17</sup> See, e.g., CBOE's SPX—45,000 contracts, RUT—50,000 contracts; Amex's XII—45,000 contracts, XMI—34,000 contracts; and New York Stock Exchange, Inc.'s ("NYSE") NYA and NNA—45,000 contracts each.

<sup>18</sup> 15 U.S.C. § 78f(b) (1988).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1994).

<sup>3</sup> Position limits impose a ceiling on the aggregate number of option contracts on the same side of the market that an investor, or group of investors acting in concert, may hold or write. See Phlx Rule 1001A(a)(ii).

<sup>4</sup> Exercise limits impose a ceiling on the aggregate long positions in option contracts that an investor, or group of investors acting in concert, can or will have exercised within five consecutive business days. See Phlx Rule 1002A.

<sup>5</sup> The Index is a capitalization-weighted market index composed of the 100 largest capitalized stocks trading over-the-counter.

<sup>6</sup> See Securities Exchange Act Release No. 36461 (November 6, 1995), 60 FR 57257 (November 14, 1995).

<sup>7</sup> See Securities Exchange Act No. 22044 (May 17, 1985), 50 FR 21532 (May 24, 1985) (File Nos. SR-Phlx-84-28 and SR-Phlx-85-11).

<sup>8</sup> According to the Exchange, XOC volume for the period January-June 1995 was 167,894 contracts, compared to 158,228 contracts for the period January-June 1993.

<sup>9</sup> See Securities Exchange Act Release No. 36577 (December 12, 1995) (order approving File No. SR-Phlx-95-61).



abuses arising from the Index's increased position and exercise limits.

Lastly, the Exchange submitted data comparing the Index to several other broad-based indexes, including the CBOE's Nasdaq 100 Index, which is comprised of OTC stocks similar to those companies in the XOC.<sup>22</sup> The Commission believes that the comparative data confirms that the proposed increase in the Index's position and exercise limits to 25,000 contracts are comparable to those of similar indexes which trade on other options exchanges.

#### IV. Conclusion

For the foregoing reasons, the Commission finds that the Phlx's proposal to increase the position and exercise limits of the Index from 17,000 to 25,000 contracts is consistent with the requirements of the Act and the rules and regulations thereunder. In addition, the Commission notes that the change in position and exercise limits on the XOC does not become effective until after the expiration of the June 1996 option series.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-Phlx-95-38) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 96-1363 Filed 1-25-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-36744; File No. SR-Phlx-95-92]

#### **Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Options on the PHLX OTC Industrial Average Index**

January 19, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 1995, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 29, 1995, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to list and trade options on the Phlx OTC Industrial Average Index ("OTC Industrial Index" or "Index"), a price weighted index developed by the Phlx composed of ten of the largest stocks, by capitalization, traded through the National Association of Securities Dealers Automated Quotations system and are reported national market system securities ("NASDAQ/NMS"). The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements

concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

#### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Phlx proposes to list for trading an European-style option<sup>4</sup> on the Phlx OTC Industrial Average Index which is composed of ten of the largest capitalized common stock issues traded through NASDAQ/NMS representing diversified industries including Telecommunications, Pharmaceuticals, Semiconductors, and Data Processing.<sup>5</sup>

The Phlx believes there are numerous benefits to listing the OTC Industrial Index options. First, the Exchange believes that the OTC Industrial Index will appeal to individual investors as well as program and basket traders because the Index reflects the direction and pricing of some of the nation's most important and heavily traded companies. These stocks are frequently found in investor and trader portfolios alike. Second, because the OTC Industrial Index is based on a relatively small number of actively traded stocks, replication of the Index for hedging purposes with underlying stocks can be readily accomplished with complete accuracy. Third, the Exchange does not believe that the OTC Industrial Index will be susceptible to manipulation because the stocks comprising the OTC Industrial Index are some of the largest and most widely held common stocks. Furthermore, all of the component stocks in the Index are options eligible and have overlying options currently trading.

The formula for calculating the OTC Industrial Index is as follows:

$$\text{Index Value} = \frac{SP_1 + SP_2 + SP_3 + \dots + SP_{13}}{\text{divisor}} \times 100$$

SP = the stock price of each component.

<sup>22</sup> See also *supra* notes 14-15.

<sup>23</sup> 15 U.S.C. § 78s(b)(2) (1988).

<sup>24</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange amended the proposed rule change to indicate that the Index will be treated as

a narrow based index. See Letter from Nandita Yagnik, New Product Development, Phlx, to John Ayanian, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated December 27, 1995 ("Amendment No. 1").

<sup>4</sup> European-style options can be exercised only during a specific time period prior to expiration of the options.

<sup>5</sup> The components of the Index are: Amgen, Inc.; Applied Materials; Bay Networks, Inc.; CISCO Systems; Intel Corp.; Microsoft Corp.; MCI Communications; Oracle Corp.; Sun Microsystems; and Tele Communications, Inc.

The current price of each component issue is added and multiplied by 100 shares to determine the current aggregate market value of the issues in the Index. To compute the current Index value, the aggregate market value is divided by the divisor. The Index value was set at a starting value of 150 as of November 1, 1995.

In order to maintain continuity in the value of the Index, the Index divisor will be adjusted for changes in capitalization of any of the component issues resulting from, among other things, mergers, acquisitions, delistings, and substitutions. Adjustments in the value of the Index which are necessitated by the addition and/or the deletion of an issue from the Index are made by adding and/or subtracting the market value (price times shares outstanding) of the relevant issues. The value of the Index as of the close of trading on Friday, January 4, 1996 was 279.27.

The Index value will be updated dynamically at least once every 15 seconds during the trading day. The Phlx has retained Bridge Data, Inc. to compute and do all necessary maintenance of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority. The Index value will also be available on broker/dealer interrogation devices to subscribers of the option information.

In accordance with Phlx Rule 1009A, if any change in the nature of any stock in the Index occurs as a result of delisting, merger, acquisition or otherwise, the Exchange will take appropriate steps to delete that stock from the Index and replace it with another stock which the Exchange believes would be compatible with the intended market character of the Index. In making replacement determinations, the Exchange will also take into account the capitalization, liquidity, and volatility of a particular stock.

The Exchange represents that all of the stocks comprising the Index are options eligible<sup>6</sup> and have overlying options currently trading. At least 90%

<sup>6</sup>The Phlx's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) the public float must be at least 7,000,000 shares; (2) there must be a minimum of 2,000 stockholders; (3) trading volume in the U.S. must have been at least 2.4 million over the preceding twelve months; and (4) the U.S. market price must have been at least \$7.50 for a majority of the business days during the preceding three calendar months. See Phlx Rule 1009, Commentary .01.

of the component issues, by weight, and 80% of the number of stocks, must be options eligible at all times.<sup>7</sup> If at any time the Index does not meet the 90%/80% requirement, the Exchange will submit a Rule 19b-4 filing to the Commission before opening any new series of options on the Index for trading. Additionally, if at any time, the Exchange determines to increase to more than thirteen or decrease to fewer than seven, the number of component issues in the Index, the Exchange will submit a new Rule 19b-4 filing.

The settlement value for the Index options will be based on the opening values of the component securities on the date prior to expiration. Index options will expire on the Saturday following the third Friday of the expiration month, and the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

The Phlx proposes to employ the same position and exercise limits applicable to the Exchange's other narrow-based indexes pursuant to Phlx Rule 1001A(b)(i) and 1002A, respectively. Exercise prices will be initially set at 5 point intervals and additional exercise prices will be added in accordance with Phlx Rule 1101A(a).

As with the Exchange's other indexes, the multiplier for options on the OTC Industrial Index will be 100. The OTC Industrial Index options will trade from 9:30 a.m. to 4:10 p.m. eastern time.

The Phlx will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be three expiration months from the March, June, September, December cycle plus two additional near-term months so that the three nearest term months will always be available.

OTC Industrial Index options will be traded pursuant to current Phlx rules governing the trading of index options.<sup>8</sup> The Exchange notes that procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor the trading of options on the OTC Industrial Index. These procedures included having complete access to trading activity in the underlying securities which are all traded on the NYSE via the Intermarket Surveillance Group Agreement ("ISG Agreement") dated

<sup>7</sup>Telephone conversation between Michele Weisbaum, Associate General Counsel, Phlx, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on January 18, 1996.

<sup>8</sup>See Phlx Rules 1000A through 1103A, and 1000 through 1070.

July 14, 1983, as amended on January 29, 1990.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be

<sup>9</sup>15 U.S.C. § 78f(b)(5) (1988).

available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to SR-Phlx-95-92 and should be submitted by February 16, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 96-1364 Filed 1-25-96; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

[Application No. 99000180]

### Enterprise Fund, L.P.; Notice of Filing of Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1995)) by Enterprise Fund, L.P., 150 North Meramec, Clayton, Missouri 63105-3753 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. Seq.), and the Rules and Regulations promulgated there under. Enterprise Fund, L.P., is a Delaware limited partnership. The Fund investments will be made primarily in small business concerns located in the St. Louis, Missouri metropolitan area. Enterprise Fund, L.P. may also consider investments in the Eastern Missouri and Southern Illinois regions, and the Fund may make a limited number of investments in businesses located within a 250-mile radius of St. Louis.

The General Partner of Enterprise Fund, L.P. is Enterprise Capital Management, Inc. The president of the General Partner is Joseph D. Garea. Mr. Garea has extensive experience in banking, finance, and investment analysis.

Enterprise Fund, L.P. will begin operations with committed capital of \$10,050,000 and will be a source of equity and debt financings for qualified small business concerns. The SBIC GP will not engage in any business other than serving as general partner of the

applicant. The applicant will operate without SBA leverage. The following limited partners will own 10 percent or more of the proposed SBIC:

#### *Name and Percentage of Ownership*

General American Insurance Co., c/o Leonard Rubenstein, 700 Market Street, St. Louis, MO 63101: 30%  
Enterbank Holdings, Inc., c/o James C. Wagner, 150 N. Meramec, Clayton, MO 63105: 10%

Investments are contemplated in various manufacturing, distribution, and service businesses where the portfolio company's position offers growth potential through increased market share or growth in the market or niche. No industry is specifically targeted or excluded; however, the mix of portfolio companies is expected to mirror the general business population of the region. Investments in high technology companies, restaurants, or companies in those industries prohibited in the regulations promulgated by the SBA will not be pursued.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW, Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Clayton, Missouri.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies.)

Dated: January 22, 1996.

Don A. Christensen,

*Associate Administrator for Investment.*

[FR Doc. 96-1278 Filed 1-25-96; 8:45 am]

BILLING CODE 8025-01-P

[Application No. 99000179]

### Wells Fargo Small Business Investment Company, Inc.; Notice of Filing of Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to

Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1995)) by Wells Fargo Small Business Investment Company, Inc., One Montgomery Street, West Tower, Suite 2530, San Francisco, CA 94104 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated there under. Wells Fargo Small Business Investment Company, Inc., is a California corporation. The Fund's principal geographic operating area will be California, however the applicant may from time to time review selective opportunities throughout the United States.

The applicant's only stockholder is Wells Fargo Equity Capital, Inc. There is only one class of stock. All shares have equal voting rights regarding dividends, liquidation and other organic matters, all in accordance with the laws of the State of California. The stock is not subject to redemption. The responsible managers of the applicant are Richard R. Green, President, and Steven W. Burge, Managing Director. Both Mr. Green and Mr. Burge will devote as much of their time as is necessary to manage the affairs of the applicant. Both Mr. Green and Mr. Burge have extensive experience in banking, finance, and investment analysis.

The initial capitalization of \$5,000,000 has been provided by Wells Fargo Equity Capital, Inc., the applicant's parent. The applicant will operate without SBA leverage. The following shareholders will own 10 percent or more of the proposed SBIC:

#### *Name and Percentage of Ownership*

Wells Fargo Equity Capital, Inc., One Montgomery Street, West Tower, Suite 2530, San Francisco, CA 94104: 100%

The applicant intends to support the growth and development of small business concerns in the State of California through a focus on the capital needs of small but viable enterprises that fall into the main stream of American business. The applicant expects to contribute to the small business community by establishing itself as a reliable source of supplementary risk capital having different industry interests and different investment criteria than may be generally available in the market place.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of

<sup>10</sup> 17 CFR 200.30-3(a)(12).

successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in San Francisco, California.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies.)

Dated: January 22, 1996.

Don A. Christensen,

*Associate Administrator for Investment.*

[FR Doc. 96-1277 Filed 1-25-96; 8:45 am]

BILLING CODE 8025-01-P

**[Application No. 99000183]**

**Sundance Venture Partners, II L.P.;  
Notice of Filing of Application for a  
License To Operate as a Small  
Business Investment Company**

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1995)) by Sundance Venture Partners, II L.P., 400 East Van Buren Street, Phoenix, Arizona 85004 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated there under. Sundance Venture Partners, II L.P., is a Delaware limited partnership. The business of the applicant will be principally carried on in the State of Arizona and in the Southwestern United States. The applicant may, however, make selective investments outside the State of Arizona and its target geographical markets or participate in syndicated deals with other SBICs in different parts of the country.

The General Partner is Anderson & Wells Company, a Delaware corporation that is managed by its three principals, Gregory S. Anderson, President, Larry J. Wells, Chairman, and Brian N. Burns, Vice President. Messrs. Anderson, Wells, and Burns have extensive experience in venture capital finance.

The Partnership is intended to be initially capitalized at \$30,000,000 through the offering of Limited

Partnership interests to qualified investors, with a minimum to be raised in this offering of Limited Partnership Interests of \$5,000,000 and a maximum of \$30,000,000. The minimum commitment for each investor is \$500,000, although exceptions may be made by the General Partner. One quarter of each Limited Partner's commitment will be paid at closing. The balance will be payable, in installments, no earlier than 12 months and no later than 48 months following the Initial Closing. No such installment will exceed 25% of each Limited Partner's total capital commitment. The General Partner, will make a capital contribution of not less than 1% of the aggregate capital contributions of the Limited Partners. The SBIC GP will not engage in any business other than serving as general partner of the applicant. Sundance Venture Partners, II L.P., will begin operations with committed capital of \$5,000,000 and will be a source of equity financings for qualified small business concerns. The applicant intends on utilizing The Small Business Administration's Participating Security Instrument. The following limited partners will own 10 percent or more of the proposed SBIC:

*Name and Percentage of Ownership*

Prudential Securities, Inc., One Seaport Plaza, New York, NY 10292-0131: 99%

The applicant will invest in a wide range of industries including technology based industries, health care, retail, distribution and service businesses. Typically, the business will be a small company that is just beginning to enter its target market.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Phoenix, Arizona.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies.)

Dated: January 22, 1996.

Don A. Christensen,

*Associate Administrator for Investment.*

[FR Doc. 96-1276 Filed 1-25-96; 8:45 am]

BILLING CODE 8025-01-P

**[Application No. 99000191]**

**Mellon Ventures, L.P.; Notice of Filing  
of Application for a License To Operate  
as a Small Business Investment  
Company**

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1995)) by Mellon Ventures, L.P., One Mellon Bank Center, Rm. 151-3200, Pittsburgh, PA 15258-0001 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et seq.), and the Rules and Regulations promulgated there under. Mellon Ventures, L.P., is a Delaware limited partnership. The Fund's operating area will be nationwide, but will focus primarily in the Mid-Atlantic and South-Atlantic states.

The Limited Partners of the applicant will be Mellon Bank N.A. (the "Class B Limited Partner") and senior managers of Mellon Ventures, Inc. (the "Class A Limited Partners"). The sole General Partner of the applicant will be MVM, L.P. (the "General Partner"). The General Partner of MVM, L.P. (a Delaware limited partnership) is MVM, Inc. (a Delaware corporation) whose sole shareholder and Chief Executive Officer is Lawrence E. Mock Jr. Mr. Mock, Jr. has extensive experience in banking, finance, and investment analysis.

Mellon Ventures, L.P. will initially be capitalized with \$2,500,000 of capital provided by Mellon Bank, N.A., as the Class B Limited Partner, and \$25,000 of capital provided by the General Partner. Class A Limited Partners will contribute a de minimus amount for their interest. Additional capital will be provided by the Class B Limited Partner and General Partner as needed to fund investments and in the discretion of the Class B Limited Partner. The SBIC GP will not engage in any business other than serving as general partner of the applicant. The applicant will operate without SBA leverage. The following limited partners will own 10 percent or more of the proposed SBIC:

*Name and Percentage of Ownership*

Mellon Bank, N.A., One Mellon Bank Center, Pittsburgh, PA 15258-0001: 99%

Investments are contemplated in various manufacturing, distribution, and service businesses where the portfolio company's position offers growth potential through increased market share or growth in the market or niche.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW, Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Pittsburgh, Pennsylvania.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies.)

Dated: January 22, 1996.

Don A. Christensen,

*Associate Administrator for Investment.*

[FR Doc. 96-1275 Filed 1-25-96; 8:45 am]

BILLING CODE 8025-01-P

## Interest Rates

The Small Business Administration publishes an interest rate called the optional "peg" rate (13 CFR 122.8-4(d)) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loans. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 6 $\frac{1}{4}$  percent for the January-March quarter of FY 96.

Pursuant to 13 CFR 108.503-8(b)(4), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 108.503-4) shall be the greater of 6 percent over the New York prime rate or the limitation established by the constitution or laws of a given State. The initial rate for a fixed rate loan shall be the legal rate for the term of the loan.

John R. Cox,

*Associate Administrator for Financial Assistance.*

[FR Doc. 96-1346 Filed 1-25-96; 8:45 am]

BILLING CODE 8025-01-P

[License # 03/03-0178]

## D.C. Bancorp Venture Capital Company; Notice of License Surrender

Notice is hereby given that D.C. Bancorp Venture Capital Company, 901 Main Street, 66th Floor, Dallas, Texas 75202-2911, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). D.C. Bancorp Venture Capital Co. was licensed by the Small Business Administration on July 18, 1985.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on January 11, 1996, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 16, 1996.

Don A. Christensen,

*Associate Administrator for Investment.*

[FR Doc. 96-1345 Filed 1-25-96; 8:45 am]

BILLING CODE 8025-01-P

## SOCIAL SECURITY ADMINISTRATION

### Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with P.L. 96-511, as amended (P.L. 104-13 effective October 1, 1995), The Paperwork Reduction Act. The information collections listed below, which were published in the Federal Register on December 1, have been submitted to OMB.

(Call the Reports Clearance Officer on (410) 965-4142 for a copy of the form(s) or package(s), or write to her at the address listed after the information collections.)

SSA Reports Clearance Officer:

Charlotte S. Whitenight

*1. Quarterly Statistical Report on Recipients and Payments Under State-administered Assistance Programs for Aged, Blind and Disabled (Individuals and Couples) Recipients—0960-0130.* The information collected on the SSA-9741 is used to provide statistical data on recipients and assistance payments under the SSI State-administered State supplementation programs. These data

are needed to complement the data available for the federally administered programs under SSA and to more fully explain the impact of the public income support programs on the needy, aged, blind and disabled. The respondents are state agencies who administer supplementary payment programs under SSI.

*Number of Respondents:* 23.

*Frequency of Response:* 4 times annually.

*Average Burden Per Response:* 1 hour.

*Estimated Annual Burden:* 92 hours.

*2. Record of SSI Inquiry—0960-0140.*

The information collected on form SSA-3462 is used to document the earliest possible filing date and to determine potential eligibility for SSI benefits. The respondents are individuals who inquire about SSI eligibility for themselves or another individual.

*Number of Respondents:* 1,200,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 5 minutes.

*Estimated Annual Burden:* 100,000.

*3. Request for Workers' Compensation/Public Disability Information—0960-0098.*

The information collected on form SSA-1709 is used to verify workers' compensation and public disability benefits payment amounts and to compute the correct reduction to the disability insurance benefits. The respondents are state and local governments and/or businesses that administer workers' compensation or other disability benefits.

*Number of Annual Responses:* 140,000.

*Frequency of Response:* As needed to verify changes in the amount of workers compensation/public disability benefits.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 35,000 hours.

*4. Employee Work Activity Questionnaire—0960-0483.*

The information collected on form SSA-3033 is used to determine if a disability claimant has or has not either engaged in substantial gainful activity or received a non-specific subsidy. Such a determination is necessary in evaluating a claimant's eligibility for Social Security disability benefits. The respondents are current or former employers of disability claimants.

*Number of Respondents:* 12,500.

*Frequency of Response:* 1.

*Average Burden Per Response:* 15 minutes.

*Estimated Annual Burden:* 3,125 hours.

*5. Followup Survey for the Project Network Evaluation—0960-NEW.*

Project Network is a demonstration project that tests alternative approaches to assisting people with disabilities in finding and maintaining employment. Followup information collected from project participants (treatment and control group members) will be used to evaluate the extent to which the different demonstration service-delivery systems assisted people with disabilities to find and maintain employment. The respondents are selected participants in the initial Project Network survey.

*Number of Respondents:* 1,579.

*Frequency of Response:* 1.

*Average Burden Per Response:* 90 minutes.

*Estimated Annual Burden:* 2,369 hours.

#### Social Security Administration

Written comments and recommendations regarding these information collections should be sent within 30 days of the date of this publication. Comments may be directed to OMB and SSA at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, Washington, D.C. 20503.  
(SSA), Social Security Administration, DCFAM, Attn: Charlotte S. Whitenight, 6401 Security Blvd, 1-A-21 Operations Bldg., Baltimore, MD 21235

Dated: January 18, 1996.

Charlotte Whitenight,

*Reports Clearance Officer, Social Security Administration.*

[FR Doc. 96-966 Filed 1-25-96; 8:45 am]

BILLING CODE 4190-29-P

#### Notice of Senior Executive Service Performance Review Board Membership

Title 5, U.S. Code, Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95-454, requires that the appointment of Performance Review Board members be published in the Federal Register.

The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Social Security Administration:

Kathleen M. Adams  
Horace J. Dickerson, Jr.  
Gilbert C. Fisher  
Randolph W. Gaines  
Armando A. Gonzalez  
Eve Hilgenberg  
David Jenkins

Antonia Lenane  
Gordon Sherman  
Barbara Sledge  
Dale W. Sopper

Dated: January 11, 1996.

Ruth A. Pierce,

*Deputy Commissioner for Human Resources.*

[FR Doc. 96-1324 Filed 1-25-96; 8:45 am]

BILLING CODE 4190-29-P

#### DEPARTMENT OF STATE

##### [Public Notice 2295]

#### Clearance of Collections of Information Through the Office of Management and Budget

**AGENCY:** Office of Protocol, Department of State.

**ACTION:** Request for public comment. The Department of State proposes to submit the following public information collection requirements to OMB for review and clearance under "The Paperwork Reduction Act of 1995." 44 USC Chapter 35, as amended.

**SUMMARY:** In order to extend privileges and immunities under the Vienna Convention on Diplomatic Relations, 1961 and the Vienna Convention on Consular Relations, 1963 and to issue official identification cards, the Department of State must obtain information from foreign government representatives concerning the appointment and termination of assignment of diplomatic and career and honorary consular officers, foreign government employees and their dependents in the United States. In 1990, the Department of State revised the forms which it previously had used to collect this information. As the expiration date on these documents is about to take effect, the Department is seeking an extension of its ongoing collections of this information. As part of this process, the Department already has solicited the comments of the providers of this information, the foreign embassies in Washington and has incorporated changes based upon their comments, as well as suggestions provided by Department of State personnel.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Dunham, Assistant Chief of Protocol (202) 647-1985.

**SUPPLEMENTARY INFORMATION:** The following summarizes the information collection proposals to be submitted to OMB:

1. *Type of request*—Extension of ongoing collection.  
*Originating office*—Office of Protocol.

*Title of information collection*—Notification of Appointment of Foreign Diplomatic and Career Consular Officer.

*Frequency*—On occasion.

*Form Number*—DSP-110.

*Respondents*—Foreign government representatives.

*Estimated number of respondents*—2,000.

*Average hours per response*—30 minutes.

*Total estimated burden hours*—1,000.

2. *Type of request*—Extension of ongoing collection.

*Originating office*—Office of Protocol.

*Title of information collection*—Notification of Appointment of Foreign Government Employee.

*Frequency*—On occasion.

*Form Number*—DSP-111.

*Respondents*—Foreign government representatives.

*Estimated number of respondents*—5,000.

*Average hours per response*—30 minutes.

*Total estimated burden hours*—2,500.

3. *Type of request*—Extension of ongoing collection.

*Originating office*—Office of Protocol.

*Title of information collection*—Notification of appointment of Honorary Consular Officer.

*Frequency*—On occasion.

*Form Number*—DSP-112.

*Respondents*—Foreign government representatives.

*Estimated number of respondents*—200.

*Average hours per response*—30 minutes.

*Total estimated burden hours*—100.

4. *Type of request*—Extension of ongoing collection.

*Originating office*—Office of Protocol.

*Title of information collection*—Notification of Change, Identification Card Request.

*Frequency*—On occasion.

*Form Number*—DSP-113.

*Respondents*—Foreign government representatives.

*Estimated number of respondents*—5,000

*Average hours per response*—10 minutes.

*Total estimated burden hours*—600.

5. *Type of request*—Extension of ongoing collection.

*Originating office*—Office of Protocol.

*Title of information collection*—Notification of Dependents of Diplomatic, Consular and Foreign Government Employees (Continuation Sheet).

*Frequency*—On occasion.

*Form Number*—DSP-114.

*Respondents*—Foreign government representatives.

*Estimated number of respondents*—7,000.

*Average hours per response*—10 minutes.

*Total estimated burden hours*—840.

6. *Type of request*—Extension of ongoing collection.

*Originating office*—Office of Protocol.

*Title of information collection*—

Notification of Termination of Diplomatic, Consular or Foreign Government Employment.

*Frequency*—On occasion.

*Form Number*—DSP-115.

*Respondents*—Foreign government representatives.

*Estimated number of respondents*—6,000.

*Average hours per response*—10 minutes.

*Total estimated burden hours*—720.

**ADDITIONAL INFORMATION OR COMMENTS:**

Copies of the proposed forms and supporting documents may be obtained from Mr. Lawrence Dunham (202) 647-1985. Comments should be directed to Mr. Lawrence Dunham, Assistant Chief of Protocol, Room 1238, Department of State, Washington, D.C. 20520-1238 no later than 60 days following date of publication in the Federal Register.

Dated: December 18, 1995.

Molly Raiser,

*Chief of Protocol.*

[FR Doc. 96-1257 Filed 1-25-96; 8:45 am]

BILLING CODE 4710-20-M

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

[Docket OST-95-396]

**Application of Baltia Air Lines, Inc., for Certificate Authority**

**AGENCY:** Department of Transportation.

**ACTION:** Notice of order to show cause (Order 96-1-24).

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Baltia Air Lines, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in foreign scheduled air transportation of persons, property, and mail.

**DATES:** Persons wishing to file objections should do so no later than February 6, 1996.

**ADDRESSES:** Objections and answers to objections should be filed in Docket OST-95-396 and addressed to the Documentary Services Division (C-55, Room PL-401), U.S. Department of

Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol A. Woods, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2340.

Dated: January 22, 1996.

Patrick V. Murphy,

*Deputy Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 96-1315 Filed 1-25-96; 8:45 am]

BILLING CODE 4910-62-M

**Coast Guard**

[CGD 95-076]

**National Preparedness for Response Exercise Program (PREP)**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Correction to notice of PREP Area Exercise schedule for 1996, 1997 and 1998.

**SUMMARY:** This notice contains corrections to the Preparedness for Response Exercise Program (PREP) [CGD 95-076] schedule of the Area Exercises for 1996, 1997 and 1998 which was published in the Federal Register on November 13, 1995 (60 FR 57050).

**DATES:** Industry members interested in leading an Industry-led Area Exercise or participating in a Government-led Area Exercise should submit their requests directly to the USCG or Environmental Protection Agency (EPA) On-Scene Coordinator (OSC) in the appropriate Area as soon as possible, but no later than 3 months before conducting the exercise. Industry representatives should indicate the date and location of the exercise in which they are interested in participating or leading. Once the OSC has chosen an industry plan holder for an Industry-led Area Exercise or as participant for the Government-led Exercise, the OSC will contact the National Scheduling Coordinating Committee (NSCC) at the address listed below.

**ADDRESSES:** Written comments should be mailed to Commandant (G-MRO-2), Room 2100, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593-0001 ATTN: Ms. Karen Sahatjian.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Sahatjian, Office of Marine Safety, Security and Environmental Protection, Response Division, (G-MRO-2), (202) 267-2850. PREP

Guidelines and Training Elements, previously available through Coast Guard Headquarters, are now available from the Government Printing Office, (202) 512-1800. Stock numbers and cost for each manual are: PREP GUIDELINES—050-012-00365-3 COST: \$3.75; TRAINING REFERENCE—050-012-00364-5 COST: \$8.50.

**SUPPLEMENTARY INFORMATION:**

**Background Information**

The Coast Guard, EPA, the Research and Special Programs Administration (RSPA) and Minerals Management Service (MMS) developed PREP to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). OPA 90 requires periodic unannounced drills. See 33 U.S.C. 1321(j)(7). However, the working group (comprised of Coast Guard, EPA, RSPA, MMS, state representatives, and industry representatives) determined that the PREP Guidelines should also include announced drills. See 33 CFR 154.1055(a)(5) and 155.1060(d), and 40 CFR 112.

**Need for Correction**

As published, the schedule of exercises contains errors which need clarification.

**Correction of Publication**

PREP Schedule—Government-led Area Exercises

1996

- Replace Buffalo, NY Area (MSO Buffalo OSC) exercise with Eastern Wisconsin Area (MSO Milwaukee OSC) exercise
- Replace Philadelphia Coastal Area (MSO Philadelphia OSC) exercise with Hawaii/Samoa Area (MSO Honolulu OSC) exercise

1997

- Replace Detroit Area (MSO Detroit OSC) exercise with Duluth-Superior Area (MSO Duluth OSC) exercise

PREP Schedule—Industry-led Area Exercises

1996

- Delete Hawaii/American Samoa Area (MSO Honolulu OSC)

1998

- Add Philadelphia Coastal Area (MSO Philadelphia OSC)

**Schedule**

The following is the revised PREP schedule for Calendar Years 1996, 1997, and 1998. Where no industry plan holders have come forward to either participate or lead an exercise, the OSCs



may solicit and recommend plan holders. Companies that wish to participate should contact the Coast Guard or EPA OSC, who will then forward the name to the NSCC at the address listed under **ADDRESSES**.

Dated: January 18, 1996.

G.N. Naccara,

*Captain, U.S. Coast Guard, Director for Field Activities, Office of Maine Safety, Security and Environmental Protection.*

[FR Doc. 96-1385 Filed 1-25-96; 8:45 am]

BILLING CODE 4910-14-M

## Federal Railroad Administration

### Petition for Waivers of Compliance

In accordance with 49 CFR Sections 211.9, 211.41 and 211.45, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Renfe Talgo of America, Incorporated  
*FRA Docket Numbers RSGM-94-2 and SA-94-1*

Renfe Talgo of America, Incorporated (RTOA) petitioned the FRA to permit the operation of a second TALGO Pendular Train (TALGO) trainset expected to arrive at the Port of Baltimore on or about January 28, 1996. The trainset is similar to the one presently operating in the State of Washington under conditional waivers. The original request was for waivers of compliance with certain provisions of the Railroad Safety Glazing Standards (49 CFR Part 223) under Docket Number RSGM-94-2 and Railroad Safety Appliance Standards (49 CFR Part 231), under Docket Number SA-94-1 (see FR 9016, February 24, 1994). RTOA requested that the conditional waiver granted the first Talgo trainset be extended to include the second train set.

RTOA was granted the original waivers in order to permit operation of a TALGO train under two conditions. It was intended that the train would be operated (1) in non-revenue demonstration runs and (2) in revenue service as part of a regularly scheduled service operated by National Railroad Passenger Corporation (Amtrak) in the Pacific Northwest High Speed Rail Corridor. The first TALGO train completed demonstration runs between

a number of city pairs and is currently in revenue service under contract to the Washington State Department of Transportation (WSDOT).

The second TALGO trainset will be comprised of 15 Pendular cars, which would include two service cars, one sleeper car, one dining car, one cafeteria car and ten coaches. It is similar to the trainset currently in service in Washington State. RTOA seeks to include the second TALGO train in the current conditional waivers from compliance with the Railroad Glazing Standards, (49 CFR 223.15 (b)), which requires that all side facing glazing on passenger cars must meet the FRA Type II testing criteria. The original petition RTOA stated that the side facing glazing of the TALGO train may in fact meet the FRA requirements for FRA Type II, but it had not been subjected to the test specified in the regulation. The windows in the sides of the cars are double glazed with tempered safety glass. Each layer is 6 mm (.24 inches) thick with an air space in between the two layers. RTOA says that there is not sufficient time to retrofit windows in the TALGO train prior to shipment from Spain.

The original RTOA petition also sought a waiver from compliance of the Railroad Safety Appliance Standards, (49 CFR 231.14) and Sections 2 and 4 of the Safety Appliance Act (45 U.S.C. Sections 2 and 4), which requires that each passenger car must be equipped with side handholds, end handholds and uncoupling levers. The passenger cars have side handholds at the doors for the assistance of passengers, but there are no side handholds or end handholds which the rules contemplate for use in switching operations or coupling and uncoupling. RTOA states that the cars in the TALGO train constitute a single unit, in that the cars will not be uncoupled from one another, except at specified maintenance facilities. The individual cars are joined by swivel type traction bars which will not uncouple in normal operations and because of this configuration there is no need for uncoupling levers. Standard AAR Type E couplers will be installed at the ends of the front and rear service cars.

According to RTOA and Amtrak West Business Unit, the TALGO train will be moved directly from Baltimore to Oakland, California. RTOA and Amtrak West are cooperating in evaluating existing and potential emerging rail corridors. Amtrak suggested the following tentative list of city pairs for both revenue service and demonstration runs for the TALGO train:

Oakland, California to Reno, Nevada (non-revenue)

Oakland to Bakersfield, California (revenue)

Altamount Pass (non-revenue)

Los Angeles, California to Las Vegas, Nevada (revenue special)

Los Angeles/San Diego, California to Santa Barbara, California (revenue)

Los Angeles to San Francisco, California (revenue)

RTOA says that after the revenue and demonstration runs are completed, it is their intention to have this second TALGO train operate in the Pacific Northwest. If TALGO is the successful bidder to provide two trainsets to the State of Washington, the two trainsets would be leased to WSDOT for an interim period which would terminate upon delivery of the two trainsets manufactured to WSDOT specification.

Interested parties are invited to participate in this proceeding by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA-94-1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Issued in Washington, D.C. on January 22, 1995.

Phil Olekszyk,

*Associate Administrator for Safety Compliance and Program Implementation.*

[FR Doc. 96-1313 Filed 1-25-96;8:45am]

BILLING CODE 4910-06-M



## National Highway Traffic Safety Administration

[Docket No. NCI 3363; Notice 1]

### 1995 Chrysler Cirrus and Dodge Stratus Passenger Cars; Public Proceeding Scheduled

**AGENCY:** National Highway Traffic Safety Administration (NHTSA).

**ACTION:** Notice of public meeting.

**SUMMARY:** NHTSA will hold a public meeting at 10 a.m. on February 14, 1996, regarding its initial decision that certain 1995 model Chrysler Cirrus and Dodge Stratus passenger cars fail to comply with Federal Motor Vehicle Safety Standard No. 210, *Seat Belt Assembly Anchorages*.

**FOR FURTHER INFORMATION CONTACT:** Jeff Giuseppe, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; (202) 366-5756.

**SUPPLEMENTARY INFORMATION:** Pursuant to 49 U.S.C. 30118(a) (formerly section 152(a) of the National Traffic and Motor Vehicle Safety Act of 1966, as amended), on January 19, 1996, NHTSA's Associate Administrator for Safety Assurance made an initial decision that certain 1995 model Chrysler Cirrus and Dodge Stratus passenger cars manufactured by Chrysler Corporation before May 15, 1995, do not comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 210, *Seat Belt Assembly Anchorages*, 49 CFR 571.210.

In a compliance test performed for NHTSA on July 10, 1995, the anchorage for the rear seat safety belt on the driver side of a Chrysler Cirrus vehicle pulled loose from the floor of the vehicle prior to sustaining a force of 3,000 pounds, as required by paragraph S4.2.2 of FMVSS No. 210. This failure was replicated by Chrysler when it tested a Cirrus with the pelvic body block positioned several inches in front of the seat back, which is the position employed in the NHTSA test. Although it was not tested by NHTSA, the 1995 Dodge Stratus is identical to the Chrysler Cirrus in all relevant respects, and similar test results would be expected.

Chrysler contends that the anchorages in these vehicles will not fail when the body block is placed against the seat back rather than several inches from the seat back, and argues that this is sufficient to demonstrate compliance with FMVSS No. 210. A full discussion of the facts and issues involved in this matter is contained in a memorandum

dated January 11, 1996, prepared by NHTSA's Office of Vehicle Safety Compliance, that can be found in the agency's public file for this investigation.

Pursuant to 49 U.S.C. 30118(b)(1) and 49 CFR 554.10, a public meeting will be held at 10 a.m., on Wednesday, February 14, 1996, in Room 2230, Department of Transportation Building, 400 Seventh Street, SW, Washington, DC, at which time the manufacturer and all other interested persons will be afforded an opportunity to present information, views, and arguments on the issue of whether the vehicles covered by this initial decision comply with FMVSS No. 210.

Interested persons are invited to participate in this proceeding through written an/or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Elaine Beale, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6111, 400 Seventh Street, SW, Washington, DC 20590, (202) 366-2832 or by fax at (202) 366-1024, before the close of business on February 7, 1996. Persons who wish to file written comments should submit them to the same address, preferably no later than the beginning of the meeting on February 14, 1996. However, the agency will accept written submissions until February 28, 1996.

All materials related to the issues addressed by this notice are in the public file for NCI 3363, which is available for inspection during working hours (9:30 a.m. to 4 p.m.) in NHTSA's Technical Reference Library, Room 5108, 400 Seventh Street, SW, Washington, DC 20590.

Authority: 49 U.S.C. 30118(a); delegations of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Issued on: January 19, 1996.

Michael B. Brownlee,

*Associate Administrator for Safety Assurance.*

[FR Doc. 96-1314 Filed 1-25-96; 8:45 am]

BILLING CODE 4910-59-P

## Surface Transportation Board

### Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Surface Transportation Board has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Victoria Rutson or Ms. Judith Groves, Surface Transportation Board, Section of Environmental Analysis, Room 3219, Washington, DC 20423, (202) 927-6211 or (202) 927-6246. Comments on the following assessment are due 15 days after the date of availability:

AB-No. 450 (Sub-No. 1X), Ogeechee Railway Company—Discontinuance of Service Exemption—In Bleckley and Pulaski Counties, Georgia. EA available 1/19/96.

AB-No. 290 (Sub-No. 141X), Norfolk Southern Railway Company—Abandonment Exemption—In Bleckley and Pulaski Counties, Georgia. EA available 1/19/96.

AB-No. 464X, Piedmont and Atlantic Railroad Co., Inc. d/b/a Yadkin Valley Railroad Company—Discontinuance of Operations. EA available 1/17/96.

AB-No. 290 (Sub-No. 174X), Norfolk Southern Railway Company—Abandonment between Rural Hall and Brook Cove, North Carolina. EA available 1/17/96.

AB-No. 290 (Sub-No. 179X), Norfolk and Western Railway Company—Abandonment—At Lynchburg, Virginia. EA available 1/17/96.

AB-No. 55 (Sub-No 520X), CSX Transportation, Inc.—Abandonment in Chatham County, Georgia. EA available 1/23/96. Comments on the following assessment are due 30 days after the date of availability:

AB-No. 462 (Sub-No 1X), Southeastern International Corporation—Abandonment Exemption—In Chambers and Jefferson Counties, Texas. EA available 1/12/96.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96-1330 Filed 1-25-96; 8:45 am]

BILLING CODE 4915-00-P

## Surface Transportation Board<sup>1</sup>

[Finance Docket No. 32841]

### Northeast Texas Rural Rail Transportation District—Purchase (Portion) Exemption—St. Louis Southwestern Railway Company

Northeast Texas Rural Rail Transportation District (NETEX), a

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect

political subdivision of the State of Texas, has filed a verified notice of exemption under 49 CFR Part 1150, Subpart D—*Exempt Transaction* to: (1) Acquire and operate 31.0-miles of rail line from St. Louis Southwestern Railway Company (SSW) from milepost 524.0 to milepost 555.0 in Hopkins, Delta, and Hunt Counties, TX; and (2) to obtain trackage rights from milepost 524.0 to milepost 517.0 a distance of 7 miles, in the vicinity of Sulphur Springs, TX. NETEX was expected to consummate the transaction on December 15, 1995.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32841, must be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Paul D. Angenend, SAEGERT, ANGENEND & AUGUSTINE, P. O. Box 410, Austin, TX 78767-0410.

Decided: January 19, 1996.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.  
Vernon A. Williams  
*Secretary*.

[FR Doc. 96-1334 Filed 1-25-96; 8:45 am]

BILLING CODE 4915-00-P

**[Finance Docket No. 32838]**

**R.J. Corman Railroad Company/  
Pennsylvania Lines, Inc.—Acquisition  
and Operation Exemption—Lines of  
Consolidated Rail Corporation**

R.J. Corman Railroad Company/  
Pennsylvania Lines, Inc. (RJCP), a non-

prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior

carrier, has filed a verified notice under 49 CFR Part 1150, Subpart D—*Exempt Transactions* to acquire and operate approximately 230.4 miles of rail lines of Consolidated Rail Corporation (Conrail) known as the "Clearfield Cluster" in Centre, Clinton, Clearfield, Jefferson, Indiana and Cambria Counties, PA. RJCP also will acquire by assignment from Conrail incidental trackage rights over approximately 7.8 miles of rail lines between Clearfield and Curwensville, PA, owned by the Clearfield and Mahoning Railway Company. The transaction was to have been consummated on December 29, 1995.

This proceeding is related to *Richard J. Corman—Continuance in Control Exemption—R.J. Corman Railroad Company/Pennsylvania Lines, Inc.*, Finance Docket No. 32939, wherein Richard J. Corman has concurrently filed a verified notice to continue to control R.J. Corman Railroad Company/Pennsylvania Lines, Inc. upon its becoming a rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32838, must be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board, Washington, DC 20423. In addition, a copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street NW., Suite 400, Washington, DC 20036.

Decided: January 23, 1996.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.  
Vernon A. Williams,  
*Secretary*.

[FR Doc. 96-1332 Filed 1-25-96; 8:45 am]

BILLING CODE 4915-00-P

**[Finance Docket No. 32839]<sup>1</sup>**

**Richard J. Corman—Continuance in  
Control Exemption—R.J. Corman  
Railroad Company/Pennsylvania Lines,  
Inc.**

Richard J. Corman (Corman), a non-carrier, has filed a verified notice under

to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), which was enacted

49 CFR 1180.2(d)(2) to continue in control of R.J. Corman Railroad Company/Pennsylvania Lines, Inc. (RJCP) on RJCP's becoming a carrier. RJCP, a new entity within the R.J. Corman family, was created to acquire from Consolidated Rail Corporation (Conrail) approximately 238.2 miles of rail lines and trackage rights known as the "Clearfield Cluster" in Centre, Clinton, Clearfield, Jefferson, Indiana and Cambria Counties, PA. The transaction was to have been consummated on December 29, 1995.

This proceeding is related to *R.J. Corman Railroad Company/Pennsylvania Lines, Inc.—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation*, Finance Docket No. 32838, wherein RJCP will acquire 230.4 miles of rail lines of Conrail, and to acquire by assignment from Conrail incidental trackage rights over approximately 7.8 miles of railroad owned by the Clearfield and Mahoning Railway Company.

The transaction is exempt from the prior approval requirements of 49 U.S.C. 11343 because: (1) the properties of RJCP will not connect with any other railroad in the R.J. Corman corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect RJCP with any other railroad in the R.J. Corman corporate family; and (3) the transaction does not involve a class I carrier.

As a condition to this exemption, any employees adversely affected by the trackage rights will be protected under *New York Doc Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32839, must be filed with the Office of the Secretary, Case Control Branch, Surface Transportation Board,

on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former section of the statute, unless otherwise indicated.

Washington, DC 20423. In addition, a copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street NW., Suite 400, Washington, DC 20036.

Decided: January 23, 1996.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96-1331 Filed 1-25-96; 8:45 am]

BILLING CODE 4915-00-P

## Surface Transportation Board <sup>1</sup>

[Finance Docket No. 32855]

### Alamo Gulf Coast Railroad Company— Lease and Operation Exemption— Certain Lines of Southern Pacific Transportation Company

Alamo Gulf Coast Railroad Company (AGCRC) has filed a notice of exemption to acquire by lease and to operate 5 miles of rail line owned by the Southern Pacific Transportation Company (SPT) from milepost 252 to milepost 257, near Beckmann Station, in Bexar County, TX. The proposed transaction is to be consummated on the date of final agreement of the parties, or on the effective date of the notice, whichever occurs later.<sup>2</sup>

Any comments must be filed with the Surface Transportation Board, 1201 Constitution Ave., NW., Washington, DC 20423 and served on: Richard A. Allen, Zuckert, Scoutt & Rasenberger, L.L.P., Suite 600, 888 17th Street, NW., Washington, DC 20006-3959.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) [formerly 10505(d)] may be filed any time. The filing of a petition to revoke will not stay the transaction.

Decided: January 23, 1996.

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of the legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901. Therefore, this notice applies the law in effect prior to the Act.

<sup>2</sup> Under 49 CFR 1150.32(b), the notice of exemption is effective 7 days after it is filed. The notice was filed on December 29, 1995.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96-1494 Filed 1-25-96; 8:45 am]

BILLING CODE 4915-00-P

[Docket No. AB-3 (Sub-No. 128X)]; [Docket  
No. AB-456 (Sub-No. 1X)]

### Missouri Pacific Railroad Company— Abandonment Exemption— in Henry County, MO and Missouri and Northern Arkansas Railroad—Discontinuance of Service Exemption—in Henry County, MO

Missouri Pacific Railroad Company (MP) and Missouri and Northern Arkansas Railroad (MNA) have filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances for MP to abandon and MNA to discontinue service over a segment of MP's Clinton Branch line (known as the FPE Spur-Clinton line) extending between milepost 262.6 at the end of the line near FPE Spur and milepost 267.0 near Clinton, a distance of approximately 4.4 miles in Henry County, MO.

MP and MNA certify that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic; (3) no formal complaint filed by a user of rail service on this line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R.

<sup>1</sup> The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (the Act), which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board). Section 204(b)(1) of the Act provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the Act. This notice relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903. Therefore, this notice applies the law in effect prior to the Act, and citations are to the former sections of the statute, unless otherwise indicated.

Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) [formerly 10505(d)] must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 25, 1996, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by February 5, 1996.<sup>4</sup> Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 15, 1996, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representatives: Joseph D. Anthofer, Missouri Pacific Railroad Company, 1416 Dodge Street #830, Omaha, NE 68179 and Henry E. Weller, 514 N. Orner Street, P.O. Box 776, Carthage, MO 64836.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

MP and MNA have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 31, 1996. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or other trail use/rail banking conditions will be imposed,

<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board in its independent investigation) cannot be made before the exemption's effective date. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any request for stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>3</sup> See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

<sup>4</sup> The Board will accept a late-filed trail use request so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

where appropriate, in a subsequent decision.

Decided: January 22, 1996.

By the Board, David M. Konschnik,  
Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96-1333 Filed 1-25-96; 8:45 am]

BILLING CODE 4915-00-P

## DEPARTMENT OF THE TREASURY

### Customs Service

#### Application for Recordation of Trade Name: "Mega Toys"

**ACTION:** Notice of Application for Recordation of Trade Name.

**SUMMARY:** Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "Mega Toys," used by Mega Toys, a corporation organized under the laws of the State of California, located at 905 East Second Street, Los Angeles, California 90012.

The application states that the trade name is used in connection with games, dolls, party favors, decorative flags, Halloween items, and plastic, battery-operated and die-cast toys.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

**DATES:** Comments must be received on or before March 26, 1996.

**ADDRESSES:** Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue NW. (Franklin Court), Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Delois P. Johnson, Intellectual Property Rights Branch, 1301 Constitution Avenue NW. (Franklin Court), Washington, DC 20229 (202-482-6960).

Dated: January 23, 1996.

John F. Atwood,

*Chief, Intellectual Property Rights Branch.*

[FR Doc. 96-1412 Filed 1-25-96; 8:45 am]

BILLING CODE 4820-02-P

### Office of Thrift Supervision

#### Public Information Collection Requirements Submitted to OMB for Review

January 22, 1996.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

*OMB Number:* 1550-0023.

*Form Number:* OTS 1313 and OTS 1568.

*Type of Review:* Revision.

*Title:* Thrift Financial Report.

*Description:* OTS collects financial data from insured savings associations and their subsidiaries in order to assure their safety and soundness as depositories of the personal monies of the general public. The OTS monitors the financial positions and interest-rate risk so that adverse conditions can be remedied promptly.

*Respondents:* Savings and Loan Associations and Savings Banks.

*Estimated Number of Respondents/Recordkeepers:* 1,460.

*Estimated Burden Hours Per*

*Response:* 11.2 Hrs. Avg.

*Frequency of Response:* 12.

*Estimated Total Reporting and Recordkeeping Burden:* 196,194 Hrs.

*Clearance Officer:* Colleen M. Devine, (202) 906-6025, Office of Thrift Supervision, 1700 Street, NW., Washington, DC 20552.

*OMB Reviewer:* Milo Sunderhauf, (202) 395-7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C.M. Teti,

*Director, Records Management and Information Policy.*

[FR Doc. 96-1302 Filed 1-25-96; 8:45 am]

BILLING CODE 6720-01-P

#### [AC-01; OTS No. 6037]

#### Patapsco Federal Savings and Loan Association, Dundalk, MD; Approval of Conversion Application

Notice is hereby given that on January 19, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to

delegated authority, approved the application of Patapsco Federal Savings and Loan Association, Dundalk, Maryland, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309.

Dated: January 23, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Corporate Secretary.*

[FR Doc. 96-1352 Filed 1-25-96; 8:45 am]

BILLING CODE 6720-01-P

#### [AC-02; OTS No. 0554]

#### Home Federal Savings and Loan Association of Fayetteville, Fayetteville, NC; Approval of Conversion Application

Notice is hereby given that on January 17, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Home Federal Savings and Loan Association of Fayetteville, Fayetteville, North Carolina, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309.

Dated: January 23, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Corporate Secretary.*

[FR Doc. 96-1353 Filed 1-25-96; 8:45 am]

BILLING CODE 6720-01-P

#### [AC-03; OTS Nos. H-2217 and 02217]

#### Community Federal, M.H.C., Tupelo, MS; Approval of Conversion Application

Notice is hereby given that on January 18, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Community Federal, M.H.C., Tupelo, Mississippi, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G

Street, N.W., Washington, D.C. 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Dallas, Texas 75039-2010.

Dated: January 23, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Corporate Secretary.*

[FR Doc. 96-1354 Filed 1-25-96; 8:45 am]

BILLING CODE 6720-01-P

**[AC-04; OTS No. 2715]**

**Washington Federal Savings Bank, Washington, IA; Approval of Conversion Application**

Notice is hereby given that on January 16, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Washington Federal Savings Bank, Washington, Iowa, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Dallas, Texas 75039-2010.

Dated: January 23, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Corporate Secretary.*

[FR Doc. 96-1355 Filed 1-25-96; 8:45 am]

BILLING CODE 6720-01-P

**[AC-05; OTS No. 4226]**

**The Citizens Loan and Savings Company, London, OH; Approval of Conversion Application**

Notice is hereby given that on January 19, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Citizens Loan and Savings Company, London, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: January 23, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Corporate Secretary.*

[FR Doc. 96-1356 Filed 1-25-96; 8:45 am]

BILLING CODE 6720-01-P

**[AC-06; OTS Nos. H-1935 and 00602]**

**Fidelity Federal, M.H.C., Cincinnati, OH, Approval of Conversion Application**

Notice is hereby given that on January 5, 1996, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Fidelity Federal, M.H.C., Cincinnati, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: January 23, 1996.

By the Office of Thrift Supervision.

Nadine Y. Washington,

*Corporate Secretary.*

[FR Doc. 96-1357 Filed 1-25-96; 8:45 am]

BILLING CODE 6720-01-P

**UNITED STATES INFORMATION AGENCY**

**Russian Civic Education: Curriculum Development and Teacher Training**

**ACTION:** Notice—Request for Proposals.

**SUMMARY:** The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for up to two assistance awards. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)-1 may apply to cooperate in the planning and implementation of up to two curriculum development and teacher training projects for civic education in Russia. The recipient organization(s) will work with Russian partner organizations to be selected by USIS Moscow to assist Russian educators to draft, review, and field-test new teacher and student materials for secondary-level civic education. The grant(s), to be carried out over approximately eighteen months, will consist of three stages: (1) preliminary assessment and preparation, (2) a U.S.-based curriculum development workshop for a Russian

materials development team, and (3) post-workshop review and field-testing of materials. The cooperation with USIA will include regular consultation with USIA officers in Russia with regard to program development, implementation, and assessment. Applicant organizations may propose to cooperate with USIA on either one or both of these projects. Proposals should demonstrate expert knowledge of Russia and Russian education, as well as significant experience in civic education and curriculum development as practiced in the U.S.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries\* \* \*; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations\* \* \* and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

The funding authority for the program cited above is provided through the Freedom Support Act legislation (FSA). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

**ANNOUNCEMENT TITLE AND NUMBER:** All communications with USIA concerning this announcement should refer to the above title and reference number E/AS-96-04.

**DEADLINE FOR PROPOSALS:** All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Monday, April 1, 1996. Faxed documents will not be accepted, nor will documents postmarked April 1 but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Proposals should plan for grant activities to begin approximately by June 1996 and to be completed approximately by December 1997.

**FOR FURTHER INFORMATION, CONTACT:** The Advising, Teaching, and Specialized Programs Division, E/AS Room 256, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone number 202/619-6038, fax

number 202/619-6790, Internet address "skux@usia.gov", to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

**TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET:** The Solicitation Package may also be downloaded from USIA's website at <http://www.usia.gov/> or from the Internet Gopher at <gopher.usia.gov>, under "New RFPs on Educational and Cultural Exchanges."

Please specify USIA Program Specialist Sally Kux on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

**SUBMISSIONS:** Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AS-96-04, Office of grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.4" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS Moscow for review, in order to reduce the time of the Agency's grants review process.

**DIVERSITY GUIDELINES:** Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense to encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

#### **SUPPLEMENTARY INFORMATION:**

##### **Overview**

The goal of these projects is to build on current Russian efforts to develop appropriate and up-to-date citizenship education programs for use in Russian secondary schools. The project will assist educators with the development and implementation of new civics materials in Russian regions in which education officials have demonstrated a commitment to civic education. The project's rationale is that improving citizenship education at the secondary school level will better prepare Russian students to participate actively in building a pluralistic, democratic society, and will promote democratic relations among members of the school community, including students, teachers, school administrators, and parents. The recipient organization(s) will work in partnership with the selected Russian organization(s) and must be willing and able to respond to the needs of the Russian partner(s).

##### **Program Description**

###### *Phase I*

Representatives of the U.S. grantee organization(s) will make a preliminary assessment visit to Russia. This trip will enable the U.S. partner(s) to consult with their Russian counterpart(s) to identify project objectives and the scope and themes of materials to be developed. This visit will also enable them to become acquainted with the local educational system through site visits to schools and appointments with education officials. The Russian partner organization(s) will select a curriculum development team of approximately five practitioners (e.g., classroom teachers, curriculum specialists, and/or educational officials) in consultation with the recipient organization and USIS Moscow, and will undertake preliminary work in Russia over a period of 3-6 months. During this time members of the curriculum development team(s) will familiarize themselves with issues and materials relevant to the project and will finalize the choice of topics to be explored in the draft materials.

###### *Phase II*

Members of the curriculum development team(s) will spend approximately two months in a highly structured U.S.-based workshop sponsored and organized by the U.S. grantee organization(s). During the workshop(s) the Russian team(s) will complete draft teacher and student materials. Within the framework of the workshop, the grantee organization(s)

will be responsible for allowing adequate time for participants to work individually and collectively on the materials. The Russian team(s) should be provided access to leading U.S. civic educators and a broad range of relevant resources to stimulate the work of the team(s) on materials oriented toward the Russian situation. The workshop(s) should include focused seminars on topics related to the teaching of civics and such relevant field experiences as visits to schools and professional associations.

###### *Phase III*

Upon completion, the draft materials will be reviewed by Russian and American experts. In Russia, the curriculum development team(s) will work with local teachers and, as appropriate, with U.S. specialists to provide training for a group of practitioners in methods for implementing and reviewing the draft materials on a pilot basis in selected schools in each region.

##### **Guidelines**

Programs must comply with J-1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details.

##### **Budget**

Applicants must submit a comprehensive as well as a summary budget for each project. The award for each of the two projects will not exceed \$225,000. Budget submissions should delineate separately administrative and program costs. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity. Budgets should be presented in a multi-column format that clearly identifies the following categories: line item, amount of USIA support, and amount of cost-shared support. Any relevant calculations or explanations that do not appear in the budget should be included in budgetary notes. USIA is committed to containment of administrative expenses consistent with overall program objectives and sound management principles; total USIA-funded administrative expenses for this project should not exceed 25% of the total USIA-funded budget. Additional budget guidelines are provided in the Solicitation Package.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to \$60,000. Please refer to the Solicitation Package for complete

budget guidelines and formatting instructions.

#### Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the Agency contracts office, as well as the USIA Office of EEN and USIS Moscow. For the review of a proposal to be successful, it will need to receive positive assessments by USIA's geographic desk officers and overseas officers. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions rest with the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with an Agency grants officer.

#### Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

**1. Quality of the program idea:** Proposals should exhibit originality, substance, precision, relevance to Agency mission, and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate geographic and substantive expertise.

**2. Program planning:** Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity and should adhere to the program overview and guidelines described above. Proposals should include a plan for continuous and summative evaluations.

**3. Ability to achieve program objectives:** Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet program objectives and how continuous evaluation will be used to adjust program plans.

**4. Multiplier effect/impact:** Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

**5. Support of Diversity:** Proposals should demonstrate a commitment to promoting the awareness and understanding of diversity with regard to both program content and program administration.

**6. Institutional Capacity:** Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

**7. Institutional's Record/Ability:** Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

**8. Follow-on Activities:** Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

**9. Cost-effectiveness:** The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

**10. Cost-sharing:** Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

**Notification:** Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: January 19, 1996.

John P. Loiello,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 96-1290 Filed 1-25-96; 8:45 am]

BILLING CODE 8230-01-M

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## UNITED STATES INFORMATION AGENCY

### Summer Institute for Russian University Educators on International Politics

**ACTION:** Notice—Request for Proposals.

**SUMMARY:** The Advising, Teaching, and Specialized Programs Division of the Office of Academic Programs in the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations meeting the provisions described in IRS regulations 26 CFR 1.501(c)(3)–1 may apply to develop a six-week graduate level program designed for a group of ten Russian university educators on the subject of contemporary international politics. The primary purpose of the institute is to provide participants with a frame work for an understanding of the field that will in turn enable them to develop programs and courses in their home institutions.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in fields directly related to the study of international relations and can demonstrate expertise in conducting graduate-level programs for foreign educators. Applicant institutions must have a minimum of four years' experience in conducting international exchange programs. The project director or one of the key program staff responsible for the academic program must have an advanced degree in the field related to the topic of the institute. Staff escorts traveling under the USIA cooperative agreement must be U.S. citizens with demonstrated qualifications for this service.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87-256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries \* \* \*; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations \* \* \* and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

The funding authority for the program cited above is provided through the Freedom Support Act (FSA). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.



**ANNOUNCEMENT TITLE AND NUMBER:** All communications with USIA concerning this announcement should refer to the above title and reference number E/AS-96-02.

**DEADLINE FOR PROPOSALS:** All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Monday, March 25, 1996. Faxed documents will not be accepted, nor will documents postmarked March 25, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline. Tentative approximate program dates are August 5, 1996 through September 16, 1996. In order to assure adequate time for the host institution to make program arrangements and send pre-program materials to grantees, USIA will make every effort to award the approved cooperative agreement by May 13, 1996.

**FOR FURTHER INFORMATION, CONTACT:** The Office of Academic Programs, Advising, Teaching and Specialized Programs Division, E/AS, Room 349, U.S. Information Agency, 301 4th Street, SW, Washington, D.C. 20547, telephone number 202-619-6038; fax number 202-619-6970; internet address shayman@usia.gov, to request an Application Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

**TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET:** Solicitation Package may be downloaded from USIA's website at <http://www.usia.gov/> or from the Internet Gopher at <gopher.usia.gov>, under "New RFPs on Educational and Cultural Exchanges."

Please specify USIA Program Specialist Sherry Hayman on all inquiries and correspondences. Interested applicants should read the complete Federal Register announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

**SUBMISSIONS:** Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AS-96-02, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 10547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a

3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS Moscow for review, with the goal of reducing the time it takes to obtain comments for the Agency's grant review process.

**DIVERSITY GUIDELINES:** Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal.

**SUPPLEMENTARY INFORMATION:**

Overview

The purpose of the Summer Institute for Russian Educators on International Politics is to enable the participants to gain a deeper understanding of U.S. academic teaching and research about international politics. The Institute seeks to provide participants with an understanding of the contending approaches to the subject in order to enable the participants to initiate and develop programs for the study of international politics at their home institutions. Accordingly, the successful proposal will offer a survey of the principal theoretical models for the study of international politics, giving attention to how the disciplines of law, politics, and history contribute to such study; will explore the current debates within the field of international politics, with particular attention to those issues related to the realignment in the international system in the post-Cold War era; and, finally, will provide participants with access to the key bibliographic, monographic and reference materials on which to build courses of their own. Close attention should be paid to providing source materials, bibliographies and computer resources. The Institute should enable the participants to apply a wide range of curricular materials, scholarly approaches, teaching techniques, information about the internet, and

other resources to their classrooms in Russia.

The Institute should be six weeks in length and should take place on a U.S. college or university campus where participants will have access to libraries and computer networks as well as an opportunity to become acquainted with university teaching practices in the U.S. At the beginning of the program the participants should receive an initial orientation to the U.S. and to American university life in addition to an introduction to current trends in teaching and research about international politics. The program should provide the participants with opportunities to explore these issues with U.S. scholars and to observe international politics classes that are in session. The program should focus on engaging the participants in active ways that will aid them in designing new approaches to their own teaching and research. The institute should foster a collegial atmosphere in which institute faculty and participants discuss relevant texts, issues and concepts and should be structured to require participants to make presentations, write reports, and prepare drafts.

At the conclusion of the Institute each participant should be required to present a report on his or her thoughts about how to adapt the approaches and interests of U.S. international politics specialists to teaching and research in Russia.

Objectives

(1) To conduct an intensive, academically stimulating program that presents an in-depth view of the contending theories of international politics, including the principal schools, approaches, and models that constitute the field and which define debate and discussion among leading scholars in the field; (2) to examine how the end of the Cold War has influenced the study of international politics, with particular reference to U.S.-Russia relations as well as East-West relations more generally; (3) to provide direct access to bibliographic, reference and other scholarly materials that will enable visiting Russian scholars to establish a framework for the study of international politics at their home institutions.

Participants

The program should be designed for ten Russian university educators who are currently teaching courses in international relations but who, despite significant knowledge of Western political and historical traditions, are less familiar with current approaches to teaching or research about international

politics in the U.S. The participants will be nominated by the United States Information Service (USIS) in Moscow and will have a high level of fluency in English.

#### Guidelines

The Institute should be specifically designed for experienced Russian university educators. While it is important that the topics and readings of the Institute be clearly organized, the institute should not simply replicate a lecture course or a graduate seminar. Through a combination of lectures, roundtable discussions, guest presentations, consultations and site visits, the Institute should facilitate the development of a collegial atmosphere in which Russian participants become fully engaged in the exchange of ideas.

In addition to the core faculty from the host institution, and consistent with the program's design, the Institute should bring in presenters from outside academic life. Such individuals might come from foreign policy institutes, think tanks, lobbying organizations, embassies, consulates, international development organizations, media, or government, as appropriate. Presenters should be fully briefed about the Institute, its goals, general themes, readings, and especially the background and needs of the participants themselves. Information about presenters and how they will be utilized should be included in the proposal submission.

The best proposals will express a high level of thematic articulation in addition to demonstrating clearly the means by which these themes will be concretely communicated to participants for discussion and reflection. It is especially important for the institute organizer to devise ways to integrate all aspects of the program, from the assigned readings, lectures, and discussions, to any site visits and field trips.

The equivalent of one day a week should be available to participants to pursue individual research and reading. The Institute should provide access to leading American scholars and research resources (libraries, archives, databases); provisions should be made to pair participants with faculty mentors. A key element of the Institute is to expose participants to the full range of scholarly materials, primary and secondary literature, curricular materials and teaching resources, including Internet and computer training, that will allow them to continue their use of such materials in Russia.

A residential program of a minimum of five weeks on a college or university campus is mandatory. Any study tour segment must be directly supportive of the academic program content.

Details of programs may be modified in consultation with USIA following the grant award.

The selected grant organization will be responsible for most arrangements associated with this program. This includes the organization and implementation of all presentations and program activities, arrangements for all domestic and international travel, lodging, subsistence, and group transportation for participants, orientation and briefing of participants, preparation of any necessary support materials including a pre-program mailing and working with program presenters to achieve maximum program coordination and effectiveness.

Please refer to the Solicitation Package for further details on program design and implementation.

#### Additional Information

Confirmation letters from U.S. co-sponsors noting their intention to participate in the program will enhance a proposal. Proposals incorporating participant/observer site visits will be more competitive if letters committing prospective host institutions to support these efforts are provided.

#### Visa/Insurance/Tax Requirements

Programs must comply with J-1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details. Visas will be issued by USIS posts abroad. USIA insurance will be provided to all participants, unless otherwise indicated in the proposal submission. Grantee organization will be responsible for enrolling participants in the chosen insurance plan. Please indicate in the proposal if host institutions have any special tax withholding requirements on participant or staff escort stipends or allowances.

#### Proposed Budget

Applicants must submit a comprehensive line item budget for the entire program based on the specific guidance in the Solicitation Package. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. The total USIA-

funded budget award may not exceed \$125,000. USIA-funded administrative costs should be as low as possible and should not exceed \$37,000 or 30%, whichever is less. The recipient organization should try to maximize cost-sharing and to stimulate U.S. private sector (foundation and corporate) support.

The program should include a book budget for participants to use in purchasing books and teaching materials which they will need to develop new courses and to improve existing ones.

Allowable costs for the program include the following:

- (1) books, teaching materials and computer software
- (2) mailing allowances.
- (3) travel and per diem.
- (4) salaries, fringe benefits.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

#### Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the Agency contracts office, as well as the USIA Area Office and USIS Moscow as appropriate. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

#### Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. *Quality of the Program Idea:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the contemporary debates within the field.
2. *Program Planning:* A detailed agenda and a relevant work plan should demonstrate substantive undertakings and logistical capacity. The agenda and work plan should adhere to the program overview and guidelines described above.
3. *Ability to achieve program objectives:* Objectives should be

reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. The proposals should indicate evidence of continuous on-site administrative and managerial capacity.

**4. Multiplier effect/impact:** Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual connections.

**5. Support of Diversity:** Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

**6. Institutional Capacity:** Proposed personnel and institutional resources should be adequate and appropriate to achieve the project's goals.

**7. Institution's Record/Ability:** Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

**8. Follow-on Activities:** Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIAS-supported programs are not isolated events.

**9. Project Evaluation:** Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

**10. Cost-effectiveness:** The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as

possible. All other items should be necessary and appropriate.

**11. Cost-sharing:** Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

**12. Value to U.S.-Partner Country Relations:** Proposed projects should receive positive assessment by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country.

#### Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

#### Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: January 19, 1996.

John P. Loiello,

*Associate Director, Bureau of Educational and Cultural Affairs.*

[FR Doc. 96-1289 Filed 1-25-96; 8:45 am]

**BILLING CODE 8230-01-M**

### U.S. Advisory Commission on Public Diplomacy Meeting

**AGENCY:** United States Information Agency.

**ACTION:** Notice for the Federal Register.

**SUMMARY:** The U.S. Advisory Commission on Public Diplomacy will meet in Room 600, 301 4th Street, S.W., on January 25, 1996 from 9:30 a.m. to 12:00 noon.

The meeting will be closed to the public from 9:30 a.m. to 11:30 a.m.,

because it will involve discussion of classified information relating to public diplomacy and the Bosnian peace process. The Commission will meet with USNATO Public Affairs Officer Mary Ellen Connell; Dr. Mary McIntosh, Director, Office of European Research, USIA; Mr. Bud Jacobs, Deputy Director, Office of East European and NIS Affairs, USIA; and Col. Daniel C. Deflin, Chief of Psychological Operations and Civil Affairs, The Joint Staff (5 U.S.C. 552b(c)(1)).

The 11:30 a.m. to 12:00 p.m. portion of the Commission's meeting will be open to the public and will involve discussion of the U.S. Information Agency's budget with USIA's Comptroller Stanley Silverman.

Please call Betty Hayes, (202) 619-4468, for further information.

Dated: January 22, 1996.

Joseph Duffey,  
*Director.*

Determination To Close a Portion of the U.S. Advisory Commission on Public Diplomacy's Meeting of January 25, 1996

Based on the information provided to the United States Information Agency by the United States Advisory Commission on Public Diplomacy, I hereby determine that the meeting scheduled by the Commission for January 25, 1996 may be closed to the public from 9:30 a.m. to 11:30 a.m.

The Commission has requested that its January 25 meeting be closed from 9:30 a.m. to 11:30 a.m., because it will involve discussion of classified information relating to public diplomacy and the Bosnian peace process. The Commission will meet with USNATO Public Affairs Officer Mary Ellen Connell; Dr. Mary McIntosh, Director, Office of European Research, USIA; Mr. Bud Jacobs, Deputy Director, Office of East European and NIS Affairs, USIA; Col. Daniel C. Devlin, Chief of Psychological Operations and Civil Affairs, The Joint Staff (5 U.S.C. 552b(c)(1)).

The 11:30 a.m. to 12:00 p.m. portion of the Commission's meeting will be open to the public and will involve discussion of the U.S. Information Agency's budget with USIA's Comptroller Stanley Silverman.

Dated: January 22, 1996.

Joseph Duffey,  
*Director.*

[FR Doc. 96-1336 Filed 1-25-96; 8:45 am]

**BILLING CODE 8230-01-M**

# Sunshine Act Meetings

Federal Register

Vol. 61, No. 18

Friday, January 26, 1996

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).

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, January 23, 1996, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: January 23, 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

*Deputy Executive Secretary.*

[FR Doc. 96-1512 Filed 1-24-96; 1:11 pm]

BILLING CODE 6714-01-M

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

**TIME AND DATE:** 10:00 a.m., Thursday, February 1, 1996.

**PLACE:** Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following:

1. *U.S. Steel Mining Co., Inc.*, Docket No. WEVA 92-783. (Issues include whether the judge erred in concluding that the operator's violation of a transportation safeguard issued under 30 C.F.R. § 75.1403 was significant and substantial.)

**CONTACT PERSON FOR MORE INFO:** Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Dated: January 22, 1996.

Jean H. Ellen,

*Chief Docket Clerk.*

[FR Doc. 96-1618 Filed 1-24-96; 3:35 pm]

BILLING CODE 6735-01-M

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 61 FR 1437, January 19, 1996.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10:00 a.m., Wednesday, January 24, 1996.

**CHANGES IN THE MEETING:** The open meeting has been canceled, and the scheduled item was handled via notation voting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: January 24, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96-1503 Filed 1-24-96; 10:34 am]

BILLING CODE 6210-01-P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### INSTITUTE OF MUSEUM SERVICES

#### Notice of Rescheduled Meeting

**SUMMARY:** This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. Please note: This meeting had been previously scheduled for January 12 but was postponed due to severe weather conditions in Washington, DC. This notice also describes the functions of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

**TIME/DATE:** 10:30 a.m.—1:00 p.m.—Friday, March 1, 1996.

**STATUS:** Open.

**ADDRESS:** The Madison Hotel, 15th and M Streets, NW., Washington, DC 20005. 202/862-1740.

**FOR FURTHER INFORMATION CONTACT:** Elsa Mezvinsky, Special Assistant to the Director, Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506—(202)606-8536.

**SUPPLEMENTARY INFORMATION:** The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting of Friday, March 1 will be open to the public.

If you need special accommodations due to a disability, please contact: Institute of Museum Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506—(202) 606-8536—TDD (202) 606-8636 at least seven (7) days prior to the meeting date.

65th Meeting of the National Museum Services Board, The Madison Hotel, Friday, March 1, 1996\* 10:30 a.m.—1:00 p.m.

#### Agenda

- I. Chairman's Welcome and Approval of Minutes
- II. Director's Report
- III Appropriations Report
- IV. Legislative/Public Affairs Report
- V. IMS Programs Report
- VI. Twentieth Anniversary Report

\*Note: this meeting was originally scheduled for January 12 but had to be postponed due to severe weather conditions in Washington, DC.

Dated: January 23, 1996.

Linda Bell,

*Director of Policy, Planning and Budget, National Foundation on the Arts and the Humanities, Institute of Museum Services.*

[FR Doc. 96-1617 Filed 1-24-96; 3:34 pm]

BILLING CODE 7036-01-M

**UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS**

## Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 9:00 a.m. on Tuesday, February 6, 1996, in Houston, Texas. The meeting is open to the public and will be held at the Four Seasons Hotel, 1300 Lamar Street, Houston, in the Austin Room. Due to the blizzard and extreme weather conditions that hit Washington, D.C., on Sunday, January 7, the Board meeting scheduled for January 8 and 9 was cancelled. (See 60 FR 67021, December 27, 1995) The Board expects to discuss the matters stated in the agenda which is set forth below. The agenda includes the items that were scheduled for the January meeting. Requests for information about the meeting should

be addressed to the Secretary of the Board, Thomas J. Koerber, at (202) 268-4800.

There will also be a session of the Board on Monday, February 5, 1996, but it will consist entirely of briefings and is not open to the public.

## Agenda

*Tuesday Session**February 6-9:00 a.m. (Open)*

1. Minutes of the Previous Meeting, December 4-5, 1995.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon)
3. Consideration of Board Resolution on Capital Funding. (Chairman Sam Winters)
4. Annual Report on Government in the Sunshine Act Compliance. (Chairman Sam Winters)
5. Quarterly Report on Service Performance. (Yvonne D. Maguire, Vice President, Consumer Advocate)
6. Quarterly Report on Financial Performance. (Michael J. Riley, Chief Financial Officer and Senior Vice President)

7. Report on Southwest Area Operations. (Charles K. Kernan, Vice President, Southwest Area Operations)
8. Capital Investments. (All for final consideration)
  - a. Tray Management System—Phase II Development. (William J. Dowling, Vice President, Engineering)
  - b. Low Cost Optical Character Reader. (Mr. Dowling)
  - c. 47 Small Parcel and Bundle Sorters. (Mr. Dowling)
  - d. Associate Office Infrastructure R&D. (Richard D. Weirich, Vice President, Information Systems)
  - e. Jacksonville, Florida, Bulk Mail Center Expansion. (Rudolph K. Umscheid, Vice President, Facilities)
  - f. El Paso, Texas, P&DC and VMF. (Mr. Umscheid)
9. Election of Chairman and Vice Chairman of the Board of Governors.
10. Tentative Agenda for the March 4-5, 1996, meeting in Washington, D.C.

Thomas J. Koerber,  
*Secretary.*

[FR Doc. 96-1567 Filed 1-24-96; 3:06 pm]

**BILLING CODE 7710-12-M**

**Federal Register**

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Friday  
January 26, 1996

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**Part II**

**Environmental  
Protection Agency**

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**40 CFR Parts 239 and 258  
State/Tribal Permit Program Adequacy  
Determination: Municipal Solid Waste  
Facilities; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 239 and 258

[FRL-5400-5/EPA/530-Z-95-010]

RIN 2050-AD03

#### Subtitle D Regulated Facilities; State/Tribal Permit Program Determination of Adequacy; State/Tribal Implementation Rule (STIR)

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule is designed to guide States and Indian Tribes in developing, implementing, and revising programs to issue and enforce permits for facilities which landfill discarded materials known as "municipal solid waste (MSW)".

On October 9, 1991, the Environmental Protection Agency (EPA) published the "Solid Waste Disposal Facility Criteria," a set of standards prescribing how MSW landfills are to be constructed and operated. States are to adopt and implement permit programs to ensure that MSW landfills comply with these standards. EPA is to review the State permit programs and determine whether they are adequate.

The STIR establishes criteria and procedures which EPA will use to determine whether the State permit programs are adequate to ensure compliance with the Solid Waste Disposal Facility Criteria. While the Disposal Facility Criteria automatically apply to all MSW landfills, States with permit programs deemed adequate have the authority to provide some flexibility to landfill owners and operators in meeting the criteria. To date, using the draft STIR as guidance, EPA has approved more than 40 state permit programs. This proposal is designed to minimize disruption of existing state/Tribal programs. Eventual promulgation of a final STIR is not expected to disrupt approved programs, and will provide a flexible framework for future program modifications.

The Resource Conservation and Recovery Act (RCRA) is the legal basis for the proposed STIR. RCRA requires States to adopt and implement permit programs to ensure compliance with the Federal Disposal Facility Criteria and requires EPA to determine the adequacy of the State permit programs. So that management of MSW is equally protective on Indian lands, the STIR also gives Indian Tribes the right to apply for EPA approval of their landfill permit programs.

**DATES:** Comments on this proposed rule must be submitted on or before April 25, 1996.

**ADDRESSES:** Commentors must send an original and two copies of their comments to: Docket Clerk, mailcode: 5305w, Docket No. F-96-STIP-FFFFF, U.S. Environmental Protection Agency Headquarters, 401 M Street SW.; Washington, D.C. 20460. Comments should include the docket number F-96-STIP-FFFFF. The public docket is located at Crystal Gateway, North #1, 1235 Jefferson Davis Highway, First Floor, Arlington, VA and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (703) 603-9230. Copies cost \$0.15/page. Charges under \$25.00 are waived.

**FOR FURTHER INFORMATION CONTACT:** For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency Headquarters, 401 M Street SW.; Washington, D.C. 20460, (800) 424-9346; TDD (800) 553-7672 (hearing impaired); in Washington, D.C. metropolitan area the number is (703) 412-9810, TDD (703) 486-3323.

For more detailed information contact Mia Zmud, Office of Solid Waste (mailcode 5306W), U.S. Environmental Protection Agency Headquarters, 401 M Street SW., Washington, D.C. 20460; (703) 308-7263.

**SUPPLEMENTARY INFORMATION:** Copies of the following document are available from the Docket Clerk, mailcode 5305, U.S. Environmental Protection Agency Headquarters, 401 M Street SW.; Washington, D.C. 20460, (202) 475-9327.

#### Preamble Outline

- I. Authority
- II. Background
  - A. Approach
  - B. Part 258 Revised Criteria
  - C. Non-municipal solid waste criteria
  - D. Rationale for Today's Proposed Rule
  - E. Part 239 Determination of Permit Program Adequacy
  - F. Differences from Subtitle C Authorization Process
  - G. Indian Lands
  - H. Enforcement
- III. Section-by-Section Analysis of 40 CFR Part 239
  - A. Purpose and Scope (Subpart A)
  - B. Components of Program Application (Subpart B)
  - C. Requirements for Adequate Permit Programs (Subpart C)
  - D. Adequacy Determination Procedures (Subpart D)
  - E. Changes to Part 258
- IV. Economic and Regulatory Impacts
  - A. Regulatory Impact Analysis

- B. Regulatory Flexibility Act
- C. Paperwork Reduction Act
- D. Unfunded Mandates Reform Act

#### I. Authority

EPA is proposing these regulations under the authority of sections 2002(a)(1) and 4005(c) of the Resource Conservation and Recovery Act of 1976, as amended by HSWA (RCRA or the Act). Section 4005(c)(1)(B) requires each State to develop and implement a permit program to ensure that facilities that may receive hazardous household waste or hazardous waste from conditionally exempt small quantity generators are in compliance with the Subtitle D Federal revised criteria promulgated under section 4010(c). Section 4005(c)(1)(C) further directs EPA to determine whether State permit programs are adequate to ensure compliance with the Subtitle D Federal revised criteria. Section 2002(a)(1) of RCRA authorizes EPA to promulgate regulations necessary to carry out its functions under the Act.

#### II. Background

##### A. Approach

The regulation of solid waste management historically has been a State and local concern. EPA fully intends that States/Tribes will maintain the lead role in implementing the Subtitle D Federal revised criteria as promulgated. This proposal is consistent with general EPA policy that places primary responsibility for coordinating and implementing many environmental protection programs with the States/Tribes. While a State/Tribe may simply adopt the Federal standards, they also may choose to take advantage of the significant flexibility designed into today's proposal.

Following are three illustrations of how today's proposal is designed to cause a minimum disruption of existing State/Tribal permit programs.

First, EPA's goal is for States/Tribes to apply for and receive approval of their Subtitle D permit programs. Today's proposal reflects this policy by requiring elements of basic authority, rather than prescriptive programmatic elements. This approach establishes a framework that allows States/Tribes flexibility in the structure of their individual permit programs, while requiring that States/Tribes have the necessary authority to ensure that Subtitle D facilities comply with the Federal revised criteria. Further, today's proposal does not define how a State/Tribe must implement the basic elements required in the Federal revised criteria for Subtitle D facilities and today's proposal. States/Tribes may use their



own design standards (e.g., develop an alternative liner design), performance standards (e.g., specify a performance standard for a liner design such as setting the maximum allowable contaminant level at a relevant point of compliance), or a combination of these two approaches.

Second, in assessing the States'/ Tribes' authorities, EPA generally will defer to the State/Tribal certifications of legal authority and not "second guess" the applicants. However, if EPA receives information indicating that the applicant's legal certification is inaccurate, EPA reserves the right to conduct its own review of the applicant's legal certification and authorities.

Third, a State's/Tribe's guidance documents may be used to supplement laws and regulations if the State's/ Tribe's legal certification demonstrates that the guidance can be used to develop enforceable permits which will ensure compliance with the Subtitle D Federal revised criteria. Thus, in some cases, the specific technical requirements of the Subtitle D Federal revised criteria need not be contained in State/Tribal law or regulations. By allowing the States/Tribes to use guidance in the development of enforceable permits where allowed by State/Tribal law, today's proposal mitigates the problem of States/Tribes unnecessarily having to restructure their existing laws/regulations.

#### *B. Part 258 Revised Criteria*

On October 9, 1991, EPA promulgated the Subtitle D Federal revised criteria for MSWLFs (40 CFR Parts 257 and 258 Solid Waste Disposal Facility Criteria; Final Rule). These Federal revised criteria establish minimum Federal standards to ensure that MSWLFs are designed and managed in a manner that is protective of human health and the environment. The Part 258 Federal revised criteria include location restrictions and standards for design, operation, ground-water monitoring, corrective action, financial assurance, and closure/post-closure care of MSWLFs.

The 40 CFR Part 258 Federal revised criteria are self-implementing on their effective date for all MSWLFs within the jurisdiction of the United States. Every standard in 40 CFR Part 258 is designed to be implemented by the owner or operator with or without oversight or participation by a regulatory agency (i.e., through a permit program). RCRA Section 4005(c)(2)(A) authorizes EPA to enforce 40 CFR Part 258 in those cases where the Agency has determined the State/Tribal permit program to be

inadequate. RCRA Section 7002 also authorizes citizen suits to ensure compliance with the Federal revised criteria.<sup>1</sup>

The Federal revised criteria for MSWLFs recognize the regulatory value of the permitting system which provides a mechanism for States/Tribes to interact with the public and with owners/operators on site-specific issues before and after permit issuance. Within the bounds established by authorizing statutes and regulations, permitting agencies are able to interact with facility owners/operators, provide opportunity for public review and input and, at the discretion of the State/Tribe, tailor protective permit conditions and requirements to facility-specific characteristics. Once EPA has determined that State/Tribal permit programs are adequate to ensure compliance with 40 CFR Part 258, the Part 258 Federal revised criteria provide approved States/Tribes the option of allowing MSWLF owners/operators flexibility in meeting the requirements of Part 258.

The Part 258 MSWLF regulations thus provide approved States/Tribes the option of making site-specific determinations regarding MSWLF design and other requirements of Part 258 under specific conditions. For example, approved States/Tribes that adopt the Federal performance standard may allow any final cover design if the owner/operator demonstrates that the design meets the performance standard of 40 CFR Part 258. Another example of such broad flexibility is the option to approve an alternative liner design instead of the prescribed composite design specified in § 258.40(a)(2), as long as the alternative design meets the performance standard described in § 258.40(a)(1).

In addition, the flexibility afforded to an approved State/Tribe allows the application of an alternative liner design on a State/Tribal-wide basis, so long as that design meets the performance standard in all locations throughout the State/Tribe. This demonstration, by necessity, would require the use of fate and transport modeling to demonstrate that the alternative design could meet the performance standard in "worst-case" scenarios. Where there is no approved permit program, there is no mechanism by which a regulatory agency can exercise flexibility in developing facility-specific conditions and requirements adequate to ensure compliance with 40 CFR Part 258.

<sup>1</sup> Nothing in this preamble or rule proposed today is intended to affect the extent of a State or Tribe's sovereign immunity to suit under RCRA.

#### *C. Non-Municipal Solid Waste Criteria*

EPA plans to amend existing regulations to address all non-municipal solid waste facilities that may receive conditionally exempt small quantity generator (CESQG) waste. In accordance with a settlement agreement with the Sierra Club filed with the court on January 31, 1994, the Agency proposed these regulations on June 12, 1995 and will publish final regulations by July 1, 1996. *Sierra Club v. Browner*, Civ. No. 93-2167 (D.D.C.). Specific requirements relating to the approval of State/Tribal non-municipal solid waste permit programs needed to implement these amendments may be included in that rulemaking as appropriate.

#### *D. Rationale for Today's Proposed Rule*

Due to the significant flexibility that is only available in approved States/Tribes, the Agency made active efforts to encourage States/Tribes to seek early approval of their MSWLF permit programs. EPA conducted a pilot program with four States and EPA Regions to streamline the approval process and obtain early feedback from States and EPA Regions. The draft STIR was used as guidance in interpreting the statutory authorities and requirements, in identifying the necessary components of an application, and in making adequacy determinations of State/Tribal MSWLF permit programs. These early efforts by EPA were successful in encouraging States/Tribes to apply for approval of their MSWLF permit programs. To date, EPA has approved over 40 State/Tribal MSWLF permit programs and anticipates approval of the remaining States in the near future.

While EPA has proceeded to approve State/Tribal permit programs using the draft STIR as guidance, the Agency believes it remains necessary to promulgate today's proposal to provide a framework for modifications of approved permit programs, to establish procedures for withdrawal of approvals allowing ample opportunity for EPA and the State/Tribe to resolve problems, and to establish the process for future program approvals (e.g., non-municipal solid waste facilities that may receive conditionally exempt small quantity generator waste).

The Agency provided opportunities for public comments and public hearings on the State/Tribal MSWLF permit programs that have been approved to date and received few significant comments on the criteria used as a basis for approval. Today's proposal establishes the same approval procedures and standards used by the Agency in approving those States/

Tribes. Therefore, the Agency believes that States/Tribes with approved permit programs will not have to reapply upon promulgation of today's proposal in final form.

#### *E. Part 239 Determination of Permit Program Adequacy*

##### 1. Approval Procedures for State/Tribal Permit Programs

Today's proposed rule establishes the criteria and process for determining whether State/Tribal permit programs are adequate to ensure that regulated facilities are in compliance with the Subtitle D Federal revised criteria. EPA Regional Administrators will make this determination.

To secure an EPA determination of adequacy under RCRA section 4005(c), a State/Tribe must submit an application for permit program approval to the appropriate EPA Regional Administrator for review. This proposed rule describes the program elements to be included in such an application and sets forth the criteria EPA will use in determining whether a State/Tribal permit program is adequate. A more detailed explanation of what EPA is proposing to require of a State/Tribe seeking a determination is found in the following sections of this preamble.

##### 2. Approval Procedures for Partial State/Tribal Permit Programs

In view of the comprehensive nature of Subtitle D Federal revised criteria, it is likely that some State/Tribal permit programs will meet the procedural and legal requirements of Part 239 but not all of the technical requirements of the Subtitle D Federal revised criteria promulgated under § 4010(c) of RCRA. These State/Tribal programs would require a few revisions before the entire program could be approved. As a result, they would need to delay submittal of program approval applications until the limited number of required statutory, regulatory, and/or guidance changes were complete. This delay concerns the Agency, because a delay of the final adequacy determination while these revisions were being made could place a substantial, and often unnecessary, financial burden on owners/operators by withholding the flexibility provided by the Subtitle D Federal revised criteria in approved States/Tribes.

To mitigate this problem, EPA included procedures for partial program approval in this proposal. This allows the Agency to approve those provisions of the State/Tribal permit program that meet today's proposed requirements and provides the State/Tribe time to make necessary changes to the remaining

portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Subtitle D Federal revised criteria's flexibility for those portions of the program which have been approved. For example, if a State/Tribe does not prohibit the open burning of municipal solid waste, but the remainder of the program is approvable, the Agency could partially approve that State/Tribal program. Under this partial approval, the State/Tribe would be approved for everything but the open burning provisions. Generally, the open burning provisions may be enforced through citizen suits against owners/operators. In addition, where a citizen brings a concern to EPA's attention, the Agency will respond in an appropriate manner on a case-by-case basis. In addition to the enforcement authority the Agency assumes upon determining that a State/Tribal permit program is inadequate, EPA retains enforcement authority under RCRA Section 7003 to address situations that may pose an imminent and substantial endangerment to human health or the environment. In addition, EPA may also exercise enforcement authority under Section 104(e) of the Comprehensive Environmental Response and Liability Act (CERCLA) in situations where there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance, pollutant, or contaminant.

Section 239.11 of today's proposal allows the Agency to approve either partial or complete State/Tribal permit programs. EPA intends to approve partial permit programs only when the State/Tribe has a few discrete technical requirements to revise. Those States/Tribes that need to make substantial changes to their permit program are encouraged to complete all necessary program modifications before submitting an application for approval. In establishing the partial approval process, EPA does not intend to create a two-step process by which every State/Tribe would first gain approval for those parts of their permit program that are currently adequate and then revise the remainder of the program. A State/Tribal permit program may be eligible for partial approval if it meets all the procedural and legal Part 239 requirements (i.e., application components, enforcement, public participation, compliance monitoring) but does not meet all of the Part 239 technical requirements (e.g., requirements in 239.6). States/Tribes applying for partial approval also must include a schedule, agreed to by the

State/Tribe and the appropriate Regional Administrator, for completing the necessary changes to the laws, regulations, and/or guidance to comply with the remaining technical requirements.

Part 239.11(a)(2) of today's proposal asserts that States/Tribes with partially approved permit programs are approved to implement only those portions of the technical requirements included in the partial approval. This means that any flexibility provided by the Subtitle D Federal revised criteria to approved States/Tribes is not available to owners/operators unless the partial program approval includes those technical provisions.

EPA is proposing an expiration date for partial approvals in order to assure that States/Tribes will pursue full program approval in a timely manner. As such, the Agency views the partial approval process as a temporary measure to accelerate State/Tribal program approval. The Agency believes that providing two years is necessary, because the time required to make changes in laws, regulations, and/or guidance would differ on a case-by-case basis. Also, some State legislatures meet on a biennial basis, and two years would provide States/Tribes additional time to make required statutory changes. The Agency believes that allowing two years provides ample time for States/Tribes to execute the limited changes to their laws, regulations, and/or guidance necessary to achieve full program approval. However, the Agency believes it would be counterproductive to determine an entire program inadequate if a State/Tribe has cause to miss the two-year deadline by a few weeks or months. For this reason, the Agency is proposing to accommodate State/Tribal program development by providing a mechanism to allow partial programs to extend beyond the two-year deadline if the State/Tribe can demonstrate cause to their EPA Region.

States/Tribes that receive partial approval should submit an amended application meeting all requirements of Part 239 and have that application approved within two years of the effective date of the final determination for partial program adequacy. States/Tribes should be sensitive to this deadline and submit an amended and complete application well in advance to allow Regions ample time to provide opportunities for public participation, to make tentative and final adequacy determinations, and to publish these determinations in the Federal Register. If the State/Tribe can demonstrate that it has sufficient cause for not meeting the two-year deadline, the appropriate

Regional Administrator may extend the expiration date of the partial approval. The Regional Administrator will publish the expiration date extension for the partial approval and a new date for expiration in the Federal Register.

EPA believes that partial approvals of State/Tribal permit programs achieve the goals of avoiding disruption of existing State/Tribal permit programs, providing flexibility to owners/operators as soon as possible, and ensuring that owners/operators comply with the relevant technical criteria.

While States/Tribes must have the authority to issue, monitor compliance with, and enforce permits adequate to ensure compliance with 40 CFR Part 258, the specific operating, design, ground-water monitoring, and corrective action requirements, as well as the location restrictions and the other requirements of the Part 258 Federal revised criteria, need not be contained in State/Tribal law or regulations. A State's/Tribe's guidance documents may be used to supplement laws and regulations.

State/Tribal guidance may be used if the State/Tribe demonstrates in its legal certification that the guidance will be used to develop enforceable permits which will ensure compliance with 40 CFR Part 258. Also, guidance only may be used to supplement State/Tribal laws and regulations; it cannot correct laws and regulations that are inconsistent with the guidance. For example, if a State's/Tribe's laws or regulations required three inches of earthen material daily as a cover, the State/Tribe could not meet the daily cover requirement of 40 CFR Part 258.21 by issuing guidance that owner/operators apply six inches of earthen material at the end of each operating day. The narrative description of the State/Tribal program, discussed below in the section-by-section analysis of today's proposal, must explain how the State/Tribe will use guidance to develop enforceable permits. This option gives the States/Tribes added flexibility in meeting the requirements of Part 239, yet maintains the requirement that States/Tribes have the authority to ensure MSWLF owner/operator compliance with Part 258. The flexibility afforded the States/Tribes should help limit the need to restructure existing State/Tribal laws/regulations.

#### *F. Differences From the Subtitle C Authorization Process*

Today's proposed approach for determining the adequacy of State/Tribal permit programs under § 4005(c) of Subtitle D of RCRA differs from the current approach taken for authorizing

State hazardous waste programs under RCRA section 3006 of Subtitle C. These differences in approach reflect differences in the statutory framework of each Subtitle.

Under Subtitle C, prior to authorization of a State program, EPA has primary responsibility for permitting of hazardous waste facilities. Federal law, including the issuance and enforcement of permits, applies until EPA authorizes a State to operate the State program in lieu of EPA operating the Federal program. Subtitle C requires authorized State programs to be at least equivalent to and consistent with the Federal program and other authorized State programs and to have requirements that are no less stringent than the Federal Subtitle C requirements. Once authorized, State programs operate in lieu of the Federal program and, if Federal enforcement of requirements is necessary, EPA must enforce the approved State's requirements. EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003 although authorized States have primary enforcement responsibility.

In contrast, under Subtitle D Congress intended facility permitting to be a State responsibility. Subtitle D does not specifically authorize EPA to issue Federal permits. EPA's current role includes establishing technical design and operating criteria for facilities, determining the adequacy of State/Tribal permit programs and enforcing compliance with the Subtitle D Federal revised criteria only after EPA determines that the State/Tribal permit program is inadequate. Subtitle D does not provide EPA with enforcement authority in States/Tribes pending an adequacy determination or in States/Tribes whose permit programs are deemed adequate by EPA. In addition, Subtitle D does not provide for State/Tribal requirements to operate "in lieu of" the Subtitle D Federal revised criteria. Therefore, the Subtitle D Federal revised criteria and State/Tribal requirements operate concurrently regardless of whether a State/Tribal permit program is deemed adequate or inadequate. Generally, the Subtitle D Federal revised criteria may be enforced through citizen suits against owners/operators under Section 7002 of RCRA even in approved States/Tribes. In addition, where a citizen brings a concern to EPA's attention, the Agency will respond in an appropriate manner on a case-by-case basis. In addition to the enforcement authority the Agency assumes upon determining that a State/Tribal permit program is inadequate, EPA retains enforcement authority

under RCRA Section 7003 to address situations that may pose an imminent and substantial endangerment to human health or the environment. In addition, EPA may also exercise enforcement authority under Section 104(e) of CERCLA in situations where there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance, pollutant, or contaminant.

#### *G. Indian Lands*

EPA is extending to Indian Tribes the same opportunity to apply for permit program approval as is available to States. To date, EPA has approved one Tribal MSWLF permit program and proposed approval for a second Tribal program using the same review process used in the State approvals. The draft STIR was used as guidance in making these early proposals, and the Agency published a notice for each decision in the Federal Register that included much of the language found in today's proposed rule (final approval for the Campo Band of Mission Indians was published on May 1, 1995, 60 FR at 21191; tentative approval for the Cheyenne River Sioux Tribe was published on April 7, 1994, 59 FR at 16642).

Providing Tribes with the opportunity to apply for approval of their MSWLF permit programs is consistent with EPA's Indian policy. This policy, formally adopted in 1984, recognizes Indian Tribes as the primary sovereign entities for regulating the reservation environment and commits the Agency to working with Tribes on a "government-to-government" basis to effectuate that recognition. A major goal of EPA's Indian Policy is to eliminate all statutory and regulatory barriers to Tribal implementation of Federal environmental programs. Today's proposal represents another facet of the Agency's continuing commitment to the implementation of this long-standing policy.

In the spirit of Indian self-determination and the government-to-government relationship, EPA recognizes that not all Tribes will choose to exercise this option at this time. Regardless of the choice made, the Agency remains committed to providing technical assistance and training when possible to Tribal entities as they work to resolve their solid waste management concerns.

Under Section 4005, EPA may enforce 40 CFR Part 258 only after it determines that a State permit program is inadequate. However, Congress did not specifically address implementation of Subtitle D on Indian lands.

### 1. Authority

States generally are precluded from enforcing their civil regulatory programs on Indian lands, absent an explicit Congressional authorization. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987). Yet, under RCRA Subtitle D, EPA generally is precluded from enforcing the Federal revised criteria as well unless EPA determines that a State or Tribal permit program is inadequate to ensure compliance with the Federal revised criteria. Furthermore, Congress has not yet created an explicit role for Tribes to implement the Subtitle D program, as it has done under most other major environmental statutes amended since 1986 (Safe Drinking Water Act, CERCLA, Clean Water Act, Clean Air Act).

There exist three principal approaches for effectively ensuring comprehensive, flexible, and efficient implementation of the Subtitle D Federal revised criteria on Indian lands: (1) Allow Tribes to demonstrate the existence of adequate Subtitle D permit programs in the same manner as States under today's proposed rule; (2) make determinations on a case-by-case basis on whether a Tribe or a State has adequate authority to ensure compliance with Subtitle D Federal revised criteria on Indian lands; or, (3) make a blanket determination as appropriate that States lack the authority to implement their programs on Indian lands, that there are no adequate permit programs in place on Indian lands, and that EPA may enforce Subtitle D Federal revised criteria directly on Indian lands in light of this determination.

EPA prefers the first approach, under which an Indian Tribe may seek approval by demonstrating the existence of an adequate permit program in the same manner as a State pursuant to the procedures specified in today's proposal, including a demonstration of jurisdiction. Where no adequate permit program is demonstrated, EPA may enforce the Subtitle D Federal revised criteria directly upon determination that the Tribal program is not adequate to ensure compliance with the Subtitle D Federal revised criteria.

Tribes that are seeking approval may opt to enter into a memorandum of agreement, or other agreement mechanisms, with another governmental entity (State, Tribe, or local government) to provide additional necessary expertise or resources to the Tribe. For example, a Tribe may arrange to use a ground-water monitoring expert the other governmental entity has on

board, rather than hiring a Tribal ground-water monitoring expert. Even though a Tribe in this case would be relying in part on another governmental entity's expertise, as it would in any other contractor or agency relationship, the Tribe would seek approval of its program and would continue to exercise its permitting authority. This type of agreement must specify the relevant roles of each party to the agreement. The Tribe seeking approval would need to meet all other requirements outlined in this proposed rule and include copies of all relevant agreements in its application for program approval. In the context of making adequacy determinations, EPA will review such agreements to assure that they will ensure compliance with 40 CFR Part 258.

EPA recognizes, however, that there may be circumstances where a State seeks to assert jurisdiction in Indian Country. Where a State can demonstrate jurisdiction on Indian lands, the State seeking approval may propose, as part of its permit program approval application, to ensure compliance on Indian lands. However, the burden a State must meet to demonstrate its authority to regulate Subtitle D regulated facilities on Indian lands is a high one. *See, e.g.*, 53 FR 43080 (October 25, 1988).

EPA does not favor the third approach, because it requires EPA to step in to enforce the program without consideration of whether the Tribe can adequately do so. Under this approach, owners/operators of MSWLFs on Indian lands would not be able to obtain the flexibility and lower costs available in jurisdictions with approved permit programs.

EPA believes that adequate authority exists under RCRA to allow Tribes to seek an adequacy determination for purposes of Sections 4005 and 4010. EPA's interpretation of RCRA is governed by the principles of *Chevron, USA v. NRDC*, 467 U.S. 837 (1984). Where Congress has not explicitly stated its intent in adopting a statutory provision, the Agency charged with implementing that statute may adopt any interpretation which, in the Agency's expert judgment, is reasonable in light of the goals and purposes of the statute as a whole. *Id.* at 844. Interpreting RCRA to allow Tribes to apply for an adequacy determination satisfies the *Chevron* test.

RCRA does not explicitly define a role for Tribes under Sections 4005 and 4010 and reflects an undeniable ambiguity in Congressional intent. Indeed, the only mention of Indian Tribes anywhere in RCRA is in Section 1004(13), a part of

the "Definitions" of key terms in RCRA. Section 1004(13) defines the term "municipality" to mean:

A city, town, borough, county, parish, district or other public body created by or pursuant to State law, with responsibility for the planning or administration or solid waste management, or any Indian tribe or authorized tribal organization or Alaska Native village or organization[.]

*Id.* (emphasis added). The term "municipality", in turn, is used in Sections 4003(c)(1)(C), 4008(a)(2), and 4009(a) of RCRA with reference to the availability of certain Federal funds and technical assistance for solid waste planning and management activities by municipalities. Section 4003(c)(1)(C) specifies that States are to use Subtitle D grant funds to, among others, assist municipalities in developing municipal waste programs; Sections 4008(a)(2) and 4008(d)(3) authorizes EPA to provide financial and technical assistance to municipalities on solid waste management; Section 4009(a) authorizes EPA to make grants to States to provide financial assistance to small municipalities. Thus, Congress apparently intended to make explicit that Indian Tribes could receive funds and assistance when available in the same manner as municipal governments. However, Congress did not explicitly recognize any other role for Tribes under other provisions. There is no accompanying legislative history which explains why Indian Tribes were included in Section 1004(13) and nowhere else.

EPA does not believe that Congress, by including Indian Tribes in Section 1004(13), intended to prohibit EPA from allowing Tribes to apply for an adequacy determination under Subtitle D. First of all, it is clear that Indian Tribes are not "municipalities" in the traditional sense. Indian Tribes are not "public bodies created by or pursuant to State law." Indeed, Indian Tribes are not subject to State law except in very limited circumstances. *Cabazon, supra*. Indian Tribes are sovereign governments. *Worcester v. Georgia*, 31 U.S. (10 Pet.) 515 (1832). There is no indication in the legislative history that Congress intended to abrogate any sovereign Tribal authority by defining them as "municipalities" under RCRA, i.e., that Congress intended Section 1004(13) to subject Indian Tribes to State law for RCRA purposes. Moreover, it is a well-established principle of statutory construction that Federal statutes which might arguably abridge Tribal powers of self-government must be construed narrowly in favor of retaining Tribal rights. F. Cohen,

*Handbook of Federal Indian Law*, 224 (1981); See, e.g., *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832, 846 (1982).

EPA believes that inclusion of Indian Tribes in Section 1004(13) was a definitional expedient, to avoid having to include the phrase "and Indian tribes or tribal organizations or Alaska Native villages or organizations" wherever the term "municipality" appeared, *not* to change the sovereign status of Tribes for RCRA purposes. In particular, the references in Sections 4003(c) and 4009(a) to state "assistance" to municipalities does not suggest that Congress intended Indian Tribes to be subject to State governmental control. Furthermore, given the limited number of times the term "municipality" appears in RCRA, it does not appear that Congress was attempting to define a role for Tribes for all potential statutory purposes.

The ambiguity in RCRA regarding Indian Tribes also is evident from the structure of the 1984 Amendments. As mentioned earlier, Congress expressed a strong preference for a State lead in ensuring compliance with the Subtitle D Federal revised criteria, in that Section 4005(c) allows EPA to enforce the criteria only after a finding of inadequacy of the State permit program. Yet, the legislative history of the 1984 Amendments does not suggest that Congress intended to authorize States to implement such programs on Indian lands or that Congress considered the legal principle that States generally are precluded from such implementation. *Cf. Washington Dept. of Ecology v. EPA*, 752 F.2d 1465 (9th Cir. 1985) (RCRA Subtitle C does not constitute an explicit delegation of authority to States to implement hazardous waste programs on Indian lands); *accord, Nance v. EPA*, 745 F.2d 701 (9th Cir. 1981). Thus, Congress has otherwise put States in a primary role for Subtitle D permit programs, yet on Indian lands has failed to define how Tribes participate where States lack authority. EPA believes it necessary to harmonize the conflicts and resolve the ambiguities created by these provisions.

EPA concludes that interpreting Sections 4005, 4008, and 4010 to allow Indian Tribes to seek an adequacy determination is reasonable.<sup>2</sup> Several

factors enter into this determination. First, as discussed in the previous paragraph, this approach is consistent with Subtitle D, because it preserves Congressional intent to limit the Federal government's role in Subtitle D permit programs. Absent the opportunity for Tribes to seek a determination of adequacy, there would be few or no adequate permit programs in place on Indian lands (because the State lacked the authority and the Tribe could not apply for program approval).

Failure to approve Tribal programs would deny Tribes the option available to approved States of granting their owners and operators flexibility in meeting the requirements of the Subtitle D Federal revised criteria. Under Part 258, the Federal revised criteria would be implemented without benefit of an EPA approved permit process and EPA would take enforcement actions as appropriate. With this proposal, however, Subtitle D regulated facilities on Indian Lands could be under the jurisdiction of the closest sovereign with permitting and enforcement authority, the Tribe, rather than the Federal government.

In the case of other environmental statutes (e.g., the Clean Water Act), EPA has worked to revise them to define explicitly the role for Tribes under these programs. Yet, EPA also has stepped in on at least two occasions to allow Tribes to seek program approval despite the lack of an explicit Congressional mandate. Most recently, EPA recognized Indian Tribes as the appropriate authority under the Emergency Planning and Community Right-to-Know Act (EPCRA), despite silence on the Tribal role under EPCRA. 55 FR 30632 (July 26, 1990). EPA reasoned that since EPCRA has no federal role to backup State planning activities, failure to recognize Tribes as the authority under EPCRA would leave gaps in emergency planning on Indian lands. 54 FR 13000-01 (March 29, 1989).

EPA filled a similar statutory gap much earlier as well, even before development of its formal Indian Policy. In 1974, EPA promulgated regulations which authorized Indian Tribes to redesignate the level of air quality applicable to Indian Lands under the Prevention of Significant Deterioration (PSD) program of the Clean Air Act in the same manner that States could redesignate for other lands. See *Nance v. EPA* (upholding regulations). EPA promulgated this regulation despite the fact that the Clean Air Act at that time

made no reference whatsoever to Indian Tribes or their status under the Act.<sup>3</sup>

One Court already has recognized the reasonableness of EPA's actions in filling such regulatory gaps on Indian lands. In *Nance*, the U.S. Court of Appeals for the Ninth Circuit affirmed EPA's PSD redesignation regulations described in the previous paragraph. The Court found that EPA could reasonably interpret the Clean Air Act to allow for Tribal redesignation, rather than allowing the States to exercise that authority or exempting Indian lands from the redesignation process. 745 F.2d 713. The Court noted that EPA's rule was reasonable in light of the general existence of Tribal sovereignty over activities on Indian Lands. *Id.* at 714.

Today's proposal is analogous to the rule upheld in *Nance*. EPA is proposing to fill a gap in jurisdiction on Indian lands. As with the redesignation program, approving Tribal MSWLF permit programs ensures that the Federal government is not the entity exercising authority that Congress intended to be exercised at a more local level. Furthermore, the case law supporting EPA's interpretation is even stronger today than at the time of the *Nance* decision. First, the Supreme Court reaffirmed EPA's authority to develop reasonable controlling interpretations of environmental statutes. *Chevron, supra*. Second, the Supreme Court emphasized since *Nance* that Indian Tribes may regulate activities on Indian Lands, including those of non-Indians, where the conduct directly threatens the health and safety of the Tribe or its members. *Montana v. United States*, 450 U.S. 544, 565 (1981).

In the case of Subtitle D regulated facilities, EPA believes that improperly maintained facilities would not be protective of human health (including that of Tribal members) and the environment (including Indian lands). Tribes are likely to be able to assert regulatory authority over facilities on Indian lands to protect these interests. Allowing Tribes to seek adequacy would reflect general principles of Federal Indian law. Thus, as in *Nance*, EPA believes that allowing Tribes to apply for program approval reflects the sovereign authority of Tribes under Federal law.

## 2. Jurisdiction

To have its Subtitle D permit program deemed adequate by EPA, a Tribe must

<sup>2</sup> EPA notes that the arguments set forth below also may apply to other RCRA programs/statutory sections, including Section 3006 (EPA authorization of State hazardous waste programs), although there are unique considerations associated with each program. EPA currently is considering whether to allow Tribes to apply for authorization to implement other RCRA programs and will revisit the issue in future Federal Register notices.

<sup>3</sup> Congress ratified EPA's regulation in 1977 by explicitly authorizing Tribes to make PSD redesignations; the 1990 Amendments to the Act authorize EPA to allow Tribes to apply for approval to implement any programs EPA deems appropriate.

have adequate authority over the regulated activities. Indian reservations include lands owned in fee by non-Indians. Pursuant to *Montana v. U.S.*, 450 U.S. 544 (1981), Tribes have jurisdiction over Indian lands owned by Indians. However, the extent of Tribal authority to regulate activities by non-Indians on fee lands has been the subject of considerable discussion. The test for civil regulatory authority over non-member owned fee lands within Indian reservations was stated in *Montana v. U.S.*, 450 U.S. 544, 565–66 (1981) (citations omitted):

To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate . . . the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. . . . A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

In *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989), the Court applied this test. Both the State of Washington and the Yakima Nation asserted authority to zone non-Indian real estate developments on two parcels within the Yakima reservation, one in an area that was primarily Tribal, the other in an area where much of the land was owned in fee by nonmembers. Although the Court analyzed the issues and the appropriate interpretation of *Montana* at considerable length, the nine members split 4:2:3 in reaching the decision that the Tribe should have exclusive zoning authority over property in the Tribal area and the State should have exclusive zoning authority over non-Indian owned property in the fee area.

Specifically, the Court recognized Tribal authority over activities that would threaten the health and welfare of the Tribe, 492 U.S. at 443–444 (Stevens, J., writing for the Court); *id.* at 449–450 (Blackmun, J. concurring). Conversely, the Court found no Tribal jurisdiction where the proposed activities “would not threaten the Tribe’s \* \* \* health and welfare.” *Id.* at 432 (White, J., writing for the Court). Given the lack of a majority rationale, the primary significance of *Brendale* is in its result, which was fully consistent with *Montana v. United States*.

In evaluating whether a Tribe has authority to regulate a particular activity on land owned in fee by nonmembers

but located within a reservation, EPA will examine the Tribe’s authority in light of the evolving case law as reflected in *Montana* and *Brendale* and applicable Federal law. The extent of such Tribal authority depends on the effect of that activity on the Tribe. As discussed above, in the absence of a contrary statutory policy, a Tribe may regulate the activities of non-Indians on fee lands within its reservation when those activities threaten or have a direct effect on the political integrity, the economic security, or the health or welfare of the Tribe. *Montana*, 450 U.S. at 565–66.

However, as discussed by EPA in the context of the Clean Water Act, the Supreme Court, in a number of post-*Montana* cases, has explored several criteria to assure that the impacts upon Tribes of the activities of non-Indians on fee land, under the *Montana* test, are more than *de minimis*, although to date the Court has not agreed, in a case on point, on any one reformulation of the test. See 56 FR 64876, 64878 (December 12, 1991). In response to this uncertainty, the Agency will apply, as an interim operating rule, a formulation of the *Montana* standard that will require a showing that the potential impacts of regulated activities of non-members on the Tribe are serious and substantial. See 56 FR at 64878. Thus, EPA will require that a Tribe seeking RCRA Subtitle D permit program approval demonstrate jurisdiction, i.e., make a showing that the potential impacts on the Tribe from solid waste management activities of non-members on fee lands are serious and substantial.

The choice of an Agency operating rule containing this standard is taken solely as a matter of prudence in light of judicial uncertainty and does not reflect an Agency endorsement of this standard *per se*. See 56 FR at 64878. Moreover, as discussed below, the Agency believes that the activities regulated under the various environmental statutes, including RCRA, generally have potential direct impacts on human health and welfare that are serious and substantial. As a result, the Agency believes that Tribes usually will be able to meet the Agency’s operating rule, and that use of such a rule by the Agency should not create an improper burden of proof on Tribes.

Whether a Tribe has jurisdiction over activities by nonmembers will be determined case-by-case, based on factual, Tribal-specific findings. The determination as to whether the required effect is present in a particular case depends on the circumstances.

Nonetheless, the Agency also may take into account the provisions of environmental statutes and any legislative findings that the effects of the activity are serious and substantial in making a generalized finding that Tribes are likely to possess sufficient inherent authority to control environmental quality in Indian Country. See, e.g., *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 476–77 and nn.6, 7 (1987). The Agency also may rely on its special expertise and practical experience regarding the importance of proper solid waste management to the protection of Tribal environments and the health and welfare of Tribal members. As a result, the reservation-specific demonstration required of a Tribe may, in many cases, be relatively simple.

The Agency believes that Congressional enactment of RCRA establishes a strong Federal interest in effective management of solid waste. For example, Congress has stated that “the disposal of solid waste \* \* \* in or on the land without careful planning and management can present a danger to human health and the environment” and that unsound solid waste disposal practices “have created greater amounts of air and water pollution and other problems for the environment and health.” RCRA § 1002(b)(2), (3), 42 U.S.C. 6901(b) (2), (3). Congress recognized that potential hazards from mismanagement of solid waste disposal facilities include “fire hazards; air pollution (including reduced visibility); explosive gas migration; surface and ground-water contamination; disease transfer (via vectors such as rats and flies); personal injury (to unauthorized scavengers); and, aesthetic blight.” House Report to accompany H.R. 14496, September 9, 1976 at 37. EPA has confirmed these Congressional observations.<sup>4</sup>

EPA notes that, where solid waste affects ground water which has pathways that allow it to migrate readily, it would be practically very difficult to separate out the effects of solid waste disposal on non-Indian fee land within a reservation from those on Tribal portions. In addition, EPA notes that many of the environmental problems caused by mismanagement of solid waste (e.g., ground-water

<sup>4</sup> See, e.g., USEPA, OSW, Case Studies on Ground-Water and Surface Water Contamination from Municipal Solid Waste Landfills—Criteria for Solid Waste Landfills (40 CFR Part 258) Subtitle D of RCRA, July 1988, EPA/530-SW-88-040; USEPA, OSW, Operating Criteria (Subpart C)—Criteria for Solid Waste Landfills (400 CFR Part 258) Subtitle D of RCRA, July 1988, EPA/530-SW-88-037.

contamination or the contamination of surface water through uncontrolled runoff) by their nature present potential direct impacts that are serious and substantial in areas that are outside the place where the solid waste activity originally occurred. In other words, any environmental impairment that occurs on, or as a result of, solid waste activities by non-members on fee lands within the reservation is likely to present direct impacts to Tribal environments, health, and welfare that are serious and substantial. EPA also believes that a "checkerboard" system of regulation, whereby the Tribe and State split up regulation of solid waste on Indian lands, would exacerbate the difficulties of assuring compliance with RCRA requirements.

In light of the Agency's statutory responsibility for implementing the environmental statutes, its interpretations of the intent of Congress regarding Tribal management of solid waste within the reservation are entitled to substantial deference. *Washington Dep't of Ecology v. EPA*, 752 F.2d 1465, 1469 (9th Cir. 1985); see generally *Chevron, USA, Inc. v. NRDC*, 467 U.S. 837, 843-45 (1984).

The Agency also believes that the effects on Tribal health and welfare necessary to support Tribal regulation of non-Indian activities on Indian lands may be easier to establish in the context of environmental regulation than with regard to zoning, which was at issue in *Brendale*. There is a significant distinction between land use planning and environmental regulation of solid waste under RCRA. The Supreme Court has explicitly recognized such a distinction: "Land use planning in essence chooses particular uses for the land; environmental regulation \* \* \* does not mandate particular uses of the land but requires only that, however the land is used, damage to the environment is kept within prescribed limits." *California Coastal Comm'n v. Granite Rock Co.*, 480 U.S. 572, 587 (1987). The Court has relied on this distinction to support a finding that States retain authority to carry out environmental regulation even in cases where their ability to carry out general land use regulation is preempted by federal law. *Id.* at 587-589.

Further, management of solid waste serves the purpose of protecting public health and safety, which is a core governmental function, whose exercise is critical to self-government. The special status of governmental actions to protect public health and safety is well

established.<sup>5</sup> By contrast, the power to zone can be exercised to achieve purposes which have little or no direct nexus to public health and safety. See, e.g., *Brendale*, 492 U.S. at 420 n.5 (White, J.) (listing broad range of consequences of state zoning decision). Moreover, solid waste may affect ground water, which is mobile, freely migrating from one local jurisdiction to another, sometimes over large distances. By contrast, zoning regulates the uses of particular properties with impacts that are much more likely to be contained within a given local jurisdiction.

The process that the Agency will use for Tribes to demonstrate their authority over non-members on fee lands includes a submission of a statement in the Tribal legal Certification (section 239.5(c)) explaining the legal basis for the Tribe's regulatory authority. However, EPA also will rely on its generalized findings regarding the relationship of solid waste management to Tribal health and welfare. Thus, the Tribal submission will need to make a showing of facts that there are or may be activities regulated under RCRA Subtitle D engaged in by non-members on fee lands within the territory for which the Tribe is seeking approval, and that the Tribe or Tribal members could be subject to exposure to solid waste from such activities through, e.g., ground water, surface water, soil, and/or direct contact. The Tribe must explicitly assert jurisdiction, i.e., make a showing that improper management of solid waste by non-members on fee lands could have direct impacts on the health and welfare of the Tribe and its members that are serious and substantial. Once a Tribe meets this initial burden, EPA will, in light of the facts presented by the Tribe and the generalized statutory and factual findings regarding the importance of proper solid waste management in Indian country, presume that the Tribe has made an adequate showing of jurisdiction over non-member activities on fee lands, unless an appropriate governmental entity (e.g., an adjacent Tribe or State) demonstrates a lack of jurisdiction on the part of the Tribe.

The Agency recognizes that jurisdictional disputes between Tribes and States can be complex and difficult and that it will, in some circumstances, be forced to address such disputes by attempting to work with the parties in a mediative fashion. However, EPA's ultimate responsibility is protection of

human health and the environment. In view of the mobility of environmental problems, and the interdependence of various jurisdictions, it is imperative that all affected sovereigns work cooperatively for environmental protection.

### 3. Permit Program Approval

EPA wishes to emphasize that Tribes are not required to seek approval of their Subtitle D permit programs. Today's proposed rule states that a Tribe may, by submitting an application for EPA review, seek approval of its permit program. If the Tribe does not wish to seek adequacy, it simply need not submit an application for that purpose. This is in contrast to the requirement of Section 4005(c)(1)(B), which requires States to adopt and implement adequate permit programs. EPA does not believe it should impose a mandatory duty on Tribes to adopt and implement permit programs simply because some Tribes may seek and receive a determination of adequacy. Given that Congress has not explicitly defined the Tribal role under Subtitle D, EPA doubts that Congress intended to impose a mandatory duty on all Tribes. The decision of whether or not to seek approval is an individual Tribal determination based upon a number of factors such as whether the flexibility available to approved programs offers the Tribe any advantage and whether the Tribe has the infrastructure and resources to apply for and administer such a program.

Generally, Tribes that opt to seek program approval must meet the same approval criteria EPA requires States to meet. Today's proposal recognizes the uniqueness of Tribes and Indian lands, however, and includes appropriate requirements in certain sections of the proposed rule. For example, due to the lack of clarity of Tribal boundaries (or lands over which the Tribe asserts jurisdiction) in some cases, the proposed rule requires Tribes to include a map or legal description of these lands. A more detailed explanation of the requirements Tribes must meet to be deemed adequate by EPA follows.

Under the Clean Water Act, Safe Drinking Water Act, CERCLA, and the Clean Air Act, Congress has specified certain criteria by which EPA is to determine whether Tribes should be allowed to seek program approval. These criteria generally require that: (1) The Tribe be recognized by the Secretary of the Interior; (2) the Tribe has an existing government exercising substantial governmental duties and powers; (3) the Tribe has adequate civil regulatory jurisdiction over the subject matter and entities to be regulated; and

<sup>5</sup> This special status has been reaffirmed by all nine justices in the context of Fifth Amendment takings law. See *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 491 n. 20 (1987); *id.* at 512 (Rehnquist, C.J., dissenting).



(4) the Tribe is reasonably expected to be capable of administering the federal environmental program.

Today's proposal recognizes the importance and fully agrees with the substance of these criteria. Therefore, EPA has integrated the four criteria used in other statutes into today's proposed State/Tribal Implementation Rule and has not established a pre-approval process for Indian Tribes. Under proposed Section 239.4(g), a Tribe seeking approval of its permit program would address three of the above criteria in its Narrative Description. As proposed in Section 239.5(c), the Tribe would address the fourth criterion, adequacy of civil regulatory jurisdiction, in its Legal Certification.

The process EPA is proposing for Tribes to make this showing generally is not an onerous one. The Agency has simplified its process for determining Tribal eligibility to administer environmental programs under several other environmental statutes. See 59 FR 64339 (December 14, 1994) ("Treatment as a State (TAS) Simplification Rule"). The proposed process for determining eligibility for RCRA Subtitle D Programs parallels the simplification rule.

Generally, the fact that a Tribe has met the recognition or governmental function requirements under another environmental statute allowing for Tribal assumption of environmental programs or grants (e.g., the Clean Water Act, Safe Drinking Water Act, Clean Air Act) will establish that the Tribe meets those requirements for purpose of RCRA Subtitle D permit program approval. To facilitate review of Tribal applications, EPA therefore requests that the Tribe, in responding to proposed Section 239.4(g), demonstrate that it has been approved for "TAS" (under the old "TAS" process) or has been deemed eligible to receive authorization (under the simplified process) for any other program. If a Tribe has not received "TAS" approval or has not been deemed eligible to receive authorization for any other program, the Tribe must demonstrate, pursuant to proposed Section 239.4(g), that it meets the recognition and governmental function criteria described above. Discussion on how to make these showings can be found at 59 FR 64339 (December 14, 1994).

Section 239.2 of today's proposal defines Tribes to mean any Indian Tribe, band, nation, or other organized group or community which is recognized by the Secretary of the Interior or Congress and which exercises substantial governmental duties and powers. While the definition of Tribes in today's proposal does not explicitly include

Alaska Native Villages, Alaska Native entities (e.g., villages) may apply for permit program approval. Alaska Native Villages that are Federally-recognized Tribes should not be excluded *per se* from seeking EPA program approval, although EPA does not mean to imply that it has determined that any village possesses the adequate civil regulatory authority to operate a permit program. Rather, such a determination would be made on a case-by-case basis. Alaska Native Villages that demonstrate that their permit programs meet the jurisdictional capacity and other requirements of today's proposal will be deemed adequate.

EPA believes that the Agency must make a separate determination that a Tribe has adequate jurisdictional authority and administrative and programmatic capability before it approves each Tribal permit program. Thus, today's proposal requires, under proposed Section 239.5(c), that a Tribe seeking program approval provide an analysis of jurisdictional authorities in the Tribal Legal Certification. The legal certification must include a map or legal description of the lands over which the Tribe asserts jurisdiction and documents supporting the Tribe's assertion of jurisdiction. In addition, as noted above, if the Tribe is asserting jurisdiction over solid waste activities conducted by non-members on fee lands within Reservation boundaries, it must explicitly show in its submission that the activities of non-members on fee lands regarding solid waste could have direct effects on the health and welfare of the Tribe that are serious and substantial.

Finally, capability is a determination that will be made on a case-by-case basis. Ordinarily, the information provided in the application for RCRA Subtitle D permit program approval submitted by any applicant, Tribal or State, will be sufficient. For example, today's proposal requires both States and Tribes to discuss the staff resources available to carry out the program. Section 239.3 requires that States/Tribes list the number of Subtitle D regulated facilities under their jurisdiction and discuss staff resources available to carry out and enforce the program. However, EPA may request, in individual cases, that a Tribe provide additional narrative or other documents showing that the Tribe is capable of administering the program for which it is seeking approval. See 59 FR 44339 (December 14, 1994).

4. Financial Assurance for Tribally owned MSWLFs

Part 258 exempts States that are MSWLF owner/operators from the financial assurance requirements contained in 40 CFR Part Section 258.74. While today's proposal extends to Tribes the same opportunity to apply for permit program approval as it does to States, EPA has no basis for believing that Indian Tribes are exactly like States in terms of their financial capabilities. Thus, EPA is proposing that the financial assurance requirement contained in 40 CFR § 258.74 remain applicable to Tribes.

EPA considered, during the development of 40 CFR Part 258, whether to exempt Tribes from financial responsibility requirements and whether Tribes have the requisite financial strength and incentives to cover the costs of closure, post-closure care, and corrective action for known releases. The Agency found that, due to the variation among Tribes in terms of size, financial capacity, and function performed, exempting all Tribes from the requirements would provide insufficient protection of human health and the environment. Requiring all Tribes to demonstrate financial assurance should encourage appropriate advanced planning for the costs of closure, post-closure care, and corrective action for known releases by these entities. See 56 FR 51106-07 (October 9, 1991).

The Agency does not believe that the financial assurance requirements generally will be burdensome to Tribes due to the relatively small part of the total cost of compliance with today's proposal imposed by the financial assurance requirements. Mechanisms that could be used to make this demonstration, such as trust funds, surety bonds, and letters of credit, are discussed in 40 CFR Part 258.74. The Agency is developing a special financial test for local governments that also may be utilized by Tribes (proposed on December 27, 1993, 58 FR at 68353). Financially strong Tribes, like financially strong municipalities, will be able to comply with the requirement using the local government financial test. EPA intends to issue the financial assurance test for local governments in October 1995, well before the effective date of the financial assurance requirement (April 9, 1997).

EPA solicits comment on whether today's proposal incorporates the appropriate criteria and procedures in general for determining whether a Tribe's permit program should be deemed adequate by EPA. EPA also



invites comment on appropriate terms for Tribal positions equivalent to State positions, such as Governor, Attorney General, Agency, and Director.

#### H. Enforcement

Approved States/Tribes have primary responsibility for ensuring compliance with the Subtitle D Federal revised criteria through the enforcement element of their permit programs. Because RCRA does not give EPA the authority to take enforcement actions in approved States/Tribes, adequate State/Tribal enforcement authorities are crucial to ensuring compliance. Under RCRA 4005(c)(2)(A), the Agency has the authority to enforce the Subtitle D Federal revised criteria where it determines the State/Tribal permit program to be inadequate.

Independent of any governmental enforcement program, citizens may seek enforcement of the Subtitle D Federal revised criteria by means of citizen suits against owners/operators under Section 7002 of RCRA. Section 7002 provides that any person may commence a civil action on his or her own behalf against any person who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to RCRA. The self-implementing Subtitle D Federal revised criteria constitute the basis for enforcement actions through potential citizen suits against facilities that fail to comply. In addition, where a citizen brings a concern to EPA's attention, the Agency will respond in an appropriate manner on a case-by-case basis. In addition to the enforcement authority the Agency assumes upon determining that a State/Tribal permit program is inadequate, EPA retains enforcement authority under RCRA Section 7003 to address situations that may pose an imminent and substantial endangerment to human health or the environment. In addition, EPA may also exercise enforcement authority under Section 104(e) of CERCLA in situations where there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance, pollutant, or contaminant.

Unlike Subtitles C and I of RCRA, the statute does not provide that State programs deemed adequate by EPA operate in lieu of the Federal program. Absent such a statutory provision, the Subtitle D Federal revised criteria are applicable to all Subtitle D regulated facilities, regardless of whether EPA has approved the State/Tribal permit program. Violation of the Subtitle D Federal revised criteria may subject the violator to a citizen suit in Federal

court. In the event of a citizen suit against an owner/operator permitted by an approved State/Tribe, however, EPA expects the owner/operator who complies with the requirements of an approved State's/Tribe's permit program will be found by Federal courts to have complied with the requirements in the Subtitle D Federal revised criteria. EPA expects this result because EPA will have reviewed and explicitly approved the State's/Tribe's design or performance standard approach as ensuring compliance with the Subtitle D Federal revised criteria.

This citizen suit authority under RCRA is an important addition to State/Tribal and Federal enforcement which EPA believes will help ensure compliance with Subtitle D Federal revised criteria. For example, the citizen suit authority provides an incentive for owners and operators to comply with the Subtitle D Federal revised criteria. In addition, citizens may bring action against a State (to the extent permitted by the eleventh amendment to the Constitution) for failure to develop and implement an adequate permit program as required by RCRA Section 4005(c)(1)(B). (Such suits would not be appropriate against Indian Tribes, who are not specifically required to comply with RCRA Section 4005.)

#### III. Section-by-Section Analysis of 40 CFR Part 239

The following sections of this preamble include discussions of the major issues and present the rationale for the specific regulations being proposed today. The preamble is organized in a section-by-section sequence for ease of reference.

##### A. Purpose and Scope (Subpart A, §§ 239.1 and 239.2)

Sections 239.1 and 239.2 outline the purpose and scope of today's proposal and provide definitions of key terms used in the requirements. Today's proposal specifies the requirements that State/Tribal permit programs must meet to be determined adequate to ensure that Subtitle D facilities regulated under RCRA section 4010(c) comply with the Subtitle D Federal revised criteria. The proposed rule also sets forth the procedures EPA will follow in determining the adequacy of State/Tribal permit programs. Nothing in today's proposal precludes States/Tribes from requiring more stringent levels of protection than those required by the Subtitle D Federal revised criteria. The definitions proposed in § 239.2 are consistent with definitions in other RCRA regulations where appropriate. For this Part, the Agency defines

"permit" to include other systems of prior approval and conditions (e.g., licenses). The Agency is proposing this definition to be consistent with RCRA § 4005(c) which requires States to "adopt and implement a permit program or other system of prior approval and conditions" and to accommodate existing State/Tribal programs that function as "permit" programs but are not so designated.

##### B. Components of a Permit Program Application (Subpart B, §§ 239.3-239.5)

###### 1. State/Tribal Permit Program Application (§ 239.3)

Section 239.3 of today's proposed rule identifies the components that the State/Tribe must include in its program application to obtain an adequacy determination under this Part. Under the proposed rule, a State/Tribe must submit an application containing the following: (1) A transmittal letter requesting permit program approval, (2) a description of the State/Tribal permit program, (3) a written legal certification demonstrating that the State/Tribal authorities cited in the permit program application are fully enacted and effective, (4) copies of all applicable State/Tribal laws, regulations and guidance that the State/Tribe will use to ensure that Subtitle D regulated facilities comply with the Subtitle D Federal revised criteria, and (5) copies of any Tribal-State agreements if a Tribe and State have negotiated agreements for the implementation of the Subtitle D permit program on Indian lands. Copies of all applicable State/Tribal laws, regulations, and guidance or other policy documents submitted with the State's/Tribe's application will be used by EPA to evaluate the adequacy of a State/Tribal program's scope and technical requirements.

A transmittal letter signed by the State/Tribal Director must accompany the official State/Tribal application. If more than one State/Tribal agency has implementation responsibilities, the transmittal letter must designate a lead agency and be jointly signed by all State/Tribal agencies with implementation responsibilities or by the State Governor/Tribal authority exercising powers substantially similar to those of a State Governor. This letter is the State's/Tribe's formal request for determination of adequacy. The designation of a lead agency will provide EPA with a single point of contact in the State/Tribe and will facilitate communication between EPA and the State/Tribe. Under today's proposal, EPA only will approve adequate programs with jurisdiction

throughout a State/Tribe. Independent sub-State or sub-Tribal agencies that do not have jurisdiction throughout the State/Tribe are not eligible for adequacy determinations but can have implementation roles as outlined in the next section.

## 2. Narrative Description of a State/Tribal Program (§ 239.4)

Under proposed § 239.4, any State/Tribe that seeks approval for its Subtitle D permit program must submit a narrative description of the State/Tribal permit program as part of its application. The narrative description provides an overview of the State/Tribal permit program and demonstrates how the program meets the statutory requirement to ensure that owners/operators comply with the Subtitle D Federal revised criteria under RCRA section 4010(c). The narrative must demonstrate that the State/Tribal program ensures the protection of human health and the environment through the implementation of permit standards that ensure compliance with the Subtitle D Federal revised criteria.

The narrative description is the component of the application wherein the State/Tribe describes how its permit program satisfies the requirements of Subpart C of today's proposed rule. The specific elements of the program narrative which must be included in a State's/Tribe's application and are being proposed today are listed in § 239.4 and are described briefly below. The narrative must include a discussion of the jurisdiction and responsibilities of all State/Tribal and local agencies implementing the permit program. The narrative also must provide a description of State/Tribal procedures for permitting, compliance monitoring, and enforcement as specified in §§ 239.6 through 239.9 of today's proposal and any applicable State-Tribal agreements.

Many State, Tribal, and local agencies have begun to address the Subtitle D Federal revised criteria, and the Agency does not wish to disrupt these on-going efforts. The nature of the problem and the work involved in implementing the regulatory program dictate that the actual day-to-day work take place at the State, Tribal, and local levels. Therefore, today's proposal does not require implementation only by State/Tribal agencies with State/Tribal-wide jurisdiction and authorities. Rather, EPA is allowing sub-State/Tribal agencies an implementation role where lead State/Tribal agencies demonstrate in the application for permit program approval that the local agencies will ensure compliance and will operate under State/Tribal-wide authorities. The

Agency encourages States/Tribes to work closely with local implementing agencies and provide oversight so that problems, such as local conflicts of interest, are prevented.

The program narrative also must provide a discussion of how the State's/Tribe's permit program will provide for the permitting of new and existing Subtitle D regulated facilities to ensure compliance with the Subtitle D Federal revised criteria. Under today's proposal, new Subtitle D regulated facilities must have permits prior to construction and operation. States/Tribes may meet this requirement with a multi-stage permitting process (e.g., issuing a permit to construct and a separate permit to operate) if all requirements relevant to each stage are incorporated into the permit for that stage and if new Subtitle D regulated facilities have permits incorporating all the requirements of the Subtitle D Federal revised criteria before operating. If a State/Tribe uses a multi-stage permitting process it must ensure that the public participation elements of today's proposal in § 239.6(a) and § 239.6(b) are met during each stage.

Strategies for ensuring that existing Subtitle D regulated facilities are permitted to ensure compliance are likely to vary depending on the composition of the regulated community in a State/Tribe and on whether the State/Tribe has a pre-existing permit program. Among the strategies a State/Tribe may wish to consider are: (1) Putting existing facilities on a schedule to receive a permit where no permits have yet been issued; (2) scheduling review of existing permits; (3) scheduling closure of existing facilities that are unlikely to come into compliance with new requirements; or (4) a combination of these approaches. Regardless of which strategy is selected, eventually all facilities in approved States/Tribes must receive permits that ensure compliance with the Subtitle D Federal revised criteria or they must close.

The total number of regulated facilities within the State/Tribal jurisdiction must be indicated in the narrative. EPA believes that information pertaining to the number of facilities within the State/Tribal jurisdiction will be useful in assessing whether the State's/Tribe's available resources are adequate to ensure compliance. As explained below, however, resource information is not likely to be a central factor in the determination of State/Tribal permit program adequacy.

Finally, the program narrative must address the staff resources that the State/Tribe has available to carry out its program. The Agency has not proposed

specific resource and staffing requirements for approved programs due to the site-specific nature of ensuring compliance with the Subtitle D Federal revised criteria. Each State/Tribe will have different resource requirements and strategies for ensuring compliance. The Agency intends to allow States/Tribes flexibility in determining the best use of their resources. Such information is not likely to be a central factor in the determination of State/Tribal permit program adequacy. However, EPA intends that, in certain cases (e.g., where EPA determines that State/Tribal resources clearly are insufficient), this information may be used to make a determination of inadequacy. The resource estimates will not be judged with any upper or lower bounds for approval or disapproval, yet EPA wants to ensure that funding and staffing exist.

### 2.a. MSWLF Permit Program Approval

The total number of MSWLFs within the State/Tribal jurisdiction that received municipal solid waste on or after October 9, 1991, must be indicated in the narrative. The October 9, 1991, date was chosen, because MSWLFs receiving waste after this date must, at a minimum, comply with the final cover requirements in 40 CFR Part 258.60(a)(2). The MSWLFs included in this number are those units which may receive hazardous household waste or conditionally exempt small quantity generator hazardous waste. Land application units, surface impoundments, injection wells, or waste piles, as those terms are defined under Part 257.2, do not have to be addressed in the narrative for approval of MSWLF permit programs.

### 3. State/Tribal Legal Certification (§ 239.5)

Section 239.5 of the proposed rule would require any State/Tribe that seeks a determination of adequacy to submit a written statement from the State/Tribal Attorney General certifying that the laws, regulations, and guidance cited in the State's/Tribe's permit program application are fully enacted and fully effective when the State/Tribal permit program is approved. The State/Tribal legal certification serves as the foundation for ensuring that the State/Tribal permit program has adequate authority to ensure compliance with the Subtitle D Federal revised criteria and to meet the requirements of this rule.

If guidance is to be used to supplement statutes and regulations, the State/Tribal legal certification must state that the State/Tribe has the authority to

use guidance to develop enforceable permits which will ensure compliance with the Subtitle D Federal revised criteria and that the guidance was duly issued in accordance with State/Tribal law. Guidance only may be used to supplement State/Tribal laws and regulations; it cannot correct laws and regulations that are inconsistent with the Subtitle D Federal revised criteria. The narrative description of the State/Tribal program must explain how the State/Tribe will use guidance to develop enforceable permits. The Agency emphasizes that guidance is not a substitute for regulations and statutes and that the applicant must have the necessary authorities to ensure compliance with the Subtitle D Federal revised criteria.

This certification may be signed by the independent legal counsel for the State/Tribe, rather than the Attorney General or equivalent Tribal official, provided that such counsel has full authority to represent independently the lead State/Tribal Agency in court on all matters pertaining to the State/Tribal program.

Applicants seeking approval of permit programs on Indian lands also must include in the legal certification an analysis of the applicant's authority to regulate all facilities covered by the relevant Subtitle D Federal revised criteria on Indian lands. The applicant shall include: a map or legal description of the Indian lands over which the applicant asserts jurisdiction and a copy of all documents such as constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions which support the applicant's assertions of authority. States asserting jurisdiction over Indian lands also must submit the same information, as well as copies of applicable State-Tribal agreements.

To facilitate greater flexibility in the approval process, the Agency intends to allow legal certifications that cite statutes, rules, or guidance that are still in the legislative or rulemaking process and are not yet fully enacted or fully effective. The Agency will make tentative determinations of adequacy based on these types of legal certifications but will request copies of the revised laws and regulations and a revised legal certification stating all laws and regulations are fully enacted and fully effective prior to any final adequacy determination by EPA. It may occur that the statutes, regulations, or guidance originally submitted with the application are modified so that they no longer ensure compliance with the Subtitle D Federal revised criteria. Should this happen, the Regional Administrator will publish a new

tentative adequacy determination in the Federal Register to provide for adequate public participation, including an opportunity for the public to provide comments.

### *C. Requirements for Adequate Permit Programs (Subpart C, § 239.6–239.9)*

Under § 239.6–239.9 the Agency is proposing requirements for State/Tribal permit programs to ensure that all new and existing Subtitle D facilities which are subject to regulation under RCRA section 4010(c) have a permit and comply with the Subtitle D Federal revised criteria. Strategies for permitting existing facilities are discussed in section B.2 above. Section 239.6 of the proposed rule requires States/Tribes to have legal authority to require permits ensuring compliance with the Subtitle D Federal revised criteria. A State/Tribe must have adequate authority to collect all information it needs to issue permits that implement the technical requirements.

Sections 239.7 through 239.9 of the proposed rule outline the minimum components of an adequate compliance monitoring and enforcement program to ensure compliance with the Subtitle D Federal revised criteria. In general, the proposed rule requires that States/Tribes have the authority to effectively ensure and enforce ongoing compliance with their approved State/Tribal permit requirements. These sections describe the general legal and procedural program elements that are necessary: compliance monitoring authorities, enforcement authorities, and provisions for public intervention in civil enforcement proceedings.

The rule does not prescribe specific permitting procedures or enforcement and compliance monitoring activity levels or tasks. In proposing these requirements, EPA is emphasizing elements of basic authority, rather than detailed programmatic elements. This emphasis allows sufficient State/Tribal flexibility while requiring that the approved State/Tribal programs have adequate authorities and procedures that will allow them to take action as needed to ensure compliance with the technical requirements. A detailed discussion of the permitting, compliance, and enforcement provisions of today's proposal follows.

#### **1. Permitting Requirements (§ 239.6)**

The Agency recognizes public involvement in permit decisions as an essential component of an effective permit program. In light of the recognized importance of public participation, EPA is requiring that the permit application process must provide

for public review of and input to permit documents containing the applicable site-specific design and operating conditions and must provide for consideration of comments received and notification to the public of the final permit decision.

The Agency believes that it is essential for an effective permit program to provide opportunities for public involvement in permit decisions made after the initial permit issuance (e.g., permit modifications). States/Tribes must provide a full description of their public participation procedures, including procedures for permit actions after initial permit issuance, in the narrative and include a copy of the procedures in the permit program application.

The public participation requirements are intended to ensure that approved permit programs avail the public of needed information and the opportunity to provide input on decisions affecting the management of regulated Subtitle D facilities located in their community. Although EPA is not proposing prescriptive public participation requirements, EPA expects the States/Tribes to have comprehensive and effective procedures for public involvement in key permitting decisions, in accordance with RCRA Section 7004(b)(1).

The Agency believes that it is particularly important to provide for review and comment (including the opportunity for public hearings or meetings) on permits. It also is important to provide public notice and sufficient time for the public to review technical, often complex, permit documents. In addition, EPA has found that notice of opportunities for public review of and input to key post-permit decisions (e.g., significant permit modifications) is essential to an effective public participation program. While some States/Tribes may distinguish between minor permit actions (e.g., increasing the gas monitoring frequency) and major permit actions (e.g., selecting a corrective action remedy), the public should be involved in key decisions which affect their health and their community. For example, public notice of remedial actions and opportunity to comment on the selection of remedies is recommended.

EPA believes the ultimate success of a permit program depends in large part on the effectiveness of a State's/Tribe's public participation program. The additional up-front time a State/Tribe takes involving the public in key permit decisions will result in long-term improvements to the permit program.

While post-permit issuance public participation procedures will not be a determining factor in an adequacy determination, EPA is concerned with ensuring effective public participation. To that end, if, after reviewing the State's/Tribe's public participation narrative and procedures, the Regional Administrator determines that the State's/Tribe's procedures could be improved, he/she will direct Regional staff to work with the State/Tribe to improve the effectiveness of its public participation procedures.

States/Tribes also must demonstrate that they have the authority to require permit conditions that ensure compliance with the Subtitle D Federal revised criteria. Section 239.6 outlines the authorities States/Tribes must have for their permit programs to be deemed adequate.

In order to demonstrate that they will ensure compliance with the Subtitle D Federal revised criteria, States/Tribes must describe and explain substantive differences between the State/Tribal requirements and the Subtitle D Federal revised criteria. States/Tribes may, in any case, impose requirements which are more stringent than the Federal requirements.

#### 1.a. Permitting Requirements for MSWLFs

As discussed earlier in the Approach section of today's proposal, States/Tribes may use any combination of design and performance standards as long as the State/Tribal standards ensure compliance with the Subtitle D Federal revised criteria for MSWLFs. Where 40 CFR Part 258 has a performance standard (e.g., Subpart B Location Restrictions), the State/Tribe may use any performance standard that is at least as stringent as the Federal performance standard. The State/Tribe also may use its own design standard or a combination of a performance standard and a design standard which achieves the Federal performance standard.

Where Part 258 has both a performance standard and design standard (e.g., section 258.21—cover material requirements), the State/Tribe need only demonstrate technical comparability with one of the standards. For example, if the State/Tribe requires MSWLF owners and operators to use a specific daily cover material that the State/Tribe demonstrates to the satisfaction of the Regional Administrator meets the Federal performance standard of Part 258.21 (i.e., controlling disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human

health and the environment), the Regional Administrator may accept that design as adequate. States/Tribes also may use design or performance standards that the Regional Administrator deems to be clearly more stringent than those found in Part 258.

EPA has received a number of questions concerning the Agency's standard for determining the adequacy of the design portion of a state's permit program. In Subpart D of 40 CFR Part 258, the Agency promulgated both a performance standard (section 258.40(a)(1)) and a uniform composite liner requirement (sections 258.40(a)(2) and 258.40(b)). Under the performance standard provision, a new MSWLF unit or a lateral expansion of an existing unit must be constructed using a design approved by the Director of an approved state, and this design must ensure that concentration values listed in Table 1 of section 258.40 (Maximum Contaminant Levels ("MCLs")) will not be exceeded at the relevant point of compliance, as specified by the approved State Director under section 258.40(d).

Section 258.40(c) sets forth criteria for the Director of an approved state to utilize in evaluating designs. Section 258.40(d) provides that the relevant point of compliance shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the MSWLF unit. This section also establishes the factors which the Director of an approved state must consider in determining what the relevant point of compliance should be.

As the Agency stated when the MSWLF final rule was promulgated, EPA's approach to state program approval recognizes the traditional lead role that states take in implementing landfill standards and protecting ground water. 56 FR 50994 (Oct. 9, 1991). More specifically, EPA stated that, "[i]n selecting a design to meet this performance standard, an approved State may adopt its own performance standard, it may use the rule's specific liner design, or it may use any design it determines would be capable of preventing contamination of ground water beyond the drinking water standards [the MCLs]." *Id.*

In evaluating the design requirements for new units and lateral expansions in State permit programs, EPA has provided states with various approaches for developing adequate programs. For example, States can develop design requirements that only include a performance standard that is at least as stringent as the performance standard in 40 CFR section 258.40(a)(1), i.e., not exceeding the MCLs at the relevant

point of compliance. In such States, the Director could approve alternative designs on a site-specific basis as long as the alternative design satisfied the performance standard. The vast majority of the 44 State/Tribal permit programs which EPA has approved as adequate have included a performance standard that is at least as stringent (in certain cases more stringent, e.g., by specifying a relevant point of compliance closer than 150 meters from the unit boundary) than the performance standard in section 258.40(a)(1). EPA believes that state adoption of a design performance standard that is at least as stringent as the one adopted in the MSWLF rule will ensure that owners and operators of new MSWLF units and lateral expansions will comply with the design requirements of the revised criteria. Except as specified in 40 CFR section 258.40(e), i.e., in situations where an unapproved state determines that an alternative liner meets the performance standard and submits a petition to EPA, the Agency never intended to review and/or approve alternative liner designs on a site-specific basis.

EPA has also approved State programs as being adequate under RCRA section 4005(c)(1)(C) if the State has adopted one alternative design or various liner designs which have been shown to satisfy the performance standard in 40 CFR section 258.40(a)(1) in all locations in the State. In these situations, states may perform modeling and associated analysis to show that the alternative design(s) satisfy the performance standard contained in 40 CFR section 258.40(a)(1). The Agency has issued technical guidance which provides states and the public information as to how such modeling and analysis can be done. In approving such state alternative designs, EPA has ensured that the modeling done by the state and any done by the Agency was contained in the public record for review and comment. If the modeling and analysis show that the performance standard in 40 CFR section 258.40(a)(1) will be met in the various locations throughout the state, then the Agency believes the State's alternative design(s) will ensure compliance with the revised criteria, and, thus, is adequate under RCRA section 4005(c)(1)(C). EPA has approved at least six state permit programs which incorporate these alternative design(s) on a state-wide basis.

States are not required to utilize one particular model to show that an alternative liner design will satisfy the performance standard on a state-wide basis. In fact, EPA's technical guidance document identifies a number of models that States may use to assess alternative

designs. In certain situations, however, e.g., where a state adopts a state-wide double composite liner design which is clearly more stringent than the MSWLF single composite design set forth in 40 CFR 258.40(b), EPA believes that modeling and associated analysis may not be necessary.

States may also adopt a combination of a performance standard that is at least as stringent as the performance standard in section 258.40(a)(1) and either the composite liner design contained in sections 258.40(a)(2) and 258.40(b) or alternative designs (discussed above) that meet the performance standard of ensuring that the MCLs will not be exceeded at the relevant point of compliance. In such states, owners and operators of facilities have maximum flexibility in constructing new units and lateral expansions of existing units, while still ensuring that the design standards in Part 258 are satisfied.

## 2. Requirements for Compliance Monitoring (§ 239.7)

Section 239.7 requires States/Tribes to demonstrate the authority to require compliance monitoring and testing. Paragraph (a) requires that the State/Tribe have the authority to obtain all relevant compliance information. More specifically, the proposed rule requires that the State/Tribe have the authority to: obtain any and all information from an owner or operator necessary to determine whether the owner/operator is in compliance with the State/Tribal program requirements; conduct monitoring or testing to ensure that owners/operators are in compliance with the State/Tribal program requirements; and enter any site or premises subject to the permit program or in which records relevant to the operation of the regulated facilities or activities are kept. A State/Tribe also must demonstrate that its compliance monitoring program provides for inspections adequate to determine compliance with State/Tribal program requirements.

Finally, a State/Tribe must demonstrate that its compliance monitoring program provides mechanisms and processes to: verify the accuracy of information submitted by owners or operators; ensure proper consideration of information submitted by the public; verify adequacy of methods (including sampling) used by owners or operators in developing that information; and produce evidence admissible in an enforcement proceeding.

EPA believes that these compliance monitoring authorities and procedures are central to a State's/Tribe's ability to

ensure compliance with the Subtitle D Federal revised criteria. Monitoring and testing programs help ensure that States/Tribes are able to detect permit violations and collect the necessary evidence to support case development and enforcement actions. These authorities play an integral role in the overall determination of adequate permit programs.

The compliance monitoring requirements proposed today are designed to ensure that approved State/Tribal representatives have the authorities and procedures to conduct facility inspections and obtain information necessary to determine owner/operator compliance with approved State/Tribal permit programs. These authorities and procedures provide a basis for State/Tribal agencies to effectively take enforcement actions and help ensure that the regulated community complies with applicable requirements.

## 3. Requirements for Enforcement Authority (§ 239.8)

Section 239.8 outlines enforcement authority requirements that are necessary for adequate State/Tribal permit programs. A strong State/Tribal enforcement presence is critical to ensuring compliance. The State/Tribe must have the legal authority to take specific actions against any owner/operator that fails to comply with the approved State's/Tribe's requirements. Each of these actions is discussed in detail below.

Paragraph 239.8(a) requires that States/Tribes have the ability to use an administrative or court order to restrain any person from conducting an activity that threatens human health or the environment. Under proposed paragraph 239.8(b), States/Tribes must have the authority to sue in court to enjoin any party from violating State/Tribal program statutes, regulations, orders, or permits. Paragraph 239.8(c) requires that States/Tribes demonstrate the authority to sue in a court of competent jurisdiction to recover civil penalties for violations of permit or order conditions as well as for failure to comply with laws and regulations.

Although the rule being proposed today does not require that States/Tribes have authority to assess criminal penalties, other State/Tribal-delegated programs, such as programs under the Clean Water Act, do require this authority. In fact, there are at least 30 States which already have criminal

authority for enforcement of municipal solid waste requirements.<sup>6</sup>

The Agency solicits comment on whether the rule should require that States/Tribes have criminal penalty authority for their permit programs. The Agency realizes that such a criminal requirement could raise impediments to Tribal permit program approval. Federal law bars Indian Tribes from criminally trying or punishing non-Indians in the absence of a treaty or other agreement to the contrary. *Oliphant v. Suquamish Indian Tribe* 435 U.S. 191 (1978). In addition, the Federal Indian Civil Rights Act prohibits any Indian court or tribunal from imposing any criminal fine greater than \$5,000 (25 U.S.C. 1302(7)). To address this problem, EPA has traditionally asserted that it would exercise criminal enforcement authority where the Tribe is incapable of doing so pursuant to a Memorandum of Agreement (MOA) between EPA and the Tribe specifying procedures for referral of cases. See, e.g., 40 CFR 123.34. The Agency is interested in receiving comments on employing the "MOA referral" approach for Tribal MSWLF permit programs and any other suggestions as to how Tribes could meet a criminal penalty authority requirement in light of the limitations on their authority to assert criminal jurisdiction over non-Indians on Tribal lands.

## 4. Intervention in Civil Enforcement Proceedings (§ 239.9)

Today's proposal provides that State/Tribal civil enforcement proceedings must ensure adequate opportunity for public participation through either of two options: (1) authority to allow intervention as a right; or, (2) assurances that the State/Tribal authority will provide notice and opportunity for public comment in all proposed settlements of civil enforcement actions, investigate and provide responses to citizen complaints about violations, and not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

Each of these options separately provides an adequate opportunity for public participation. Thus, States/Tribes need only provide one of the options. The options ensure that the opportunity for public participation in civil enforcement proceedings is provided with minimal intrusion into the States'/ Tribes' judicial systems. The purpose for the intervention requirement is

<sup>6</sup> Review of State Enforcement Powers and Authorities Under RCRA Subtitle D: Final Report. U.S. Environmental Protection Agency, March 31, 1987.

outlined below followed by a detailed discussion of the two options.

The purpose of providing public participation in the decision making process is to promote public involvement in the enforcement of Subtitle D Federal revised criteria. Without intervention requirements, citizens may be precluded from participating in civil enforcement proceedings even if they have pertinent information that would support State/Tribal enforcement cases. Also, citizens that have an interest in or that may be affected by the outcome of the enforcement action may not be able to intervene in enforcement proceedings.

Citizen intervention provisions are mandatory for other EPA programs, such as the Underground Storage Tank, Hazardous Waste, Underground Injection Control, and National Pollutant Discharge Elimination System programs. EPA first required citizen intervention as a result of the decision in *Citizens for a Better Environment v. Environmental Protection Agency*, 596 F.2d 720 (7th Cir. 1979). That decision interpreted section 101(e) of the Federal Water Pollution Control Act Amendments (FWPCA) of 1972 to require EPA to establish State program guidelines and evaluate State programs to ensure that there is public participation in the enforcement of the Clean Water Act. This principle has been extended to RCRA, because the language of FWPCA section 101(e) is quite similar to RCRA section 7004(b)(1). Section 7004 of RCRA requires EPA and the States to provide for, encourage, and assist with public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under RCRA.

Under today's proposal, the State/Tribe would be required to provide for intervention using either of two options. The first option, paragraph 239.9(a), requires that the State/Tribe allow intervention by any citizen having an interest that is or may be adversely affected. Under this option, the State/Tribe allows intervention as a right in any civil action to enforce this Part. The second option requires the State/Tribe to assure that it would: provide opportunity for public involvement or comment on all proposed civil settlements; respond to citizen complaints about violations; and not oppose citizen action when intervention is legally allowed. The public involvement or comment requirement of this last option may be satisfied by a variety of means: from a formal notice

and hearing to less formal public review.

#### *D. Adequacy Determination Procedures (Subpart D, §§ 239.10–239.12)*

##### 1. Adequacy Determination Procedures (§ 239.10)

To encourage early and close working relationships between the States/Tribes and the EPA Regions, approval authority has been delegated to EPA's Regional Administrators. EPA Regional Offices will review State/Tribal applications to determine if a State's/Tribe's application is complete and whether the State/Tribal permit program meets the requirements of this Part.

For those States/Tribes that have submitted a permit program application, the Regional Administrator will have 30 days to make an administrative review of each application and request additional information from the State/Tribe or notify the State/Tribe that the application is administratively complete.

Upon review of a complete application, EPA will make a tentative determination of the adequacy of the permit program. After publication of the Federal Register notice of this tentative determination, a public comment period, and review and consideration of comments received, the Regional Administrator will make a final adequacy determination and publish it in the Federal Register. At the discretion of the Regional Administrator, a public hearing may be held if sufficient public interest exists or if such a hearing might clarify substantive issues. A final determination of adequacy will be made within 180 days of EPA's determination that the application is complete unless a delay is agreed to by the Regional Administrator after consultation with the State/Tribal Director.

The Agency designed this process to ensure that permit program adequacy is determined in a timely manner, while simultaneously affording the public and EPA sufficient opportunity for review and comment.

##### 2. Partial Approval Procedures for State/Tribal Permit Programs (§ 239.11)

Section 239.11 proposes procedures for partial approval of State/Tribal permit programs. A State/Tribal permit program is eligible for partial approval if it meets all of the procedural and legal Part 239 requirements (i.e., but not limited to, enforcement, public participation, compliance monitoring) and meets essentially all of the technical Part 239 requirements (e.g., 40 CFR Part 258 requirements). States/Tribes

applying for partial approval also must include a schedule, agreed to by the State/Tribe and the appropriate Regional Administrator, for completing the necessary changes to the laws, regulations, and/or guidance to comply with the remaining technical requirements. For an additional explanation of the partial approval process refer to section II.E.2 in the background portion of this preamble.

##### 3. Procedures for Review of Modified State/Tribal Programs (§ 239.12)

Section 239.12 proposes procedures for submittal and review of revised applications for State/Tribal program adequacy determinations, should a State/Tribe revise its permit program once deemed adequate. Program revision may result from changes in the pertinent Federal statutory or regulatory authority, changes in State/Tribal statutory or regulatory authority or relevant guidance, or when responsibility for the State/Tribal program is shifted within the lead agency or to a new or different State/Tribal agency or agencies.

States/Tribes may be required to revise their permit program if the Federal statutory or regulatory authorities which have significant implications for State/Tribal permit programs change. These changes also may require revision to a State's/Tribe's permit program application. Such a change at the Federal level, and resultant requirements for States/Tribes, would be made known to the States/Tribes either in the Federal Register containing the change or through the appropriate EPA Regional Office.

Changes to parts of the State/Tribal permit program, as described in its application, which may result in the permit program becoming inadequate must be reported to the appropriate Regional Administrator. In cases where the State/Tribal statutory or regulatory authority or relevant guidance changes, or when responsibility for the State/Tribal program is shifted within the lead agency or to a new or different State/Tribal agency or agencies, the State/Tribal Director must inform the Regional Administrator of these modifications. In addition, changes to a State's/Tribe's statutes, regulations, or guidance which were not part of the State's/Tribe's initial application, but which may have a significant impact on the adequacy of the State's/Tribe's permit program, also shall be reported to the EPA. An example of a change in State/Tribal statutes or regulations which may have a significant effect on the adequacy of a State's/Tribe's permit program is the passage of a new law

which disallows the use of guidance in environmental regulatory programs, where a State/Tribe has submitted guidance as part of its application.

The Regional Administrator will determine, on a case-by-case basis, whether changes at the State/Tribal level warrant re-examination of the State/Tribal program adequacy determination, including submission of a revised application. In re-examining the adequacy determination, the Regional Administrator will follow the adequacy determination procedures outlined in today's rule under § 239.12.

This process is necessary to ensure that State/Tribal permit programs remain current with Federal requirements and continue to be adequate to ensure compliance with the Subtitle D Federal revised criteria. There are no mandatory time-frames for submitting modifications or re-examining adequacy determinations. Rather, schedules for approved States/Tribes to submit modifications to the Regional Administrator and for State/Tribal submission of a revised application are to be negotiated by the State/Tribal Director and the Regional Administrator. This arrangement should minimize potential disruption to ongoing program activities.

Section 239.12(g) and 239.12(h) of today's proposal refer to "additional classifications of Subtitle D regulated facilities" and specify that streamlined approval procedures will not be followed in this case. This language has been included in anticipation of future EPA regulation of other types of facilities under Subtitle D. An example of a potential additional class of Subtitle D facilities is industrial landfills that accept conditionally exempt small quantity generator waste.

EPA anticipates maintaining a continued informal dialogue with approved States/Tribes as States/Tribes make changes to their permit programs or as Federal statutes or regulations change. State/Tribal permitting is a dynamic process and EPA anticipates State/Tribal Directors and the respective EPA Regional Administrators will continue to communicate on a variety of solid waste issues. These types of routine communications between the States/Tribes and the EPA Regions are important in maintaining good information exchange and should be encouraged. EPA notes that the majority of communications between States/Tribes and the Regions are part of normal operations and should not be construed as part of the adequacy withdrawal process or program modification process. The procedures for modification of State/Tribal permit

programs and for withdrawal of determination of adequacy require formal notifications to the State/Tribe and any such correspondence shall be clearly identified to differentiate it from other correspondence.

#### 4. Withdrawal of Determination of Adequacy of State/Tribal Permit Programs (§ 239.13)

Section 239.13 lays out specific conditions and procedures for the withdrawal of State/Tribal permit program determinations of adequacy. Withdrawal procedures may be initiated where it appears that the State/Tribal permit program may no longer be adequate to ensure compliance with the Subtitle D Federal revised criteria. The withdrawal of the Agency's adequacy determination will require completion of several steps including: (1) receipt of substantive information sufficient to indicate that the State's/Tribe's permit program may no longer be adequate; (2) a 45-day period allowing the State/Tribe to demonstrate its permit program adequacy; (3) a determination of any measures needed to correct program deficiencies and an opportunity for the State/Tribe to address these program deficiencies; (4) initiation of proceedings for withdrawal of adequacy determination (i.e., notice of tentative determination of inadequacy), if the State/Tribe fails to appropriately resolve the deficiency; (5) public involvement; and, (6) a final determination.

The first step is EPA receipt of substantive information sufficient to indicate program inadequacy, after which the Regional Administrator will inform the State/Tribe of the information. It is EPA's intent that a program withdrawal would not be triggered by minor complaints. Today's proposed rule will allow a State/Tribe 45 days to demonstrate that its permit program remains adequate.

If, after reviewing the State's/Tribe's response, the Regional Administrator believes there is reason to revise the permit program, the State/Tribe and Region will negotiate a schedule for the resolution of the deficiency(ies). If the State/Tribal Director and Regional Administrator fail to agree to a time period for resolving the deficiency(ies), the Regional Administrator will set a time period and inform the State/Tribal Director of the time period.

If, within the established time frame, the State/Tribe has not adequately addressed the identified program deficiencies, the Regional Administrator may initiate adequacy determination withdrawal by publishing a notice of tentative adequacy withdrawal in the Federal Register. This notice will

outline the deficiency and will allow for a period of public comment and opportunity for a public hearing. At the conclusion of the public comment period and after the public hearing (if any), the Regional Administrator will consider all comments received, reevaluate the State/Tribal permit program, and determine whether the State/Tribal permit program can ensure compliance with the Subtitle D Federal revised criteria.

If the Regional Administrator finds that the State/Tribal program remains adequate, he/she will publish a notice in the Federal Register which explains the reasons for the decision and terminate the withdrawal process. However, if the Regional Administrator finds that the permit program is no longer adequate to ensure compliance with the Subtitle D Federal revised criteria, he/she will publish a notice in the Federal Register withdrawing the Agency's determination of State/Tribal permit program adequacy and declaring the State/Tribal permit program inadequate to ensure compliance with the Subtitle D Federal revised criteria.

The Agency proposes these specific withdrawal procedures to ensure that citizens have the opportunity to bring alleged State/Tribal deficiencies to the attention of the Regional Administrators and that States/Tribes have the opportunity to refute or correct alleged problems as they arise. Any State/Tribe whose permit program has been deemed inadequate to ensure compliance with the Subtitle D Federal revised criteria may seek another adequacy determination at any time.

#### E. Changes to Part 258

For the sole purpose of applying the Federal revised criteria to approved Tribal programs, the rule proposes to include Indian Tribes in the definition of "State" and Tribal Director in the definition of "State Director." The Agency proposes to do this as a means of efficiency and not to imply any other substantive effect on the character, authority, and/or rights of Tribes.

### IV. Economic and Regulatory Impacts

#### A. Regulatory Impact Analysis

Pursuant to the terms of executive order 12866, the Office of Management and Budget (OMB) has notified EPA that it considers this a "significant regulatory action." EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Requirements for State/Tribal permit programs as outlined in this proposal



will not add substantial costs beyond those already imposed under the Subtitle D Federal revised criteria. Regardless of this regulation, RCRA section 4005(c)(1)(B) requires all States to develop and implement permit programs to ensure compliance with the Subtitle D Federal revised criteria. EPA believes that the proposed STIR does not impose a major increase in costs over and above any costs which RCRA section 4005(c)(1)(B) already imposes on States/Tribes.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare, and make available for public comment, a regulatory flexibility analysis that describes the impact of a proposed or final rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have significant economic impact on a substantial number of small entities.

This proposal, in itself, will not have a significant impact on a substantial number of small entities, since the proposal has direct effects only on State/Tribal Agencies. Therefore, no regulatory flexibility analysis has been prepared.

#### C. Paperwork Reduction Act

The information collection requirements in today's proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1608), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division, U.S. EPA (2136), 401 M Street SW., Washington, D.C., 20460 or by calling (202) 260-2740.

The need for this collection of information from the States/Tribes derives from Section 4005(c) of RCRA. This section requires the EPA Administrator to review State/Tribal permit programs to determine if they are adequate to ensure compliance with the Federal MSWLF criteria. To carry out this mandate, and thus make a determination, EPA must collect information in the form of an application for MSWLF permit program approval from States/Tribes. The universe of respondents involved in this information collection will be limited to those States/Tribes seeking approval of their municipal solid waste permit programs. The information which

States/Tribes would submit is public information; therefore, no problems of confidentiality or sensitive questions arise.

The projected cost and hour burden for the submittal of a schedule or an application by the estimated 41 respondents within a three year time frame is 9,236 Hours. Given these parameters, the bottom line cost estimate is \$318,280.00. This cost estimate reflects total capital costs and operation and maintenance costs. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 26, 1996, a comment to OMB is best assured of having its full effect if OMB receives it by February 26, 1996. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that the proposed STIR does not include a federal 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, in any one year. Under the authority of RCRA section 4005(c)(1)(C), EPA has already approved 42 state MSWLF permit programs. The Agency also has approved one tribal MSWLF program. EPA does not anticipate that the approval of MSWLF permit programs under the proposed STIR for the few remaining states (or any tribes which submit their programs voluntarily for approval) will result in annual costs of \$100 million or more. EPA estimates that it costs a state approximately \$15,000 to develop and submit to EPA an application for approval of a state permit program. The Agency also has estimated that tribal governments may spend approximately \$8,000 to prepare and submit a permit program application.

EPA's approval of state and tribal programs generally have a deregulatory effect on the private sector because once a state or tribal MSWLF permit program is determined to be "adequate" under RCRA section 4005(c)(1)(C), owners and

operators of MSWLFs may take advantage of the flexibility that an approved state or Indian tribe may exercise. Such flexibility will reduce, not increase, compliance costs for the private sector.

As to section 203 of the Act, EPA has determined that the proposed STIR will not significantly or uniquely affect small governments, including tribal governments. The Agency recognizes that small governments may own and/or operate solid waste disposal facilities, including MSWLFs, that will become subject to the requirements of a state permit program that is approved under the STIR, once it is promulgated. However, such small governments which own and/or operate MSWLFs are already subject to the requirements in 40 CFR Part 258. Once EPA approves state permit programs under the STIR, these same small governments will be able to own and operate their MSWLFs with increased levels of flexibility provided under the approved state program.

EPA has, however, worked closely with states and small governments in the development of the proposed STIR. EPA distributed drafts of the proposed rule to 14 states for their review and comments. The Agency also provided copies of the draft proposed STIR to the Association of State and Territorial Solid Waste Management Officials, which distributed the draft rule to all of its state and territorial members. In addition, EPA conducted a pilot program where the Agency worked with the states of California, Connecticut, Virginia, and Wisconsin to develop their applications for program approval using the draft STIR as guidance.

EPA also distributed the draft STIR at the National Tribal Conference on Environmental Management and at EPA Regional-Tribal conferences. Although tribal governments are not required to submit applications for program approval under RCRA section 4005(c)(1)(B), EPA has utilized the draft proposed STIR as guidance in working with particular tribal governments which have chosen to seek EPA's approval, e.g., the Campo Band tribe in California and the Cheyenne River Sioux in South Dakota.

As owners and/or operators of municipal landfills, small governments have been more directly impacted by the MSWLF rule (40 CFR Part 258) than they will be by the STIR. Indeed, the STIR will provide small governments with additional flexibility, resulting in a cost reduction, once their state permit program is approved. The Agency has worked closely with small governments in the implementation of the MSWLF

rule and provided them with information concerning the flexibility which it provides to owners/operators in approved states. EPA has supported training workshops for small governments and has prepared and distributed an extensive amount of information, including fact sheets and brochures about the MSWLF rule.

In working with these various tribal governments, states, state organizations, and local governments, EPA has provided notice to small governments of the requirements of the MSWLF rule and the STIR; obtained meaningful and timely input from them; and informed, educated, and advised small governments on how to comply with the requirements of the STIR and the MSWLF rule. Through this notice, EPA seeks input from small governments during this rulemaking process. Thus, any application requirements of section 203 of the Act will have been met.

#### List of Subjects

##### 40 CFR Part 239

Environmental protection, Administrative practice and procedure, municipal solid waste landfills, non-municipal solid waste, State/Tribal permit program approval, and adequacy.

##### 40 CFR Part 258

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Authority: These regulations are issued under authority of the Resource Conservation and Recovery Act, 42 U.S.C. 6901.

Dated: December 12, 1995.

Carol M. Browner,  
*Administrator.*

For the reasons set out in the preamble, 40 CFR Chap. I is proposed to be amended as follows:

1. Part 239 is added to read as follows:

#### **PART 239—REQUIREMENTS FOR STATE/TRIBAL PERMIT PROGRAM DETERMINATION OF ADEQUACY**

##### **Subpart A—General**

Sec.

239.1 Purpose.

239.2 Scope and definitions.

##### **Subpart B—State/Tribal Program Application**

239.3 Components of program application.

239.4 Narrative description of State/Tribal permit program.

239.5 State/Tribal legal certification.

##### **Subpart C—Requirements for Adequate Permit Programs**

239.6 Permitting requirements.

239.7 Requirements for compliance monitoring authority.

239.8 Requirements for enforcement authority.

239.9 Intervention in civil enforcement proceedings.

##### **Subpart D—Adequacy Determination Procedures**

239.10 Criteria and procedures for making adequacy determinations.

239.11 Approval procedures for partial approval.

239.12 Modifications of State/Tribal programs.

239.13 Criteria and procedures for withdrawal of determination of adequacy.

Authority: 42 U.S.C. 6901.

##### **Subpart A—General**

###### **§ 239.1 Purpose.**

This Part specifies the requirements that State/Tribal permit programs must meet to be determined adequate by the EPA under section 4005(c)(1)(C) of the Resource Conservation and Recovery Act (RCRA or the Act) and the procedures EPA will follow in determining the adequacy of State/Tribal Subtitle D permit programs or other systems of prior approval and conditions required to be adopted and implemented by States under RCRA section 4005(c)(1)(B).

###### **§ 239.2 Scope and definitions.**

(a) Scope. (1) Nothing in this Part precludes a State/Tribe from adopting or enforcing requirements that are more stringent or more extensive than those required under this Part or from operating a permit program or other system of prior approval and conditions with more stringent requirements or a broader scope of coverage than that required under this Part.

(2) All States shall submit a Subtitle D permit program application for an adequacy determination for purposes of this Part.

(3) An Indian Tribe may, within its discretion, submit a Subtitle D permit program application for an adequacy determination for purposes of this Part.

(4) If EPA determines that a State/Tribal Subtitle D permit program is inadequate, EPA will have the authority to enforce the Subtitle D Federal revised criteria on the RCRA section 4010(c) regulated facilities under the State's/Tribe's jurisdiction.

(b) Definitions. (1) For purposes of this part:

*Administrator* means the Administrator of the United States Environmental Protection Agency or any authorized representative.

*Approved permit program* or *approved program* means a State/Tribal Subtitle D permit program or other system of prior approval and conditions

that has been determined to be adequate by EPA under this part.

*Approved State/Tribe* means a State/Tribe whose Subtitle D permit program or other system of prior approval and conditions has been determined to be adequate by EPA under this part.

*Guidance* means policy memorandum, an application for approval under this Part, or other technical or policy documents that supplement State/Tribal laws and regulations. These documents provide direction with regard to how State/Tribal agencies should interpret their permit program requirements and are consistent with State/Tribal laws and regulations.

*Implementing agency* means the State/Tribal and/or local agency(ies) responsible for carrying out an approved State/Tribal permit program.

*Indian lands* or *Indian country* means: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running throughout the reservation; (2) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and, (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights of way running through the same.

*Indian Tribe* or *Tribe* means any Indian Tribe, band, nation, or community recognized by the Secretary of the Interior and exercising substantial governmental duties and powers.

*Lead State/Tribal Agency* means the State/Tribal agency which has the legal authority and oversight responsibilities to implement the permit program or other system of prior approval and conditions to ensure that Subtitle D regulated facilities comply with the requirements of the approved State/Tribal permit program and/or has been designated as lead agency.

*Permit documents* means permit applications, draft and final permits, or other documents that include applicable design and management conditions in accordance with the Subtitle D Federal revised criteria and the technical and administrative information used to explain the basis of permit conditions.

*Permit or prior approval and conditions* means any authorization, license, or equivalent control document issued under the authority of the State/Tribe regulating the location, design, operation, ground-water monitoring, closure, post-closure care, corrective

action, and financial assurance of Subtitle D facilities.

*Regional Administrator* means any one of the ten Regional Administrators of the United States Environmental Protection Agency or any authorized representative.

*State/Tribal Director* means the chief administrative officer of the lead State/Tribal agency responsible for implementing the State/Tribal permit program for Subtitle D regulated facilities.

*State/Tribal program* or *permit program* means all the authorities, activities, and procedures that comprise the State's/Tribe's system of prior approval and conditions for regulating the location, design, operation, ground-water monitoring, closure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

*Subtitle D regulated facilities* means all solid waste disposal facilities subject to the revised criteria promulgated by EPA under RCRA section 4010(c).

(2) The definitions in Part 258 apply to all Subparts of this Part.

## **Subpart B—State/Tribal Program Application**

### **§ 239.3 Components of program application.**

Any State/Tribe that seeks a determination of adequacy under this Part must submit an application to the Regional Administrator, in the appropriate EPA Region. The application must identify the scope of the program for which the State/Tribe is seeking approval (i.e., which class of Subtitle D regulated facilities are covered by the application). The application also must demonstrate that the State's/Tribe's authorities and procedures are adequate to ensure compliance with the relevant Subtitle D Federal revised criteria and that its permit program is uniformly applicable to all the relevant Subtitle D regulated facilities within the State's/Tribe's jurisdiction. The application must contain the following parts:

(a) A transmittal letter, signed by the State/Tribal Director, requesting program approval. If more than one State/Tribal agency has implementation responsibilities, the transmittal letter must designate a lead agency and be jointly signed by all State/Tribal agencies with implementation responsibilities or by the State Governor/Tribal authority exercising powers substantially similar to those of a State Governor;

(b) A narrative description of the State/Tribal permit program in accordance with § 239.4;

(c) A legal certification in accordance with § 239.5;

(d) Copies of all applicable State/Tribal statutes, regulations, and guidance; and,

(e) Copies of any State-Tribal agreements, if a State and Indian Tribe have negotiated agreements for the implementation of the permit program on Indian lands.

### **§ 239.4 Narrative Description of State/Tribal Permit Program.**

The description of a State's/Tribe's program must include:

(a) An explanation of the jurisdiction and responsibilities of all State/Tribal agencies and local agencies implementing the permit program and description of the coordination and communication responsibilities of the lead State/Tribal agency to facilitate communications between EPA and the State/Tribe if more than one State/Tribal agency has implementation responsibilities;

(b) An explanation of how the State/Tribe will ensure that existing and new facilities are permitted or otherwise approved and in compliance with the relevant Subtitle D Federal revised criteria;

(c) A demonstration that the State/Tribe meets the requirements in §§ 239.6, 239.7, 239.8, and 239.9;

(d) The number of facilities within the State's/Tribe's jurisdiction that received waste on or after the date specified below:

(1) For municipal solid waste landfill units, October 9, 1991.

(2) [Reserved.]

(e) A discussion of staff resources available to carry out and enforce the State/Tribal relevant permit program.

(f) A description of the State's/Tribe's public participation procedures as specified in § 239.6(a) through (c).

(g) For Indian Tribes, an assertion and demonstration that the Tribe is recognized by the Secretary of the Interior; has an existing government exercising substantial governmental duties and powers; has adequate civil regulatory jurisdiction (as shown in the Tribal Legal Certification under 239.5(c)) over the subject matter and entities to be regulated; and is reasonably expected to be capable of administering the federal environmental program for which it is seeking approval. If the Administrator has previously determined that a Tribe has met these prerequisites for another EPA program authorization, then that Tribe need provide only that information

unique to RCRA Subtitle D permit program approval.

**§ 239.5 State/Tribal legal certification.**

(a) A State/Tribe must submit a written certification from the Attorney General or equivalent Tribal official that the laws, regulations, and any applicable guidance cited in the application are enacted at the time the certification is signed and are fully effective when the State/Tribal permit program is approved. This certification may be signed by the independent legal counsel for the State/Tribe, rather than the Attorney General or equivalent Tribal official, provided that such counsel has full authority to independently represent the lead State/Tribal Agency in court on all matters pertaining to the State/Tribal program.

(b) If guidance is to be used to supplement statutes and regulations, the State/Tribal legal certification must state that the State/Tribe has the authority to use guidance to develop enforceable permits which will ensure compliance with relevant Subtitle D Federal revised criteria and that the guidance was duly issued in accordance with State/Tribal law.

(c) If an applicant seeks approval of its permit program on Indian lands, the required legal certification shall include an analysis of the applicant's authority to implement the permitting and enforcement provisions of this Part (Subparts C and D) on those Indian lands. The applicant shall include: a map or legal description of the Indian lands over which it asserts jurisdiction and a copy of all documents such as constitutions, by-laws, charters, executive orders, codes, ordinances, court decisions, and/or resolutions which support the applicant's assertions of authority.

(d) If any laws, regulations, or guidance are not enacted or fully effective when the legal certification is signed, the certification should specify what portion(s) of laws, regulations, or guidance are not yet enacted or fully effective and when they are expected to be enacted or fully effective.

The Agency may make a tentative determination of adequacy using this legal certification. The State/Tribe must submit a revised legal certification meeting the requirements of paragraph (a) of this section and, if appropriate, paragraph (b) of this section along with all the applicable fully enacted and effective statutes, regulations, or guidance, prior to the Agency making a final determination of adequacy. If the statutes, regulations or guidance originally submitted under § 239.3(d) and certified to under this section are

modified in a significant way, the Regional Administrator will publish a new tentative determination to ensure adequate public participation.

**Subpart C—Requirements for Adequate Permit Programs**

**§ 239.6 Permitting requirements.**

(a) State/Tribal law must require that:

(1) Permit documents for permit determinations are made available for public review and comment; and,

(2) Final permit determinations on permit applications are made known to the public.

(b) The State/Tribe shall have procedures that ensure that public comments on permit determinations are considered.

(c) The State/Tribe must fully describe its public participation procedures for permit issuance and post-permit actions in the narrative description required under § 239.4 and include a copy of these procedures in its permit program application.

(d) The State/Tribe shall have the authority to collect all information necessary to issue permits that are adequate to ensure compliance with the relevant Subtitle D Federal revised criteria.

(e) For municipal solid waste landfill units, State/Tribal law must require that:

(1) Prior to construction and operation, all new municipal solid waste landfill units shall have a permit incorporating the conditions identified in paragraph (e)(3) of this section;

(2) All existing municipal solid waste landfill units shall have a permit incorporating the conditions identified in paragraph (e)(3) of this section;

(3) The State/Tribe shall have the authority to impose requirements for municipal solid waste landfill units adequate to ensure compliance with 40 CFR part 258. These requirements shall include:

(i) General standards which achieve compliance with 40 CFR part 258 subpart A;

(ii) Location restrictions for municipal solid waste landfill units which achieve compliance with 40 CFR part 258 subpart B;

(iii) Operating criteria for municipal solid waste landfill units which achieve compliance with 40 CFR part 258 subpart C;

(iv) Design criteria for municipal solid waste landfill units which achieve compliance with 40 CFR part 258 subpart D;

(v) Ground-water monitoring and corrective action standards for municipal solid waste landfill units

which achieve compliance with 40 CFR part 258 subpart E;

(vi) Closure and post-closure care standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258 subpart F; and,

(vii) Financial assurance standards for municipal solid waste landfill units which achieve compliance with 40 CFR part 258 subpart G.

**§ 239.7 Requirements for compliance monitoring authority.**

(a) The State/Tribe must have the authority to:

(1) Obtain any and all information, including records and reports, from an owner or operator of a Subtitle D regulated facility necessary to determine whether the owner/operator is in compliance with the State/Tribal requirements;

(2) Conduct monitoring or testing to ensure that owners/operators are in compliance with the State/Tribal requirements; and,

(3) Enter any site or premise subject to the permit program or in which records relevant to the operation of Subtitle D regulated facilities or activities are kept.

(b) A State/Tribe must demonstrate that its compliance monitoring program provides for inspections adequate to determine compliance with the approved State/Tribal permit program.

(c) A State/Tribe must demonstrate that its compliance monitoring program provides mechanisms or processes to:

(1) Verify the accuracy of information submitted by owners or operators of Subtitle D regulated facilities;

(2) Verify the adequacy of methods (including sampling) used by owners or operators in developing that information;

(3) Produce evidence admissible in an enforcement proceeding; and,

(4) Receive and ensure proper consideration of information submitted by the public.

**§ 239.8 Requirements for enforcement authority.**

Any State/Tribe seeking approval must have the authority to impose the following remedies for violation of State/Tribal program requirements:

(a) To restrain immediately and effectively any person by administrative or court order or by suit in a court of competent jurisdiction from engaging in any activity which may endanger or cause damage to human health or the environment.

(b) To sue in a court of competent jurisdiction to enjoin any threatened or continuing activity which violates any statute, regulation, order, or permit

which is part of or issued pursuant to the State/Tribal program.

(c) To sue in a court of competent jurisdiction to recover civil penalties for violations of a statute or regulation which is part of the State/Tribal program or of an order or permit which is issued pursuant to the State/Tribal program.

**§ 239.9 Intervention in civil enforcement proceedings.**

Any State/Tribe seeking approval must provide for intervention in the State/Tribal civil enforcement process by providing either:

(a) Authority that allows intervention as a right in any civil action to obtain remedies specified in Section 239.8 by any citizen having an interest that is or may be adversely affected; or,

(b) Assurance by the appropriate State/Tribal agency that:

(1) It will provide notice and opportunity for public involvement in all proposed settlements of civil enforcement actions (except where immediate action is necessary to adequately protect human health and the environment); and,

(2) It will investigate and provide responses to citizen complaints about violations; and,

(3) It will not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

**Subpart D—Adequacy Determination Procedures**

**§ 239.10 Criteria and procedures for making adequacy determinations.**

(a) The State/Tribal Director seeking an adequacy determination must submit to the appropriate Regional Administrator an application in accordance with § 239.3.

(b) Within 30 days of receipt of a State/Tribal program application, the Regional Administrator will review the application and notify the State/Tribe whether its application is administratively complete in accordance with the application components required in § 239.3. The 180-day review period for final determination of adequacy, described in paragraph (d) of this section, begins when the Regional Administrator deems a State/Tribal application to be administratively complete.

(c) After receipt and review of a complete application, the Regional Administrator will make a tentative determination on the adequacy of the State/Tribal program. The Regional Administrator shall publish the tentative determination on the adequacy

of the State/Tribal program in the Federal Register. Notice of the tentative determination must:

(1) Specify the Regional Administrator's tentative determination;

(2) Afford the public at least 30 days after the notice to comment on the State/Tribal application and the Regional Administrator's tentative determination;

(3) Include a specific statement of the areas of concern, if the Regional Administrator indicates the State/Tribal program may not be adequate;

(4) Note the availability for inspection by the public of the State/Tribal permit program application;

(5) Indicate that a public hearing will be held by EPA if sufficient public interest is expressed during the comment period. The Regional Administrator may determine when such a hearing is necessary to clarify issues involved in the tentative adequacy determination. If held, the public hearing will be scheduled at least 45 days from public notice of such hearing. The public comment period may be continued after the hearing at the discretion of the Regional Administrator.

(d) Within 180 days of determining that a State/Tribal program application is administratively complete, the Regional Administrator will make a final determination of adequacy after review and consideration of all public comments, unless the Regional Administrator after consultation with the State/Tribal Director agrees to extend the review period. The Regional Administrator will give notice of the final determination in the Federal Register. The notice must include a statement of the reasons for the determination and a response to significant comments received.

(e) For all States/Tribes that do not submit an application, the Administrator or Regional Administrator may issue a final determination of inadequacy in the Federal Register declaring those State/Tribal permit programs inadequate to ensure compliance with the relevant Subtitle D Federal revised criteria. Such States/Tribes may apply later for a determination of adequacy.

**§ 239.11 Approval procedures for partial approval.**

(a) The EPA may partially approve State/Tribal permit programs that do not meet all of the requirements in § 239.6 (e)(3) (i.e., do not incorporate all of the relevant Subtitle D Federal revised criteria). Such permit programs may be partially approved if:

(1) The appropriate Regional Administrator determines that the State's/Tribe's permit program largely meets the technical requirements of Section 239.6 and meets all other requirements of this rule;

(2) Changes to a specific part(s) of the State/Tribal permit program are required in order for the State/Tribal program to fully meet the requirements of Section 239.6; and,

(3) Provisions not included in the partially approved portions of the State/Tribal permit program are clearly identifiable and separable subsets of the relevant Subtitle D Federal revised criteria.

(b) A State/Tribe applying for partial approval must include in its application a schedule to revise the necessary laws, regulations, and/or guidance to obtain full approval within two years of final approval of the partial permit program. The Regional Administrator and the State/Tribal Director must agree to the schedule.

(c) The application for partial approval must fully meet the requirements of subparts B and C of this part.

(d) States/Tribes with partially approved permit programs are only approved for those relevant provisions of the Subtitle D Federal revised criteria included in the partial approval.

(e) Any partial approval adequacy determination made by the Regional Administrator pursuant to this section and § 239.10 shall expire two years from the effective date of the final partial program adequacy determination unless the Regional Administrator grants an extension. States/Tribes seeking an extension must submit a request to the appropriate Regional Administrator, must provide cause for missing the deadline, and must supply a new schedule to revise necessary laws, regulations, and/or guidance to obtain full approval. The appropriate Regional Administrator will decide if there is cause and the new schedule is realistic. If the Regional Administrator extends the expiration date, the Region will publish a notice in the Federal Register along with the new expiration date. A State/Tribe with partial approval shall submit an amended application meeting all of the requirements of part 239 and have that application approved by the two-year deadline or the amended date set by the Regional Administrator.

(f) The Regional Administrator will follow the adequacy determination procedures in § 239.10 for all initial applications for partial program approval and follow the adequacy determination procedures in § 239.12(f) for any amendments for approval for

unapproved sections of the relevant Subtitle D Federal revised criteria.

**§ 239.12 Modifications of State/Tribal programs.**

(a) Approved State/Tribal permit programs may be modified for various reasons, such as changes in Federal or State/Tribal statutory or regulatory authority.

(b) If the Federal statutory or regulatory authorities that have significant implications for State/Tribal permit programs change, approved State/Tribes may be required to revise their permit programs. These changes may necessitate submission of a revised application. Such a change at the Federal level and resultant State/Tribal requirements would be made known to the States/Tribes either in the Federal Register containing the change or through the appropriate EPA Regional Office.

(c) States/Tribes that modify their programs must notify the Regional Administrator of the modifications. Program modifications include changes in State/Tribal statutory or regulatory authority or relevant guidance or shifting of responsibility for the State/Tribal program within the lead agency or to a new or different State/Tribal agency or agencies. Changes to the State's/Tribe's permit program as described in its application which may result in the program becoming inadequate must be reported to the Regional Administrator. In addition, changes to a State's/Tribe's basic statutory or regulatory authority or guidance which were not part of the State's/Tribe's initial application, but may have a significant impact on the adequacy of the State's/Tribe's permit program, also must be reported to the Regional Administrator.

(d) States/Tribes must notify the appropriate Regional Administrator of all permit program modifications within a time-frame agreed to by the State/Tribal Director and the Regional Administrator.

(e) The Regional Administrator will review the modifications and determine whether the State/Tribal Director must submit a revised application. If a revised application is necessary, the Regional Administrator will inform the State/Tribal Director in writing that a revised application is necessary, specifying the required revisions and establishing a schedule for submission of the revised application.

(f) For all revised applications, and amended applications in the case of partially approved programs, the State/Tribe must submit to the appropriate Regional Administrator an amended

application that addresses those portions of its program that have changed or are being amended. The Regional Administrator will make an adequacy determination using the same criteria as used for the initial application.

(g) For revised applications that do not incorporate permit programs for additional classifications of Subtitle D regulated facilities and for all amended applications in the case of partially approved programs, the appropriate Regional Administrator shall provide for public participation using the procedures outlined in § 239.10 or, at the Regional Administrator's discretion, using the following procedures.

(1) The Regional Administrator will publish an adequacy determination in the Federal Register summarizing the Agency's decision and the portion(s) of the State/Tribal permit program affected and providing an opportunity to comment for a period of at least 30 days.

(2) The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives comments opposing its adequacy determination, the Regional Administrator will review these comments and publish another Federal Register notice either affirming or revising the initial decision and responding to public comments.

(h) For revised applications that incorporate permit programs for additional classifications of Subtitle D regulated facilities, the appropriate Regional Administrator will follow the procedures in § 239.10.

**§ 239.13 Criteria and procedures for withdrawal of determination of adequacy.**

(a) The Regional Administrator may initiate withdrawal of a determination of adequacy when the Regional Administrator has reason to believe that a State/Tribe no longer has an adequate permit program or adequate authority to administer and enforce an approved program in accordance with this Part.

(b) Upon receipt of substantive information sufficient to indicate that a State/Tribal program may no longer be adequate, the Regional Administrator shall inform the State/Tribe in writing of the information.

(c) If, within 45 days of the State's/Tribe's receipt of the information in paragraph (b) of this section, the State/Tribe demonstrates to the satisfaction of the Regional Administrator that the State/Tribal program is adequate (i.e., in compliance with this part), the Regional Administrator shall take no further action toward adequacy withdrawal and shall so notify the State/Tribe and any

person(s) who submitted information regarding the adequacy of the State's/Tribe's program and authorities.

(d) If the State/Tribal Director does not demonstrate the State's/Tribe's compliance with this Part to the satisfaction of the Regional Administrator, the Regional Administrator shall list the deficiencies in the program and negotiate with the State/Tribe a reasonable time for the State/Tribe to complete such action to correct deficiencies as the Regional Administrator determines necessary. If these negotiations reach an impasse, the Regional Administrator shall establish a time period within which the State/Tribe must correct any program deficiencies and inform the State/Tribal Director of the time period in writing.

(e) Within the schedule negotiated by the Regional Administrator and the State/Tribal Director, or set by the Regional Administrator, the State/Tribe shall take appropriate action to correct deficiencies and shall file with the Regional Administrator a statement certified by the State/Tribal Director describing the steps taken to correct the deficiencies.

(f) If the State/Tribe takes appropriate action to correct deficiencies, the Regional Administrator shall take no further action toward adequacy withdrawal and shall so notify the State/Tribe and any person(s) who submitted information regarding the adequacy of the State's/Tribe's permit program. If the State/Tribe has not demonstrated its compliance with this Part to the satisfaction of the Regional Administrator, the Regional Administrator shall inform the State/Tribal Director and may initiate withdrawal of determination of adequacy.

(g) The Regional Administrator shall initiate withdrawal of determination of adequacy by publishing the tentative withdrawal of adequacy of the State/Tribal program in the Federal Register. Notice of the tentative determination must:

(1) Afford the public at least 30 days after the notice to comment on the Regional Administrator's tentative determination;

(2) Include a specific statement of the Regional Administrator's areas of concern and reason to believe the State/Tribal program may no longer be adequate; and,

(3) Indicate that a public hearing will be held by EPA if sufficient public interest is expressed during the comment period or when the Regional Administrator determines that such a hearing might clarify issues involved in the tentative adequacy determination. If

held, the public hearing will be scheduled at least 45 days from notice of such hearing. The public comment period may be continued after the hearing at the discretion of the Regional Administrator.

(h) If the Regional Administrator finds, after the public hearing (if any) and review and consideration of all public comments, that the State/Tribe is in compliance with this Part, the withdrawal proceedings shall be terminated and the decision shall be published in the Federal Register. The notice must include a statement of the reasons for this determination and a response to significant comments received. If the Regional Administrator finds that the State/Tribal program is not in compliance with this Part by the date prescribed by the Regional Administrator or any extension approved by the Regional Administrator, a final notice of inadequacy shall be published in the Federal Register declaring the State/Tribal permit program inadequate to

ensure compliance with the relevant Subtitle D Federal revised criteria. The notice will include a statement of the reasons for this determination and response to significant comments received.

(i) States/Tribes may seek a determination of adequacy any time after a determination of inadequacy.

**PART 258—SOLID WASTE DISPOSAL CRITERIA**

2. The authority cite for part 258 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949(c); 33 U.S.C. 1345 (d) and (e).

3. Section 258.2 is amended by revising the definitions for "Director of an approved State", "State" and "State Director" to read as follows:

**§ 258.2 Definitions.**

\* \* \* \* \*

*Director of an approved State* means the chief administrative officer of a

State/Tribal agency responsible for implementing the State/Tribal permit program that is deemed to be adequate by EPA under regulations published pursuant to sections 2002 and 4005 of RCRA.

\* \* \* \* \*

*State* means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Indian Tribes, although Tribes are excluded from the definition for purposes of Subpart G of Part 258 (Financial Assurance).

*State Director* means the chief administrative officer of the lead State/Tribal agency responsible for implementing the State/Tribal permit program for Subtitle D regulated facilities.

\* \* \* \* \*

[FR Doc. 96-878 Filed 1-25-96; 8:45 am]

BILLING CODE: 6560-50-P



# Federal Register

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Friday  
January 26, 1996

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## Part III

# Department of Transportation

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Federal Aviation Administration

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14 Parts 119, 121, and 135

Operating Requirements: Domestic, Flag,  
Supplemental, Commuter, and On-  
Demand Operations; Editorial and  
Terminology Changes; Final Rule

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 119, 121, and 135**

[Docket No. 28154; Amendment Nos. 119-1, 121-253, and 135-60]

RIN 2120-AG03

**Operating Requirements: Domestic, Flag, Supplemental, Commuter, and On-Demand Operations: Editorial and Terminology Changes**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts changes to certain references and language in the regulations governing the operations of certificate holders under parts 121 and 135. Many of these changes are made necessary as a result of the issuance of new part 119, which has made numerous references in parts 121 and 135 incorrect or obsolete. The changes to parts 121 and 135 in this amendment will not impose any additional restrictions on persons affected by these regulations.

EFFECTIVE DATE: February 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, Office of Rulemaking (ARM- ); Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9685.

**SUPPLEMENTARY INFORMATION:****Background**

On December 20, 1995, new part 119, Certification: Air Carriers and Commercial Operators, was published in the Federal Register (60 FR 65913; December 20, 1995). Part 119 reorganizes, into one part, certification and operations specifications requirements that formerly existed in SFAR 38-2 and in parts 121 and 135. The final rule for new part 119 also deleted or changed certain sections in part 121, Subparts A-D, and part 135, Subpart A, because most of the requirements in those subparts appear in part 119. This amendment makes editorial and terminology changes in the remaining subparts of parts 121 and 135 to conform those parts to the language of part 119 and to make certain other changes.

Part 119 was issued as part of a large rulemaking effort to upgrade the requirements that apply to scheduled operations conducted in airplanes that seat 10 to 30 passengers. These operations will in the future be conducted under the requirements of

part 121, in accordance with the final rule published on December 20, 1995. The changes in this final rule are necessary as a result of the issuance of part 119, and as "house-keeping" items for commuter operations affected by the final rule published on December 20, 1995. These changes are consistent with the commuter rule.

**Editorial Changes**

The new part 119 and revisions to parts 121 and 135 require certain editorial changes. These changes are being made for clarity and consistency and to facilitate combining the certification requirements of parts 121 and 135 into new part 119. None of these changes impose any additional requirements on persons affected by the regulations.

The following are examples of changes being made in this final rule to the sections remaining in part 121 and part 135 in order to make these sections consistent with each other and with new part 119 and to reflect current FAA administrative procedures:

(1) References to "domestic, flag, or supplemental air carriers" have been changed to "domestic, flag, or supplemental operations," or "certificate holder conducting domestic, flag, or supplemental operations," as appropriate. Likewise, the term "commercial operator" has been changed to refer to the type of operation, such as "domestic operation," or to "certificate holder."

(2) References to an "ATCO Operating Certificate" have been changed to "Air Carrier Operating Certificate or Operating Certificate."

(3) References to "Flight Standards District Office" and "District Office" have been changed to "certificate-holding district office."

(4) Language changes have been made for consistency and to facilitate computer searches for certain terms; for example, "principal operations base" is changed to "principal base of operations."

(5) Obsolete compliance dates have been removed. These dates were originally included in the regulations as a convenience to give certificate holders the schedule for complying with certain regulations. Now that these dates are past, they are being removed.

(6) References to the operation of rotorcraft have been removed from part 121 because, as a result of SFAR 38-2 and new part 119, all rotorcraft operations are now conducted under part 135.

(7) Additionally, a correction is being made to § 135.227(f) concerning operations in icing conditions. When

the agency inserted a new paragraph (b) in § 135.227 as part of the ground deicing final rule, and agency neglected to update certain references in what is now paragraph (f). This amendment corrects that oversight.

(8) The definition of "scheduled operation" is corrected to the verbiage that appeared in the NPRM to eliminate a redundancy in the language.

(9) Although the preamble states that section 119.58 is removed, the final rule language contained that section. Therefore, section 119.58 is removed. Likewise, section 121.6 is removed for the same reason.

(10) In the preamble to the final rule, the FAA states that section 119.71, requirements for the Director of Maintenance, requires 3 years of experience within any amount of time; however the rule language for that section reads "3 years of experience within 3 years . . ." in both (e)(1) and (2). The FAA corrects the rule language to indicate this.

**Age 60 Rule**

In the final rule published at 60 FR 65832, the delayed pilot age limitation contained an error as to which pilots it applies. Section 121.2(i)(1) provides for delayed implementation of the Age 60 Rule (§ 121.383(c)) for certain pilots. Section 121.2(i)(2) defined those pilots as those employed by covered certificate holders "on or before March 20, 1997." The intent, however, was to include only those pilots employed on March 20, 1997. See, for instance, the discussion in the preamble at 60 FR 65843. Accordingly, the words "or before" are being deleted from the rule.

In addition, the FAA has received questions about the applicability of § 121.2(i) to pilots employed by certificate holders with "split certificates." An air carrier with a "split certificate" in this instance means an air carrier with authority to engage in both operations that have in the past been under part 121 (and will continue to be under part 121), and operations described in § 121.2(a)(1) (which have been under part 135 but will be under part 121 under the new rule). Some people have asked whether a pilot who is employed by a certificate holder with a "split certificate" on March 20, 1997, is under the delayed compliance described in § 121.2(i). The answer depends on the type of operations in which the pilot is employed on March 20, 1997. If the pilot is employed in operations described in § 121.2(a)(1) on that date, the pilot may serve as a pilot in such operations until December 20, 1999. If the pilot is not employed in such operations on March 20, 1997, the

pilot may not serve in § 121.2(a)(1) operations after March 20, 1997. To clarify this, § 121.2(i)(2) is being amended to provide that the delayed compliance for the Age 60 Rule depends on the operations in which the pilot is employed on March 20, 1997. In addition, § 121.2(i)(1) is being amended to provide that a pilot who has reached the age of 60 may only be used in operations covered in § 121.2(a)(1).

There has been some confusion regarding the overall impact of the delayed compliance date for the Age 60 Rule. The following discussion should assist in understanding the rule.

The delayed compliance described in § 121.2(i) applies only to those operations described in § 121.2(a)(1), which identifies those commuter operations that were under part 135 and will transition to part 121 rules (that is, the "covered operations"). The application of the Age 60 Rule to certificate holders who have in the past been under part 121 is not affected.

On and before March 20, 1997, certificate holders may hire and use pilots in covered operations regardless of age.

Starting on March 21, 1997, and through December 19, 1999, a certificate holder may hire and use in covered operations only the following pilots:

- persons who have not reached age 60;
- persons who, on March 20, 1997, were employed by that certificate holder as pilots in covered operations, regardless of current age; and
- persons who, on March 20, 1997, were employed by another certificate holder as pilots in covered operations, regardless of current age.

Starting on December 20, 1999, no pilots who have reached their 60th birthdays will be permitted in covered operations. As of that date, all operations under part 121 will be fully in compliance with the Age 60 Rule.

In addition, in the appendix to this amendment, the FAA republishes four charts, Tables 1 through 4, contained in the final rule to correct minor errors made during the publication process.

#### Federalism Implications

The regulations do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

#### Paperwork Reduction Act

The information collection requirements associated with this rule have already been approved. There will be no increase or decrease in paperwork requirements as a result of these amendments, since the changes are completely editorial in nature.

#### Good Cause Justification for Immediate Adoption

This amendment is needed to conform parts 121 and 135 to the terminology of new part 119. In view of the need to expedite these changes, and because the amendment is editorial in nature and would impose no additional burden on the public, I find that notice and opportunity for public comment before adopting this amendment is unnecessary.

#### Conclusion

The FAA has determined that this regulation imposes no additional burden on any person. Accordingly, it has been determined that the action: (1) is not a significant rule under Executive Order 12866; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); Also, because this regulation is of editorial nature, no impact is expected to result and a full regulatory evaluation is not required. In addition, the FAA certifies that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects

##### 14 CFR Part 119

Administrative practice and procedures, Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Commuter operations, Reporting and recordkeeping requirements.

##### 14 CFR part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

##### 14 CFR part 135

Aircraft, Airplane, Airworthiness, Air transportation.

#### The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends the Federal Aviation Regulations (14 CFR parts 119, 121 and 135) as follows:

#### PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

1. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. In section 119.3, the definition of "scheduled operation" is revised to read as follows:

##### § 119.3 Definitions.

\* \* \* \* \*

*Scheduled operation* means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is charter operation.

\* \* \* \* \*

##### 3. § 119.58 [Removed]

Section 119.58 is removed.

#### PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

5. Section 121.2 is amended by revising paragraphs (d)(1)(i) introductory text, (d)(2)(i) introductory text and (e)(1)(ii), and paragraph (i) to read as follows:

##### § 121.2 Compliance schedule for operators that transition to part 121; certain new entrant operators.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) December 20, 1997:

\* \* \* \* \*

(2) \* \* \*

(i) December 20, 1997:

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(ii) Manufactured on or after December 20, 1997; Section 121.317(a), Fasten seat belt light.

\* \* \* \* \*

(i) *Delayed pilot age limitation.* (1) Notwithstanding § 121.383(c), and except as provided in paragraph (i)(2) of this section, a certificate holder may use the services of a person as a pilot in

operations covered by paragraph (a)(1) of this section after that person has reached his or her 60th birthday, until December 20, 1999. Notwithstanding § 121.383(c), and except as provided in paragraph (i)(2) of this section, a person may serve as a pilot in operations covered by paragraph (a)(1) of this section after that person has reached his or her 60th birthday, until December 20, 1999.

(2) This paragraph applies only to persons who were employed as pilots by a certificate holder in operations covered by paragraph (a)(1) of this section on March 20, 1997.

#### **6. § 121.6 [Removed]**

Section 121.6 is removed.

#### **Subpart E—Approval of Routes: Domestic and Flag Operations**

6. The heading for subpart E is revised to read as set forth above.

7. Section 121.91 is revised to read as follows:

#### **§ 121.91 Applicability.**

This subpart prescribes rules for obtaining approval of routes by certificate holders conducting domestic or flag operations.

#### **§ 121.93 [Amended]**

8. Section 121.93 is amended in paragraph (a) by removing the words “domestic or flag air carrier” and adding, in their place, the words “certificate holder conducting domestic or flag operations” and in paragraph (b) by removing the words “air carrier” and adding, in their place, the words “certificate holder.”

#### **§ 121.95 [Amended]**

9. Section 121.95 is amended in paragraph (a) by removing the words “flag air carriers” and adding, in their place, the words “certificate holders conducting flag operations” and in paragraph (b) by removing the words “air carrier’s” and adding, in their place, the words “certificate holder’s.”

#### **§ 121.97 [Amended]**

10. Section 121.97 is amended in paragraphs (a) and (b) by removing the words “domestic and flag air carrier” and adding, in their place, the words “certificate holder conducting domestic or flag operations” and in paragraph (c) by removing the words “Flight Standards District Office” and adding, in their place, the words “certificate-holding district office.” This section is further amended in paragraph (b) by removing from the beginning of the paragraph the words “After September 9, 1981,” and capitalizing the following word.

11. Section 121.99 is revised to read as follows:

#### **§ 121.99 Communications facilities.**

Each certificate holder conducting domestic or flag operations must show that a two-way air/ground radio communication system is available at points that will ensure reliable and rapid communications, under normal operating conditions, over the entire route (either direct or via approved point-to-point circuits) between each airplane and the appropriate dispatch office, and between each airplane and the appropriate air traffic control unit. For all operations by certificate holders conducting domestic operations and for certificate holders conducting flag operations in the 48 contiguous States and the District of Columbia, the communications systems between each airplane and the dispatch office must be independent of any system operated by the United States.

#### **§ 121.101 [Amended]**

12. Section 121.101 is amended in paragraphs (a) and (d) by removing the words “domestic and flag air carrier” and adding, in their place, the words “certificate holder conducting domestic or flag operations” and in paragraphs (b), (c), and (e) by removing the words “domestic or flag air carrier” and adding, in their place, the words “certificate holder conducting domestic or flag operations.” This section is further amended by removing the words “by December 31, 1977,” from the beginning of paragraph (d) and capitalizing the following word, and by removing paragraph (e).

#### **§ 121.103 [Amended]**

13. Section 121.103 is amended in paragraph (a) by removing the words “domestic and flag air carrier” and adding, in their place, the words “certificate holder conducting domestic or flag operations” and by removing the words “air carrier’s” and adding, in their place, the words “certificate holder’s.” This section is further amended in paragraph (b) by removing the words “air carrier” and adding, in their place, the words “certificate holder.”

14. Section 121.105 is revised to read as follows:

#### **§ 121.105 Servicing and maintenance facilities.**

Each certificate holder conducting domestic or flag operations must show that competent personnel and adequate facilities and equipment (including spare parts, supplies, and materials) are available at such points along the certificate holder’s route as are

necessary for the proper servicing, maintenance, and preventive maintenance of airplanes and auxiliary equipment.

15. Section 121.107 is revised to read as follows:

#### **§ 121.107 Dispatch centers.**

Each certificate holder conducting domestic or flag operations must show that it has enough dispatch centers, adequate for the operations to be conducted, that are located at points necessary to ensure proper operational control of each flight.

#### **Subpart F—Approval of Areas and Routes for Supplemental Operations**

16. The heading for subpart F is revised to read as set forth above.

17. Section 121.111 is revised to read as follows:

#### **§ 121.111 Applicability.**

This subpart prescribes rules for obtaining approval of areas and routes by certificate holders conducting supplemental operations.

#### **§ 121.113 [Amended]**

18. Section 121.113 is amended in paragraphs (a) and (b) by removing the words “supplemental air carrier or commercial operator” and adding, in their place, “certificate holder conducting supplemental operations.” This section is further amended in paragraph (b) by removing the words “air carrier or commercial operator” and adding, in their place the words “certificate holder” and by removing the words “air carrier’s or commercial operator’s” and adding, in their place, the words “certificate holder’s.”

#### **§ 121.115 [Amended]**

19. Section 121.115 is amended in paragraph (b) by removing the words “air carrier’s or commercial operator’s” and adding, in their place, the words “certificate holder’s.”

#### **§ 121.117 [Amended]**

20. Section 121.117 is amended in paragraph (a) by removing the words “supplemental air carrier or commercial operator” and adding, in their place, the words “certificate holder conducting supplemental operations;” in paragraph (b) by removing the words “supplemental air carrier and commercial operator” and adding, in their place, the words “certificate holder conducting supplemental operations;” and in paragraph (c) by removing the words “Flight Standards District Office” wherever they appear and adding, in their place, the words “certificate-holding district office.” This section is

further amended in paragraph (b) by removing "After September 9, 1981," from the beginning of the paragraph and by capitalizing the following word.

**§ 121.119 [Amended]**

21. Section 121.119 is amended in paragraphs (a) and (b) by removing the words "supplemental air carrier or commercial operator" and adding, in their place, the words "certificate holder conducting supplemental operations" and in paragraph (a) by removing the words "air carrier or commercial operator" and adding, in their place, the words "certificate holder."

**§ 121.121 [Amended]**

22. Section 121.121 is amended in paragraph (a) by removing the words "supplemental air carrier or commercial operator" and adding, in their place, the words "certificate holder conducting supplemental operations" and in paragraph (c) by removing the words "air carrier's or commercial operator's" and adding, in their place, the words "certificate holders."

23. Section 121.123 is revised to read as follows:

**§ 121.123 Servicing maintenance facilities.**

Each certificate holder conducting supplemental operations must show that competent personnel and adequate facilities and equipment (including spare parts, supplies, and materials) are available for the proper servicing, maintenance, and preventive maintenance of aircraft and auxiliary equipment.

**§ 121.125 [Amended]**

24. Section 121.125 is amended in paragraphs (a) and (b) by removing the words "supplemental air carrier or commercial operator" and adding, in their place, the words "certificate holder conducting supplemental operations" and in paragraph (d) by removing the words "supplemental air carrier's or commercial operator's" and adding, in their place, the words "certificate holder's." This section is further amended in paragraph (b) by removing the words "air carrier or commercial operator" and adding, in their place, the words "certificate holder."

**§ 121.127 [Amended]**

25. Section 121.127 is amended in paragraphs (a) and (b) by removing the words "supplemental air carrier or commercial operator" and adding, in their place, the words "certificate holder conducting supplemental operations" and in paragraph (a)(1)(ii) by removing the words "air carrier or commercial operator" and adding, in their place, the words "certificate holder."

**§ 121.139 [Amended]**

26. Section 121.139 is amended in the section heading by removing the words "supplemental air carriers and commercial operators" and adding, in their place, the words "supplemental operations;" in paragraph (a) by removing the words "supplemental air carrier and commercial operator" and adding, in their place, the words "certificate holder conducting supplemental operations;" and in paragraph (b) by removing the words "supplemental air carrier or commercial operator" and adding, in their place, the words "certificate holder conducting supplemental operations." This section is further amended in paragraph (a) by adding the words "of operations" after the words "principal base."

27. Section 121.207 is revised to read as follows:

**§ 121.207 Provisionally certificated airplanes: Operating limitations.**

In addition to the limitations in § 91.317 of this chapter, the following limitations apply to the operation of provisionally certificated airplanes by certificate holders:

(a) In addition to crewmembers, each certificate holder may carry on such an airplane only those persons who are listed in § 121.547(c) or who are specifically authorized by both the certificate holder and the Administrator.

(b) Each certificate holder shall keep a log of each flight conducted under this section and shall keep accurate and complete records of each inspection made and all maintenance performed on the airplane. The certificate holder shall make the log and records made under this section available to the manufacturer and the Administrator.

28. Section 121.303 is amended by revising paragraph (d)(2) and removing paragraph (d)(3) as follows:

**§ 121.303 Airplane instruments and equipment.**

\* \* \* \* \*

(d) \* \* \*

(2) Instruments and equipment specified in §§ 121.305 through 121.321, 121.359, and 121.360 for all operations, and the instruments and equipment specified in §§ 121.323 through 121.351 for the kind of operation indicated, wherever these items are not already required by paragraph (d)(1) of this section.

**§ 121.314 [Amended]**

29. Section 121.314 is amended by removing the words "After March 20, 1991," from the beginning of paragraph (a) and by capitalizing the following word.

**§ 121.319 [Amended]**

30. Section 121.319 is amended by removing the words "After September 8, 1975" from the beginning of paragraph (a) and by removing the words "After December 1, 1980," from the beginning of paragraph (b)(1) and by capitalizing the following word.

**§ 121.351 [Amended]**

31. Section 121.351 is amended in paragraph (b) by removing the words "flag or supplemental air carrier or commercial operator" and adding, in their place, the words "certificate holder conducting a flag or supplemental operation or a domestic operation within the State of Alaska."

**§ 121.373 [Amended]**

32. Section 121.373 is amended in paragraph (c) by removing the words "Flight Standards District Office" and adding, in their place, the words "certificate-holding district office."

33. Section 121.385(c) is revised to read as follows:

**§ 121.385 Composition of flight crew.**

\* \* \* \* \*

(c) The following minimum pilot crews apply:

(1) *Domestic operations.* If a certificate holder conducting domestic operations is authorized to operate under IFR, or if it operates large aircraft, the minimum pilot crew is two pilots and the certificate holder shall designate one pilot as pilot in command and the other second in command.

(2) *Flag operations.* If a certificate holder conducting flag operations is authorized to operate under IFR, or if it operates large aircraft, the minimum pilot crew is two pilots.

(3) *Supplemental operations.* If a certificate holder conducting supplemental operations operates large aircraft, the minimum pilot crew is two pilots and the certificate holder shall designate one pilot as pilot in command and the other second in command.

\* \* \* \* \*

34. Section 121.395 is revised to read as follows:

**§ 121.395 Aircraft dispatcher: Domestic and flag operations.**

Each certificate holder conducting domestic or flag operations shall provide enough qualified aircraft dispatchers at each dispatch center to ensure proper operational control of each flight.

**§ 121.404 [Removed]**

35. Section 121.404 is removed. (This removal supersedes the revision published at 60 FR 65948 December 20, 1995.)

**§ 121.405 [Amended]**

36. Section 121.405 is amended in paragraph (e) by removing the words "FAA Flight Standards District Office charged with the overall inspection of the certificate holder's operations" and adding, in their place, the words "certificate-holding district office."

**§ 121.437 [Amended]**

37. Section 121.437 is amended in paragraph (a) by removing the words "air carrier or commercial operator" and in paragraph (c) by removing the words "After July 1, 1980," from the beginning, capitalizing the following word, and removing the second sentence of paragraph (c).

**§ 121.440 [Amended]**

38. Section 121.440 is amended in paragraph (b) by removing the words "air carrier pilots" and adding, in their place, the word "operations;" in paragraph (b)(2) by removing the words "air carrier's" and adding, in their place, the words "certificate holder's;" and in paragraph (c) by removing the words "air carrier and commercial operators" and adding, in their place, the word "operations."

**Subpart P—Aircraft Dispatcher Qualifications and Duty Time**

*Limitations: Domestic and Flag Operations; Flight Attendant Duty Period Limitations and Rest Requirements: Domestic, Flag, and Supplemental Operations*

39. The heading for subpart P is revised to read as set forth above.

40. Section 121.461 is revised to read as follows:

**§ 121.461 Applicability.**

This subpart prescribes—

(a) Qualifications and duty time limitations for aircraft dispatchers for certificate holders conducting domestic flag operations; and

(b) Duty period limitations and rest requirements for flight attendants used by certificate holders conducting domestic, flag, or supplemental operations.

41. Section 121.465 is revised to read as follows:

**§ 121.465 Aircraft dispatcher duty time limitations: Domestic and flag operations.**

(a) Each certificate holder conducting domestic or flag operations shall establish the daily duty period for a dispatcher so that it begins at a time that allows him or her to become thoroughly familiar with existing and anticipated weather conditions along the route before he or she dispatches any airplane. He or she shall remain on duty

until each airplane dispatched by him or her has completed its flight, or has gone beyond his or her jurisdiction, or until he or she is relieved by another qualified dispatcher.

(b) Except in cases where circumstances or emergency conditions beyond the control of the certificate holder require otherwise—

(1) No certificate holder conducting domestic or flag operations may schedule a dispatcher for more than 10 consecutive hours of duty;

(2) If a dispatcher is scheduled for more than 10 hours of duty in 24 consecutive hours, the certificate holder shall provide him or her a rest period of at least eight hours at or before the end of 10 hours of duty.

(3) Each dispatcher must be relieved of all duty with the certificate holder for at least 24 consecutive hours during any seven consecutive days or the equivalent thereof within any calendar month.

(c) Notwithstanding paragraphs (a) and (b) of this section, a certificate holder conducting flag operations may, if authorized by the Administrator, schedule an aircraft dispatcher at a duty station outside of the 48 contiguous States and the District of Columbia, for more than 10 consecutive hours of duty in a 24-hour period if that aircraft dispatcher is relieved of all duty with the certificate holder for at least eight hours during each 24-hour period.

**§ 121.467 [Amended]**

42. Section 121.467 is amended as follows:

a. In the section heading by removing the words "air carriers and commercial operators" and adding, in their place, the word "operations."

b. In paragraphs (a), (b), and (c) by removing the words "domestic, flag, or supplemental air carrier or commercial operator" wherever they appear and adding, in their place, the words "certificate holder conducting domestic, flag, or supplemental operations."

c. In paragraph (b) by removing the words "air carrier or commercial operator" wherever they appear and adding, in their place, the words "certificate holder."

d. In paragraph (b) by removing the words "air carrier's or the commercial operator's" wherever they appear and adding, in their place, the words "certificate holder's."

e. In paragraph (b)(11) by removing the words "air carrier or operator" and adding, in their place, the words "certificate holder."

f. In paragraph (b)(13) by removing the words "domestic, flag, or supplemental air carrier" and adding, in

their place, the words "certificate holder conducting domestic, flag, or supplemental operations."

g. In paragraph (c)(2) by removing the words "FAA Flight Standards District Office that is charged with the overall inspection of the certificate holder's operations" and adding, in their place, the words "certificate-holding district office."

**Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Operations**

43. The heading for subpart Q is revised to read as set forth above.

**§ 121.471 [Amended]**

44. Section 121.471 is amended in paragraphs (a), (b), (d), and (e) by removing the words "domestic air carrier" and adding, in their place, the words "certificate holder conducting domestic operations" and in paragraphs (c), (f) and (g) by removing the words "air carrier" and adding, in their place, the words "certificate holder."

**Subpart R—Flight Time Limitations: Flag Operations**

45. The heading for subpart R is revised to read as set forth above.

**§ 121.481 [Amended]**

46. Section 121.481 is amended in paragraphs (a) and (b) by removing the words "flag air carrier" and adding, in their place, the words "certificate holder conducting flag operations" and in paragraphs (b) and (c) by removing the words "air carrier" and adding, in their place, the words "certificate holder."

**§ 121.483 [Amended]**

47. Section 121.483 is amended in paragraph (a) by removing the words "flag air carrier" and adding, in their place, the words "certificate holder conducting flag operations."

**§ 121.485 [Amended]**

48. Section 121.485 is amended in paragraphs (a) and (b) by removing the words "flag air carrier" and adding, in their place, the words "certificate holder conducting flag operations."

49. Section 121.489 is revised to read as follows:

**§ 121.489 Flight time limitations: Other commercial flying.**

No pilot that is employed as a pilot by a certificate holder conducting flag operations may do any other commercial flying if that commercial flying plus his flying in air transportation will exceed any flight time limitation in this part.

**Subpart S—Flight Time Limitations: Supplemental Operations**

50. The heading for subpart S is revised to read as set forth above.

**§ 121.501 [Removed]**

51. Section 121.501 is removed.

**§ 121.503 [Amended]**

52. Section 121.503 is amended in paragraph (a) by removing the words “supplemental air carrier or commercial operator” and adding, in their place, the words “certificate holder conducting supplemental operations;” in paragraph (b) by removing the words “air carrier or commercial operator” and adding, in their place, the words “certificate holder;” in paragraph (c) by removing the words “supplemental air carrier and commercial operator” and adding, in their place, the words “certificate holder conducting supplemental operations;” in paragraphs (d) and (e) by removing the words “air carrier service” and adding, in their place, the words “air transportation;” in paragraph (f) by removing the words “an air carrier” and adding, in their place, the words “the certificate holder;” and in paragraph (f)(3) by removing the words “air carrier” and adding, in their place, the words “certificate holder.”

**§ 121.505 [Amended]**

53. Section 121.505 is amended in paragraph (a) by removing the words “supplemental air carrier or commercial operator” wherever they appear and adding, in their place, the words “certificate holder conducting supplemental operations.”

**§ 121.507 [Amended]**

54. Section 121.507 is amended in paragraph (a) by removing the words “supplemental air carrier or commercial operator” and adding, in their place, the words “certificate holder conducting supplemental operations.”

**§ 121.509 [Amended]**

55. Section 121.509 is amended in paragraph(a) by removing the words “supplemental air carrier or commercial operator” and adding, in their place, the words “certificate holder conducting supplemental operations.”

**§ 121.513 [Amended]**

56. Section 121.513 is amended in the introductory paragraph by removing the words “supplemental air carrier or commercial operator” and adding, in their place, the words “certificate holder conducting supplemental operations.”

57. Section 121.517 is revised to read as follows:

**§ 121.517 Flight time limitations: Other commercial flying: airplanes.**

No airman who is employed by a certificate holder conducting supplemental operations may do any other commercial flying, if that commercial flying plus his flying in operations under this part will exceed any flight time limitation in this part.

**§ 121.521 [Amended]**

58. Section 121.521 is amended in paragraph (a) by removing the words “supplemental air carrier or commercial operator” and adding, in their place, the words “certificate holder conducting supplemental operations” and in paragraph (b) by removing the words “air carrier or commercial operator” and adding, in their place, the words “certificate holder.”

**§ 121.523 [Amended]**

59. Section 121.523 is amended in paragraphs (a) and (c) by removing the words “supplemental air carrier or commercial operator” and adding, in their place, the words “certificate holder conducting supplemental operations;” and in paragraphs (b) and (e) by removing the words “supplemental air carrier and commercial operator” and adding, in their place, the words “certificate holder conducting supplemental operations.”

**§ 121.533 [Amended]**

60. Section 121.531 is amended in the section heading by removing the words “domestic air carriers” and adding, in their place, the words “domestic operations” and in paragraph (a) by removing the words “domestic air carrier” and adding, in their place, the words “certificate holder conducting domestic operations.”

**§ 121.535 [Amended]**

61. Section 121.535 is amended in the section heading by removing the words “flag air carriers” and adding, in their place, the words “flag operations” and in paragraph (a) by removing the words “flag air carrier” and adding, in their place, the words “certificate holder conducting flag operations.”

**§ 121.537 [Amended]**

62. Section 121.537 is amended in the section heading by removing the words “supplemental air carriers and commercial operators” and adding, in their place, the words “supplemental operations” and in paragraph (a) by removing the words “supplemental air carrier and commercial operators” and adding, in their place, the words “certificate holder conducting supplemental operations.”

63. Section 121.541 is revised to read as follows:

**§ 121.541 Operations schedules: Domestic and flag operations.**

In establishing flight operations schedules, each certificate holder conducting domestic or flag operations shall allow enough time for the proper servicing of aircraft at intermediate stops, and shall consider the prevailing winds en route and the cruising speed of the type of aircraft used. This cruising speed may not be more than that resulting from the specified cruising output of the engines.

**§ 121.547 [Amended]**

64. Section 121.547(c)(4) is amended by removing the word “carrier” and adding, in its place, the words “certificate holder.”

65. Section 121.548 is revised to read as follows:

**§ 121.548 Aviation safety inspector's credentials: Admission to pilot's compartment.**

Whenever, in performing the duties of conducting an inspection, an inspector of the Federal Aviation Administration presents form FAA 110A, “Aviation Safety Inspector's Credential,” to the pilot in command of an aircraft operated by a certificate holder, the inspector must be given free and uninterrupted access to the pilot's compartment of that aircraft.

**§ 121.550 [Amended]**

66. Section 121.550 is amended by removing the words “an air carrier or commercial operator” and adding, in their place, the words “a certificate holder.”

67. Section 121.551 is revised to read as follows:

**§ 121.551 Restriction or suspension of operation: Domestic and flag operations.**

When a certificate holder conducting domestic or flag operations knows of conditions, including airport and runway conditions, that are a hazard to safe operations, it shall restrict or suspend operations until those conditions are corrected.

68. Section 121.553 is revised to read as follows:

**§ 121.553 Restriction or suspension of operation: Supplemental operations.**

When a certificate holder conducting supplemental operations or pilot in command knows of conditions, including airport and runway conditions, that are a hazard to safe operations, the certificate holder or pilot in command, as the case may be, shall restrict or suspend operations until those conditions are corrected.



**§ 121.555 [Amended]**

69. Section 121.555 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations" and in paragraph (a) by removing the words "domestic or flag air carrier's" and adding, in their place, the words "certificate holder's."

**§ 121.557 [Amended]**

70. Section 121.557 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations;" and in paragraph (c) by removing the words "air carrier's" and adding, in their place, the words "certificate holder's."

**§ 121.559 [Amended]**

71. Section 121.559 is amended in the section heading by removing the words "air carriers and commercial operators" and adding, in their place, the word "operations;" and in paragraph (c) by removing the words "air carrier's or commercial operator's" and adding, in their place, the words "certificate holder's."

72. Section 121.565 is amended by revising paragraph (d) to read as follows:

**§ 121.565 Engine inoperative: Landing; reporting.**

\* \* \* \* \*

(d) If the pilot in command lands at an airport other than the nearest suitable airport, in point of time, he or she shall (upon completing the trip) send a written report, in duplicate, to his or her director of operations stating the reasons for determining that the selection of an airport, other than the nearest airport, was as safe a course of action as landing at the nearest suitable airport. The director of operations shall, within 10 days after the pilot returns to his or her home base, send a copy of this report with the director of operation's comments to the certificate-holding district office.

**§ 121.569 [Amended]**

73. Section 121.569 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations;" in paragraph (a) and (b) by removing the words "domestic and flag air carrier" and adding, in their place, the words "certificate holder conducting domestic or flag operations;" and in paragraph (a)(5) by removing the words "air carrier" wherever they appear and adding, in their place, the words "certificate holder."

**§ 121.583 [Amended]**

74. Section 121.583(d) is amended by removing the words "air carrier's or

commercial operator's" and adding, in their place, the words "certificate holder's."

75. Section 121.585 is amended by revising paragraph (n)(2) to read as follows:

**§ 121.585 Exit seating.**

\* \* \* \* \*

(n) \* \* \*

(2) Submit their procedures for preliminary review and approval to the principal operations inspectors assigned to them at the certificate-holding district office.

\* \* \* \* \*

76. Section 121.586 is amended in paragraphs (b) and (c) by removing the words "FAA Flight Standards District Office charged with the overall inspection of its operations" and adding, in their place, the words "certificate-holding district office."

77. Section 121.591 is revised to read as follows:

**§ 121.591 Applicability.**

This subpart prescribes dispatching rules for domestic and flag operations and flight release rules for supplemental operations.

**§ 121.593 [Amended]**

78. Section 121.593 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations."

**§ 121.595 [Amended]**

79. Section 121.595 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations."

**§ 121.597 [Amended]**

80. Section 121.597 is amended in the section heading by removing the words "air carriers and commercial operators" and adding, in their place, the word "operations."

**§ 121.599 [Amended]**

81. Section 121.599 is amended in paragraph (a) by removing the words "air carriers" and adding, in their place, the word "operations" and in paragraph (b) by removing the words "air carriers and commercial operators" and adding, in their place, the word "operations."

**§ 121.601 [Amended]**

82. Section 121.601 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations" and in paragraphs (b) and (c) by removing the words "by December 31, 1977."

**§ 121.603 [Amended]**

83. Section 121.603 is amended in the section heading by removing the words

"air carriers and commercial operators" and adding, in their place, the word "operations."

**§ 121.607 [Amended]**

84. Section 121.607 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations;" in paragraph (a) by removing the words "flag air carriers" and adding, in their place, the words "a certificate holder conducting flag operations;" in paragraph (b) by removing the words "flag air carrier" and adding, in their place, the words "certificate holder conducting flag operations;" and in paragraph (b) by removing the words "the air carrier" and adding, in their place, the words "the certificate holder."

**§ 121.609 [Amended]**

85. Section 121.609 is amended in the section heading by removing the words "air carriers and commercial operators" and adding, in their place, the word "operations."

**§ 121.615 [Amended]**

86. Section 121.615 is amended in the section heading by removing the words "air carriers and commercial operators" and adding, in their place, the word "operations" and in paragraphs (b) and (c) by removing the words "flag and supplemental air carrier and commercial operator" and adding, in their place, the words "certificate holder conducting a flag or supplemental operation or a domestic operation within the State of Alaska." This section is further amended in paragraph (d) by removing the words "air carrier's or commercial operator's" and adding, in their place, the words "certificate holder's."

**§ 121.619 [Amended]**

87. Section 121.619 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations."

**§ 121.621 [Amended]**

88. Section 121.621 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations" and in paragraph (b) by removing the words "air carrier's" and adding, in their place, the words "certificate holder's."

**§ 121.623 [Amended]**

89. Section 121.623 is amended in the section heading by removing the words "air carriers and commercial operators" and adding, in their place, the word "operations" and in paragraph (c) by removing the words "air carrier's or commercial operator's" and adding, in

their place, the words "certificate holder's."

**§ 121.627 [Amended]**

90. Section 121.627(a) is amended by removing the words "air carriers" and adding, in their place, the word "operations."

**§ 121.628 [Amended]**

91. Section 121.628 is amended in paragraph (a)(2) by removing the words "Flight Standards District Office having certification responsibility" and adding, in their place, the words "certificate-holding district office."

**§ 121.629 [Amended]**

92. Section 121.629 is amended in paragraph (a) by removing the words "air carriers" and adding, in their place, the word "operations."

**§ 121.635 [Amended]**

93. Section 121.635 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations."

**§ 121.637 [Amended]**

94. Section 121.637 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations" and in paragraph (b) by removing the words "air carrier's" and adding, in their place, the words "certificate holder's."

**§ 121.641 [Amended]**

95. Section 121.641 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations."

**§ 121.643 [Amended]**

96. Section 121.643 is amended in the section heading by removing the words "air carriers and commercial operators" and adding, in their place, the word "operations."

**§ 121.645 [Amended]**

97. Section 121.645 is amended in the section heading by removing the words "air carriers and commercial operators" and adding, in their place, the word "operations;" in paragraph (a) by removing the words "air carrier;" in paragraph (b) by removing the words "flag air carrier, supplemental air carrier, or commercial operator operation" and adding, in their place, the words "certificate holder conducting flag or supplemental operations." This section is further amended in paragraph (d) by removing the words "flag or supplemental air carrier or commercial operator" and adding, in their place, the words "certificate holder conducting flag or supplemental operations;" and in

paragraph (e) by removing the words "air carrier or commercial operator."

**§ 121.649 [Amended]**

98. Section 121.649 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations."

**§ 121.652 [Amended]**

99. Section 121.652(a) is amended by removing the words "an air taxi operator certificated under § 135.2 of this chapter," and adding, in their place, the words "a certificate holder conducting operations in large aircraft under part 135 of this chapter."

**§ 121.657 [Amended]**

100. Section 121.657 is amended in paragraph (a) by removing the words "air carrier or commercial operator's" and adding, in their place, the words "certificate holder's" and in paragraph (b) by removing the words "domestic air carrier" and adding, in their place, the words "certificate holder conducting domestic operations." This section is further amended in paragraph (b) by removing the words "flag or supplemental air carrier or commercial operator" and adding, in their place, the words "certificate holder conducting flag or supplemental operations."

**§ 121.659 [Amended]**

101. Section 121.659 is amended in the section heading by removing the words "air carriers and commercial operators" and adding, in their place, the word "operations."

**§ 121.661 [Amended]**

102. Section 121.661 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations."

103. Section 121.663 is revised to read as follows:

**§ 121.663 Responsibility for dispatch release: Domestic and flag operations.**

Each certificate holder conducting domestic or flag operations shall prepare a dispatch release for each flight between specified points, based on information furnished by an authorized aircraft dispatcher. The pilot in command and an authorized aircraft dispatcher shall sign the release only if they both believe that the flight can be made with safety. The aircraft dispatcher may delegate authority to sign a release for a particular flight, but he may not delegate his authority to dispatch.

**§ 121.667 [Amended]**

104. Section 121.667 is amended in the section heading by removing the

words "air carriers and commercial operators" and adding, in their place, the word "operations."

105. Section 121.683 is amended in paragraph (a)(1) and (a)(2) by removing the words "air carriers" and adding, in their place, the word "operations" and by revising paragraph (b) to read as follows:

**§ 121.683 Crewmember and dispatcher record.**

\* \* \* \* \*

(b) Each certificate holder conducting supplemental operations shall maintain the records required by paragraph (a) of this section at its principal base of operations, or at another location used by it and approved by the Administrator.

\* \* \* \* \*

106. Section 121.685 is revised to read as follows:

**§ 121.685 Aircraft record: Domestic and flag operations.**

Each certificate holder conducting domestic or flag operations shall maintain a current list of each aircraft that it operates in scheduled air transportation and shall send a copy of the record and each change to the certificate-holding district office. Airplanes of another certificate holder operated under an interchange agreement may be incorporated by reference.

**§ 121.687 [Amended]**

107. Section 121.687 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations".

108. Section 121.689 is amended by revising the section heading and by revising paragraph (c) to read as follows:

**§ 121.689 Flight release form: Supplemental operations.**

\* \* \* \* \*

(c) Each certificate holder conducting domestic or flag operations under the rules of this part applicable to supplemental operations shall comply with the dispatch or flight release forms required for scheduled operations under this subpart.

**§ 121.693 [Amended]**

109. Section 121.693 is amended in the section heading by removing the words "air carriers and commercial operators" and adding, in their place, the words "All certificate holders" and in paragraph (e) by removing the words "air carrier or commercial operator" and adding, in their place, the words "certificate holder."

**§ 121.695 [Amended]**

110. Section 121.695 is amended in the section heading by removing the words "air carriers" and adding, in their place, the word "operations" and in paragraph (b) by removing the words "air carrier" and adding, in their place, the words "certificate holder."

111. Section 121.697 is amended by revising the section heading and by revising paragraphs (b), (c), (d), and (e) to read as follows:

**§ 121.697 Disposition of load manifest, flight release, and flight plans: Supplemental operations.**

\* \* \* \* \*

(b) If a flight originates at the certificate holder's principal base of operations, it shall retain at that base a signed copy of each document listed in paragraph (a) of this section.

(c) Except as provided in paragraph (d) of this section, if a flight originates at a place other than the certificate holder's principal base of operations, the pilot in command (or another person not aboard the airplane who is authorized by the certificate holder) shall, before or immediately after departure of the flight, mail signed copies of the documents listed in paragraph (a) of this section, to the principal base of operations.

(d) If a flight originates at a place other than the certificate holder's principal base of operations, and there is at that place a person to manage the flight departure for the certificate holder who does not himself or herself depart on the airplane, signed copies of the documents listed in paragraph (a) of this section may be retained at that place for not more than 30 days before being sent to the certificate holder's principal base of operations. However, the documents for a particular flight need not be further retained at that place or be sent to the principal base of operations, if the originals or other copies of them have been previously returned to the principal base of operations.

(e) The certificate holder conducting supplemental operations shall:

- (1) Identify in its operations manual the person having custody of the copies of documents retained in accordance with paragraph (d) of this section; and
- (2) Retain at its principal base of operations either an original or a copy of the records required by this section for at least three months.

112. Section 121.711 is revised to read as follows:

**§ 121.711 Communication records: Domestic and flag operations.**

Each certificate holder conducting domestic or flag operations shall record

each en route radio contact between the certificate holder and its pilots and shall keep that record for at least 30 days.

**§ 121.721 Applicability.**

113. Section 121.721 is amended by removing the words "air carriers or commercial operators" and adding, in their place, the words "certificate holders."

**§ 121.723 [Amended]**

114. Section 121.723 is amended in paragraph (b) by removing the words "air carrier or commercial operator" and adding, in their place, the words "certificate holder" and by removing the words "carrier or operator" and adding, in their place, the words "certificate holder."

**PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS**

115. The authority citation for part 135 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701, 44702, 44705, 44709, 44711-44713, 44715-44717, 44722.

**135.10 [Removed]**

116. Section 135.10 is removed.

**§ 135.91 [Amended]**

116a. Section 135.91 is amended in paragraph (e) by removing the words "FAA Flight Standards District Office charged with the overall inspection of the certificate holder" and adding, in their place, the words "certificate-holding district office."

**§ 135.127 [Amended]**

117. Section 135.127 is amended in paragraph (d) by removing from the beginning of the paragraph the words "After December 31, 1988," and capitalizing the following word.

118. Section 135.129 is amended by revising paragraph (n)(2) to read as follows:

**§ 135.129 Exit seating.**

\* \* \* \* \*

(n) \* \* \*

(2) Submit their procedures for preliminary review and approval to the principal operations inspectors assigned to them at the certificate-holding district office.

\* \* \* \* \*

**§ 135.151 [Amended]**

119. Section 135.151 is amended in paragraph (a) and (b) by removing from the beginning of each paragraph the words "After October 11, 1991," and capitalizing the following word.

**§ 135.153 [Amended]**

120. Section 135.153 is amended in paragraph (a) by removing the words "after April 20, 1994,".

**§ 135.173 [Amended]**

121. Section 135.173 is amended in paragraph (b) by removing from the beginning of the paragraph the words "After January 6, 1988," and capitalizing the following words.

**§ 135.179 [Amended]**

122. Section 135.179 is amended in paragraph (a)(2) by removing the words "Flight Standards District Office having certification responsibility" and adding, in their place, the words "certificate-holding district office."

**§ 135.213 [Amended]**

123. Section 135.213 is amended in paragraph (b) by removing the words "FAA Flight Standards District Office charged with the overall inspection of the certificate holder" and adding, in their place, the words "certificate-holding district office" and by removing the words "ATCO operating certificate" and adding, in their place, the words "air carrier operating certificate or operating certificate."

124. Section 135.227 is amended by revising paragraph (f) to read as follows:

**§ 135.227 Icing conditions: Operating limitations.**

\* \* \* \* \*

(f) If current weather reports and briefing information relied upon by the pilot in command indicate that the forecast icing condition that would otherwise prohibit the flight will not be encountered during the flight because of changed weather conditions since the forecast, the restrictions in paragraphs (c), (d), and (e) of this section based on forecast conditions do not apply.

**§ 135.267 [Amended]**

125. Section 135.267 is amended by removing paragraph (g).

**§ 135.273 [Amended]**

126. Section 135.273 is amended in paragraph (c)(2) by removing the words "FAA Flight Standards District Office that is charged with the overall inspection of the certificate holder's operations" and adding, in their place, the words "certificate-holding district office."

**§ 135.417 [Amended]**

127. Section 135.417 is amended in the introductory paragraph by removing the words "FAA Flight Standards District Office charged with the overall inspection of the certificate holder" and

adding, in their place, the words "certificate-holding district office."

Issued in Washington, D.C., on January 17, 1996.

which were published December 20, 1995, 60 FR 65849, 65851, 65888, and 65892.

**§ 135.431 [Amended]**

128. Section 135.431 is amended in paragraph (c) by removing the words "FAA Flight Standards District Office charged with the overall inspection of the certificate holder" and adding, in their place, the words "certificate-holding district office."

Donald P. Byrne,  
*Assistant Chief Counsel for Regulations,  
Office of the Chief Counsel.*

**Appendix—Tables 1–4**

Note: This appendix will not appear in the Code of Federal Regulations. This appendix corrects and republishes tables 1 through 4,

**TABLE 1.—SUMMARY OF NEW EQUIPMENT AND PERFORMANCE MODIFICATIONS FOR AFFECTED COMMUTERS**

Effective date of required upgrade is as stated, measured from the rule publication date: Issue/Requirement	Upgrade will apply to all airplanes including newly manufactured airplanes		Upgrade will apply to all newly manufactured airplanes after years (#)
	Within 15 months	Within years (#)	
1. Passenger Seat Cushion Flammability, 10–19 Pax §§ 121.2, 121.312(c)	.....	15	
2. Lavatory Fire Protection, 10–30 Pax §§ 121.2, 121.308	.....	2	
3. Exterior Emergency Exit Markings, 10–19 Pax § 121.310(g)	YES .....	.....	
4. Pitot Heat Indication System, 10–19 Pax §§ 121.2, 121.342	.....	4	
5. Landing Gear Aural Warning, 10–19 Pax §§ 121.2, 121.289	.....	2	
6. Takeoff Warning System, 10–19 Pax §§ 121.2, 121.293	.....	.....	4.
7. Emergency Exit Handle Illumination, 10–19 Pax §§ 121.2, 121.310(e)(2)	.....	2	
8. First Aid Kits, 10–19 Pax § 121.309(d)(1)(i)	YES .....	.....	
9. Emergency Medical Kits, 20–30 Pax § 121.309(d)(1)(ii)	YES .....	.....	
10. Wing Ice Light, 10–19 Pax § 121.341(b)	YES .....	.....	
11. Fasten Seat Belt Light and Placards, 10–19 Pax §§ 121.2, 121.317	YES <sup>1</sup> .....	.....	2 <sup>1</sup> .
12. Third Attitude Indicator, 10–30 Pax: Turbojet Turboprop §§ 121.2, 121.305(j)	YES <sup>2</sup> .....	..... ..... ..... <sup>2</sup> 15	15 months <sup>2</sup> .
13. Airborne Weather Radar, 10–19 Pax § 121.357	YES .....	.....	
14. Protective Breathing Equipment, 10–30 Pax § 121.2 § 121.337(b)(8)—Smoke and fume protection § 121.337(b)(9)—Fire fighting (20–30 only)	.....	2	
15. Safety Belts and Shoulder Harnesses, Single point inertial harness, 10–19 Pax §§ 121.2, 121.311(f)	.....	.....	15 months.
16. Cabin Ozone Concentration, 10–30 Pax § 121.578	YES .....	.....	
17. Retention of Galley Equipment, 10–30 Pax §§ 121.576, 121.577	YES .....	.....	
18. Ditching approval, 10–30 Pax §§ 121.2, 121.161(b)	YES <sup>3</sup> .....	..... <sup>3</sup> 15	
19. Flotation means, 10–30 Pax §§ 121.2, 121.340	.....	2	
20. Door Key and Locking Door, 20–30 Pax § 121.313(f) & (g)	YES .....	.....	
21. Portable O <sub>2</sub> , 20–30 Pax §§ 121.327–121.335	YES .....	.....	
22. Additional life rafts, 10–30 Pax § 121.339	YES .....	.....	
23. First Aid Oxygen, 20–30 Pax § 121.333(e)(3)	YES .....	.....	
24. Enroute radio communications, 10–30 Pax § 121.99	YES .....	.....	
25. Latex gloves, 10–30 Pax § 121.309(d)(2)	YES .....	.....	
26. Passenger information cards, 20–30 Pax § 121.571(b)	YES .....	.....	

TABLE 1.—SUMMARY OF NEW EQUIPMENT AND PERFORMANCE MODIFICATIONS FOR AFFECTED COMMUTERS—Continued

Effective date of required upgrade is as stated, measured from the rule publication date: Issue/Requirement	Upgrade will apply to all airplanes including newly manufactured airplanes		Upgrade will apply to all newly manufactured airplanes: after years (#)
	Within 15 months	Within years (#)	
27. Flashlights—additional for flight attendant and pilot, 10–30 Pax § 121.549(b)	YES .....	.....	
28. Flashlight holder for flight attendant, 20–30 Pax § 121.310(l)	YES .....	.....	
29. DME, 10–30 Pax § 121.349(c)	YES .....	.....	
30. Single engine cruise performance data, 10–30 Pax (required for determining alternatives) § 121.617	YES .....	.....	
31. Performance, obstruction clearance, and accelerate-stop requirements, 10–19 Pax §§ 121.2, 121.157, 121.173(b), 121.189(c)	YES <sup>4</sup> .....	415	

<sup>1</sup> In-service airplanes must comply within 15 months. They may use lights or placards. Newly manufactured airplanes must comply with seat belt sign requirements of § 121.317(a) within 2 years.  
<sup>2</sup> Turbojet airplanes must comply within 15 months. Newly manufactured turboprop airplanes must comply within 15 months. In-service 10–30 pax turboprop airplanes must comply within 15 years.  
<sup>3</sup> Transport category must comply within 15 months. Nontransport category can operate for 15 years without ditching approval.  
<sup>4</sup> Commuter category airplanes must comply within 15 months. SFAR 41 and predecessor category airplanes must comply within 15 years.

TABLE 2.—COMPARABLE SECTIONS IN PARTS 121 AND 135

[This table shows the comparable sections in parts 121 and 135 by issue. Affected commuters, however, must comply with all sections in part 121 that are applicable to their operations, not just the ones listed in this table or discussed in this preamble.]

Subject	135 Section	121 Section
Subparts E and F—Approval of Routes: Domestic, Flag, and Supplemental Operations.	135.213 .....	121.97 121.99 121.101 121.107
Subpart G—Manual Requirements:		
Contents and personnel .....	135.21, .23 .....	121.133, .135, 121.137
Airplane flight manual .....	.....	121.141
Subpart I—Airplane Performance Operating Limitations .....	135.365–.387 .....	121.175–.197
Subpart J—Special Airworthiness Requirements .....	.....	121.217
—Internal doors .....	135.87 .....	121.285
—Cargo carried in the passenger compartment .....	135 APP A .....	121.289
—Landing gear aural warning device .....	.....	121.291
—Emergency evacuation and ditching demonstration .....	.....	.....
—New special airworthiness requirements (retrofit) and requirements applicable to future manufactured airplanes.	.....	121.293(a) (new)
—Ditching emergency exits .....	.....	121.293(b) (new)
—Takeoff warning system .....	.....	.....
Subpart K—Instrument and Equipment Requirements:		
—Third attitude indicator .....	.....	.....
—Lavatory fire protection .....	135.149, 135.163 (a), (h) .....	121.305(j) 121.308
—Emergency equipment inspection .....	.....	121.309(b)
—Hand-held fire extinguishers .....	135.177(b) .....	121.309(c)
—First aid kits and medical kits .....	135.155 .....	121.309(d)
—Crash ax .....	135.177(a)(1) .....	121.309(e)
—Emergency evacuation lighting and marking requirements .....	135.177(a)(2) .....	121.310(c)–(h)
.....	135.178(c)–(h) .....	.....
—Seatbacks .....	.....	.....
—Seatbelt and shoulder harnesses on the flight deck .....	135.117 .....	121.311(e) 121.311(f)
.....	.....	121.312(b)
—Interior materials and passenger seat cushion flammability .....	135.169(a) .....	121.313 (c), (f), (g)
—Miscellaneous equipment .....	.....	121.313(f), 121.587
—Cockpit and door keys .....	.....	.....
—Cargo and baggage compartments .....	.....	.....
—Fuel tank access covers .....	.....	121.314, .221
—Passenger information .....	.....	121.316
—Instruments and equipment for operations at night .....	135.127 .....	121.317 121.323
.....	.....	.....
—Oxygen requirements .....	.....	.....
—Portable oxygen for flight attendants .....	135.157 .....	121.327–.335 121.333(d)
.....	.....	121.337
—Protective breathing equipment (PBE) .....	.....	121.339
—Additional life rafts for extended underwater operations .....	135.167 .....	.....
—Flotation devices .....	.....	.....

TABLE 2.—COMPARABLE SECTIONS IN PARTS 121 AND 135—Continued

[This table shows the comparable sections in parts 121 and 135 by issue. Affected commuters, however, must comply with all sections in part 121 that are applicable to their operations, not just the ones listed in this table or discussed in this preamble.]

Subject	135 Section	121 Section
—Pitot heat indication system .....	.....	121.340
—Radio equipment .....	135.158 .....	121.342
—Emergency equipment for operations over uninhabited terrain .....	135.161 .....	121.345–351
.....	135.177, .178 .....	121.353
—TCAS .....	.....	.....
—Flight data recorders .....	135.180 .....	121.356
—Airborne weather radar .....	135.152(a), (b) .....	121.343
—Cockpit voice recorders .....	135.173, .175 .....	121.357
—Low-altitude windshear systems .....	135.151 .....	121.359
—Ground proximity warning system (GPWS) .....	135.153 .....	121.358
Subpart L—Maintenance, Preventive Maintenance, and Alterations:		
—Applicability .....	135.411(a)(2) .....	121.361
—Responsibility for Airworthiness .....	135.413 .....	121.363
—Maintenance, preventive maintenance, and alteration organization .....	135.423, .425 .....	121.365, .367
—Manual requirements .....	135.427 .....	121.369
—Required inspection personnel .....	135.429 .....	121.371
—Continuing analysis and surveillance .....	135.431 .....	121.373
—Maintenance and preventative maintenance training programs .....	135.433 .....	121.375
—Maintenance and preventive maintenance personnel duty time limitations.	.....	121.377
—Certificate requirements .....	135.435 .....	121.378
—Authority to perform and approve maintenance, preventive maintenance, and alterations.	135.437 .....	121.379
—Maintenance recording requirements .....	135.439(a)(2) .....	121.380(a)(2)
—Transfer of maintenance records .....	135.441 .....	121.380a
Subpart M—Airman and Crewmember Requirements:		
—Flight attendant complement .....	135.107 .....	121.391
—Flight attendants being seated during movement on the surface .....	135.128(a) .....	121.391(d)
—Flight attendants or other qualified personnel at the gate .....	.....	121.391(e), 121.417, 121.393 (new)
Subparts N and O—Training Program and Crewmember Requirements .....	.....	121.400–121.459
Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers.	.....	121.461–121.467
Subparts Q, R, and S—Flight Time Limitations and Rest Requirements: Domestic, Flag, and Supplemental Operations.	135.261–135.273 .....	121.470–121.525
Subpart T—Flight Operations:		
—Operational control .....	135.77, .79 .....	121.533, .535, 121.537
—Admission to the flight deck .....	135.75 .....	121.547
—Emergency procedures .....	135.69, .19 .....	121.551, .553, 121.557, .559 121.565 (new)
—Passenger information .....	135.117, .127 .....	121.571(a), 121.533, .573, 121.585
—Oxygen for medical use by passengers .....	135.91(d) .....	121.574
—Alcoholic beverages .....	135.121 .....	121.575
—Retention of items of mass .....	135.87, .122 .....	121.577
—Cabin ozone concentration .....	.....	121.578(b)
—Minimum altitudes for use of autopilot .....	135.93 .....	121.579
—Forward observer's seat .....	135.75 .....	121.581
—Authority to refuse transportation .....	135.23(q) .....	121.586
—Carry-on baggage .....	135.87 .....	121.589
—Airports .....	135.229, .217 .....	121.590, 121.617(a)
Subpart U—Dispatching and Flight Release Rules:		
—Flight release authority .....	.....	121.597
—Dispatch or flight release under VFR .....	135.211 .....	121.611
—Operations in icing conditions .....	135.227, .341, 135.345 .....	121.629
—Fuel reserves .....	135.209, .223 .....	121.639, .641, 121.643, .645
Subpart V—Records and Reports:		
—Maintenance log: Airplane .....	135.65(c), 135.415(a) .....	121.701(a), 121.703(a), (e)
—Mechanical interruption summary report .....	135.417 .....	121.705(b)
—Alteration and repair reports .....	135.439(a)(2) .....	121.707
—Airworthiness release or airplane log entry .....	135.443 .....	121.709
—Other recordkeeping requirements .....	.....	121.711, .713, 121.715

TABLE 3.—DERIVATION TABLE FOR PART 119

New Section	Based on
Subpart A: 119.1(a) .....	New language.

TABLE 3.—DERIVATION TABLE FOR PART 119—Continued

New Section	Based on
119.1(b) .....	SFAR 38–2, Section 1(a).
119.1(c) .....	New language.
119.1(d) .....	New language.
119.1(e) .....	New language.
119.2 .....	New language.
119.3 .....	SFAR 38–2, Section 6 and new language.
119.5(a) .....	SFAR 38–2, Section 2(a).
119.5(b) .....	SFAR 38–2, Section 2(b).
119.5(c) .....	New language.
119.5(d) .....	SFAR 38–2, Section 1(a)(3).
119.5(e) .....	SFAR 38–2, Section 1(a)(3).
119.5(f) .....	SFAR 38–2, Section 1(b).
119.5(g) .....	SFAR 38–2, Section 1(c), 121.4, 135.7.
119.5(h) .....	SFAR 38–2, Flush paragraph following Section 1(a)(3) and new language.
119.5(i) .....	121.27(a)(1), 121.51(a)(1), 135.13(a)(3).
119.5(j) .....	135.33.
119.7(a) .....	SFAR 38–2, Section 3.
119.7(b) .....	121.23, 121.43.
119.9(a) .....	135.29.
119.9(b) .....	New language.
Subpart B:	
119.21(a) .....	SFAR 38–2, Section 4(a), 121.3.
119.21(b) .....	SFAR 38–2, Section 4(b).
119.21(c) .....	New language.
119.23(a) .....	SFAR 38–2, Section 5(a).
119.23(b) .....	SFAR 38–2, Section 5(b).
119.25(a) .....	SFAR 38–2, Section 4(c), 5 (c), and (d) and new language.
119.25(b) .....	SFAR 38–2, Section 4(c), 5 (c), and (d) and new language.
Subpart C:	
119.31 .....	SFAR 38–2, Section 1(c), 2 (a) and (b), 121.3, and 135.5.
119.33(a) .....	SFAR 38–2, Section 1(c), 2 (a) and (b), 3, 121.3, 135.5, 135.13(a).
119.33(b) .....	SFAR 38–2, Section 1(c), 2 (a) and (b), 3, 121.3, 135.5, 135.13(a).
119.33(c) .....	SFAR 38–2, Section 1(c), 2 (a) and (b), 3, 121.3, 135.5, 135.13(a).
119.35(a) .....	121.26, 121.47(a), 135.11(a).
119.35(b) .....	121.26, 121.47(a), 135.11(a).
119.35(c) .....	121.47(a).
119.35(d) .....	121.47(b).
119.35(e) .....	121.47(c).
119.35(f) .....	121.47(d).
119.35(g) .....	121.48.
119.35(h) .....	121.49.
119.37(a) .....	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(b) .....	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(c) .....	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(d) .....	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(e) .....	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.39(a) .....	121.27(a)(2), 121.51(a)(3), 135.11(b)(1).
119.39(b) .....	121.27(a)(2), 121.51, 135.13 (a)(2) and (b).
119.41(a) .....	121.77(a), 135.15(a).
119.41(b) .....	New language.
119.41(c) .....	121.77(b), 135.15(b).
119.41(d) .....	121.77(c), 135.15(d).
119.43(a) .....	121.75(b), 135.63(a)(2).
119.43(b) .....	121.75(b), 135.63(a)(2).
119.47(a) .....	135.27(a).
119.47(b) .....	121.83, 135.27(b).
119.49(a) .....	121.5, 121.25(b), 121.45(b), 135.11(b), and new language.
119.49(b) .....	121.45(b), 135.11(b)(1) and new language.
119.49(c) .....	135.11(b)(1) and new language.
119.49(d) .....	121.75, 135.81.
119.51(a) .....	121.79(a), 135.17(a).
119.51(b) .....	121.79(b), 135.17(d).
119.51(c) .....	121.79(c), 135.17(b), and new language.
119.51(d) .....	121.79(d), 135.17 (c) and (d).
119.51(e) .....	121.79(b), 135.17 (c) and (d).
119.53(a) .....	121.6(a).
119.53(b) .....	New language.
119.53(c) .....	121.6(b).
119.53(d) .....	121.6(c).
119.53(e) .....	New language.
119.53(f) .....	New language.
119.55(a) .....	121.57 (a) and (b).

TABLE 3.—DERIVATION TABLE FOR PART 119—Continued

New Section	Based on
119.55(b) .....	121.57 (a) and (b).
119.55(c) .....	121.57 (a) and (b).
119.55(d) .....	121.57 (a) and (b).
119.55(e) .....	121.57 (a) and (b).
119.57(a) .....	121.57(c).
119.57(b) .....	New language.
119.58(a) .....	135.19(b).
119.58(b) .....	135.19(a).
119.58(c) .....	135.19(c).
119.59(a) .....	121.81(a), 135.73, and new language.
119.59(b) .....	121.73, 121.81(a), 135.63(a), 135.73, and new language.
119.59(c) .....	121.81(a).
119.59(d) .....	New language.
119.59(e) .....	New language.
119.59(f) .....	New language.
119.61(a) .....	121.29(a), 121.53 (a), (c), and (d), 135.9(a).
119.61(b) .....	121.29(a), 121.53(c), and new language.
119.61(c) .....	135.35.
119.63(a) .....	New language.
119.63(b) .....	New language.
119.65(a) .....	121.59(a).
119.65(b) .....	121.59(b).
119.65(c) .....	121.59(b).
119.65(d) .....	121.61 and new language.
119.65(e) .....	121.59(c).
119.67(a) .....	121.61(a) and new language.
119.67(b) .....	121.61(b) and new language.
119.67(c) .....	121.61(c), 135.39(c) and new language.
119.67(d) .....	121.61(d) and new language.
119.67(e) .....	121.61(b), 135.39(d).
119.69(a) .....	135.37(a).
119.69(b) .....	121.59(b), 135.37(b).
119.69(c) .....	121.59(b).
119.69(d) .....	135.39 and new language.
119.69(e) .....	121.59, 135.37(c).
119.71(a) .....	135.39(a)(1) and new language.
119.71(b) .....	135.39(a)(2) and new language.
119.71(c) .....	135.39(b)(1) and new language.
119.71(d) .....	135.39(b)(2) and new language.
119.71(e) .....	135.39(c) and new language.
119.71(f) .....	135.39(d) and new language.

TABLE 4.—DISTRIBUTION TABLE FOR PART 121, PART 135, AND SFAR 38–2 SECTIONS BEING REPLACED BY PART 119

<i>Part 121:</i>	<i>Replaced by:</i>
121.3 .....	119.21(a); 119.31; 119.33.
121.4 .....	119.5(g).
121.5 .....	119.49(a).
121.6(a) .....	119.53(a).
121.6(b) .....	119.53(c).
121.6(c) .....	119.53(d).
121.7 .....	119.21.
121.9 .....	deleted.
121.13 .....	119.25.
121.21 .....	119.1.
121.23 .....	119.7(b).
121.25(a) .....	119.37 (a), (b), (c), (d), (e), (f), and (g).
121.25(b) .....	119.49(a).
121.26 .....	119.35 (a) and (b).
121.27(a)(1) .....	119.5(i).
121.27(a)(2) .....	119.39 (a) and (b).
121.29(a) .....	119.61 (a) and (b).
121.41 .....	119.1.
121.43 .....	119.7(b).
121.45(a) .....	119.37 (a), (b), (c), (d), (e), (f), and (g).
121.45(b) .....	119.49 (a) and (b).
121.47(a) .....	119.35 (a), (b), and (c).
121.47(b) .....	119.35(d).
121.47(c) .....	119.35(e).
121.47(d) .....	119.35(f).
121.48 .....	119.35(g).



TABLE 4.—DISTRIBUTION TABLE FOR PART 121, PART 135, AND SFAR 38–2 SECTIONS BEING REPLACED BY PART 119—Continued

121.49 .....	119.35(h).
121.51 .....	119.39(b).
121.51(a)(1) .....	119.5(i).
121.51(a)(3) .....	119.39(a).
121.53(a) .....	119.61(a).
121.53(c) .....	119.61 (a) and (b).
121.53(d) .....	119.61(a).
121.55 .....	deleted.
121.57(a) .....	119.55 (a), (b), (c), (d), and (e).
121.57(b) .....	119.55 (a), (b), (c), (d), and (e).
121.57(c) .....	119.57(a).
121.59 .....	119.69(e).
121.59(a) .....	119.65(a).
121.59(b) .....	119.65 (b) and (c); 119.69 (b) and (c).
121.59(c) .....	119.65(e).
121.61 .....	119.65(d).
121.61(a) .....	119.67(a).
121.61(b) .....	119.67 (b) and (e).
121.61(c) .....	119.67(c).
121.61(d) .....	119.67(d).
121.71 .....	119.1.
121.73 .....	119.59(b).
121.75 .....	119.49(d).
121.75(b) .....	119.43 (a) and (b).
121.77(a) .....	119.41(a).
121.77(b) .....	119.41(c).
121.77(c) .....	119.41(d).
121.79(a) .....	119.51(a).
121.79(b) .....	119.51 (b) and (e).
121.79(c) .....	119.51(c).
121.79(d) .....	119.51(d).
121.81(a) .....	119.59 (a), (b), and (c).
121.83 .....	119.47(b).
<i>Part 135:</i>	<i>Replaced by:</i>
135.5 .....	119.31; 119.33 (a), (b), and (c).
135.7 .....	119.5(g).
135.9(a) .....	119.61(a).
135.11(a) .....	119.35 (a) and (b).
135.11(b) .....	119.49(a).
135.11(b)(1) .....	119.37 (a), (b), (c), (d), (e), (f), and (g); 119.39(a); 119.49 (b) and (c).
135.13(a) .....	119.33 (a), (b), and (c).
135.13(a)(2) .....	119.39(b).
135.13(a)(3) .....	119.5(i).
135.13(b) .....	119.39(b).
135.15(a) .....	119.41(a).
135.15(b) .....	119.41(b).
135.15(d) .....	119.41(d).
135.17(a) .....	119.51(a).
135.17(b) .....	119.51(c).
135.17(c) .....	119.51 (d) and (e).
135.17(d) .....	119.51 (b), (d), and (e).
135.19 .....	119.58.
135.27(a) .....	119.47(a).
135.27(b) .....	119.47(b).
135.29 .....	119.9(a).
135.31 .....	119.5.
135.33 .....	119.5(j).
135.35 .....	119.61(c).
135.37(a) .....	119.69(a).
135.37(b) .....	119.69(b).
135.37(c) .....	119.69(e).
135.39 .....	119.69(d).
135.39(a)(1) .....	119.71(a).
135.39(a)(2) .....	119.71(b).
135.39(b)(1) .....	119.71(c).
135.39(b)(2) .....	119.71(d).
135.39(c) .....	119.67(c); 199.71(e).
135.39(d) .....	119.67(e); 119.71(f).
135.63(a) .....	119.59(b).
135.63(a)(2) .....	119.43 (a) and (b).
135.73 .....	119.59(a) and (b).
135.81 .....	119.49(d).
<i>SFAR 38–2:</i>	<i>Replaced by:</i>

TABLE 4.—DISTRIBUTION TABLE FOR PART 121, PART 135, AND SFAR 38–2 SECTIONS BEING REPLACED BY PART 119—Continued

Section 1(a) .....	119.1(b).
Section 1(a)(3) ..	119.5 (d) and (e); 119.5(h).
Section 1(b) .....	119.5(f).
Section 1(c) .....	119.5(g); 119.31; 119.33 (a), (b), and (c).
Section 2(a) .....	119.5(a); 119.31; 119.33 (a), (b), and (c).
Section 2(b) .....	119.5(b); 119.31; 119.33 (a), (b), and (c).
Section 2(c) .....	129.1.
Section 3 .....	119.7(a); 119.33 (a), (b), and (c).
Section 4(a) .....	119.21(a).
Section 4(b) .....	119.21(b).
Section 4(c) .....	119.25 (a) and (b).
Section 4(d) .....	119.25 (a) and (b).
Section 5(a) .....	119.23(a).
Section 5(b) .....	119.23(b).
Section 5(c) .....	119.25 (a) and (b).
Section 5(d) .....	119.25 (a) and (b).
Section 6 .....	119.3.

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# Federal Register

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Friday  
January 26, 1996

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## Part IV

**Department of Defense  
General Services  
Administration**

**National Aeronautics and  
Space Administration**

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48 CFR Ch. I, et al.

**Federal Acquisition Regulations; Final  
and Interim Rules**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**Federal Acquisition Circular 90-37 Introduction**

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final and interim rules with request for comment.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules which follow it in the order listed below. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are issuing Federal Acquisition Circular (FAC) 90-37 to amend the FAR.

**DATES:** For effective dates and comment dates, see separate documents which follow. Please cite FAC 90-37 and the appropriate FAR case number(s) in all

correspondence related to the following documents.

**FOR FURTHER INFORMATION CONTACT:**

The analyst whose name appears (in the table below) in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-37 and specific FAR case number(s).

**SUPPLEMENTARY INFORMATION:** Federal Acquisition Circular 90-37 amends the Federal Acquisition Regulation (FAR) as specified below:

Item	Subject	FAR case	Analyst
I	Inherently Governmental Functions	92-051	O'Such.
II	Javits-Wagner-O'Day Program	91-108	Klein.
III	Made in America Labels/Unfair Trade Practices	93-301/ 93-306	De Stefano.
IV	Debarment and Suspension Certificate	92-615	De Stefano.
V	Nonprofit Institutions Clause Prescription	92-010	Olson.
VI	Field Pricing Support Request	95-006	Olson.
VII	Subcontract Proposal Audits	92-002	Olson.
VIII	Overhead Should-Cost Reviews	92-017	Olson.
IX	SBA Responsibility, Certificate of Competency Requests	92-606	Klein.
X	Mentor Protégé Program (Interim)	93-308	Klein.
XI	Subcontracting Plans	92-019	Klein.
XII	Insurance—Liability to Third Persons (under Cost Reimbursement Contracts)	92-014	O'Such.
XIII	Availability of Accounting Guide	94-002	Olson.
XIV	Nonallowability of Excise Taxes on Nondeductible Contributions to Deferred Compensation Plans	92-604	Olson.
XV	Contractors' Purchasing Systems Reviews and Subcontractor Consent	92-040	Klein.

**Item I—Inherently Governmental Functions (FAR Case 92-051)**

This final rule amends FAR Parts 7, 11, and 37 to provide policy and procedures relating to inherently governmental functions. Subpart 7.5 is added to provide a definition of "inherently governmental functions" and to provide a list of examples of functions considered to be inherently governmental, or which shall be treated as such, and a list of certain services and actions that are not considered to be inherently governmental functions.

**Item II—Javits-Wagner-O'Day Program (JWOD) (FAR Case 91-108)**

This final rule amends FAR Parts 8, 51, and 52 to clarify that the Government's statutory obligation to purchase certain items from the Committee for Purchase from People Who Are Blind or Severely Disabled also applies when contractors purchase items for Government use.

**Item III—Made in America Labels/Unfair Trade Practices (FAR Cases 93-301 and 93-306)**

This final rule amends FAR 9.403, 9.406, and 9.407 to add language concerning suspension or debarment of

contractors who engage in unfair trade practices and/or intentionally affix a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States.

**Item IV—Debarment and Suspension Certificate (FAR Case 92-615)**

This final rule amends FAR 9.406-2, 9.407-2, and 52.209-5 to add "tax evasion" as a cause for debarment or suspension.

**Item V—Nonprofit Institutions Clause Prescription (FAR Case 92-010)**

This final rule amends the prescriptions for use of the clauses at 52.215-27, Termination of Defined Benefit Pension Plans, and 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), and also clarifies the language of the clauses.

**Item VI—Field Pricing Support Request (FAR Case 95-006)**

This final rule revises FAR 15.805-5(c)(1) to clarify that contracting officers may send audit requests directly to the cognizant audit office, if no other type of field pricing support is required.

**Item VII—Subcontract Proposal Audits (FAR Case 92-002)**

This final rule amends FAR 15.806-3, Field pricing reports, to add two additional examples of when field pricing support audits of subcontract proposals may be appropriate. The first example is when the contractor or higher tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing. The second example is when a lower tier subcontractor has been cited as having significant estimating system deficiencies.

**Item VIII—Overhead Should-Cost Reviews (FAR Case 92-017)**

This final rule amends FAR 15.810 to add guidance on overhead should-cost reviews.

**Item IX—SBA Responsibility, Certificate of Competency Requests (FAR Case 92-606)**

This final rule amends FAR 19.602-2 to reflect the approval of Small Business Administration regional offices to issue Certificate of Competency (COC) Determinations as provided in 13 CFR Part 125.

**Item X—Mentor Protégé Program (FAR Case 93-308)**

This interim rule amends FAR 19.702, Statutory requirements, to allow mentor firms participating in the Department of Defense (DOD) Mentor-Protégé Program to be granted credit toward subcontracting goals under small business subcontracting plans entered into with any executive agency. FAR 52.244-5, Competition in Subcontracting, is amended to permit DOD mentor firms to award subcontracts on a noncompetitive basis to protégé firms under DOD and other contracts.

**Item XI—Subcontracting Plans (FAR Case 92-019)**

This final rule amends FAR 19.705-2(d) to expand the circumstances when subcontracting plans may be required from and negotiated with more than the apparently successful offeror. The clause prescription at 19.708(b)(1) and Alternate II for the clause at 52.219-9 are added for use when subcontracting plans are required with initial proposals.

**Item XII—Insurance—Liability to Third Persons (under Cost Reimbursement Contracting) (FAR Case 92-014)**

This final rule deletes the provision at FAR 52.228-6 and makes related changes at 28.311, 52.228-7, 52.245-7, and 52.245-10 to remove obsolete language pertaining to liability insurance under cost-reimbursement contracts.

**Item XIII—Availability of Accounting Guide (FAR Case 94-002)**

This final rule amends FAR Part 31 to add a new section 31.001 advising contractors on how to obtain a copy of an informational guide entitled "Guidance for New Contractors."

**Item XIV—Nonallowability of Excise Taxes on Nondeductible Contributions to Deferred Compensation Plans (FAR Case 92-604)**

This final rule amends FAR 31.205-41 to designate excise taxes at subtitle D, chapter 43 of the Internal Revenue Code, as unallowable costs.

**Item XV—Contractors' Purchasing Systems Reviews and Subcontractor Consent (FAR Case 92-40)**

This final rule amends FAR Parts 44 and 52 to increase the thresholds for Contractors' Purchasing Systems Reviews (CPSR's) and subcontract consent. The threshold at 44.302(a) for performing CPSR's is raised from \$10 million to \$25 million. The threshold at 52.244-2(a) for consent to subcontract

under cost-reimbursement and letter prime contracts for fabrication, purchase, rental, installation, or other acquisition for special test equipment is raised from \$10,000 to \$25,000. The threshold at 52.244-2(b)(1) requiring additional information on certain subcontracts is raised from \$10,000 to \$25,000.

Dated: January 11, 1996.

Edward C. Loeb,  
*Acting Director, Office of Federal Acquisition Policy.*

**Federal Acquisition Circular  
Number 90-37**

Federal Acquisition Circular (FAC) 90-37 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-37 is effective March 26, 1996, except for Item X which is effective January 26, 1996.

Dated: January 4, 1996.

Eleanor R. Spector,  
*Director, Defense Procurement.*

Dated: January 17, 1996.

Ada M. Ustad,  
*Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.*

Dated: January 12, 1996.

Deidre A. Lee,  
*Associate Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 96-1014 Filed 1-25-96; 8:45 am]

**BILLING CODE 6820-EP-M**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 7, 11, and 37**

[FAC 90-37; FAR Case 92-051 Item I]

**RIN 9000-AF56**

**Federal Acquisition Regulation;  
Inherently Governmental Functions**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to revise the Federal Acquisition Regulation (FAR) to implement Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions. This rule provides a definition of, and internal Government responsibilities and procedures relating to, inherently governmental functions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter O'Such (202) 501-1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-051.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule implements the requirements of the Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions. The OFPP published its proposed policy letter for public comment in the Federal Register at 56 FR 65279, December 16, 1991. OFPP evaluated public comments and published the final policy letter in the Federal Register at 57 FR 45096, September 30, 1992.

A FAR proposed rule to implement the policy letter was published in the Federal Register at 59 FAR 29696, June 8, 1994. Thirteen sources submitted public comments. Minor revisions were made to the rule as a result of those comments.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains to internal Government responsibilities and procedures relating to inherently governmental functions.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors,

contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 7, 11, and 37

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, 49 CFR parts 7, 11, and 37 are amended as set forth below:

The authority citation for 48 CFR parts 7, 11, and 37 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 7—ACQUISITION PLANNING

2. Section 7.000 is amended in paragraph (b) by removing the word "and"; in paragraph (c) by removing the period at the end of the sentence and inserting in its place "; and"; and by adding paragraph (d) to read as follows:

### § 7.000 Scope of part.

\* \* \* \* \*

(d) Determining whether functions are inherently governmental.

3. Section 7.103 is amended by adding paragraph (p) to read as follows:

### 7.103 Agency-head responsibilities.

\* \* \* \* \*

(p) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all contracts are adequately managed so as to ensure effective official control over contract performance.

4. Section 7.105 is amended by redesignating paragraphs (b)(9) through (b)(19) as (b)(10) through (b)(20) and adding a new (b)(9) to read as follows:

### 7.105 Contents of written acquisition plans.

\* \* \* \* \*

(b) \* \* \*

(9) *Inherently governmental functions.* Address the consideration given to OFPP Policy Letter 92-1 (see subpart 7.5).

5. Subpart 7.5 is added to read as follows:

## Subpart 7.5—Inherently Governmental Functions

Sec.

7.500 Scope of subpart.

7.501 Definition.

7.502 Applicability.

7.503 Policy.

## Subpart 7.5—Inherently Governmental Functions

### 7.500 Scope of subpart.

The purpose of this subpart is to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors. It implements the policies of Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, *Inherently Governmental Functions.*

### 7.501 Definition.

*Inherently governmental function* means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

(a) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(1) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(2) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(3) Significantly affect the life, liberty, or property of private persons;

(4) Commission, appoint, direct, or control officers or employees of the United States; or

(5) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(b) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical

services. The list of commercial activities included in the attachment to Office of Management and Budget (OMB) Circular No. A-76 is an authoritative, nonexclusive list of functions which are not inherently governmental functions.

### 7.502 Applicability.

The requirements of this subpart apply to all contracts for services. This subpart does not apply to services obtained through either personnel appointments, advisory committees, or personal services contracts issued under statutory authority.

### 7.503 Policy.

(a) Contracts shall not be used for the performance of inherently governmental functions.

(b) Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials.

(c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

(1) The direct conduct of criminal investigations.

(2) The control of prosecutions and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution.

(3) The command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.

(4) The conduct of foreign relations and the determination of foreign policy.

(5) The determination of agency policy, such as determining the content and application of regulations, among other things.

(6) The determination of Federal program priorities for budget requests.

(7) The direction and control of Federal employees.

(8) The direction and control of intelligence and counter-intelligence operations.

(9) The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.

(10) The approval of position descriptions and performance standards for Federal employees.

(11) The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within

specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

(12) In Federal procurement activities with respect to prime contracts—

(i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(ii) Participating as a voting member on any source selection boards;

(iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(iv) Awarding contracts;

(v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(vi) Terminating contracts;

(vii) Determining whether contract costs are reasonable, allocable, and allowable; and

(viii) Participating as a voting member on performance evaluation boards.

(13) The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

(14) The conduct of Administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

(15) The approval of Federal licensing actions and inspections.

(16) The determination of budget policy, guidance, and strategy.

(17) The collection, control, and disbursement of fees, royalties, duties, fines, taxes, and other public funds, unless authorized by statute, such as 31 U.S.C. 952 (relating to private collection contractors) and 31 U.S.C. 3718 (relating to private attorney collection services), but not including—

(i) Collection of fees, fines, penalties, costs, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or

predetermined and the funds collected can be easily controlled using standard case management techniques; and

(ii) Routine voucher and invoice examination.

(18) The control of the treasury accounts.

(19) The administration of public trusts.

(20) The drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the General Accounting Office, or other Federal audit entity.

(d) The following is a list of examples of functions generally not considered to be inherently governmental functions. However, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. This list is not all inclusive:

(1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

(2) Services that involve or relate to reorganization and planning activities.

(3) Services that involve or relate to analysis, feasibility studies, and strategy options to be used by agency personnel in developing policy.

(4) Services that involve or relate to the development of regulations.

(5) Services that involve or relate to the evaluation of another contractor's performance.

(6) Services in support of acquisition planning.

(7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

(8) Contractors providing technical evaluation of contract proposals.

(9) Contractors providing assistance in the development of statements of work.

(10) Contractors providing support in preparing responses to Freedom of Information Act requests.

(11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the Defense Industrial Security Program described in 4.402(b)).

(12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations

campaigns, or conducting agency training courses.

(13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.

(14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

(15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.

(16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

(17) Contractors providing inspection services.

(18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.

(19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

(e) Agency implementation shall include procedures requiring the agency head or designated requirements official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment should place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work products. Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of a solicitation.

## **PART 11—DESCRIBING AGENCY NEEDS**

6. Section 11.105 is added to read as follows:

### **11.105 Purchase descriptions for service contracts.**

In drafting purchase descriptions for service contracts, agency requiring activities shall ensure that inherently governmental functions (see subpart 7.5) are not assigned to a contractor. These purchase descriptions shall

(a) Reserve final determination for Government officials;

(b) Require proper identification of contractor personnel who attend meetings, answer Government telephones, or work in situations where

their actions could be construed as acts of Government officials unless, in the judgment of the agency, no harm can come from failing to identify themselves; and

(c) Require suitable marking of all documents or reports produced by contractors.

**PART 37—SERVICE CONTRACTING**

7. Section 37.102 is revised to read as follows:

**37.102 Policy.**

(a) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A-76, Performance of Commercial Activities and subpart 7.3).

(b) Agencies shall not award a contract for the performance of an inherently governmental function (see subpart 7.5).

(c) Non-personal service contracts are proper under general contracting authority.

8. Section 37.114 is added to read as follows:

**37.114 Special acquisition requirements.**

Contracts for services which require the contractor to provide advice, opinions, recommendations, ideas, reports, analyses, or other work products have the potential for influencing the authority, accountability, and responsibilities of Government officials. These contracts require special management attention to ensure that they do not result in performance of inherently governmental functions by the contractor and that Government officials properly exercise their authority. Agencies must ensure that—

(a) A sufficient number of qualified Government employees are assigned to oversee contractor activities, especially those that involve support of government policy or decision making. During performance of service contracts, the functions being performed shall not be changed or expanded to become inherently governmental.

(b) A greater scrutiny and an appropriate enhanced degree of management oversight is exercised when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (see 7.503(c)).

(c) All contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public or

Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. They must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed.

[FR Doc. 96-1015 Filed 1-25-96; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 8, 51, and 52**

[FAC 90-37; FAR Case 91-108; Item II]

RIN 9000-AF71

**Federal Acquisition Regulation; Javits-Wagner-O'Day Program (JWOD)**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify that the Government's obligation to purchase items from statutorily mandated sources of supply also applies when contractors purchase items for Government use. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 91-108.Q02

**SUPPLEMENTARY INFORMATION:**

**A. Background**

A proposed rule was published in the Federal Register at 59 FR 14454, March 28, 1994. The rule amended FAR Parts 8, 51, and 52 to clarify that the statutory obligation for Government agencies to purchase certain items from the Committee for Purchase from People Who are Blind or Severely Disabled also

applies when contractors purchase items for Government use.

Five substantive comments from three sources were received during the public comment period. Clarifying revisions have been made to §§ 51.101(c) and 52.208-9 of the rule as a result of the public comments.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely clarifies that contractors must purchase certain items from the same statutorily mandated sources that Government agencies are required to use, when a contractor is performing an agency's supply function.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8, 51, and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR parts 8, 51, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 8, 51, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

2. Section 8.001 is amended by revising paragraphs (a)(2) (ii) and (iii) and adding paragraph (c) to read as follows:

**8.001 Priorities for use of Government supply sources.**

(a) \* \* \*

(2) \* \* \*

(ii) Mandatory Federal Supply Schedules (see subpart 8.4);

(iii) Optional use Federal Supply Schedules (see subpart 8.4); and

\* \* \* \* \*

(c) The statutory obligation for Government agencies to satisfy their



requirements for supplies available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supply items for Government use.

3. Section 8.003 is added to read as follows:

**8.003 Contract clause.**

The contracting officer shall insert the clause at 52.208-9, Contractor Use of Mandatory Sources of Supply, in solicitations and contracts which require a contractor to purchase supply items for Government use that are available from the Committee for Purchase from People Who Are Blind or Severely Disabled. The contracting officer shall identify in the contract schedule the items which must be purchased from a mandatory source and the specific source.

**PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS**

4. Section 51.101 is amended by adding paragraph (c) to read as follows:

**51.101 Policy.**

(c) Contracting officers shall authorize contractors purchasing supply items for Government use that are available from the Committee for Purchase from People Who Are Blind or Severely Disabled (see subpart 8.7) to purchase such items from the Defense Logistics Agency (DLA), the General Services Administration (GSA), and the Department of Veterans Affairs (VA) if they are available from these agencies through their distribution facilities. Mandatory supplies that are not available from DLA/GSA/VA shall be ordered through the appropriate central nonprofit agency (see 52.208-9(c)).

5. Section 51.102 is amended in the first sentence of the introductory text of paragraph (a) by inserting after the word "sources" the phrase "in accordance with 51.101 (a) or (b),"; adding a new second sentence; and revising paragraph (c)(3) to read as follows:

**51.102 Authorization to use Government supply sources.**

(a) \* \* \* A written finding is not required when authorizing use of the Government supply sources in accordance with 51.101(c). \* \* \*

\* \* \* \* \*

(c) \* \* \*

(3) Approval for the contractor to use Department of Veterans Affairs (VA) supply sources from the Deputy Assistant Secretary for Acquisition and Materiel Management (Code 90), Office of Acquisition and Materiel

Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420;

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

6. Section 52.208-9 is added to read as follows:

**52.208-9 Contractor Use of Mandatory Sources of Supply.**

As prescribed in 8.003, insert the following clause:

Contractor Use Of Mandatory Sources Of Supply (Mar 1996)

(a) Certain supplies to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase from People Who Are Blind or Severely Disabled (Javits-Wagner-O' Day Act (JWOD) (41 U.S.C. 48)). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies by the time required, or if the quality of supplies provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies from other sources until the Contracting Officer has notified the Contractor that the mandatory source has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contract for JWOD central nonprofit agencies are:

(1) National Industries for the Blind (NIB)  
1901 North Beauregard Street, Suite 200  
Alexandria, VA 22311-1705 (703) 998-0770

(2) NISH, 2235 Cedar Lane, Vienna, VA  
22182-5200 (703) 560-6800

(End of clause)

[FR Doc. 96-1016 Filed 1-25-96; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 9**

[FAC 90-37; FAR Cases 93-301 and 93-306; Item III]

RIN 9000-AF40

**Federal Acquisition Regulation; Made in America Labels/Unfair Trade Practices**

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule adopted as final.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement sections 201 and 202 of the Defense Production Act. Section 201 directs that the FAR be amended to address the responsibility of contractors who engage in unfair trade practices as defined in section 201. Section 202 directs that the FAR be amended to address the responsibility of persons that intentionally affix a label bearing a fraudulent "Made in America" inscription to a product sold in or shipped to the United States. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** January 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph De Stefano (202) 501-1758 in reference to these combined FAR cases. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR cases 93-301 and 93-306.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule implements the requirements of sections 201 and 202 of the Defense Production Act. Section 201 of the Defense Production Act (Public Law 102-558) provides that any contractor who has engaged in unfair trade practices may be found to lack such business integrity to affect the contractor's responsibility to perform a Government contract or subcontract. Section 201 defines "unfair trade

practices" as the commission by a contractor of any of the following acts: (1) A violation of Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as determined by the International Trade Commission (2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the "Coordination Committee" for purposes of the Export Administration Act of 1979 (50 U.S.C. App. 2401, *et seq.*) or any similar bilateral or multilateral export control agreement, or (3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished. Section 201 mandates that this statement of public contract law policy be implemented by amending FAR subpart 9.4, not later than 270 days after the date of enactment of the Defense Production Act (October 28, 1992).

Section 202 of the Defense Production Act (Public Law 102-558) provides that any person determined to have intentionally affixed a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States, when such product was not made in the United States, may be found to lack business integrity or business honesty to such a degree as to affect their responsibility to perform a Federal contract or subcontract. Section 202 mandates that this statement of policy be implemented by amending FAR Subpart 9.4 (Debarment, Suspension, and Ineligibility) not later than 270 days (July 28, 1993) after the date of enactment of the Defense Production Act (October 28, 1992).

A combined interim rule was published in the Federal Register at 59 FR 11368 on March 10, 1994. Two sources submitted public comments. No changes were made as a result of those comments.

#### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to entities who engage in unfair trade practices or who intentionally affix fraudulent "Made in America" labels to products sold in or shipped to the United States.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Part 9

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,  
*Acting Director, Office of Federal Acquisition Policy.*

#### Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR part 9, which was published at 59 FR 11371, March 10, 1994, (FAC 90-20, Item II) is adopted as a final rule without change.

The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 96-1017 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 9 and 52

[FAC 90-37; FAR Case 92-615; Item IV]

RIN 9000-AF57

#### Federal Acquisition Regulation; Debarment and Suspension Certificate

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to add tax evasion as a cause for consideration for suspension or debarment. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Ralph De Stefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-37, FAR case 92-615.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Twentieth Report by the Committee on Government Operations entitled "Coins, Contracting, and Chicanery: Treasury and Justice Departments Fail to Coordinate" dated May 27, 1992, among other things, stated that there was a very real possibility that the U.S. Government did business with a man indicted as being one of the biggest tax evaders in history. In order to prevent this from happening in the future, a revision to the FAR was proposed to address tax evasion.

A proposed rule was published in the Federal Register at 58 FR 63494 on December 1, 1993. Four sources submitted public comments. No changes were made as a result of those comments.

##### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because offerors already must certify whether they have been convicted of or had a civil judgment rendered against them for a list of offenses. This rule will add "tax evasion" to the existing certification, as well as to the list of offenses for which contractors may be suspended or debarred from Federal contracts.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9 and 52

Government procurement.

Dated: January 11, 1996.  
Edward C. Loeb,  
*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 9 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 9 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## **PART 9—CONTRACTOR QUALIFICATIONS**

### **9.406-2 [Amended]**

2. Section 9.406-2 is amended in paragraph (a)(3) by inserting "tax evasion," after "false statements,".

### **9.407-2 [Amended]**

3. Section 9.407-2 is amended in paragraph (a)(3) by inserting "tax evasion," after "false statements,".

## **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

### **52.209-5 [Amended]**

4. Section 52.209-5 is amended by revising the clause date to read "(MAR 1996)"; and in paragraph (a)(1)(i)(B) by inserting "tax evasion," after "false statements".

### **52.212-3 [Amended]**

5. Section 52.212-3 is amended by revising the date of the provision to read "(MAR 1996)"; and in paragraph (h)(2) by adding "tax evasion," after "false statements,".

[FR Doc. 96-1018 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

## **DEPARTMENT OF DEFENSE**

### **GENERAL SERVICES ADMINISTRATION**

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 15 and 52**

[FAC 90-37; FAR Case 92-010; Item V]

RIN 9000-AF77

#### **Federal Acquisition Regulation; Nonprofit Institutions Clause Prescription**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR). These changes revise the prescriptions for use of the clauses, Termination of Defined Benefit Pension Plans and Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), and also clarifies the language of the clauses. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-010.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

The wording of the prescriptions at 15.804-8(e) and (f) currently implies that the clauses at 52.215-27, Termination of Defined Benefit Pension Plans, and 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions, should also be used in solicitations and contracts with noncommercial organizations. The clauses refer to the cost principles applicable to commercial organizations in FAR subpart 31.2, whereas OMB Circulars A-21, A-87 and A-122 contain the cost principles governing contracts with noncommercial organizations. In addition, the prescriptions currently contain dissimilar criteria concerning the use of the clauses in preaward or postaward cost situations. The revisions to the prescriptions at 15.804-8(e) and (f) correct these inconsistencies and clarify when the clauses at 52.215-27 and 52.215-39 should be used. Additional revisions to the clauses clarify the requirements specified in them. A proposed rule was published in the Federal Register at 59 FR 16389, April 6, 1994. Three public comments were received. No changes were made as a result of those comments.

##### **B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded

to small businesses are awarded on a competitive, fixed-price basis and the cost principles do not apply. It is estimated that the number of contract actions awarded to small businesses which require the submission of cost or pricing data average less than 1 percent of the total number of small business actions.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,  
*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 15 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 15 and 52 continue to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## **PART 15—CONTRACTING BY NEGOTIATION**

2. Section 15.804-8 is amended by revising paragraphs (e) and (f); and in paragraph (g) by removing the word "certified". The revised text reads as follows:

### **15.804-8 Contract clauses and solicitation provisions.**

\* \* \* \* \*

(e) *Termination of defined benefit pension plans.* The contracting officer shall insert the clause at 52.215-27, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to part 31.

(f) *Postretirement benefit funds.* The contracting officer shall insert the clause at 52.215-39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to part 31.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Section 52.215-27 is amended by revising the clause to read as follows:

**52.215-27 Termination of Defined Benefit Pension Plans.**

\* \* \* \* \*

Termination of Defined Benefit Pension Plans (Mar 1996)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or gift a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meets the applicability requirements of FAR 15.804-8(e).  
(End of clause)

4. Section 52.215-39 is amended by revising the clause to read as follows:

**52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).**

\* \* \* \* \*

Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (Mar 1996)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination, reduction, or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share of any amount of previously funded PRB costs which revert or inure to the Contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data (see 15.804 of the Federal Acquisition Regulation (FAR)) were submitted or which are subject to FAR Part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804-8(f).  
(End of clause)

[FR Doc. 96-1019 Filed 1-25-96; 8:45 am]  
BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

[FAC 90-37; FAR Case 95-006; Item VI]

RIN 9000-AG69

**Federal Acquisition Regulation; Field Pricing Support Request**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to clarify internal Government procedures for requesting field pricing support. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 95-006.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule implements a recommendation of the Department of Defense Procurement Process Reform Process Action Team. The rule clarifies that contracting officers may send audit requests directly to the cognizant audit office, if no other type of field pricing support is required.

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-37, FAR case 95-006), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 15**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 15 is amended as set forth below:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR Part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.805-5 is amended in paragraph (c)(1) by revising the second sentence to read as follows:

**15.805-5 Field pricing support.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \* If an audit is all that is needed, the contracting officer may initiate an audit by sending the request directly to the cognizant audit office.

\* \* \*

\* \* \* \* \*

[FR Doc. 96-1020 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

[FAC 90-37; FAR Case 92-002; Item VII]

RIN 9000-AF74

**Federal Acquisition Regulation; Subcontract Proposal Audits**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to add two additional examples of when field pricing support audits of subcontract proposals may be appropriate. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy Olson, at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-002.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An amendment to the FAR was published in the Federal Register at 59 FR 14457, March 28, 1994, as a proposed rule with a request for comments. Three responses were received. Each supported the proposed rule.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and certified cost or pricing data and field pricing support are not required.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 15**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 15 is amended as set forth below:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR Part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.806-3 is amended in paragraph (a)(3) by removing "or"; in paragraph (a)(4) by removing the period and inserting a semicolon; and by adding paragraphs (a) (5) and (6) to read as follows:

**15.806-3 Field pricing reports.**

(a) \* \* \*

(5) The contractor or higher tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing, especially the failure to perform adequate cost analyses of proposed subcontract costs or to perform subcontract analyses prior to negotiation of the prime contract with the Government; or

(6) A lower tier subcontractor has been cited as having significant estimating system deficiencies.

\* \* \* \* \*

[FR Doc. 96-1021 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

[FAC 90-37; FAR Case 92-017; Item VIII]

RIN 9000-AF79

**Federal Acquisition Regulation; Overhead Should-Cost Reviews**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend the Federal Acquisition Regulation (FAR) to add guidance on overhead should-cost reviews. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general

information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-37, FAR case 92-017.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

An amendment to FAR 15.810 was published in the Federal Register at 59 FR 16388, April 6, 1994, as a proposed rule with a request for comments. Six responses were received. The Councils' analysis of those comments did not result in any revisions to the proposed rule previously published.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts awarded to small entities rarely are subject to program or overhead should-cost reviews.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 15**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 15 is amended as set forth below:

**PART 15—CONTRACTING BY NEGOTIATION**

1. The authority citation for 48 CFR Part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 15.810 is revised to read as follows:

**15.810 Should-cost review.**

**15.810-1 General.**

(a) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods. During traditional reviews, local contract audit

and contract administration personnel primarily base their evaluation of forecasted costs on an analysis of historical costs and trends. In contrast, should-cost reviews do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(b) There are two types of should-cost reviews—program should-cost review (see 15.810-2) and overhead should-cost review (see 15.810-3). These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

#### 15.810-2 Program should-cost review.

(a) Program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually incurred in the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(b) A program should-cost review should be considered, particularly in the case of a major system acquisition (see part 34), when—

- (1) Some initial production has already taken place;
- (2) The contract will be awarded on a sole-source basis;
- (3) There are future year production requirements for substantial quantities of like items;
- (4) The items being acquired have a history of increasing costs;
- (5) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(6) Sufficient time is available to plan and conduct the should-cost review adequately; and

(7) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(c) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(d) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer (ACO) a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(e) When a program should-cost review is planned, the contracting officer should state this fact in the acquisition plan (see subpart 7.1) and in the solicitation.

#### 15.810-3 Overhead should-cost review.

(a) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, facilities and equipment, depreciation, plant maintenance and security, taxes, and general and administrative activities. It is normally used to evaluate and negotiate a forward pricing rate agreement (FPRA) with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(b) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

- (1) Dollar amount of Government business.
- (2) Level of Government participation.

(3) Level of noncompetitive Government contracts.

(4) Volume of proposal activity.

(5) Major system or program.

(6) Mergers, acquisitions, takeovers.

(7) Other conditions, e.g., changes in accounting systems, management, or business activity.

(c) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, identify inefficient and uneconomical practices, and recommend corrective action. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating a FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

[FR Doc. 96-1022 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Part 19

[FAC 90-37; FAR Case 92-606; Item IX]

RIN 9000-AG78

#### Federal Acquisition Regulation; SBA Responsibility, Certificate of Competency Requests

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to reflect approval authority of the Small Business Administration (SBA) regional offices to issue Certificate of Competency (COC) Determinations as provided in 13 CFR Part 125. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-37, FAR case 92-606.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

FAR 19.602-2(b)(3) currently requires that all COC requests over \$500,000 be forwarded to the SBA Central Office for a decision on issuance. The issuance of COC's by the SBA is governed by 13 CFR Part 125, which authorizes regional SBA offices to issue COC's within their delegated authority. This rule merely reflects existing internal SBA procedures.

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAC 90-37, FAR case 92-606, in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 19**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 19 is amended as set forth below:

**PART 19—SMALL BUSINESS PROGRAMS**

1. The authority citation for 48 CFR Part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.602-2 is amended as follows:

(a) The paragraph designation "(a)" is removed;

(b) Paragraph (b) is removed;  
(c) Paragraph (c) is redesignated as (d) and revised; and  
(d) Paragraphs (a)(1) through (a)(3) are redesignated as (a), (b), and (c), respectively.

**19.602-2 Issuing or denying a certificate of competency (COC).**

\* \* \* \* \*

(d) Notify the concern and the contracting officer that the COC is denied or is being issued.

[FR Doc. 96-1023 Filed 1-25-96; 8:45 am]

**BILLING CODE 6820-EP-M**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 19 and 52**

[FAC 90-37; FAR Case 93-308; Item X]

**RIN 9000-AG70**

**Federal Acquisition Regulation; Mentor Protégé Program**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to allow mentor firms under the Department of Defense Pilot Mentor-Protégé Program to be granted credit toward subcontracting goals under small business subcontracting plans entered into with any executive agency. The rule also will permit mentor firms to award subcontracts on a noncompetitive basis to protégé firms under Department of Defense or other contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**DATES:** *Effective Date:* January 26, 1996.

*Comment Due Date:* To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before March 26, 1996.

**ADDRESSES:** Comments should be submitted to: General Services Administration, FAR Secretariat, 18th & F Streets NW., Room 4037, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 37, FAR case 93-308.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This rule implements Section 814(c) of Public Law 102-190, which amended the Small Business Act at 15 U.S.C. 637(d)(11) to authorize certain costs incurred by a mentor firm under the Department of Defense Mentor-Protégé Program to be credited toward subcontracting goals for awards to small disadvantaged businesses. This rule also further implements Section 831(f)(2) of Public Law 101-510 which permits mentor firms to award subcontracts on a noncompetitive basis to its protégés under Department of Defense or other contracts.

**B. Regulatory Flexibility Act**

The interim rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revisions apply to mentor firms under the DOD Pilot Mentor-Protégé Program, and these firms generally are not small entities. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR parts will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90-37, FAR case 93-308) in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any reporting or recordkeeping requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**D. Determination to Issue an Interim Rule**

A determination has been made under authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA); and the Administrator of the National Aeronautics and Space Administration (NASA) that, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. However, public comments received in response

to this interim rule will be considered in formulating the final rule. The rule is necessary to further implement Section 814(c) of Public Law 102-190, which amended the Small Business Act at 15 U.S.C. 637(d)(11) to authorize certain costs incurred by a Department of Defense Mentor-Protégé Program firm to be credited toward subcontracting goals for awards to small disadvantaged businesses, and Section 831(f)(2) of Public Law 101-510 which permits mentor firms to award subcontracts on a noncompetitive basis to its protégés under Department of Defense or other contracts.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### **PART 19—SMALL BUSINESS PROGRAMS**

2. Section 19.702 is amended by adding paragraph (d) to read as follows:

##### **19.702 Statutory requirements.**

\* \* \* \* \*

(d) As authorized by 15 U.S.C. 637(d)(11), certain costs incurred by a mentor firm in providing developmental assistance to a Protégé firm under the Department of Defense Pilot Mentor-Protégé Program, may be credited as subcontract awards to a small disadvantaged business for the purpose of determining whether the mentor firm attains a small disadvantaged business goal under any subcontracting plan entered into with any executive agency. However, the mentor firms must have been approved by the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense for Acquisition and Technology, OUSD (A&T)SADBU, Room 2A340, The Pentagon, Washington, DC 20301-3061, (703) 697-1688, before developmental assistance costs may be credited against subcontract goals.

#### **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. 52.244-5 is amended by revising the clause to read as follows:

#### **52.244-5 Competition in Subcontracting.**

\* \* \* \* \*

Competition in Subcontracting (Jan 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

[FR Doc. 96-1024 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

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### **DEPARTMENT OF DEFENSE**

#### **GENERAL SERVICES ADMINISTRATION**

#### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

#### **48 CFR Parts 19 and 52**

[FAC 90-37; FAR Case 92-019; Item XI]

RIN 9000-AF45

#### **Federal Acquisition Regulation; Subcontracting Plans**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend the Federal Acquisition Regulation (FAR) to expand the circumstances when subcontracting plans may be required from and negotiated with more than the apparently successful offeror and to add a clause alternate for use when subcontracting plans are required with initial proposals. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

#### **FOR FURTHER INFORMATION CONTACT:**

Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-019.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

An amendment to FAR 19.705-2, 19.708, and 52.219-9 was published in the Federal Register at 59 FR 16390, April 6, 1994, as a proposed rule with a request for comments. Two responses were received. The Councils' analysis of those comments did not result in any revisions to the proposed rule.

##### **B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because subcontracting plans are not required from small business concerns.

##### **C. Paperwork Reduction Act**

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply because the final rule contains information collection requirements. Accordingly, a request for approval of a revised information collection requirement concerning 9000-0006 was submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and approved through March 31, 1998.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 19 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### **PART 19—SMALL BUSINESS PROGRAMS**

2. Section 19.705-2 is amended by revising paragraph (d) to read as follows:

##### **19.705-2 Determining the need for a subcontracting plan.**

\* \* \* \* \*

(d) In solicitations for negotiated acquisitions, the contracting officer may require the submission of subcontracting plans with initial offers, or at any other time prior to award. In determining when subcontracting plans should be required, as well as when and



with whom plans should be negotiated, the contracting officer shall consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small, small disadvantaged and women-owned small business concerns to participate, and the burden placed on offerors.

3. Section 19.708 is amended in paragraph (b)(1)(iii) by revising "has been" to read "is" and by adding a sentence at the end of the paragraph to read as follows:

**19.708 Solicitation provisions and contract clauses.**

\* \* \* \* \*

(b)(1) \* \* \*

(iii) \* \* \* When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705-2(d), the contracting officer shall use the clause with its Alternate II.

\* \* \* \* \*

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

4. Section 52.219-9 is amended by adding Alternate II at the end of the section to read as follows:

**52.219-9 Small, Small Disadvantaged, and Women-Owned Small Business Subcontracting Plan.**

\* \* \* \* \*

*Alternate II* (MAR 1996). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan, which separately addresses subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

[FR Doc. 96-1025 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 28 and 52**

[FAC 90-37; FAR Case 92-014; Item XII]

RIN 9000-AF78

**Federal Acquisition Regulation; Insurance—Liability to Third Persons**

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to delete a solicitation provision and prescriptive language pertaining to liability insurance under cost-reimbursement contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter O'Such at (202) 501-1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-014.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The deleted FAR language applied only to cost-reimbursement contracts for research and development awarded to state agencies or charitable institutions that claim partial or total immunity from tort liability. For these entities, Alternates I and II of 52.228-7, Insurance—Liability to Third Persons, limit the contract's insurance requirements and the Government's obligation to indemnify for third party liability. A proposed rule was published in the Federal Register at 59 FR 16392, April 6, 1994. No substantive comments were received in response to the proposed rule.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space

Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the FAR language being deleted applies only to cost-reimbursement contracts for research and development that are awarded to entities which, by virtue of their status as either an agency of the state or as a charitable institution, claim partial or total immunity from tort liability under such contracts. These entities are believed to be few in number.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Parts 28 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 28 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 28—BONDS AND INSURANCE**

**28.311-1 [Removed]**

**28.311-2 and 28.311-3 [28.311-2, 28.311-3 Redesignated as 28.311-1, 28.311-2]**

2. Section 28.311-1 is removed and sections 28.311-2 and 28.311-3 are redesignated as 28.311-1 and 28.311-2, respectively.

**28.311-1 [Amended]**

3. The newly designated 28.311-1 is amended by removing the last two sentences.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**52.228-6 [Removed and reserved]**

4. Section 52.228-6 is removed and reserved.

5. Section 52.228-7 is amended in the introductory paragraph by removing the citation "28.311-2" and inserting "28.311-1"; by revising the date of the clause heading; by revising paragraphs

(a)(1) and (c) introductory text; and by removing Alternates I and II. The revised text reads as follows:

**52.228-7 Insurance—Liability to Third Persons.**

\* \* \* \* \*

Insurance—Liability to Third Persons (Marcg 1996)

(a)(1) Except as provided in subparagraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insurance as the Contracting Officer may require under this contract.

\* \* \* \* \*

(c) The Contractor shall be reimbursed—

\* \* \* \* \*

6. Section 52.245-7 is amended by revising the date of the clause and the first sentence of paragraph (j) to read as follows:

**52.245-7 Government Property (Consolidated Facilities).**

\* \* \* \* \*

Government Property (Consolidated Facilities March 1996)

\* \* \* \* \*

(j) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at FAR 52.228-7, Insurance—Liability to Third Persons.\* \* \*

\* \* \* \* \*

7. Section 52.245-10 is amended by revising the date of the clause and the first sentence of paragraph (f) to read as follows:

**52.245-10 Government Property (Facilities Acquisition).**

\* \* \* \* \*

Government Property (Facilities Acquisition March 1996)

\* \* \* \* \*

(f) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at FAR 52.228-7, Insurance—Liability to Third Persons.\* \* \*

\* \* \* \* \*

[FR Doc. 96-1026 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 31**

[FAC 90-37; FAR Case 94-002; Item XIII]

RIN 9000-AG79

**Federal Acquisition Regulation; Availability of Accounting Guide**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to advise contractors on how to obtain an informational accounting guide entitled "Guidance for New Contractors." This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 94-002.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The final rule is the result of a recommendation by the Office of Federal Procurement Policy SWAT Team that the FAR be revised to include information on how contractors may obtain an accounting guide, published by the Defense Contract Audit Agency, to assist in developing contractors' accounting systems.

**B. Regulatory Flexibility Act**

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C.

601, *et seq.* (FAC 90-37, FAR case 94-002), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 31 is amended as set forth below:

**PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.002 is added to read as follows:

**31.002 Availability of accounting guide.**

Contractors needing assistance in developing or improving their accounting systems and procedures may request a copy of the guide entitled "Guidance for New Contractors" (DCAAP 7641.90). The guide is available from: Headquarters, Defense Contract Audit Agency, Operating Administrative Office, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, Virginia 22060-6219; Telephone No. (703) 767-1066; Telefax No. (703) 767-1061.

[FR Doc. 96-1027 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Part 31**

[FAC 90-37; FAR Case 92-604; Item XIV]

RIN 9000-AF85

**Federal Acquisition Regulation;  
Nonallowability of Excise Taxes on  
Nondeductible Contributions to  
Deferred Compensation Plans**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) by revising the cost principle concerning taxes. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-604.

**SUPPLEMENTARY INFORMATION:****A. Background**

Under the current FAR 31.205-41(b)(6), excise taxes on accumulated funding deficiencies or prohibited transactions involving employee deferred compensation plans pursuant to sections 4971 and 4975 of the Internal Revenue Code of 1954, as amended, are unallowable. This reflects a long-standing Government policy that punitive-type excise taxes are not reimbursable costs on Government contracts. Over the years, subsequent legislation has added several new excise taxes to subtitle D, chapter 43 of the Internal Revenue Service Code such that the Code currently lists 13 such taxes. The Councils have agreed that it is appropriate to revise FAR 31.205-41(b)(6) to insert a general prohibition on all excise taxes found at subtitle D, chapter 43 of the Internal Revenue Service Code. Such a general

prohibition will ensure that future legislative changes to subtitle D, chapter 43 of the Internal Revenue Code will be automatically reflected in the cost principle.

A proposed rule was published in the Federal Register at 59 FR 16393, April 6, 1994, with a request for comments. Three responses were received. The Councils' analysis of those comments did not result in any revisions to the proposed rule.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 55 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR Part 31 is amended as set forth below:

**PART 31—CONTRACT COST  
PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-41 is amended by revising paragraph (b)(6) to read as follows:

**31.205-41 Taxes.**

\* \* \* \* \*

(b) \* \* \*

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred

compensation plans, or other similar types of plans.

\* \* \* \* \*

[FR Doc. 96-1028 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 44 and 52**

[FAC 90-37; FAR Case 92-040; Item XV]

RIN 9000-AF82

**Federal Acquisition Regulation;  
Contractors' Purchasing Systems  
Reviews and Subcontractor Consent**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to increase the dollar thresholds for the performance of Contractors' Purchasing Systems Reviews (CPSR's) and the thresholds for subcontract consent. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**EFFECTIVE DATE:** March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-37, FAR case 92-040.

**SUPPLEMENTARY INFORMATION:****A. Background**

A proposed rule was published in the Federal Register at 59 FR 16393, April 6, 1994. The rule proposed to raise (1) the threshold for performing CPSR's from \$10 million to \$25 million, and (2) in the clause, Subcontracts (Cost-Reimbursement and Letter Contracts), (i) the \$10,000 threshold for notification to the contracting officer to \$25,000, and (ii) the \$10,000 threshold requiring additional information on certain subcontracts to \$25,000. After evaluation of public comments, the Councils agreed to a final rule without

change. As a result of internal review, it was determined that FAR 44.201-2(a)(1) should also be revised to reflect the higher threshold.

#### B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the threshold increase will reduce the number of contractors meeting the criteria for CPSR's and the number of small businesses requesting consent to subcontract as a result of the increased threshold will be minimal.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) is deemed to apply because the final rule contains

information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning 9000-0132 has been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, through June 30, 1997.

#### List of Subjects in 48 CFR Parts 44 and 52

Government procurement.

Dated: January 11, 1996.

Edward C. Loeb,

*Acting Director, Office of Federal Acquisition Policy.*

Therefore, 48 CFR parts 44 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 44 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

### PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

#### 44.201-2 [Amended]

2. Section 44.201-2 is amended in paragraph (a)(1) by removing "\$10,000" and inserting "\$25,000" in its place.

#### 44.302 [Amended]

3. Section 44.302 is amended in paragraph (a) by removing "\$10 million" each time (twice) it appears and inserting "\$25 million".

### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 52.244-2 [Amended]

4. Section 52.244-2 is amended by revising the date of the clause heading to read "(MAR 1996)"; and by removing from paragraphs (a)(4) and (b)(1)(i) "\$10,000" and inserting "\$25,000".

[FR Doc. 96-1029 Filed 1-25-96; 8:45 am]

BILLING CODE 6820-EP-M

Federal Reserve

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Friday  
January 26, 1996

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**Part V**

**Department of  
Housing and Urban  
Development**

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24 CFR Parts 203 and 221  
Single Family Mortgage Insurance  
Premium; Proposed Rule

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for  
Housing—Federal Housing  
Commissioner**

**24 CFR Parts 203 and 221**

**[Docket No. FR-3899-P-01]**

**RIN 2502-AG55**

**Single Family Mortgage Insurance  
Premium**

**AGENCY:** Office of the Assistant  
Secretary for Housing—Federal Housing  
Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would provide many benefits to the mortgage lenders that would reduce their servicing costs and the confusion generated by adjustments to the annual mortgage insurance premium (MIP) on cases not endorsed within the first six months after amortization. The rule would change the method of payment, and the reconciliation schedule, and clarify the due date. The changes would result in an increase in MIP income, thereby strengthening the FHA insurance fund. Also, it would cut down on the costly reconciliation now done by HUD.

Specifically, this proposed rule would provide that the FHA Commissioner can accrue MIP from the beginning of amortization (as defined in 24 CFR 203.251) on all Section 530 (of the National Housing Act) loans and risk-based loans, no matter what time frame exists between the endorsement date and the beginning of amortization. It would also amend the existing regulation by requiring that mortgagees pay the monthly installments as due on or before the 10th of the month, whether or not collected from the mortgagor. A new system is being developed (and expected to be operational by January 1997) which would produce a monthly notice of premiums due, and the reconciliation would be made monthly by the lender when the premium is paid. There would be no requirement for annual reconciliation.

**DATES:** Comment due date: March 26, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500.

Communications should refer to the above docket number and title.

Facsimile (FAX) comments are *not* acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Christopher Peterson, Director, Office of Mortgage Insurance Accounting and Servicing, Room 2108, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-1046. For telephone communication, contact Anne Baird-Bridges, Single Family Insurance Operations Division, at (202) 708-2438. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-4594. These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 320 of the Housing and Community Development Act of 1980 (Pub. L. 96-399) amended Title V of the National Housing Act (the Act) (12 U.S.C. 1702 et seq.) to add a new section 530. Section 530 requires, with respect to insurance of mortgages under Title II of the Act, the payment of MIPs upon receipt from the borrower, except HUD may approve payment of such premiums within 24 months of such receipt if the financial institution or mortgagee pays interest to the insurance fund. On July 15, 1982, at 47 FR 30750, the Department published a final rule that implemented section 530 by requiring mortgagees to pay the MIP in installments due on or before the 10th day of the month following the month in which payments are due from the mortgagors. On June 23, 1983, at 48 FR 28794, the Department published a final rule which set forth the requirement that the borrower pay a single premium when the mortgage loan is closed, which represents the total premium obligation for the insured loan. This change applied to all new mortgages insured under the Mutual Mortgage Insurance Fund; therefore, after the change took effect, section 530 was limited to mortgages insured under the Special Risk and General Insurance Funds.

Section 530 loans include all FHA loans endorsed prior to September 30, 1983, and all FHA loans insured under the Special Risk and General Insurance Funds after September 1983. Lenders are required to remit annual MIP in 12 monthly payments totalling one-half of one percent of the average outstanding principal obligation of the mortgage.

The risk-based premium became effective on July 1, 1991, for all loans

insured under the provisions of the Mutual Mortgage Insurance Fund, in accordance with the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) and the National Affordable Housing Act of 1990 (Pub. L. 101-625). Sections 203.284 and 203.285 of title 24 of the Code of Federal Regulations were promulgated to implement the provisions governing risk-based premiums (See 57 FR 15208, April 24, 1992, and 58 FR 40996, July 30, 1993). Risk-based premiums have two components: the up-front premium and the periodic premium. Periodic premiums on risk-based loans are collected over a set number of years, depending on the loan-to-value ratio of the mortgage. Premium payments are paid in twelve monthly installments totalling one-half of one percent of the insured principal balance of the mortgage, minus any amounts included to finance up-front MIP. However, there is an exception under § 203.285 for any mortgage with a term of 15 years or less, which requires premium payments totalling one-fourth of one percent of the insured principal balance.

**Proposed Change**

This rule proposes to change the method of payment and the reconciliation schedule, and to clarify the due date. Specifically, this proposed rule would provide that the FHA Commissioner can accrue MIP from the beginning of amortization (as defined in 24 CFR 203.251) on all Section 530 and risk-based loans, no matter what time frame exists between the endorsement date and the beginning of amortization. It would also amend the existing regulation by requiring that mortgagees pay the monthly installments as due on or before the 10th of the month, whether or not collected from the mortgagor. A monthly notice of premiums due would be sent, and reconciliation would be made monthly by the lender when the MIP payment is made. There would be no requirement for annual reconciliation.

This rule proposes to revise §§ 203.262, 203.264, and 203.265 to reflect the new policy on monthly payment of MIPs. The revised provisions would also apply to risk-based premiums under §§ 203.284 and 203.285.

Sections 203.262 and 203.264 apply to the scheduled payments. Existing § 203.264 requires that "any portion of the periodic MIP received by the mortgagee from the mortgagor on or after September 1, 1982, shall be paid to the Commissioner on or before the tenth of the month following the month in which it was received," provided that

the full annual MIP be paid by the tenth of the month following the anniversary date of amortization. At the initiation of the Section 530 Program, mortgagees were offered two payment options:

a. *The Basic Monthly Payment Method.* According to this method, the lender remits on a monthly basis, on or before the tenth of each month, a payment equal to all Section 530 MIP amounts collected from mortgagors during the preceding month, plus any portion of annual MIP remaining due for the current anniversary month whether collected or not.

b. *Optional Monthly Payment Method.* According to this method, the lender remits a monthly payment equal to  $\frac{1}{12}$ th of the total of all annual Section 530 MIPs for all mortgagees in the mortgagee's servicing portfolio for the month, plus any annual premiums remaining due, without regard to MIP amounts collected from mortgagors.

Most lenders opt to pay the premiums as due. This proposed rule would eliminate the option to pay the premiums when collected. HUD systems are set up to reconcile remittances of MIP, late charges, and interest based on payment of monthly premiums by the 10th of the month; exceptions must be manually processed.

The two provisions to be modified for Section 530 loans also apply to the periodic portion of risk-based loans. Mortgagees submitting risk-based monthly premiums have been following HUD's policy on adjustment of initial MIP depending on the date of endorsement, and have been given the option of paying monthly premiums (1) "as due" or (2) "as collected".

Section 530 and risk-based monthly payments would be recorded in the Single Family Premium Collection Subsystem, which is now being designed. Monthly premiums would be due on the first of the month after the beginning of amortization (as defined in 24 CFR 203.251) and must be received on or before the tenth. Reconciliation between amounts expected by HUD and amounts remitted by the lender would be accomplished after the date of endorsement, when the insurance information has been fed into the FHA Single Family Insurance System. As soon as possible after endorsement, HUD would begin verifying that the lender has paid the required monthly premiums due at that time on each case, and would begin notifying the lender on a monthly basis of any discrepancies existing between expected, versus remitted, amounts. Until the new system is implemented, lenders would continue to reconcile risk-based monthly premiums at case level using

MGIC Investor Services Corporation, and Section 530 monthly premiums at portfolio level based on the Advance Notice of Annual Premiums for Anniversary Due Date, which is being sent by HUD.

The proposed new §§ 203.262 and 203.264 would authorize the FHA Commissioner to accrue annual premiums from the beginning of amortization (as defined in 24 CFR 203.251) on all Section 530 and risk-based loans, no matter what time frame exists between the endorsement date and the beginning of amortization. This rule also proposes to delete § 203.263 which provides for an adjustment on the accrual date of the initial annual MIP depending on the date of endorsement of the loan. Section 203.268 would be revised to provide that if the insurance contract is terminated, the lender would pay a portion of the MIP prorated from the beginning of amortization (as defined in 24 CFR 203.251) to the month in which the loan is terminated. The final monthly payment would be due on the first of the month following termination.

The changes proposed in this rule would provide many benefits to the mortgage lenders that would reduce their servicing costs and the confusion generated by adjustments to MIP on cases not endorsed within the first six months after amortization. The result would be an increase in MIP income, thereby strengthening the FHA insurance fund. The proposed changes would cut down on the costly reconciliation now done by HUD. (The cost of reconciliation on Section 530 and monthly risk based premiums exceeded \$7.5 million in FY 1994.)

According to research completed on FY 1993 cases, approximately 7% of cases were not endorsed within the first six months of amortization. Currently some lenders escrow the premiums received from the homeowners on Section 530 and risk-based loans and remit the premiums to HUD at the beginning of amortization rather than when the case is endorsed for insurance. This has led to much confusion and variations in the computation of initial premiums due, because some contingencies cannot be foreseen at settlement; i.e., endorsement before the beginning of amortization. The revised regulation would prevent confusion for those cases endorsed outside the six-month window by requiring lenders to follow the same guidelines for all cases needing periodic MIP.

MIP income would increase by approximately \$15 million per year. This amount represents the reduction in premiums now taken by the lenders for

both Section 530 loans and risk-based loans, when the loans are endorsed over six months from the beginning of amortization. Lenders should not receive a reduction in monthly MIP due because of late endorsement for the following reasons:

a. This is inconsistent with HUD's policy on one-time and up-front MIP. These amounts are paid within 15 days of closing, and no reduction is given based on the date of endorsement. On risk based loans, § 203.284 requires payment of periodic MIP for a specific number of years, depending on the loan-to-value ratio. When the loan is endorsed after the six-month window, the period of time for which payments are due is being reduced.

b. Often the late endorsement results from late submission of the closing package by the lenders to the Field Office.

The new § 203.264 would require that payment of the periodic MIP be received from the mortgagee on or before the tenth day of the month following the month in which it was due from the mortgagor. For example, for a case closed in August, the initial premium would be remitted by the lender by September 10. Monthly reconciliation would replace annual reconciliation. Once the new system is implemented, monthly notices would reflect a breakdown by case number and by month of the cumulative amounts of monthly premium, late charge, and interest due.

The proposed rule changes the method of payment, and the reconciliation schedule, and clarifies the due date. Payment of the periodic MIP by the lender would be made monthly, regardless when collected. Upon implementation of the new system, a monthly notice from HUD would be sent and reconciliation would be made monthly by the lender when the MIP payment is made. There would be no requirement for annual reconciliation. Remittances would be due, not payable, on or before the tenth day of the month.

Lenders would be informed that they are responsible for all loans in their portfolio for which monthly payments are due, even if they do not appear on the monthly notice. Because of servicing transfers, endorsement delays, and terminations, monthly notices may not reflect the current status of the lender's portfolio and may require reconciliation.

The proposed changes would provide benefits to the mortgage lenders and to HUD. Most lenders choose the "payment when due" option; the choice is made by the lender when they begin

to send in premiums and is indicated on the Form 2748 or 2752. The lender may change from the "Payment as Received" to the "Payment When Due" option without permission, but must receive permission from Headquarters before changing from the "Payment When Due" to the "Payment as Received" option.

The current Single Family Premium Collection System (A31) used for MIP collection is not set up to reconcile payments received under the "Payment as Received" option. The new Single Family Premiums Collection System (SFPCS) is not being set up to reconcile these payments either. The system enhancements necessary to accommodate this option would not be cost effective, and are not necessary, because most lenders have chosen the other option anyway.

It should be noted that § 203.284(f) "Applicability of Other Sections" does not include § 203.264 as applicable to mortgages covered by § 203.284, although HUD has taken the position that this provision is properly applicable to mortgages with risk-based premiums. This rule would re-insert a reference to § 203.264 that was inadvertently deleted when that section was published as a final rule (See 57 FR 15209, April 24, 1992). The rule would also insert references to §§ 203.262 and 203.265 in lieu of the current §§ 203.284(d) and (e) which are being deleted. Similar changes would be made to § 203.285(c).

#### Other Matters

##### *Environmental Review*

A Finding of No Significant Impact with respect to the environment has been made in accordance with the HUD regulation at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

##### *Executive Order 12866*

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this interim rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC.

#### *Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. A review of the universe of approved mortgagees indicates that only a small percentage of them have assets of less than \$10 million. These can be considered "small entities" for purposes of this regulation. The number of "small entities" affected, therefore, is not substantial. Further, HUD records indicate smaller companies hold relatively few insured mortgages, and they tend to concentrate their business in the conventional mortgage market. Thus, even for those "small entities" affected, the impact is expected to be relatively insignificant.

#### *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 would 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 rule is not subject to review under the order.

#### *Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs would result from promulgation of this rule, as those policies and programs relate to family concerns.

#### List of Subjects

##### *24 CFR Part 203*

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

#### List of Subjects

##### *24 CFR Part 221*

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend Subtitle B, Chapter II, Subchapter B, of Title 24 of the Code of Federal Regulations as follows:

#### **PART 203—SINGLE FAMILY MORTGAGE INSURANCE**

1. The authority for part 203 would continue to read as follows:

Authority: 12 U.S.C. 1709, 1715b; 42 U.S.C. 3535(d).

Subpart C also is issued under 12 U.S.C. 1715u.

2. Section 203.262 would be revised to read as follows:

##### **§ 203.262 Due date of periodic MIP.**

The full initial and each annual MIP shall be due and payable no later than the 10th day after the amortization anniversary date.

##### **§ 203.263 [Removed]**

3. Section 203.263 would be removed.

4. Section 203.264 would be revised to read as follows:

##### **§ 203.264 Payment of periodic MIP.**

The mortgagee shall pay each MIP in twelve equal monthly installments. Each monthly installment shall be due and payable to the Secretary no later than the tenth day of each month, beginning in the month in which the mortgagor is required to make the first monthly mortgage payment or, if later, in (insert the first month after the effective date of the rule).

5. In § 203.265, paragraph (a) would be revised to read as follows:

##### **§ 203.265 Mortgagee's late charge and interest.**

(a) Periodic MIP which are received by the Commissioner after the payment dates prescribed by §§ 203.262 and 203.264 shall include a late charge of four percent of the amount paid.

\* \* \* \* \*

6. In § 203.268, paragraph (a) would be revised to read as follows:

##### **§ 203.268 Pro rata payment of periodic MIP.**

(a) If the insurance contract is terminated before the due date of the initial MIP, the mortgagee shall pay a portion of the MIP prorated from the beginning of amortization, as defined in § 203.251, to the date of termination.

\* \* \* \* \*

7. In § 203.284, paragraphs (d) and (e) would be removed, and paragraph (f) would be revised to read as follows:

##### **§ 203.284 Calculation of up-front and annual MIP on or after July 1, 1991.**

\* \* \* \* \*



(f) *Applicability of other sections.* The provisions of §§ 203.261, 203.262, 203.264, 203.265, 203.266, 203.267, 203.268, 203.280, and 203.282 are applicable to mortgages subject to premiums under this section.

\* \* \* \* \*

8. In § 203.285, paragraph (c) would be revised to read as follows:

**§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.**

\* \* \* \* \*

(c) *Applicability of certain provisions.* The provisions of §§ 203.261, 203.262, 203.264, 203.265, 203.266, 203.267, 203.268, 203.280, 203.282, and 203.284(g) are applicable to mortgages subject to premiums under this section.

\* \* \* \* \*

**PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE**

9. The authority for part 221 would continue to read as follows:

Authority: 12 U.S.C. 1715b, 1715j; 42 U.S.C. 3535(d). Section 221.544(a)(3) is also issued under 12 U.S.C. 1707(a).

**§ 221.251 [Amended]**

10. In § 221.251, paragraph (a) would be amended by removing the reference to “203.263 Adjustment of initial MIP.”

Dated: November 8, 1995.

Nicolas P. Retsinas,

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 96-1305 Filed 1-25-96; 8:45 am]

BILLING CODE 4210-27-P

**Federal Register**

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Friday  
January 26, 1996

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**Part VI**

**Department of  
Housing and Urban  
Development**

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Office of the Assistant Secretary for  
Housing—Federal Housing Commissioner

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**24 CFR Parts 202 and 203  
Streamlining Mortgagee Requirements;  
Interim Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Assistant Secretary for  
Housing—Federal Housing  
Commissioner**

**24 CFR Parts 202 and 203**

[Docket No. FR-3957-I-01]

RIN 2502-AG57

**Streamlining Mortgagee Requirements**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This rule revises FHA's mortgagee requirements to streamline and make the FHA process more flexible for mortgagees and FHA's customers and clients.

**DATES:** Effective date: February 26, 1996.  
Comment due date: March 26, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** William M. Heyman, Director, Office of Lender Activities and Land Sales Registration, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (voice) (202) 708-1515, (TDD) (202) 708-4594. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

**Background**

Earlier this year an FHA Single Family Business Practices Working Group was established to develop recommendations to streamline the FHA process, reduce or eliminate unnecessary requirements, promote greater opportunities for first-time homebuyers and minorities, and maintain a responsible risk management program. The Working Group was comprised of representatives of mortgage lenders, State and local governments, trade associations, realtors, government-sponsored enterprises, and other interested parties.

The revisions made by this rule result from the efforts and recommendations made by the Working Group. They will make the FHA process more flexible for mortgagees, and for State and local governments and nonprofit associations, and also expand homeownership opportunities. They will also assist in making the FHA a more effective organization to serve the needs of our customers and clients. The revisions should also minimize the differences between FHA and conventional loan processing and place greater reliance and accountability on mortgagees.

A number of recommended changes did not require rulemaking and, therefore, were made effective immediately with the issuance of Mortgagee Letter 95-36, dated August 2, 1995. However, some of the recommended changes require either rulemaking or modification of existing data systems. This rule sets forth the changes that require rulemaking for implementation. Changes effected as a result of modifications of existing data systems will be announced later.

**This Interim Rule**

This interim rule makes the following changes:

- Section 202.11(a)(5) is revised to establish uniform requirements on the use of authorized agents by supervised and nonsupervised mortgagees. For conforming reasons, §§ 202.13(e) and 202.17(d) are removed.
- Section 202.12(m) is revised to eliminate the requirement that a branch office of a mortgagee must be approved by FHA to originate FHA mortgages. A branch registry process is permitted. However, a nonsupervised loan correspondent will be required to provide evidence that it complies with the net worth requirements for itself and all of its branches, as set forth in § 202.12(m)(3).
- Section 202.15(c)(1) is revised to eliminate the requirement that loans must be closed in the name of the Loan Correspondent, and to permit such mortgages to be closed in either the name of the Loan Correspondent or its Sponsor(s).
- Section 202.15(c)(5) is revised to eliminate the compliance report and the report on internal control from Loan Correspondents' annual audited financial statements.
- Section 203.3(b)(2) is revised to eliminate the requirement that FHA individually approve mortgagees' Direct Endorsement underwriters and to establish a registry process for the underwriter. Also, The requirement

that the technical staff utilized by the mortgagee be approved by the Secretary is removed. For conforming reasons, §§ 203.3(b)(3) and (c) are eliminated.

**Other Matters**

*Justification for Interim Rule*

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that public procedure is contrary to the public interest and unnecessary.

No mortgagees or potential mortgagors will be adversely affected by the revisions made by this rule without prior public comment. To the contrary, the revisions will streamline and make the FHA processes more flexible for mortgagees and FHA's customers and clients.

For these reasons, HUD has concluded that the public interest would not be served by the delay that issuance of a proposed rule would involve.

*Environmental Finding*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

*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 rule is not subject to review under the Order. Specifically, the requirements of this rule are directed to insuring mortgages and do not impinge upon the relationship between the Federal government and State and local governments.

#### *Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order because it revises mortgage requirements.

#### *The Regulatory Flexibility Act*

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Secretary by his approval of this rule hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because the changes made by this rule are primarily procedural and will not have a significant economic impact.

#### List of Subjects in Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

#### List of Subjects in Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, Subchapter B of Chapter II of title 24 of the Code of Federal Regulations is amended as follows:

### **CHAPTER II—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

#### **Subchapter B—Mortgage and Loan Insurance Programs Under National Housing Act and Other Authorities**

### **PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES**

1. The authority for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

2. Part 202 is amended by revising—  
a. In § 202.11, paragraph (a)(5) to read as follows:

#### **§ 202.11 Approval, recertification, withdrawal of approval and termination of approval agreement.**

(a) \* \* \*

(5) A mortgagee approved under §§ 202.13, 202.14, or 202.17 may, with the approval of the Secretary, designate another mortgagee approved under §§ 202.13 or 202.14 as authorized agent for the purpose of submitting applications for mortgage insurance in its name and on its behalf.

\* \* \* \* \*

b. In § 202.12, paragraph (m) to read as follows:

#### **§ 202.12 General approval requirements.**

\* \* \* \* \*

(m) *Branch offices.* A mortgagee approved under §§ 202.13 or 202.14, or a mortgagee that meets the definition of a supervised mortgagee under § 202.13 and applies for approval as a loan correspondent under § 202.15, may maintain branch offices for the submission of applications for mortgage insurance, provided that registration of such branches is maintained with the Secretary. A nonsupervised loan correspondent approved under § 202.15 will be required to provide evidence that it complies with net worth requirements for itself and all of its branches, as set forth in § 202.12(n)(3). The mortgagee shall remain fully responsible to the Secretary for the actions of its branch offices.

\* \* \* \* \*

#### **§ 202.13 [Removed]**

c. In § 202.13, paragraph (e) is removed.

d. In § 202.15, the first sentence of paragraph (c)(1) and paragraph (c)(5) are revised, to read as follows:

#### **§ 202.15 Loan correspondents.**

\* \* \* \* \*

(c) \* \* \*

(1) A loan correspondent shall close all mortgages in its own name or the name of its sponsor(s). \* \* \*

\* \* \* \* \*

(5) It shall file an audit report with the Secretary within 90 days of the close of its fiscal year (or within an extended time if, at the discretion of the Secretary, an extension is granted), and at such other times as may be requested, unless it meets the definition of a supervised mortgagee in § 202.13(a).

Audit reports shall be based on audits performed by a Certified Public Accountant, or by an Independent Public Accountant licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. The audit report shall include:

(i) A financial statement in a form acceptable to the Secretary, including a balance sheet and a statement of operations and retained earnings and analysis of the loan correspondent's net worth adjusted to reflect only assets acceptable to the Secretary, and an analysis of escrow funds; and

(ii) Such other financial information as the Secretary may require.

\* \* \* \* \*

e. In § 202.17, paragraph (d) is removed.

### **PART 203—SINGLE FAMILY MORTGAGE INSURANCE**

3. The authority for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1715b; 42 U.S.C. 3535(d). Subpart C also, is issued under 12 U.S.C. 1715u.

4. In § 203.3, paragraph (b)(2) is revised, and paragraphs (b)(3) and (c) are removed and reserved, to read as follows:

#### **§ 203.3 Approval of mortgagees for Direct Endorsement.**

\* \* \* \* \*

(b) \* \* \*

(2) The mortgagee has on its permanent staff an underwriter that is authorized by the mortgagee to bind the mortgagee on matters involving the origination of mortgages through the Direct Endorsement procedure and that is registered with the Secretary and such registration is maintained with the Secretary. The technical staff may be employees of the mortgagee or may be hired on a fee basis from a roster maintained by the Secretary. The mortgagee shall use appraisers permitted by § 203.5(e).

(3) [Reserved].

\* \* \* \* \*

(c) [Reserved].

\* \* \* \* \*

Dated: November 29, 1995.

Nicolas P. Retsinas,

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 96-1304 Filed 1-25-96; 8:45 am]

BILLING CODE 4210-27-P

Federal Register

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Friday  
January 26, 1996

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**Part VII**

**Social Security  
Administration**

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20 CFR Part 404  
Cycling Payment of Social Security  
Benefits; Proposed Rule

**SOCIAL SECURITY ADMINISTRATION****20 CFR Part 404**

RIN 0960-AE31

**Cycling Payment of Social Security Benefits****AGENCY:** Social Security Administration (SSA).**ACTION:** Proposed rules.

**SUMMARY:** Historically, social security benefits generally have been paid on the 3rd of each month. As a result of our ongoing efforts to improve service to our customers, we now propose to establish additional days throughout the month on which social security benefits will be paid.

**DATES:** To be sure that your comments are considered, we must receive them no later than March 26, 1996.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, sent by E-Mail to "regulations@ssa.gov," or delivered to the Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Lois Berg, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1713.

SSA plans to host an informational briefing on payment cycling for representatives of groups and organizations, and any others, that are interested in the initiative. The session will be designed to provide details and to answer questions on how SSA intends to implement payment cycling. It will not be designed to take public comments on the proposal. Those who would like to be invited to the session, which will be held in February, can request an invitation from SSA's Office of Communications. To reach the office, call (410) 965-1720 or fax (410) 965-3903.

**SUPPLEMENTARY INFORMATION:**

## Background

The second phase of the National Performance Review (NPR), the Federal Reinventing Government effort, was announced by the President and Vice

President on December 19, 1994. It was designed to focus attention on what each agency does, examining our mission and looking at our programs and functions to see if there are ways we can provide better service to the public and, at the same time, do our business in a more cost-effective manner, i.e., "make government work better and cost less." All agencies were asked to assemble a team to review the programs and functions of their own agency. SSA's team worked closely with a team of representatives from NPR and the Office of Management and Budget (OMB) to develop recommendations for the Vice President's consideration.

On April 11, 1995, the White House formally approved SSA's reinvention proposals and officially announced them the next day. One of these proposals was to cycle the payment of benefits.

Recipients of Old-Age, Survivors and Disability Insurance (OASDI) benefits and Supplemental Security Income (SSI) payments currently are paid in the first few days of each month. While these payment days have never been required by the Social Security Act (the Act), which in §§ 205(i) and 1631(a)(1) commits the time for making benefit payments to the discretion of the Commissioner of Social Security, it has been our longstanding administrative practice to make payment on these days. Monthly benefits are paid to all OASDI beneficiaries on the same day (generally the 3rd day of each month for the preceding month) and to all SSI beneficiaries on the same day (generally the 1st day of each month for which the payment is due).

Over the years, a trend has developed that has resulted in deterioration of services we provide face-to-face or over the telephone on and around our payment days. This phenomenon is described fully below and is of particular concern to us in light of the Agency's commitment to provide "world class" service to our beneficiaries and customers.

Executive Order (E.O.) 12862, issued on September 11, 1993 mandates that the standard of quality for services provided to the public for all government agencies shall be "customer service equal to the best in the business." This standard has been incorporated into SSA's goal of providing "world class" public service. For example, when you conduct business with us, we have set as goals that:

- When you make an appointment to talk with someone at one of our field offices, we will serve you within 10 minutes of the scheduled time.

- When you call our toll-free 800 number, you will get through to it within 5 minutes of your first try.

SSA's current practice of paying 47 million beneficiaries within the first 3 days of each month results in a large surge of work during the first week of each month. This surge includes a large number of visitors to field offices and calls to our toll-free 800 number to report nonreceipt of a check, question the amount paid, or ask about other payment-related issues. Approximately 9 percent of all calls during check week concern nonreceipt, compared to 3 percent during the rest of the month. As an example of the surge that occurs around the current payment days, on April 3, 1995, 1,091,282 calls were placed to SSA's 800 number. On April 14, 1995, the number of calls placed to our 800 number decreased to 229,022.

It is important to beneficiaries and customers to be able to reach SSA with fewer busy signals, and we have pledged to enable callers to get through to the 800 number within 5 minutes of their original attempt. However, in fiscal year (FY) 1994, during peak periods, customers encountered busy signals on SSA's 800 number 40-63 percent of the time and had to wait more than 5 minutes to get through about 30 percent of the time. This delay often occurs at a time when it may be the most critical for the individual to reach us, to report a lost check, for example. Anyone who experiences a delay in reaching us to report a lost check also faces a delay in receiving a replacement check. Since many beneficiaries rely solely on their social security benefits, this can be a real hardship for them.

Our goal is for our customers to have minimal waits for service when visiting a social security field office. Today, SSA does not always meet this goal. In FY 1994 there were 24 million visitors to our field offices. While the average wait during check week for individuals with an appointment was 8 minutes, some individuals with appointments had to wait over 2 hours. Thirty-two percent of the visitors to our offices without appointments in FY 1994 (typically people who have questions related to their payments or who want to report payment delivery problems) had to wait more than 30 minutes after arriving to be served. The average wait during check week for individuals without appointments was 16 minutes, although some individuals without appointments had to wait over 3 hours. This can be a particular hardship to those who are elderly or disabled, as well as to people who might take off from work to come to our offices.

The demographic and resource challenges we will face over the next 25 years will make it even more difficult for us to meet our service-delivery objectives. Currently, we pay 47 million OASDI and SSI beneficiaries within the first three days of each month. Due to the aging of the "baby boom" generation, by the year 2020, we will be paying about 75 million beneficiaries, a 60 percent increase over today's beneficiary population. This will place an unprecedented demand on our benefit delivery system.

We are concerned that, in the next 25 years, with the prospect of about 75 million beneficiaries all receiving their payments on single days, there will be a serious deterioration in our service to the public, and we will not be able to provide the kind of service to which we are committed. The growth in beneficiary population is expected to place an even greater strain on SSA's resources at the beginning of the month. At the same time that the number of SSA customers is growing, SSA's resources are being reduced. Public Law 103-226 mandates an overall 12 percent reduction of Federal staffing levels by 1999, and this will impact SSA's resources. As a result, we are particularly concerned that we will not be able to cope with the monthly workload peaks and still maintain our goal of being readily accessible to the public unless we make significant changes in the way in which we deliver service.

In the future, the increased number of beneficiaries and customers plus the mandated reduction of Federal staffing levels will have a real impact on the public's ability to contact us. This will be especially hard on individuals during check week (currently the first week in each month that benefits are paid) when the system will be overloaded. Check week is the time that beneficiaries often have the most urgent need to reach us to report nonreceipt or other problems related to their payment, and to request a replacement check.

Each attempted phone contact by an SSA beneficiary, whether over or under age 65, may represent a personal crisis due, for example, to nonreceipt of benefits. Social security benefits affect, in particular, nearly all individuals age 65 and over in the United States (U.S.). For a significant proportion of individuals over age 65, the benefits represent 90 percent or more of their total income. For these beneficiaries, nonreceipt is not an abstract concept or statistic. It may represent the difference between paying rent or mortgage payments on time or late. It may mean the ability to purchase food. It may

represent lack of gasoline or busfare to get to a medical appointment. A phone contact or visit may be by a recent widow(er) who is reporting the death of her/his spouse. One successful telephone call may be all that is necessary to enable SSA to convert retirement benefits as a spouse into higher widow(er)'s benefits. An unsuccessful phone contact could prevent us from holding back payments to the deceased individual and scheduling benefits to the newly widowed beneficiary. When individuals are unsuccessful at reaching us by telephone, either they, or a friend or family member, may take time off from work to come into a field office. Any additional delay waiting in the field office causes them to lose even more time from work.

Today, we are attempting to cope with the uneven workload pattern in order to maintain our level of service through a series of administrative and management initiatives. For example, at the beginning of the month, we redeploy staff from other work to handle the increase in telephone inquiries which sometimes exceeds two million calls a day. While this practice has been generally successful so far, it will not continue to be as effective in the future when the number of beneficiaries increases substantially and our staffing decreases.

We are considering all our options in preparing for this increase in SSA's workloads and staff reductions and, accordingly, are looking for ways to reengineer our various processes to allow us to achieve our world class customer service goals and, at the same time, increase efficiency and productivity to the maximum extent possible. It is clear, though, that SSA's goal to achieve a level of world class customer service cannot be realized unless our workloads are evened out. This is critical to providing better access to SSA's services for our beneficiaries and customers.

The release of all OASDI and SSI payments on single days also has an adverse effect on certain sectors of the economy. Based on meetings we held with representatives of the banking and business community, the Department of the Treasury (DT), the Federal Reserve System (FRS) and the U.S. Postal Service (USPS), it is clear that the large, once-a-month OASDI and SSI payment files are creating many problems. The banking and business community, the DT, FRS and the USPS all have to bear the expense of providing sufficient resources and processing capacity to deal with OASDI and SSI payments as they flow through the national payment

system at the beginning of the month. This capacity is not needed throughout the remainder of the month.

Equally significant is the growing operational risk that is associated with SSA's current payment pattern. Representatives from several large financial institutions made it clear that when the social security direct deposit payment file becomes available for processing from FRS, they stop all other business and devote their entire operation to ensuring the file is processed quickly and accurately. Because of the inordinately large number of payments involved, these institutions must ensure that nothing goes wrong as the file passes through the national payment system and is deposited into individual customers' accounts. Any event that adversely affects the operational capacity of DT, FRS or a large financial institution in the 1 to 4 day window prior to the 3rd of the month may result in the delay or nonreceipt of literally millions of social security benefit payments which could create hardship for SSA beneficiaries. Leveling the social security payment files through cycling will help prevent this operational risk and resulting hardship.

In order to improve our service to the public, both now and in the future, we propose to spread the payment of OASDI benefits throughout the month, rather than continue to make all benefit payments on single days at the beginning of the month. That is, we will establish several additional payment days for each month, and pay the full monthly benefit to some beneficiaries on the first of those payment days, to other beneficiaries on the second of those payment days, and so forth. The payment day, or cycle, on which a beneficiary is paid generally will not be changed, so that if you are paid on the second payment day in one month you will be paid on the second payment day in each succeeding month as well. This approach, which we call "cycling of payments," will level the workload peaks associated with our current practice of paying all benefits on the same day. Since calls and visits associated with receipt of the monthly benefit payment will be distributed throughout the month, rather than concentrated in a few days, there will be shorter waiting times for assistance and we will be able to achieve or sustain our world class service to the public.

It is important to note that payment cycling will not change the way benefits are computed. We will continue to follow the same rules in determining month of entitlement and the payment amount. People whose benefits are

cycled will receive the same amount they would receive if they were paid on the 3rd of the month.

The benefits to society of implementing payment cycling are potentially significant but extremely difficult to estimate. Cycling will benefit members of the public in that they will have better access to SSA services, including shorter waiting times in field offices and when calling the 800 number, as SSA's workloads increase in the future. Cycling will benefit the business and banking communities in that they will be better able to utilize their resources throughout the month, processing social security payments on a weekly basis. Cycling will also reduce the risk involved in processing large once-a-month files. If we continue to pay all beneficiaries on single days once-a-month, SSA's service to the public will deteriorate, and the adverse impact that the once-a-month payments have on the business and financial community will continue, as will the growing operational risk that goes along with processing all benefit payments at one time.

After considering how best to implement the proposal to cycle the timing of benefit payments, we are proposing the following:

1. We will establish three additional payment days throughout the month (i.e., the second, third and fourth Wednesdays of the month) on which individuals may be paid. This schedule will alleviate to the maximum extent possible the current Monday workload peak which is also now being experienced by SSA's toll-free 800 number and field offices when the payment day falls on Friday, Saturday, Sunday or Monday, which occurs more than half of the time.

2. We will implement payment cycling prospectively only for new OASDI beneficiaries whose claims are filed on or after the effective date of the final rule for payment cycling. We propose to implement payment cycling by January 1997. Payments to current beneficiaries will not be cycled, as they are already in the established pattern of receiving their benefits on the third of the month.

3. We will assign one of the newly established payment days to each new OASDI beneficiary based on the date of birth of the person on whose record entitlement is established (the insured individual). Generally, new OASDI beneficiaries who receive auxiliary or survivor benefits on an insured individual's record will be assigned to the payment day based on the insured individual's date of birth. Insured individuals who are already being paid

auxiliary or survivor benefits on the 3rd of the month when payment cycling is implemented and who subsequently become entitled on their own record after payment cycling is implemented will continue to receive all benefits on the 3rd. However, all other insured individuals who become entitled on their own record and on another record after payment cycling is implemented will be paid all benefits to which they are entitled on the payment day assigned based on their own date of birth. Insured individuals born on the 1st through the 10th of the month will be paid on the second Wednesday of each month. Insured individuals born on the 11th through the 20th of the month will be paid on the third Wednesday of each month. Insured individuals born after the 20th of the month will be paid on the fourth Wednesday of each month. With only a few exceptions described below, no new OASDI beneficiaries will receive payments on the 3rd of the month.

4. We may accommodate some beneficiaries currently being paid on the 3rd of the month who voluntarily wish to change to the payment day that would be selected by the date of birth criteria described above, in order to accelerate the workload leveling effect of cycling. For example, we plan to allow them to volunteer to switch if only one person is being paid on the record or, if there are other beneficiaries being paid on the same record, all others agree, in writing, to the change. However, once a volunteer is assigned to a new payment day, that day will be permanent and the person will not be allowed to change back to the 3rd of the month. We will not allow beneficiaries being paid on one of the three new days to switch to a different payment day.

5. We will not include persons receiving SSI payments, and persons concurrently entitled to both OASDI and SSI benefits, in payment cycling. Since SSI is a needs-based program, we believe we should continue to pay these individuals as early in the month as possible. Concurrently entitled individuals who lose eligibility for SSI will continue to be paid on the 3rd.

6. We will not apply payment cycling to OASDI beneficiaries whose income is deemed to SSI beneficiaries. The reason is that most deeming cases involve family members who receive Federal income maintenance benefits. Those family units should continue to receive payments as early in the month as possible. Likewise, payment cycling will not apply to OASDI beneficiaries who, due to their income and/or resources, are not entitled to SSI but who are covered by the State in which

they live for Medicaid and the State covers their Medicare premium. The Health Care Financing Administration requested that these OASDI beneficiaries be paid early in the month.

7. Payment cycling will not apply to beneficiaries living in a foreign country. For those beneficiaries being paid by check, foreign check delivery is often unreliable. However, with one delivery day on the 3rd of the month it is easier to target when checks should be received than if they were sent four times throughout the month. Also, since foreign beneficiaries do not have access to the 800 number or to SSA's field offices in the country where they reside, these facilities will not be adversely affected if we continue to pay foreign beneficiaries on the 3rd of the month. The presence of a foreign address for any beneficiary on a social security record will mean that all beneficiaries on that record will be paid on the 3rd of the month. The reason is that, for operational purposes, we are assigning a single payment day for all individuals who receive benefits on the earnings record of a particular individual. Once a beneficiary has reported a foreign address and all individuals receiving benefits on that account are changed to the 3rd of the month, the payment day for all of them will remain the 3rd of the month even if the person with the foreign address returns to the U.S. This is to prevent potential confusion caused by beneficiaries frequently leaving and entering the U.S.

8. We will notify affected beneficiaries in writing of the particular monthly payment day that is assigned to them. However, the assignment of a payment day is not an initial determination and is not appealable. Beneficiaries have never been able to choose their payment day and will not be able to choose a payment day under payment cycling.

#### Early Consultations

We conducted 10 focus group meetings at 5 locations around the country to solicit comments and obtain reaction from the public to cycling payments throughout the month. Two meetings were held in each location: one with current beneficiaries age 21 and over and one with future beneficiaries age 21 and over. After we described our future workload projections and resultant service delivery deterioration, the vast majority of future beneficiaries with whom we met said they would not mind being paid later in the month.

We also conducted a series of separate meetings with stakeholders including representatives from the business



community, financial community, other government agencies and advocacy groups. The overwhelming consensus of opinion among all stakeholders who participated was that SSA should implement some form of payment cycling.

#### Request for Information From the Public

SSA is interested in receiving comments from the public. We are interested in your views about the importance of improved service and access to SSA personnel and the use of payment cycling as one means to achieve better service.

#### Request for Information From Business and Financial Community

SSA is particularly interested in the incremental cost or savings to the business and financial community of changing to the proposed payment schedule. Therefore, we invite commenters from the business and financial community to provide data and analysis quantifying these effects. The more specific the data, the more they will help us to assess the cost or savings or any other effect of this proposed regulation.

#### Explanation of Revisions

We propose to add a new § 404.1807 and to amend § 404.1805 to reflect the policies described above. We propose to add a new § 404.1807(f) to reflect § 708 of the Act, which provides that payment will be moved to the prior business day if the scheduled day for payment falls on a Saturday, Sunday, or Federal legal holiday. We also propose to add a new paragraph (s) to existing § 404.903 to show that assignment of a monthly payment day is not an initial determination and, therefore, it is not subject to the administrative review process provided in subpart J of our regulations or to judicial review.

#### Electronic Versions

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9 a.m. on the date of publication in the Federal Register. To download the file, modem dial (202) 512-1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

#### Regulatory Procedures

##### *E.O. 12866*

We have determined that these proposed regulations meet the criteria for a significant regulatory action under E.O. 12866. Therefore, we prepared and

submitted to OMB an assessment of the potential costs and benefits of this regulatory action. This assessment also contains an analysis of alternative policies we considered and chose not to adopt. It is available for review by members of the public by contacting SSA.

#### *Regulatory Flexibility Act*

These regulations affect when social security recipients receive their payments. Recipients are not small entities within the definition of the Regulatory Flexibility Act. Therefore, these regulations will not have a significant impact on a substantial number of small entities.

#### *Paperwork Reduction Act*

These proposed regulations impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.003 Social Security-Special Benefits for Persons Aged 72 and Over; 96.004 Social Security-Survivors Insurance.)

#### List of Subjects in 20 CFR Part 404

Administrative Practice and Procedure, Blind benefits, Old-Age, Survivors and Disability Benefits; Reporting and recordkeeping requirements; Social Security.

Dated: November 30, 1995.

Shirley S. Chater,

*Commissioner of Social Security.*

For the reasons set forth in the preamble, subparts J and S of part 404 of chapter III of title 20 of the Code of Federal Regulations is proposed to be amended as set forth below.

### **PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950— )**

1. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 205(a), (b), (d)-(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 405(a), (b), (d)-(h), and (j), 421, 425 and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97-455, 96 Stat. 2500 (42 U.S.C. 405 note); sec. 6(a), (b), and (c)-(e), Pub. L. 98-460, 98 Stat. 1802 (42 U.S.C. 1383b, 421 note).

2. Section 404.903 is amended by removing the word "and" at the end of paragraph (q), and by removing the period at the end of paragraph (r) and adding a semicolon and the word "and" in its place, and adding paragraph (s) to read as follows:

#### **§ 404.903 Administrative actions that are not initial determinations.**

\* \* \* \* \*

(s) The assignment of a monthly payment day (see § 404.1807).

3. The authority citation for subpart S of part 404 is revised to read as follows:

Authority: Secs. 205(a) and (n), 207, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a) and (n), 407, and 902(a)(5)).

4. Section 404.1805 is amended by revising paragraph (a)(3) to read as follows:

#### **§ 404.1805 Paying benefits.**

(a) \* \* \*

(3) The time at which the payment or payments should be made in accordance with § 404.1807.

\* \* \* \* \*

5. Section 404.1807 is added to read as follows:

#### **§ 404.1807 Monthly payment day.**

(a) *General.* Once we have made a determination or decision that you are entitled to recurring monthly benefits, you will be assigned a monthly payment day. Thereafter, any recurring monthly benefits which are payable to you will be certified to the Managing Trustee for delivery on or before that day of the month as part of our certification under § 404.1805(a)(3). Except as provided in paragraphs (c)(2) through (c)(6), once you have been assigned a monthly payment day, that day will not be changed.

(b) *Assignment of Payment Day.* (1) We will assign the same payment day for all individuals who receive benefits on the earnings record of a particular insured individual. See paragraph (c)(5) for exception.

(2) The payment day will be selected based on the day of the month on which the insured individual was born. Insured individuals born on the 1st through the 10th of the month will be paid on the second Wednesday of each month. Insured individuals born on the 11th through the 20th of the month will be paid on the third Wednesday of each month. Insured individuals born after the 20th of the month will be paid on the fourth Wednesday of each month. See paragraph (c) for exceptions.

(3) We will notify you in writing of the particular monthly payment day that is assigned to you.

(c) *Exceptions.* (1) If you or any other person became entitled to benefits on the earnings record of the insured individual based on an application filed before (effective date of cycling), you will continue to receive your benefits on the 3rd day of the month (but see paragraph (c)(6) of this section). All

persons who subsequently become entitled to benefits on that earnings record will be assigned to the 3rd day of the month as the monthly payment day.

(2) If you or any other person became entitled to benefits on the earnings record of the insured individual based on an application filed after (effective date of cycling) and also become entitled to Supplemental Security Income (SSI) benefits or have income which is deemed to an SSI beneficiary (per § 416.1160), all persons who are or become entitled to benefits on that earnings record will be assigned to the 3rd day of the month as the monthly payment day. We will notify you in writing if your monthly payment day is being changed to the 3rd of the month due to this provision.

(3) If you or any other person became entitled to benefits on the earnings record of the insured individual based

on an application filed after (effective date of cycling) and also reside in a foreign country, all persons who are or become entitled to benefits on that earnings record will be assigned to the 3rd day of the month as the monthly payment day. We will notify you in writing if your monthly payment day is being changed to the 3rd of the month due to this provision.

(4) If you or any other person became entitled on the earnings record of the insured individual based on an application filed after (effective date of cycling) and are not entitled to SSI but are or become covered by the State where you live for Medicaid and the State covers your Medicare premium, all persons who are or become entitled to benefits on that earnings record will be assigned to the 3rd day of the month as the monthly payment day. We will notify you in writing if your monthly

payment day is being changed to the 3rd of the month due to this provision.

(5) Insured individuals who are already being paid auxiliary or survivor benefits on the 3rd of the month and who become entitled on their own record after (effective date of cycling) will continue to receive all benefits on the 3rd of the month. However, all other insured individuals entitled on their own record and on another record after (effective date of cycling), will be paid all benefits to which they are entitled on the payment day assigned based on their own date of birth.

(6) If the day regularly scheduled for the delivery of your benefit payment falls on a Saturday, Sunday, or Federal legal holiday, you will be paid on the first preceding day that is not a Saturday, Sunday, or Federal legal holiday.

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The rules and proposed rules in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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