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# federal register

Thursday
June 6, 1996

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 6

### Import Quotas and Fees

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is deleting three subparts on Section 22 import fees, reentry of cotton into the United States, and calculation of market stabilization price, since they are obsolete.

**EFFECTIVE DATES:** This final rule will be effective June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** Diana Wanamaker, Import Programs Group, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, AG BOX 1021 Washington, D.C. 20250–1021, or telephone (202) 720–2916.

**SUPPLEMENTARY INFORMATION:**

Executive Order 12866

This rule is issued in conformance with Executive Order 12866. It has been determined to be not significant for the purposes of E.O. 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Act is not applicable to this rule since the Office of the Secretary is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12778

This rule has been reviewed under Executive Order 12778. The provisions of this rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect.

Background

In response to the President's Regulatory Reform Initiative, USDA is amending Title 7 Part 6 of the Code of Federal Regulations to delete certain subparts which are obsolete as the result of the subsequent enactment of legislation or the elimination of their purpose.

Reasons for Removal

USDA is deleting these subparts for the following reasons:

Subpart—Section 22 Imports Fees (§§ 6.50–6.59)

This subpart provided for the licensing of sugar imports used in the production of polyhydric alcohol for non-food uses and exempted them from the Section 22 import fees. One of the fees was suspended in 1985 and both were eliminated on January 1, 1995 as a result of the Uruguay Round Agreements Act (P.L. 103–465). Further imports of sugar for this purpose have been licensed under a different program since 1990 (7 CFR 1550). The provision of this subpart are therefore obsolete.

Subpart—Reentry of Cotton Into the United States (§§ 6.71–6.75)

Under the former Section 22 import regime, there was a zero quota on the reentry of cotton into the United States. This subpart implemented the prohibition of imports of such cotton and cotton waste. Since the Section 22 zero quota was replaced by a tariff-rate quota under the Uruguay Round Agreements Act, the provisions of this subpart are now obsolete.

Subpart—Calculation of Market Stabilization Price (§§ 6.100–6.102

This subpart provided a mechanism by which the Secretary of Agriculture could calculate and publish a market stabilization price (MSP) for sugar, for the purpose of establishing a basis amount for liquidated damages under the Sugar Re-export Program. Its use for that purpose was eliminated in the 1990 revision of the Sugar Re-export regulations. The MSP has not been announced since 1989. The provisions of this subpart were not required by any statute, and do not serve any function, therefore, this subpart is obsolete.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Final rule

For the reasons set out above, 7 CFR Part 6 is amended as follows:

1. The authority citation for part 6 continues to read:

Authority: Sec. 8, 65 Stat. 75; 19 U.S.C. 1365.

2. The following subparts are removed: Subpart—Section 22 Import Fees (§§ 6.50–6.59); Subpart—Reentry of Cotton Into the United States (§§ 6.71–6.75); and Subpart—Calculation of Market Stabilization Price (§§ 6.100–6.102).

Signed at Washington, D.C. on May 13, 1996.

Dan Glickman,

*Secretary of Agriculture.*

[FR Doc. 96–13604 Filed 6–5–96; 8:45 am]

**BILLING CODE 3410–01–M**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 71

**RIN 3150—AC41**

### Compatibility With the International Atomic Energy Agency; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Correcting amendments.

**SUMMARY:** This document presents corrections to a final rule that was published September 28, 1995 (60 FR 50248). This action is necessary to correct printing errors in three tables, an inadvertent error in an equation, an incorrect cross-reference, and the inadvertent use of a specialized term.

**EFFECTIVE DATE:** The final rule became effective April 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** John R. Cook, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–8521.

**SUPPLEMENTARY INFORMATION:** On September 28, 1995 (60 FR 50248), the NRC published a final rule that revised NRC regulations in 10 CFR Part 71 governing the transportation of radioactive material, to make them compatible with those of the International Atomic Energy Agency.

This document corrects the use of a specialized term in paragraphs (2)(ii) and (3)(i) of the definition of *Low Specific Activity (LSA) material* in 10 CFR 71.4. This document also corrects Tables A–2 and A–3 of Appendix A to Part 71 to remove an extra ''x'' in the presentation of exponents throughout the tables and the isotope of uranium referenced in footnote 1 to Table A–3.

In addition, this document corrects a typographical error in the Minimum Transport Index equation in 10 CFR 71.18, an incorrect cross-reference in 10 CFR 71.55, and a number of typographical errors in Table A–1 of Appendix A to Part 71.

Each of the errors being corrected in this document was inadvertently included in the final rule for publication in the Federal Register.

List of Subjects in 10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

Accordingly, 10 CFR Part 71 is corrected by making the following correcting amendments:

## PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

1. The authority citation for Part 71 continues to read as follows:

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, Sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); Secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 71.97 also issued under Sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

2. In 10 CFR 71.4, paragraphs (2)(ii) and (3)(i) of the definition of *Low Specific Activity (LSA) material* are revised to read as follows:

**§ 71.4 Definitions.**

* * * * *

*Low Specific Activity (LSA) material.*

* * *

(2) * * *

(ii) Material in which the radioactive material is distributed throughout, and the average specific activity does not exceed $10^{-4}$ $A_2$/g for solids and gases, and $10^{-5}$ $A_2$/g for liquids.

(3) * * *

(i) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.); and

* * * * *

**§ 71.18 [Amended]**

3. In 10 CFR 71.18(d)(1), the equation for the Minimum Transportation Index is revised to read as follows:

$$\text{Minimum Transport Index} = (0.40x + 0.67y + z)\left(1 - \frac{15}{(x + y + z)}\right)$$

**§ 71.55 [Amended]**

4. In 10 CFR 71.55(d)(3), the cross-reference to ''§ 71.59(b)(1)'' is revised to read ''10 CFR 71.59(a)(1).''

*Appendix A to Part 71 [Amended]*

5. Table A–1 of Appendix A to Part 71 is amended as follows:

a. For the entry ''Ag–110m,'' Column (TBq/g) is revised to read ''$1.8\times10^{2}$.''

b. For the entry ''Am–242m,'' Column (Ci/g) is revised to read ''$1.0\times10^{1}$.''

c. For the entry ''Ar–39,'' Column (TBq/g) is revised to read ''1.3.''

d. For the entry ''Br–82,'' Column $A_1$ (Ci) is revised to read ''10.8.''

e. For the entry ''C–11,'' Column $A_1$ (Ci) is revised to read ''27.''

f. For the entry ''Cd–113m,'' Column (TBq/g) is revised to read ''8.3.''

g. For the entry ''Cm–244,'' Column $A_1$ (Ci) is revised to read ''108'' and Column (Ci/g) is revised to read ''$8.1\times10^{1}$.''

h. For the entry ''Es–253,'' Column $A_1$ (TBq) is revised to read ''200,'' Column $A_1$ (Ci) is revised to read ''5400,'' Column $A_2$ (TBq) is revised to read ''$2\times10^{-2}$,'' and Column $A_2$ (Ci) is revised to read ''$5.41\times10^{-1}$.''

i. For the entry ''Eu–150,'' Column (Ci/g) is revised to read ''$1.6\times10^{6}$.''

j. For the entry ''Eu–155,'' Column (Ci/g) is revised to read ''$4.9\times10^{2}$.''

k. For the entry ''F–18,'' Column (TBq/g) is revised to read ''$3.5\times10^{6}$.''

l. For the entry ''Fe–59,'' Column (Ci/g) is revised to read ''$5.0\times10^{4}$.''

m. For the entry ''Fm–257,'' Column $A_1$ (TBq) is revised to read ''10,'' Column $A_1$ (Ci) is revised to read ''270,'' Column $A_2$ (TBq) is revised to read ''$8\times10^{-3}$,'' and Column $A_2$ (Ci) is revised to read ''$2.16\times10^{-1}$.''

n. For the entry ''Gd–148,'' Column (TBq/g) is revised to read ''1.2'' and Column (Ci/g) is revised to read ''$3.2\times10^{1}$.''

o. The entry for MFP is corrected to read ''For mixed fission products, use formula for mixtures or table A–2.''

p. For the entry ''Pt–197m,'' Column (TBq/g) is revised to read ''$3.7\times10^{5}$.''

5. In Appendix A to Part 71, Tables A–2 and A–3 are revised to read as follows:

Appendix A to Part 71—Determination of $A_1$ and $A_2$

* * * * *

TABLE A–2.—GENERAL VALUES FOR $A_1$ and $A_2$

| Contents | $A_1$ | (Ci) | $A_2$ | |
|---|---|---|---|---|
| | (TBq) | | (TBq) | (Ci) |
| Only beta- or gamma-emitting nuclides are known to be present | 0.2 | 5 | 0.02 | 0.5 |

TABLE A–2.—GENERAL VALUES FOR $A_1$ and $A_2$—Continued

| Contents | $A_1$ (TBq) | $A_1$ (Ci) | $A_2$ (TBq) | $A_2$ (Ci) |
|---|---|---|---|---|
| Alpha-emitting nuclides are known to be present, or no relevant data are available ..... | 0.10 | 2.70 | $2x10^{-5}$ | $5.41x10^{-4}$ |

TABLE A–3.—ACTIVITY-MASS RELATIONSHIPS FOR URANIUM

| Uranium Enrichment[1] wt % U–235 present | Specific Activity TBq/g | Specific Activity Ci/g |
|---|---|---|
| 0.45 | $1.8\times10^{-8}$ | $5.0\times10^{-7}$ |
| 0.72 | $2.6\times10^{-8}$ | $7.1\times10^{-7}$ |
| 1.0 | $2.8\times10^{-8}$ | $7.6\times10^{-7}$ |
| 1.5 | $3.7\times10^{-8}$ | $1.0\times10^{-6}$ |
| 5.0 | $1.0\times10^{-7}$ | $2.7\times10^{-6}$ |
| 10.0 | $1.8\times10^{-7}$ | $4.8\times10^{-6}$ |
| 20.0 | $3.7\times10^{-7}$ | $1.0\times10^{-5}$ |
| 35.0 | $7.4\times10^{-7}$ | $2.0\times10^{-5}$ |
| 50.0 | $9.3\times10^{-7}$ | $2.5\times10^{-5}$ |
| 90.0 | $2.2\times10^{-6}$ | $5.8\times10^{-5}$ |
| 93.0 | $2.6\times10^{-6}$ | $7.0\times10^{-5}$ |
| 95.0 | $3.4\times10^{-6}$ | $9.1\times10^{-5}$ |

[1]The figures for uranium include representative values for the activity of the uranium–234 that is concentrated during the enrichment process.

Dated at Rockville, MD this 29th day of May 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

*Executive Director for Operations.*

[FR Doc. 96–14045 Filed 6–5–96; 8:45 am]

**BILLING CODE 7590–01–P**

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### 10 CFR Part 1703

### FOIA Fee Schedule

**AGENCY:** Defense Nuclear Facilities Safety Board.

**ACTION:** Update of FOIA Fee Schedule.

**SUMMARY:** The Defense Nuclear Facilities Safety Board is publishing its annual update to the Freedom of Information Act (FOIA) Fee Schedule pursuant to 10 CFR § 1703.107(b)(6) of the Board's regulations.

**EFFECTIVE DATE:** June 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901, (202) 208–6447.

**SUPPLEMENTARY INFORMATION:** The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991 the Board published for comment in the Federal Register its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR § 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule updates were published in the Federal Register and went into effect, most recently, on May 1, 1995. 59 FR 20887.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR § 1703.107(b)(6))]

| | |
|---|---|
| Search or Review Charge. | $45 per hour. |
| Copy Charge (paper). | $.05 per page or generally available commercial rate (approximately $.10 per page). |
| Copy Charge (3.5″ diskette). | $5.00 per diskette. |
| Copy Charge (audio cassette). | $3.00 per cassette. |
| Duplication of Video. | $25.00 per video, $16.50 for each additional video. |
| Copy Charge for large documents (e.g., maps, diagrams). | Actual commercial rates. |

Dated: May 31, 1996.

Kenneth M. Pusateri,

*General Manager.*

[FR Doc. 96–14243 Filed 6–5–96; 8:45 am]

**BILLING CODE 3670–01–M**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 336

**RIN 3064–AB43**

### Minimum Standards of Fitness for Employment With the Federal Deposit Insurance Corporation

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is publishing a final regulation to implement the requirements contained in section 19 of the Resolution Trust Corporation Completion Act, which amended the Federal Deposit Insurance Act to prohibit certain persons from

becoming employed or providing services to the FDIC.

**EFFECTIVE DATE:** July 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** Joy Crosser, Personnel Management Specialist, Division of Administration, (202) 942–3314; Michelle Borzillo, Counsel, Legal Division, (202) 898–7400; or Gladys C. Gallagher, Counsel, Legal Division, (202) 898–3833.

**SUPPLEMENTARY INFORMATION:** This regulation was published as a proposed rule on February 15, 1996, 61 FR 5956. Copies were provided to interested parties, including the National Treasury Employees Union. No comments were received in the 30-day comment period, which ended March 15, 1996; therefore, the final rule is being published as originally proposed, with one minor technical correction at 336.3(f), the definition of ''Federal Deposit Insurance Funds'', to add '', or their successors,'' after ''(RTC)''.

Paperwork Reduction Act

The collection of information contained in this rule has been approved by the Office of Management and Budget (OMB) under control number 3064–0121 (''Certification of Compliance With Mandatory Bars to Employment''), pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064–0121), Washington, D.C. 20503, with copies of such documents sent to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), FDIC, Room F–400, 550 17th Street, NW., Washington, DC 20429.

The collection of information in this rule is found in § 336.4(b) and takes the form of a certification of compliance.

However, in addition to the certification, the person applying for employment must provide an attachment to the certification describing any instance in the preceding five years in which the applicant, or a company under the applicant's control, has defaulted on a material obligation to an insured depository institution. The information is used by the FDIC to identify those persons prohibited from becoming employed by or providing services to the FDIC.

The estimated annual reporting burden for the collection of information requirement in this rule is summarized as follows:

*Number of Respondents:* 200.

*Number of Responses per Respondent:* 1.

*Total Annual Responses:* 200.

*Hours per Response:* 20 minutes.

*Total Annual Burden Hours:* 66.6.

This regulation was developed consistent with the intent of section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4803(a), to reduce regulatory burden and improve efficiency.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) provides (with a few limited exceptions) for Congressional review of agency rules. An exception is provided, however, for rules relating to agency management or personnel (5 U.S.C. 804(3)). Since this regulation will only affect individuals who are employed or will seek employment with the FDIC, the Board has determined that it is a rule relating to agency management or personnel and thus is not subject to Congressional review.

Regulatory Flexibility Act

The Board hereby certifies that the rule 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.*). This regulation affects only those individuals who are employed or will become employed by the FDIC. Therefore, the provisions of that Act relating to an initial and final regulatory analysis (5 U.S.C. 603 and 604) do not apply here.

Background

The Resolution Trust Corporation Completion Act (hereafter referred to as the Completion Act), Pub. L. 103–204, enacted on December 17, 1993, amended section 12 of the Federal Deposit Insurance Act, 12 U.S.C. 1822, to prohibit any person from becoming employed or providing service to or on behalf of the FDIC who does not meet minimum standards of competence, experience, integrity, and fitness.

The Completion Act provides that FDIC employees are subject to title 18 of the U.S. Code, and are subject to the ethics and conflict of interest rules and regulations issued by the Office of Government Ethics, including those concerning employee conduct, financial disclosure, and post-employment activities. The statute also provides that the Corporation shall issue regulations implementing provisions that prohibit any person from becoming employed who: has been convicted of any felony; has been removed from, or prohibited from participating in the affairs of any insured depository institution pursuant to any final enforcement action by any appropriate federal banking agency; demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or caused a substantial loss to federal deposit insurance funds. The statute requires the collection from applicants for employment information describing any instance during the preceding 5 years in which the applicant or a company under the applicant's control defaulted on a material obligation to an insured depository institution, along with other information the Corporation may require by regulation. The Completion Act gives the Corporation sole discretion over any issues that arise as a result of these prohibitions, and any decisions made by the Corporation shall not be subject to review.

*A. Scope of the Regulation*

FDIC operates in a number of separate and distinct capacities and situations. This part applies to all FDIC employees performing duties for or on behalf of the FDIC in any capacity.

This regulation implements the mandatory bars contained in section 19 of the Completion Act which amends 12 U.S.C. 1822(f)(4)(E). This part does not in any way modify other applicable rules and regulations governing employee conduct, ethics, or qualification standards. Further, there is no need to augment in FDIC regulations the existing education and experience requirements defined in the U.S. Office of Personnel Management's (U.S. OPM) Operating Manual for General Schedule Qualification Standards.

*B. Definitions*

Section 336.3 contains definitions of terms used throughout this regulation.

Company: The definition of company expands on that used in section 2(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(b)) to include firms, societies and joint ventures. These entities are included to amplify the original definition and for consistency with the application of the Completion Act to contractors providing services to the FDIC.

Default on a Material Obligation: The FDIC defines this term to mean a delinquency of 90 or more days as to payment of principal or interest, or a combination thereof, on a loan or advance from an insured depository institution in any amount. As prescribed by the statute, this regulation requires that all applicants for employment submit a list and description of defaults on material obligations incurred by

themselves or a company under their control during the 5 years preceding the submission. All defaults are to be listed regardless of whether or not they have been cured. The Corporation has set no minimum dollar value to this definition; information regarding the candidate's conduct in meeting obligations to insured depository institutions is significant in assessing the fitness and integrity of an individual for employment with the FDIC. Therefore, all defaults which meet this definition, regardless of outstanding balances, shall be reported, but are not automatic bars to employment in themselves.

Pattern or Practice of Defalcation Regarding Obligations: This definition addresses two situations. The first concerns individuals who have a history of financial irresponsibility with regard to an open insured depository institution to such an extent that the FDIC's employment of such an individual reflects adversely on the FDIC's integrity and credibility. The second situation concerns individuals who have wrongfully refused to fulfill obligations to an insured depository institution.

In the first situation involving financial irresponsibility, a pattern or practice of defalcation regarding obligations exists when an employee has defaulted on obligations totalling in excess of $50,000 in the aggregate. Defaults caused by catastrophic events such as death, disability or illness, or loss of financial support are not considered a violation of this standard. Examples are provided in the regulation's definition to clarify the meaning of ''financial irresponsibility'', including the example of failing to pay debts which were secured by uninsured property that was destroyed. Another example of such financial irresponsibility would be an abuse of credit cards or incurring excessive debt well beyond the individual's ability to repay.

The second part of this definition addresses individuals who wrongfully refuse to fulfill duties and obligations to insured depository institutions. Again, examples are provided, which illustrate the full scope of ''wrongful refusal to fulfill duties and obligations''. The examples include misconduct on the part of a borrower, such as use of false financial statements, misrepresentation of ability to repay a debt, or concealing assets. Additional examples focus on findings of misconduct on the part of officers, employees, contractors or others providing service to an insured depository institution, or who have committed fraud, embezzlement or similar misconduct.

Substantial Loss to Federal Deposit Insurance Funds: This definition incorporates $50,000 as the threshold amount for establishing a substantial loss. This loss must have inured to one of the Federal Deposit Insurance Funds (Insurance Funds) maintained by the FDIC, the Resolution Trust Corporation (RTC), Federal Savings & Loan Insurance Corporation, or their successors. Two types of losses are addressed, which are: (1) debts in default for which there remain a legal obligation to pay; and (2) final judgments, regardless of whether forgiven in whole or in part in a bankruptcy proceeding.

*C. Minimum Standards for Appointment to a Position with the FDIC*

All applicants, including former employees of the FDIC who are reemployed after a break in service of more than 3 days, are subject to this regulation for any noncompliance with the prohibitions which occurred either before or after the enactment of the Completion Act. Applicants are required to submit a certification prior to employment which addresses each of the statutory prohibitions and are required to submit information regarding any default during the previous five years. Investigations are conducted on all new appointees to ascertain all relevant information regarding the individual's history of defaults. Regardless of the number of years for which an applicant is required to submit a written report regarding defaults, any pattern or practice of defalcation regarding obligations or substantial loss, as defined in this regulation, is subject to these minimum standards. Similarly, any felony conviction and any removal from, or prohibition from participation in the affairs of, any insured depository institution by a federal banking agency is subject to the prohibitions of this regulation without time limitation. A felony conviction that has been pardoned, as opposed to being overturned on appeal, remains a conviction and is therefore subject to the prohibition mandated by the Completion Act.

*D. Minimum Standards for Employment With the FDIC*

The Corporation finds sufficient support in the text of the statute for applying the terms of the Completion Act prospectively, and therefore does not require the enforcement of these minimum standards against incumbent employees of the FDIC under an appointment authorized by title 5 of the United States Code on or before June 17, 1994, for noncompliance which occurred prior to that date. However, any final enforcement action by any appropriate federal banking agency, any final judgment or any felony conviction which is finalized on or after June 18, 1994, even though the act or omission which is the basis of the action or judgment occurred prior to June 18, 1994, is subject to the standards of this regulation. Additionally, eligibility for employment with the FDIC continues to be based on suitability standards for federal employment as measured from past and present conduct which determines whether or not an employee can perform his or her duties with efficiency and effectiveness.

All employees, regardless of date of first appointment or tenure, are subject to this regulation for any noncompliance with the standards that occurs on or after June 18, 1994. Further, any noncompliance with the standards that first occurred prior to June 18, 1994, which meets the definitions of causing a substantial loss to the Insurance Funds or a pattern or practice of defalcation regarding obligations to an insured depository institution based on financial irresponsibility and which resulted in indebtedness that remains uncured after June 18, 1994, cannot be excused.

Employees appointed prior to the June 18, 1994 effective date for section 19 of the Completion Act and who continue without a break in service of more than 3 days from one type of appointment with the FDIC to another are not subject to the prohibitions for noncompliance prior to June 18, 1994. For example, an employee serving on an excepted-service temporary appointment who may be selected for a competitive-service time-limited or permanent appointment without a break in service would not be considered a new applicant for purposes of this regulation. This regulation applies to all appointments, including co-operative student hires, experts and consultants, detailees from other agencies and any other individual appointed to provide service to or on behalf of the FDIC.

Employees assigned to the RTC were held to comparable minimum standards of fitness for employment in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. 101–73, as implemented by regulation in 12 CFR Part 1605, which were applied retroactively by statute. Therefore, unlike incumbent FDIC employees who were not covered by Pub. L. 101–73 minimum standards, any noncompliance with the standards by incumbent employees assigned to RTC

prior to June 18, 1994, remain subject to the Public Law 101–73 minimum standards, and is not excused.

Noncompliance occurring on or after June 18, 1994, with the standards contained in this regulation is a basis for removal of the employee under the authority of the Completion Act.

*E. Verification of Compliance*

Under the authority provided by 12 U.S.C. 1819 and 1822, the FDIC conducts background investigations to verify the information certified by applicants and to determine suitability for employment with the FDIC. In addition, the FDIC screens the Financial Institution's Investigative and Enforcement Records System maintained internally by the FDIC's Division of Supervision regarding records of federal banking agency enforcement actions. The FDIC also examines its own and other regulatory records systems for findings of a pattern or practice of defalcation regarding obligations and/or a substantial loss to the Insurance Funds as defined in this regulation.

*F. Employee Responsibility, Counseling and Distribution of Regulation*

Employees are required to familiarize themselves with the provisions of this regulation. Within ten days of the action or the discovery of the noncompliance, an employee shall report in writing to the Ethics Counselor regarding noncompliance with any of the prohibitions contained in § 336.5(a) (1) through (4) of this regulation. Also, if the employee receives a letter from the FDIC demanding payment on an obligation that was initially owed to an insured depository institution and is now owed to the FDIC, the employee must notify the Ethics Counselor within 10 days of receipt of such letter. Employees shall consult with the Ethics Counselor regarding the impact of this regulation on their continued employment. The Ethics Counselor shall provide counseling and guidance to employees regarding the statutes, regulations and Corporation's policies under this part. The Ethics Counselor shall review all information presented by the employee and/or the employee's representative relevant to establishing responsibility for the debt and corrective actions taken. The employee has a duty to cooperate with the Ethics Counselor in providing the information that is necessary to the Ethics Counselor's determination of compliance or noncompliance.

*G. Sanctions and Remedial Actions*

There is no remedial action for an employee found in noncompliance with the standards at § 336.5(a)(1) and (2), for felony convictions and enforcement actions, as an employee is afforded the opportunity to remedy those findings through other proceedings. Also, there is no remedial action for an employee found in noncompliance with the standards of § 336.4(a)(4), as the Corporation's Division of Depositor and Asset Services provides the opportunity to work out debts owed to the Insurance Funds. Further, noncompliance with § 336.5(a)(3) based on wrongful refusal to fulfill duties on obligations to insured depository institutions cannot be remedied. However, employees will be provided a reasonable opportunity to remedy following notification of noncompliance with the prohibitions at § 336.5(a)(3) based on financial irresponsibility as defined in 336.3(i)(1). Such employees may establish an agreement to resolve the outstanding indebtedness that satisfies both the insured depository institution and the FDIC, or otherwise resolve the matter to the satisfaction of the FDIC. This remedial action provided employees would not be extended to applicants for employment. Filling a vacancy is not delayed in order for an applicant to cure his or her debts that are deemed not in compliance with § 336.4(a)(3) through (4).

Individuals appointed by the President with the advice and consent of the Senate, which includes both the appointed and ex officio members of the Board of Directors and the Inspector General, cannot be removed from their positions under the authority of the FDIC. Therefore, this regulation does not apply to individuals appointed to or serving on an acting basis in positions designated by Title 5 of the U.S. Code as officials of the Federal Executive Schedule. Federal employees who are serving the FDIC, but are employed by another agency, such as detailees or employees of the Office of Thrift Supervision or the Office of the Comptroller of the Currency, may be returned to the employing agency if found not to be in compliance with the minimum standards.

*H. Finality of Determination*

Section 336.9 of this regulation tracks the language of the Federal Deposit Insurance Act, 12 U.S.C. 1822(f)(4)(D)(ii).

List of Subjects in 12 CFR Part 336

Conflict of interests.

For the reasons set out in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation is revising part 336 of chapter III of title 12 of the Code of Federal Regulations as follows:

## PART 336—FDIC EMPLOYEES

**Subpart A—Employee Responsibilities and Conduct**

Sec.

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

**Subpart B—Minimum Standards of Fitness for Employment With the Federal Deposit Insurance Corporation**

336.2 Authority, purpose and scope.
336.3 Definitions.
336.4 Minimum standards for appointment to a position with the FDIC.
336.5 Minimum standards for employment with the FDIC.
336.6 Verification of compliance.
336.7 Employee responsibility, counseling and distribution of regulation.
336.8 Sanctions and remedial actions.
336.9 Finality of determination.

## Subpart A—Employee Responsibilities and Conduct

Authority: 5 U.S.C. 7301; 12 U.S.C. 1819(a).

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

Employees of the Federal Deposit Insurance Corporation (Corporation) are subject to the Executive Branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Corporation regulation at 5 CFR part 3201 which supplements the Executive Branch-wide Standards, the Executive Branch-wide financial disclosure regulations at 5 CFR part 2634, and the Corporation regulation at 5 CFR part 3202, which supplements the Executive Branch-wide financial disclosure regulations.

## Subpart B—Minimum Standards of Fitness for Employment With the Federal Deposit Insurance Corporation

Authority: 12 U.S.C. 1819 (Tenth), 1822(f).

### § 336.2 Authority, purpose and scope.

(a) *Authority.* This part is adopted pursuant to section 12(f) of the Federal Deposit Insurance Act, 12 U.S.C. 1822, and the rulemaking authority of the Federal Deposit Insurance Corporation (FDIC) found at 12 U.S.C. 1819. This part is in addition to, and not in lieu of, any other statutes or regulations which may apply to standards for ethical conduct or fitness for employment with the FDIC and is consistent with the

goals and purposes of 18 U.S.C. 201, 203, 205, 208, and 209.

(b) *Purpose.* The purpose of this part is to state the minimum standards of fitness and integrity required of individuals who provide service to or on behalf of the FDIC and provide procedures for implementing these requirements.

(c) *Scope.* (1) This part applies to applicants for employment with the FDIC under title 5 of the U.S. Code appointing authority in either the excepted or competitive service, including Special Government Employees. This part applies to all appointments, regardless of tenure, including intermittent, temporary, time-limited and permanent appointments.

(2) In addition, this part applies to all employees of the FDIC who serve under an appointing authority under chapter 21 of title 5 of the U.S. Code.

(3) Further, this part applies to any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation.

**§ 336.3 Definitions.**

For the purposes of this part:

(a) *Company* means any corporation, firm, partnership, society, joint venture, business trust, association or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, or any other organization or institution, but shall not include any corporation the majority of the shares of which are owned by the United States, any state, or the District of Columbia.

(b) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company, the ability to direct in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the company's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership. For purposes of this part, an entity or individual shall be presumed to have control of a company if the entity or individual directly or indirectly, or acting in concert with one or more entities or individuals, or through one or more subsidiaries, owns or controls 25 percent or more of its equity, or otherwise controls or has power to control its management or policies.

(c) *Default on a material obligation* means a loan or advance from an insured depository institution which is or was delinquent for 90 or more days as to payment of principal or interest, or any combination thereof.

(d) *Employee* means any officer or employee, including a liquidation graded or temporary employee, providing service to or on behalf of the FDIC who has been appointed to a position under an authority contained in title 5 of the U.S. Code. This definition excludes those individuals designated by title 5 of the U.S. Code as officials in the Federal Executive Schedule.

(e) *Federal banking agency* means the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, or their successors.

(f) *Federal deposit insurance fund* means the Bank Insurance Fund, the Savings Association Insurance Fund, the Federal Savings and Loan Insurance Corporation (FSLIC) Resolution Fund, or the funds that were formerly maintained by the Resolution Trust Corporation (RTC), or their successors, for the benefit of insured depositors.

(g) *FDIC* means the Federal Deposit Insurance Corporation, in its receivership and corporate capacities.

(h) *Insured depository institution* means any bank or savings association the deposits of which are insured by the FDIC.

(i) *Pattern or practice of defalcation regarding obligations* means:

(1) A history of financial irresponsibility with regard to debts owed to insured depository institutions which are in default in excess of $50,000 in the aggregate. Examples of such financial irresponsibility include, without limitation:

(i) Failure to pay a debt or debts totalling more than $50,000 secured by an uninsured property which is destroyed; or

(ii) Abuse of credit cards or incurring excessive debt well beyond the individual's ability to repay resulting in default(s) in excess of $50,000 in the aggregate.

(2) Wrongful refusal to fulfill duties and obligations to insured depository institutions. Examples of such wrongful refusal to fulfill duties and obligations include, without limitation:

(i) Any use of false financial statements;

(ii) Misrepresentation as to the individual's ability to repay debts;

(iii) Concealing assets from the insured depository institution;

(iv) Any instance of fraud, embezzlement or similar misconduct in connection with an obligation to the insured depository institution; and

(v) Any conduct described in any civil or criminal judgment against an individual for breach of any obligation, contractual or otherwise, or any duty of loyalty or care that the individual owed to an insured depository institution.

(3) Defaults shall not be considered a pattern or practice of defalcation where the defaults are caused by catastrophic events beyond the control of the employee such as death, disability, illness or loss of financial support.

(j) *Substantial loss to federal deposit insurance funds.* (1) *Substantial loss to federal deposit insurance funds* means:

(i) A loan or advance from an insured depository institution, which is now owed to the FDIC, RTC, FSLIC or their successors, or any federal deposit insurance fund, that is delinquent for ninety (90) or more days as to payment of principal, interest, or a combination thereof and on which there remains a legal obligation to pay an amount in excess of $50,000; or

(ii) A final judgment in excess of $50,000 in favor of any federal deposit insurance fund, the FDIC, RTC, FSLIC, or their successors regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding.

(2) For purposes of computing the $50,000 ceiling in paragraphs (j)(1)(i) and (ii) of this section, all delinquent judgments, loans, or advances currently owed to the FDIC, RTC, FSLIC or their successors, or any federal deposit insurance fund, shall be aggregated. In no event shall delinquent loans or advances from different insured depository institutions be separately considered.

**§ 336.4 Minimum standards for appointment to a position with the FDIC.**

(a) No person shall become employed on or after June 18, 1994, by the FDIC or otherwise perform any service for or on behalf of the FDIC who has:

(1) Been convicted of any felony;

(2) Been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate federal banking agency;

(3) Demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(4) Caused a substantial loss to federal deposit insurance funds.

(b) Prior to an offer of employment, any person applying for employment with the FDIC shall sign a certification of compliance with the minimum standards listed in paragraphs (a)(1)

through (4) of this section. In addition, any person applying for employment with the FDIC shall provide as an attachment to the certification any instance in which the applicant, or a company under the applicant's control, defaulted on a material obligation to an insured depository institution within the preceding five years.

(c) Incumbent employees who separate from the FDIC and are subsequently reappointed after a break in service of more than three days are subject to the minimum standards listed in paragraphs (a)(1) though (4) of this section. The former employee is required to submit a new certification statement including attachments, as provided in paragraph (b) of this section, prior to appointment to the new position.

**§ 336.5 Minimum standards for employment with the FDIC.**

(a) No person who is employed by the FDIC shall continue in employment in any manner whatsoever or perform any service for or on behalf of the FDIC who, beginning June 18, 1994 and thereafter:

(1) Is convicted of any felony;

(2) Is prohibited from participating in the affairs of any insured depository institution pursuant to any final enforcement action by any appropriate federal banking agency;

(3) Demonstrates a pattern or practice of defalcation regarding obligations to insured depository institution(s); or

(4) Causes a substantial loss to federal deposit insurance funds.

(b) Any noncompliance with the standards listed in paragraphs (a)(1) through (4) of this section is a basis for removal from employment with the FDIC.

**§ 336.6 Verfication of compliance.**

The FDIC's Division of Administration shall order appropriate investigations as authorized by 12 U.S.C. 1819 and 1822 on newly appointed employees, either prior to or following appointment, to verify compliance with the minimum standards listed under § 336.4(a)(1) through (4).

**§ 336.7 Employee responsibility, counseling and distribution of regulation.**

(a) Each employee is responsible for being familiar with and complying with the provisions of this part.

(b) The Ethics Counselor shall provide a copy of this part to each new employee within 30 days of initial appointment.

(c) An employee who believes that he or she may not be in compliance with the minimum standards provided under § 336.5(a)(1) through (4), or who receives a demand letter from the FDIC for any reason, shall make a written report of all relevant facts to the Ethics Counselor within ten (10) business days after the employee discovers the possible noncompliance, or after the receipt of a demand letter from the FDIC.

(d) The Ethics Counselor shall provide guidance to employees regarding the appropriate statutes, regulations and corporate policies affecting employee's ethical responsibilities and conduct under this part.

(e) The Ethics Counselor shall provide the Personnel Services Branch with notice of an employee's noncompliance.

**§ 336.8 Sanctions and remedial actions.**

(a) Any employee found not in compliance with the minimum standards except as provided in paragraph (b) of this section below shall be terminated and prohibited from providing further service for or on behalf of the FDIC in any capacity. No other remedial action is authorized for sanctions for noncompliance.

(b) Any employee found not in compliance with the minimum standards under § 336.5(a)(3) based on financial irresponsibility as defined in § 336.3(i)(1) shall be terminated consistent with applicable procedures and prohibited from providing future services for or on behalf of the FDIC in any capacity, unless the employee brings him or herself into compliance with the minimum standards as provided in paragraphs (b)(1) and (2) of this section.

(1) Upon written notification by the Corporation of financial irresponsibility, the employee will be allowed a reasonable period of time to establish an agreement that satisfies the creditor and the FDIC as to resolution of outstanding indebtedness or otherwise resolves the matter to the satisfaction of the FDIC prior to the initiation of a termination action.

(2) As part of the agreement described in paragraph (b)(1) of this section, the employee shall provide authority to the creditor to report any violation by the employee of the terms of the agreement directly to the FDIC Ethics Counselor.

**§ 336.9 Finality of determination.**

Any determination made by the FDIC pursuant to this part shall be at the FDIC's sole discretion and shall not be subject to further review.

By order of the Board of Directors.

Dated at Washington, D.C. this 14th day of May 1996.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

*Deputy Executive Secretary.*

[FR Doc. 96–14001 Filed 6–5–96; 8:45 am]

BILLING CODE 6714–01–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–CE–23–AD; Amendment 39–9645; AD 96–12–03]**

**RIN 2120–AA64**

## Airworthiness Directives; Aviat Aircraft, Inc. Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes (Formerly Known as Pitts Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes)

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Aviat Aircraft, Inc. (Aviat) Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes that are equipped with aft lower fuselage wing attach fittings incorporating either part number (P/N) 76090, 2–2107–1, or 1–210–102. This action requires repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks and modifying any cracked aft lower fuselage wing attach fitting. Modifying the aft lower fuselage wing attach fitting on both wings eliminates the repetitive inspection requirement of the AD. Several reports of cracked fuselage wing attach fittings on the affected airplanes prompted this action. The actions specified by this AD are intended to prevent possible in-flight separation of the wing from the airplane caused by a cracked fuselage wing attach fitting.

**DATES:** Effective June 24, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 24, 1996.

Comments for inclusion in the Rules Docket must be received on or before August 9, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Aviat Aircraft, Inc., P.O. Box 1240 (postal service delivery), 672 South Washington Street (express mail), Afton, Wyoming 83110. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 5440 Roslyn Street, suite 133, Denver, Colorado 80216; telephone (303) 286–5683; facsimile (303) 286–5689.

**SUPPLEMENTARY INFORMATION:**

Events Leading to the AD

The FAA has received 11 reports of the aft lower fuselage wing attach fittings cracking on Aviat Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes. Five of these incidents were reported on in-service airplanes and six were found defective during Aviat's in-house manufacturing process. Each of the cracked aft lower fuselage wing attach fittings incorporate either part number (P/N) 76090, P/N 2–2107–1, or P/N 1–210–102. If not detected and corrected, a cracked aft lower fuselage wing attach fitting could lead to in-flight separation of the wing from the airplane.

Further analysis of the design of the P/N 76090, 2–2107–1, and 1–210–102 aft lower fuselage wing attach fittings reveals a bend radius that could reduce the fatigue life and subsequently make the parts more susceptible to cracking. Aviat started manufacturing airplanes in 1990 with aft lower fuselage wing attach fittings with a larger bend radius. The FAA has received no reports of cracking on airplanes incorporating attach fittings that incorporate this larger bend radius design.

Aviat has issued Service Bulletin (SB) No. 25, dated April 3, 1996, which specifies procedures for inspecting and modifying the aft lower fuselage wing attach fittings incorporating either P/N 76090, 2–2107–1, and 1–210–102.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent possible in-flight separation of the wing from the airplane caused by a cracked fuselage wing fitting.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Aviat Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes of the same type design that are equipped with aft lower fuselage wing attach fittings incorporating either P/N 76090, 2–2107–1, or 1–210–102, this AD requires repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks, and modifying any cracked aft lower fuselage wing attach fitting. Modifying the aft lower fuselage wing fitting on both wings eliminates the repetitive inspection requirement of this AD. Accomplishment of the required actions is in accordance with Aviat SB No. 25, dated April 3, 1996.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–23–AD.'' The postcard will be date stamped and returned to the commenter.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96–12–03 Aviat Aircraft, Inc.: Amendment 39–9645; Docket No. 96–CE–23–AD.

*Applicability:* Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes (formerly

known as Pitts Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes), all serial numbers, certificated in any category, that are equipped with aft lower fuselage wing attach fittings incorporating part number (P/N) 76090, 2–2107–1, or 1–210–102, and where these aft lower fuselage wing attach fittings on both wings have not been modified in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat Service Bulletin (SB) No. 25, dated April 3, 1996.

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 request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it. Compliance: Required initially within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 50 hours TIS.

To prevent possible in-flight separation of the wing from the airplane caused by a cracked aft lower fuselage wing attach fitting, accomplish the following:

(a) Inspect the aft lower fuselage wing attach fitting on both wings for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat Service Bulletin (SB) No. 25, dated April 3, 1996.

(b) If any cracked aft lower fuselage wing attach fitting is found during any inspection required by this AD, prior to further flight, modify the cracked aft lower fuselage wing attach fitting in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25, dated April 3, 1996. Repetitive inspections are no longer necessary on a cracked aft lower fuselage wing attachment fitting that has the referenced modification incorporated.

(c) Modifying the aft lower fuselage wing attach fitting on both wings in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25, dated April 3, 1996, is considered terminating action for the repetitive inspection requirement of this AD.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Denver Aircraft Certification Office, 5440 Roslyn Street, suite 133, Denver, Colorado 80216. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Denver ACO.

(f) The inspection and modification (if necessary) required by this AD shall be done in accordance with Aviat Service Bulletin No. 25, dated April 3, 1996. 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 Aviat Aircraft, Inc., P.O. Box 1240 (postal service delivery), 672 South Washington Street (express mail), Afton, Wyoming 83110. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9645) becomes effective on June 24, 1996.

Issued in Kansas City, Missouri, on May 29, 1996.

Michael Gallagher,

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 96–14051 Filed 6–5–96; 8:45 am]

BILLING CODE 4910–13–U

## 14 CFR Part 39

**[Docket No. 90–CE–60–AD; Amendment 39–9654; AD 96–12–12]**

**RIN 2120–AA64**

## Airworthiness Directives; The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation) Models PA31, PA31–300, PA31–325, and PA31–350 Airplanes

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

**ACTION:** Final rule

**SUMMARY:** This amendment supersedes Airworthiness Directive (AD) 80–22–04, which currently requires the following on The New Piper Aircraft, Inc. (Piper) Models PA31, PA31–300, PA31–325, and PA31–350 airplanes: repetitively inspecting the upper section of Fuselage Station (FS) 317.75 bulkhead for cracks, and incorporating a certain reinforcement kit if any crack is found. This action requires inspecting (one-time) the upper section of the FS 317.75 bulkhead for cracks, and incorporating one of two reinforcement kits depending on whether cracks are found in the FS 317.75 bulkhead area. Cracks found on airplanes in compliance with the inspection requirements of AD 80–22–04 and the Federal Aviation Administration's policy on aging commuter-class aircraft prompted this action. The actions specified in this AD are intended to prevent structural failure of the vertical fin forward spar caused by cracks in the FS 317.75 bulkhead, which, if not detected and corrected, could result in loss of control of the airplane.

**DATES:** Effective July 16, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 16, 1996.

**ADDRESSES:** Service information that applies to this AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 90–CE–60–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; facsimile (404) 305–7348.

**SUPPLEMENTARY INFORMATION:**

Events Leading to the AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Models PA31, PA31–300, PA31- 325, and PA31–350 airplanes was published in the Federal Register on January 31, 1996 (61 FR 3338). The action proposed to supersede AD 80–22–04 with a new AD that would require inspecting (one-time) the upper section of the FS 317.75 bulkhead for cracks in accordance with Piper Service Bulletin No. 636A, dated August 26, 1980, and accomplishing one of the following, as applicable:

—If any crack is found, incorporating Piper Kit 764–028 in accordance with the instructions to that kit, revised June 18, 1990; or

—If no crack is found, incorporating Piper Kit 763–917 in accordance with the instructions to that kit, revised June 18, 1990.

Cracks found on airplanes in compliance with the inspection requirements of AD 80–22–04 prompted the proposal.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the

proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 2,810 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 12 workhours (average of 8 workhours for Kit 763–917 and 16 workhours for Kit 764–028) per airplane to accomplish the required installation, and that the average labor rate is approximately $60 an hour. Parts cost approximately $300 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $2,866,200 or $1,020 per airplane. This figure is based on the assumption that no affected airplane owner/operator has accomplished the required installation.

Piper has informed the FAA that bulkhead reinforcement kits have been distributed to equip at least 15 of the affected airplanes. Assuming that each of the kits has been incorporated on an affected airplane, the cost impact of this AD upon U.S. owners/operators of the affected airplanes will be reduced by $15,300 from $2,866,200 to $2,850,900.

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 copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 Airworthiness Directive (AD) 80–22–04, Amendment 39–3943, and by adding a new AD to read as follows:

96–12–12 The New Piper Aircraft, Inc. (formerly Piper Aircraft Corporation): Amendment 39–9654; Docket No. 90–CE–60–AD. Supersedes AD 80–22–04, Amendment 39–3943.

*Applicability:* The following model and serial number airplanes, certificated in any category, that do not have either Piper Kit 764–028 or Piper Kit 763–917 incorporated at the Fuselage Station (FS) 317.75 bulkhead area:

| Models | Serial Nos. |
|---|---|
| PA31, PA31–300, and PA31–325. | 31–2 through 31–7912039. |
| PA31–350 ..... | 31–5001 through 31–7952071. |

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 request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent structural failure of the vertical fin forward spar caused by cracks in the FS 317.75 bulkhead, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Inspect the upper section of the FS 317.75 bulkhead for cracks in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 636A, dated August 26, 1980.

(1) If any crack is found, prior to further flight, incorporate Piper Kit 764–028 in accordance with the instructions included with that kit, revised June 18, 1990.

(2) If no crack is found, prior to further flight, incorporate Piper Kit 763–917 in accordance with the instructions included with that kit, revised June 18, 1980.

(b) 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.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Note 3: Alternative methods of compliance approved in accordance with AD 80–22–04 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

(d) The inspection required by this AD shall be done in accordance with Piper Service Bulletin No. 636A, dated August 26, 1980. The installation required by this AD shall be done in accordance with the instructions to Piper Kit 764–028, revised June 18, 1990, or Piper Kit 763–917, revised June 18, 1990, 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 The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9654) supersedes AD 80–22–04, Amendment 39–3943.

(f) This amendment (39–9654) becomes effective on July 16, 1996. Issued in Kansas City, Missouri, on May 30, 1996.

John R. Colomy,

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

[FR Doc. 96–14174 Filed 6–5–96; 8:45 am]

BILLING CODE 4910–13–U

**14 CFR Part 39**

**[Docket No. 96–NM–61–AD; Amendment 39–9653; AD 96–12–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Canadair Model CL–215–1A10 Series Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Canadair Model CL–215–1A10 series airplanes. This action requires repetitive inspections to detect discrepancies of the microswitches fitted at the water door actuator, and replacement of any discrepant microswitch. This action also requires a terminating action for the repetitive inspections. This amendment is prompted by a report indicating that the water doors on one airplane opened inadvertently during flight, due to corrosion of the microswitches fitted to the water door actuator. The actions specified in this AD are intended to prevent such uncommanded opening of the water doors, especially at high speed during a takeoff run, a water pick-up run, or a landing run, which could cause damage to the airplane.

**DATES:** Effective June 21, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1996.

Comments for inclusion in the Rules Docket must be received on or before August 5, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–61–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Michelle Maurer, Aerospace Engineer, New York Aircraft Certification Office, Systems & Flight Test Branch (ANE–172), Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7508; fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:** Transport Canada Aviation, which is the airworthiness authority for Canada, has notified the FAA that an unsafe condition may exist on all Canadair Model CL–215–1A10 series airplanes. Transport Canada Aviation advises that there has been an incident in which the water doors on one airplane inadvertently opened during flight. Investigation revealed that the cause of this malfunction of the doors was due to corrosion of the microswitches that are fitted to the water door actuators. The uncommanded opening of these doors at high speed during the takeoff run, water pick-up run, or landing run could cause serious damage to the airplane.

Explanation of Relevant Service Information

Canadair has issued Alert Service Bulletin 215–A363, dated March 16, 1987. This service bulletin describes procedures for (1) performing repetitive visual inspections to detect corrosion of the microswitches fitted to the water door actuator; (2) conducting repetitive resistance checks and insulation checks of the left-hand (LH) and right-hand (RH) water door actuator microswitches; and (3) replacing any discrepant microswitch. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–87–08 R1, dated December 7, 1990, in order to assure the continued airworthiness of these airplanes in Canada.

Canadair also has issued Service Bulletin 215–389, Revision 1, dated September 30, 1991, which describes procedures for modifying the water door microswitches. The modification entails replacing the LH and RH water door actuator microswitches, installing a relay channel and two relays, and modifying related wiring. Transport Canada Aviation has classified this service bulletin as ''recommended.''

FAA's Conclusions

This airplane model is manufactured in Canada 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, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, 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.

Explanation of the Requirements of the Rule

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 the inadvertent opening of the water doors during flight due to the problems associated with corrosion of the microswitches fitted at the water door actuator. This AD requires repetitive inspections to detect discrepancies of these microswitches, and replacement of any discrepant microswitch. This AD requires modification of the water door microswitches as terminating action for the repetitive inspections The actions are required to be accomplished in accordance with the service bulletins described previously.

Differences Between this AD and Related Canadian AD

Operators should note that this AD differs from the related Canadian Airworthiness Directive CF–87–08 R1 in that this AD requires the accomplishment of the terminating action for the repetitive inspections of the microswitches. The FAA has determined that long term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The modification requirement of this AD is in consonance with these considerations.

Cost Impact

None of the Model CL–215–1A10 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 2 work hours to accomplish the required inspections, at an average labor charge of $60 per work hour. Based on these figures, the cost impact of these required inspections would be $120 per airplane per inspection.

Accomplishment of the terminating modification would require approximately 40 work hours, at an average labor charge of $60 per work hour. Required parts would cost approximately $2,900 per airplane. Based on these figures, the cost impact of this required modification would be $5,300 per airplane.

Determination of Rule's Effective Date

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 96–NM–61–AD.'' The postcard will be date stamped and returned to the commenter.

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 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

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

96–12–11 Canadair: Amendment 39–9653. Docket 96–NM–61–AD.

*Applicability:* Model CL–215–1A10 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent in the inadvertent opening of the water doors due to corrosion associated with the microswitches fitted to the water door actuator, accomplish the following:

(a) Within 30 days after the effective date of this AD, conduct an inspection to detect discrepancies of the left-hand (LH) and right-hand (RH) microswitches, part number (P/N) 21EN9–6, fitted to the water door actuator, in accordance with paragraphs 2.D. and 2.E. of the Accomplishment Instructions of Canadair Alert Service Bulletin 215–A363, dated March 16, 1987.

(b) If no discrepancy is detected during the inspection required by paragraph (a) of this AD, repeat the inspection in accordance with the following schedule:

(1) For microswitches that have accumulated less than 5 calendar years and less than 1,000 total flight hours at the time of the inspection: Repeat the inspection at intervals not to exceed 240 flight hours.

(2) For microswitches that have accumulated 5 or more calendar years, or 1,000 or more flight hours at the time of the inspection: Repeat the inspection at intervals not to exceed 50 flight hours.

(c) If any discrepancy is detected during an inspection required by paragraph (a) or (b) of this AD, prior to further flight, accomplish the action specified in either paragraph (c)(1) or (c)(2) of this AD:

(1) Replace the microswitch with a serviceable microswitch of the same part number in accordance with paragraph F. of the Accomplishment Instructions of Canadair Alert Service Bulletin 215–A363, dated March 16, 1987. After replacement, repeat the inspection in accordance with the schedule specified in paragraph (b) of this AD.

(2) Modify the water door microswitches in accordance with Canadair Service Bulletin 215–389, Revision 1, dated September 30, 1991. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(d) Within 2 years after the effective date of this AD, modify the water door microswitches in accordance with Canadair Service Bulletin 215–389, Revision 1, dated September 30, 1991. This modification constitutes terminating action for the requirements of this AD.

Note 2: Accomplishment of this modification in accordance with Canadair

Service Bulletin 215–389, dated November 15, 1988, prior to the effective date of this AD, is considered acceptable for compliance with this paragraph.

(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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(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 inspections shall be done in accordance with Canadair Alert Service Bulletin 215–A363, dated March 16, 1987. The modification shall be done in accordance with Canadair Service Bulletin 215–389, Revision 1, dated September 30, 1991. 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 Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centre-ville, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 21, 1996.

Issued in Renton, Washington, on May 30, 1996.

Darrell M. Pederson,

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

[FR Doc. 96–14036 Filed 6–5–96; 8:45 am]

BILLING CODE 4910–13–U

## 14 CFR Part 39

**[Docket No. 92–ANE–08; Amendment 39–8781; AD 93–25–17]**

## Airworthiness Directives; General Electric CT7 Series Turboprop and Turboshaft Engines

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 93–25–17 applicable to General Electric (GE) CT7 series turboprop and turboshaft engines that was published in the Federal Register on January 3, 1994 (59 FR 3). The docket number in the header to the applicability section is incorrect. This document corrects the docket number. In all other respects, the original document remains the same.

**EFFECTIVE DATE:** June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** Dave Keenan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7139, fax (617) 238–7199.

**SUPPLEMENTARY INFORMATION:** A final rule airworthiness directive applicable to General Electric (GE) CT7 series turboprop and turboshaft engines, was published in the Federal Register on January 3, 1994 (59 FR 3). The following correction is needed:

**§ 39.13 [Corrected]**

On page 4, in the first column, in the heading above the Applicability Section of AD 93–25–17, in the second line, ''Docket No. 93–ANE–08'' is corrected to read ''Docket No. 92–ANE–08''.

Issued in Burlington, Massachusetts, on May 16, 1996.

Jay J. Pardee,

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

[FR Doc. 96–13888 Filed 6–5–96; 8:45 am]

BILLING CODE 4910–13–U

## 14 CFR Part 39

**[Docket No. 96–NM–56–AD; Amendment 39–9652; AD 96–12–10]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires either the application of a vapor sealant on the back of the receptacle of the auxiliary power unit (APU) power feeder cable; or a visual inspection for gold-plating and evidence of damage of the connector contacts of the power feeder cable of the APU generator, and various follow-on actions. This amendment is prompted by reports of burning and arcing of these connector contacts. The actions specified in this AD are intended to reduce the potential for a fire hazard as a result of such burning or arcing.

**DATES:** Effective June 21, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 1996.

Comments for inclusion in the Rules Docket must be received on or before August 5, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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 FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 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:** Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5347; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:** The FAA has received several reports of burning and arcing of the connector contacts (pins/sockets) of the power feeder cable of the auxiliary power unit (APU) generator on Model MD–11 series airplanes. This condition was indicated by the inability to electrically power the airplane using APU generator power. In all cases, the connector and receptacle were heat-damaged beyond repair. The associated power feeder cables also sustained heat damage. Investigation revealed that the connector contacts had been nickel plated during production. These connector contacts must be gold plated to be able to withstand the loads applied. Burning and arcing of the connector contacts of the power feeder cable of the APU generator, if not corrected, could result in potential fire hazard.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996, which describes procedures for application of a vapor sealant on the back of the receptacle of the APU power feeder cable. Applying the vapor sealant will reduce the possibility of fire or burning until the remainder of the actions specified in the alert service bulletin can be accomplished.

The alert service bulletin also describes procedures for a one-time visual inspection for color (gold plating) and evidence of damage of the connector contacts (pins/sockets) of the power feeder cable of the APU generator located in the upper left corner of the APU compartment in the forward bulkhead. It also describes procedures for replacement of damaged pins and sockets with gold-plated pins and sockets, or deactivation of the electrical operation of the APU until such replacement is accomplished. The alert service bulletin specifies that the visual inspection and replacement or deactivation (if necessary) actions eliminate the need for applying a vapor sealant.

Additionally, the alert service bulletin describes procedures for eventual replacement of undamaged pins and sockets that are nickel-plated or made of copper (brass), with gold-plated pins and sockets.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Model MD–11 series airplanes of the same type design, this AD is being issued to reduce the potential for a fire hazard as a result of burning and arcing of the connector contacts of the power feeder cable of the APU generator. This AD requires either:

1. The application of a vapor sealant on the back of the receptacle of the APU power feeder cable; or

2. A one-time visual inspection for color (gold-plating) and evidence of damage of the connector contacts (pins/sockets) of the power feeder cable of the APU generator; and either replacement of damaged pins and sockets with gold-plated pins and sockets, or deactivation of the electrical operation of the APU until such replacement is accomplished.

The actions are required to be accomplished in accordance with the alert service bulletin described previously.

This AD is considered to be interim action. The FAA may consider further rulemaking action to require operators who install the vapor sealant to eventually accomplish the one-time visual inspection (and follow-on actions) and the replacement of nickel-plated or copper (brass) pins and sockets with gold-plated pins and sockets. However, the compliance time that the FAA is considering for accomplishment of those actions are sufficiently long so that prior notice and time for public comment will be practicable.

Determination of Rule's Effective Date

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications 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 96–NM–56–AD.'' The postcard will be date stamped and returned to the commenter.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

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

96–12–10 McDonnell Douglas: Amendment 39–9652. Docket 96–NM–56–AD.

*Applicability:* Model MD–11 series airplanes; as listed McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996; 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 request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To reduce the potential for a fire hazard as a result of burning and arcing of the connector contacts of the power feeder cable of the auxiliary power unit (APU) generator, accomplish the following:

(a) Within 60 days after the effective date of this AD, accomplish the actions specified in either paragraph (a)(1) or (a)(2) of this AD:

(1) Apply a vapor sealant on the back of the APU power feeder cable receptacle in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996. Or

(2) Accomplish the actions specified in both paragraph (a)(2)(i) and (a)(2)(ii) of this AD in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996.

(i) Perform a one-time visual inspection for color (gold-plating) and evidence of damage of the connector contacts (pins/sockets) of the power feeder cable of the APU generator located in the upper left corner of the APU compartment in the forward bulkhead; and

(ii) Replace any damaged pin or socket with a gold-plated pin or socket, or deactivate the electrical operation of the APU until such replacement is accomplished.

(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, Los Angeles ACO. 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 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(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 actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–24A104, dated May 7, 1996. 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, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 21, 1996.

Issued in Renton, Washington, on May 30, 1996.

Darrell M. Pederson,

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

[FR Doc. 96–14037 Filed 6–05–96; 8:45 am]

BILLING CODE 4910–13–P

## 14 CFR Part 39

**[Docket No. 96–CE–22–AD; Amendment 39–9650; AD 96–12–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Twin Commander Aircraft Corporation 500, 680, and 690 Series Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to Twin Commander Aircraft Corporation (Twin Commander) 500, 680, and 690 series airplanes that do not have a nose landing gear drag link bolt with the manufacturer's serial number, manufacture date, and the last three digits of the drawing number, 055, on the bolt head. This action requires replacing the nose landing gear (NLG) drag link bolt with one that has been manufactured with the proper heat treatment. This action was prompted by the failure of an improperly heat treated NLG drag link bolt causing collapse of the nose landing gear on a certain Twin Commander Model 690B airplane while taxiing. The actions specified by this AD are intended to prevent the NLG from collapsing, which if not corrected, could result in loss of the airplane.

**DATES:** Effective June 27, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 27, 1996.

Comments for inclusion in the Rules Docket must be received on or before July 29, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Twin Commander Aircraft Corporation, 19010 59th Dr. NE, Arlington, Washington, 98223–7832; telephone (360) 435–9797; facsimile (360) 435–1112. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–22–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David D. Swartz, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Ave. S.W., Renton, Washington, 98055–4056; telephone (206) 227–2624; facsimile (206) 227–1181.

**SUPPLEMENTARY INFORMATION:** The FAA has recently received an accident report on a certain Twin Commander Model 690B airplane. The accident was caused by the failure of the nose landing gear (NLG) after the NLG drag link bolt, part number (P/N) ED 10055, broke. Further investigation revealed that the bolt had not been heat treated properly during manufacture, thus making it weak and the NLG susceptible to collapse during landing or taxiing operations. Additional bolts in two other manufactured lots also failed the Rockwell Hardness test, resulting in the need to replace all of these NLG drag link bolts.

Twin Commander has issued service bulletin (SB) 224, Revision A, dated April 24, 1996 which specifies replacing the NLG drag link bolt with an approved heat treated bolt.

Note: Although it is not required by this AD, the FAA recommends that the owner/operator return the removed bolt to the factory for testing.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the NLG from failing, which if not corrected, could result in loss of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Twin Commander 500, 680, and 690 series airplanes of the same type design, this AD requires replacing the NLG drag link bolt with an approved heat treated bolt which has the manufacturer's serial number, manufacture date, and the last three digits of the drawing number, 055, on the bolt head. The actions are to be done in accordance with the instructions in

Twin Commander SB 224, Revision A, dated April 24, 1996.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–22–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.

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

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 a new airworthiness directive (AD) to read as follows:

96–12–08. Twin Commander Aircraft Corporation: Amendment 39–9650; Docket No. 96–CE–22–AD.

*Applicability:* The following Model and serial number airplanes, certificated in any category.

| Models | Serial Nos. |
|---|---|
| 500S ..... | 3185, 3228, 3230, 3262, and 3291. |
| 500U ..... | 1765. |
| 680F ..... | 1195. |
| 681 ..... | 6027. |
| 690 ..... | 11035, 11053, 11068, and 11074. |
| 690A ..... | 11111, 11134, 11146, 11173, 11177, 11205, 11215, 11237, 11271, 11273, and 11282. |
| 690B ..... | 11360, 11382, 11409, 11424, 11451, 11455, 11463, 11491, 11513, 11535, 11536, and 11539. |
| 690C ..... | 11638, 11676, 11689, and 11719. |
| 690D ..... | 15041. |
| 695 ..... | 95010, 95033, and 96066. |
| 695A ..... | 69010, 69041, 69056, and 69061. |

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 request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within the next 10 hours time-in-service (TIS), unless already accomplished.

To prevent the nose landing gear (NLG) from collapsing, which if not corrected, could result in loss of the airplane, accomplish the following:

(a) Replace the NLG drag link bolt, part number (P/N) ED 10055, with a new bolt in accordance with the INSTRUCTIONS section of Twin Commander Service Bulletin 224, Revision A, dated April 24, 1996.

(b) The new replacement bolt must be marked with the manufacturer's serial number, the date of manufacture, and the last three digits of the drawing number, 055, on the bolt head.

Note 2: Although not required by this AD, it is highly recommended that the removed bolt (P/N ED 10055) be returned to Twin Commander for Rockwell Hardness testing.

(c) As of the effective date of this AD, no person shall install an NLG drag link bolt that does not have the manufacturer's serial number, manufacture date, and the last three digits of the drawing number, 055, on the bolt head.

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

(e) An alternative method of compliance (which would include Rockwell Hardness test) or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office, 1601 Lind Ave. S.W., Renton, Washington, 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle Aircraft Certification Office.

(f) The replacement required by this AD shall be done in accordance with Twin Commander Aircraft Corporation Service Bulletin 224, Revision A, dated April 24, 1996. 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 Twin Commander Aircraft Corporation, 19010 59th Dr. NE, Arlington, Washington, 98223–7832; telephone (360) 435–9797; facsimile (360) 435–1112. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment (39–9650) becomes effective on June 27, 1996.

Issued in Kansas City, Missouri, on May 30, 1996.

John R. Colomy,

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

[FR Doc. 96–14032 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–13–P**

## 14 CFR Part 71

**[Airspace Docket No. 95–ASW–20]**

## Revision of Class E Airspace; Victoria, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises the Class E airspace extending upward from 700 feet above ground level (AGL) at Victoria, TX. The development of an Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 12 Left (L) at Victoria Regional Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the ILS SIAP to RWY 12L at Victoria Regional Airport, Victoria, TX.

**EFFECTIVE DATE:** 0901 UTC, August 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Chuck Frankenfield, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5591.

**SUPPLEMENTARY INFORMATION:**

History

On January 24, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Victoria, TX, was published in the Federal Register (61 FR 1864). an ILS SIAP to RWY 12L developed for Victoria Regional Airport, Victoria, TX, requires the revision of the Class E airspace at this airport. The proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feed or more AGL are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace located at Victoria Regional Airport, Victoria, TX, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the ILS SIAP to RWY 12L.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

*Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

ASW TX E5 Victoria, TX [Revised]

Victoria, Victoria Regional Airport, TX
(lat. 28°51′09″N, long. 096°55′07″W)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Victoria Regional Airport, and within 1.9 each side of the 312° bearing from the airport extending from the 7.1-mile radius to 12.8-miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on May 15, 1996.

Albert L. Viselli,

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 96–13921 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–13–M**

## 14 CFR Part 71

**[Airspace Docket No. 95–ASW–17]**

## Revision of Class E Airspace; Guthrie, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises the Class E airspace extending upward from 700 feet above ground level (AGL) at Guthrie, TX. New Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME) Area Navigation (Random Navigation) (RNAV) Standard Instrument Approach Procedures (SIAP's) to Runaways (RWY's) 01 and 19 at 6666 Ranch Airport, Guthrie, TX, have made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the VOR/DME RNAV SIAP's to RWY's 01 and 19 at 6666 Ranch Airport, Guthrie, TX.

**EFFECTIVE DATE:** 0901 UTC, August 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Chuck Frankenfield, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5591.

**SUPPLEMENTARY INFORMATION:**

History

On January 24, 1996, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Guthrie, TX, was published in the Federal Register (61 FR 1867). Development of VOR/DME RNAV SIAP's to RWY's 01 and 19 at 6666 Ranch Airport, Guthrie, TX. requires the revision of the Class E airspace at this airport. The proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more AGL are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace located at 6666 Ranch Airport, Guthrie, TX, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the VOR/DME RNAV SIAP's to RWY's 01 and 19.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points,* dated August 17, 1995, and effective September 16, 1995, is amended as follows:

*Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

ASW TX E5 Guthrie, TX [Revised]

Guthrie, 6666 Ranch Airport, TX
(Lat. 33°38′28″N, long. 100°20′51″W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of 6666 Ranch Airport and within 2 miles each side of the 196° bearing from the airport extending from the 6.7-mile radius to 10.4 miles south of the airport, and within 3.7 miles each side of the 003° bearing from the airport extending from the 6.7-mile radius to 10.4 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on May 15, 1996.

Albert L. Viselli,

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 96–13923 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–13–M**

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## 14 CFR Part 71

**[Airspace Docket No. 94–ASW–22]**

## Revision of Class E Airspace; Guymon, OK

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises the Class E airspace extending upward from 700 feet above ground level (AGL) at Guymon, OK. The development of a Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 36 at Guymon Municipal Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the GPS SIAP to RWY 36 at Guymon Municipal Airport, Guymon, OK.

**EFFECTIVE DATE:** 0901 UTC, August 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

**SUPPLEMENTARY INFORMATION:**

History

On June 27, 1995, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Guymon, OK, was published in the Federal Register (60 FR 33161). A GPS SIAP to RWY 36 developed for Guymon Municipal Airport, Guymon, OK, requires the revision of the Class E airspace at this airport. The proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. However, the proposal was published with an incorrect coordinate for the location of the Guymon Municipal Airport. The correct coordinates for the airport should have been (Lat. 36°41′03″ N, long. 101°30′25″ W). The description of the Class E airspace in this rule has been revised to reflect this change. The FAA has determined that this is editorial change and will not increase the scope of this rule. Except for the non-substantive change just discussed, the rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more AGL are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) amends the Class E airspace located at Guymon Municipal Airport, Guymon, OK, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS SIAP to RWY 36.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

*Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

ASW OK E5 Guymon, OK [Revised]

Guymon Municipal Airport, OK
(lat. 36°41′03″N, long. 101°30′25″W)
Guymon NDB
(lat. 36°42′19″N, long. 101°30′18″W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Guymon Municipal Airport and within 2.4 miles each side of the 006° bearing from the Guymon NDB extending from the 6.6-mile radius to 7.4 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on May 15, 1996.

Albert L. Viselli,

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 96–13937 Filed 6–5–96; 8:45 am]

BILLING CODE 4910–13–M

## 14 CFR Part 71

**[Airspace Docket No. 95–ASW–01]**

## Establishment of Class E Airspace; Seymour, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes the Class E airspace extending upward from 700 feet above ground level (AGL) at Seymour, TX. The development of a Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 17 at Seymour Municipal Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the GPS SIAP to RWY 17 at Seymour Municipal Airport, Seymour, TX.

**EFFECTIVE DATE:** 0901 UTC, August 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

**SUPPLEMENTARY INFORMATION:**

History

On June 27, 1995, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish the Class E airspace at Seymour, TX, was published in the Federal Register (60 FR 33162). On August 7, 1995, a correction to the airspace description was published in the Federal Register (60 FR 40227). A GPS SIAP to RWY 17 developed for Seymour Municipal Airport, Seymour, TX, requires the revision of the Class E airspace at this airport. The proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. However, the proposal and the subsequent correction for the airspace description for the proposal were published with an incorrect coordinate for the location of the Seymour Municipal Airport. The correct coordinates for the airport should have been (Lat. 33°38′55″ N, long. 099°15′38″ W). The description of the Class E airspace in this rule has been revised to reflect this change. The FAA has determined that this is an editorial change and will not increase the scope of this rule. Except for the editorial change just discussed, the rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more AGL are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends the Class E airspace located at Seymour Municipal Airport, Seymour, TX, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS SIAP to RWY 17.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points*, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

*Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

ASW TX E5 Seymour, TX [New]

Seymour, Seymour Municipal Airport, TX (lat. 33°38′55″ N., long. 99°15′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Seymour Municipal Airport.

* * * * *

Issued in Fort Worth, TX, on May 15, 1996.

Albert L. Viselli,

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 96–13938 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–13–M**

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## 14 CFR Part 71

**[Airspace Docket No. 95–ASW–08]**

## Revision of Class E Airspace; Artesia, NM

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action revises the Class E airspace extending upward from 700 feet above ground level (AGL) at Artesia, NM. The development of a new Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway (RWY) 21 at Artesia Municipal Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rule (IFR) operations for aircraft executing the GPS SIAP to RWY 21 at Artesia Municipal Airport, Artesia, NM.

**EFFECTIVE DATE:** 0901 UTC, August 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Day, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5593.

**SUPPLEMENTARY INFORMATION:**

History

On July 17, 1995, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at Artesia, NM, was published in the Federal Register (60 FR 36373). A new GPS SIAP to RWY 21 developed for Artesia Municipal Airport, Artesia, NM, requires the revision of the Class E airspace at this airport. The proposal was to revise the controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more AGL are published in Paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revises the Class E airspace located at Artesia Municipal Airport, Artesia, NM, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS SIAP to RWY 21.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation be reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, *Airspace Designations and Reporting Points,* dated August 17, 1995, and effective September 16, 1995, is amended as follows:

*Paragraph 6005: Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

ASW NM E5 Artesia, NM [Revised]

Artesia Municipal Airport, NM
(lat. 32°51′91″ N, long. 104°28′04″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Artesia Municipal Airport and within 1.8 miles each side of the 035° bearing from the Artesia Municipal Airport extending from the 7-mile radius to 8.1 miles northeast of the airport.

* * * * *

Issued in Fort Worth, TX, on May 15, 1996.

Albert L. Viselli,

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 96–13939 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–13–M**

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## 14 CFR Part 71

**[Airspace Docket No. 96–ACE–2]**

## Amendment to Class E Airspace: Kaiser, MO; Camdenton, MO; Sedalia, MO; West Plains, MO; Point Lookout, MO; St. Charles, MO; Monett, MO; Butler, MO; Monroe City, MO; Farmington, MO; Fort Leavenworth, Sherman Army Airfield, KS; and Dodge City, KS

**AGENCY:** Federal Aviation Administration [FAA], DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment modifies the Class E airspace area at Kaiser, Lee C. Fine Memorial Airport, MO; Camdenton Memorial Airport, Camdenton, MO;

Sedalia Memorial Airport, Sedalia, MO; West Plains Municipal Airport, West Plains, MO; M. Graham Clark Airport, Point Lookout, MO; St. Charles Co. Smartt Airport, St. Charles, MO; Monett Municipal Airport, Monett, MO; Butler Memorial Airport, Butler, MO; Farmington Regional Airport, Farmington, MO; Fort Leavenworth, Sherman AAF, KS; and Dodge City Regional Airport, Dodge City, KS. This action will provide additional controlled airspace necessary for the planned SIAPs utilizing the Global Positioning System (GPS).

**EFFECTIVE DATE:** 0901 UTC August 15, 1996.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Operations Branch, ACE–530C, Federal Aviation Administration, 601 E. 12th St., Kansas City, MO 64106; telephone (816) 426–3408.

**SUPPLEMENTARY INFORMATION:**

History

On March 26, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying the Class E airspace area at Kaiser, MO; Camdenton, MO; Sedalia, MO; West Plains, MO; Point Lookout, MO; St. Charles, MO; Monett, MO; Butler, MO; Monroe City, MO; Farmington, MO; Fort Leavenworth, Sherman Army Airfield, KS; and Dodge City, KS. (61 FR 13115). The proposed action would provide additional controlled airspace to accommodate the new SIAPs to the above listed airports. A minor correction is being made to the Kansas City International Airport, MO, Class E5 airspace, which contains Sherman Army Airfield, Fort Leavenworth, KS, and to geographical coordinates at certain airports and navigational aids.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Seven comments were received in support of the proposal regarding Monett, MO. Class E airspace areas extending from 700 feet or more above the surface of the Earth are published in paragraph 6005 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the Class E airspace area at the airports listed in the summary, by providing additional controlled airspace for aircraft executing the new SIAPs to the airports. A minor correction is being made to the Kansas City International Airport, MO, Class E5 airspace, which contains Sherman Army Airfield, Fort Leavenworth, KS, and to geographical coordinates at certain airports and navigational aids.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending From 700 Feet or More Above the Surface of the Earth.*

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ACE MO E5 Kaiser, MO

Kaiser, Lee E. Fine Memorial Airport, MO
(lat. 38°05′46″N., long. 92°32′58″W.)
Camdenton Memorial Airport, MO
(lat. 37°58′29″N., long. 92°41′30″W.)
Osage Beach, Linn Creek-Grand Glaize Memorial Airport, MO
(lat. 38°05′38″N., long. 92°40′50″W.)
Kaiser NDB
(lat. 38°05′48″N., long. 92°33′11″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Lee C. Fine Memorial Airport and within 2.6 miles each side of the 045° bearing of the Kaiser NDB extending from the 6.5-mile radius of the Lee C. Fine Memorial Airport to 7.9 miles northeast of the airport and within a 6.3-mile radius of Camdenton Memorial Airport and within a 6.3-mile radius of Linn Creek-Grand Glaize Memorial Airport.

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ACE MO E5 Sedalia, MO

Sedalia Memorial Airport, MO
(lat. 38°42′25″ N., long. 93°10′34″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Sedalia Memorial Airport and within 2.6 miles of the 011° bearing from Sedalia Memorial Airport extending from the 6.7-mile radius to 7 miles north of the airport and within 2.6 miles each side of the 178° bearing from Sedalia Memorial Airport extending from the 6.7-mile radius to 7 miles south of the airport.

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ACE MO E5 West Plains, MO

West Plains Municipal Airport, MO
(lat. 36°52′41″ N., long. 91°54′10″ W.)
Pomona NDB
(lat. 36°52′42″ N., long. 91°54′02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of West Plains Municipal Airport and within 2.6 miles each side of the 185° bearing from the Pomona NDB extending from the 6.4-mile radius of the West Plains Municipal Airport to 7.4 miles south of the NDB.

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ACE MO E5 Point Lookout, MO

Point Lookout, M. Graham Clark Airport, MO
(lat. 36°37′33″ N., long. 93°13′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of M. Graham Clark Airport and within 2.6 miles each side of the 123° bearing from the M. Graham Clark Airport extending from the 6.5-mile radius to 7 miles southeast of the airport.

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ACE MO E5 St. Louis, MO

Lambert-St. Louis International Airport
(lat. 38°44′52″ N., long 90°21′36″ W.)
Spirit of St. Louis Airport, MO
(lat. 38°39′43″ N., long 90°39′104″ W.)
St. Louis Regional Airport, Alton, IL

(lat. 38°53′25″ N., long 90°02′46″ W.)
St. Charles County Smartt Airport, St. Charles, MO
(lat. 38°55′47″ N., long 90°25′48″ W.)
St. Louis VORTAC
(lat. 38°51′39″ N., long 90°28′57″ W.)
Foristell VORTAC
(lat. 38°41′40″ N., long 90°58′17″ W.)
ZUMAY LOM
(lat. 38°47′17″ N., long 90°16′44″ W.)
OBLIO LOM
(lat. 38°48′01″ N., long 90°28′29″ W.)
Civic Memorial NDB
(lat. 38°53′32″ N., long 90°03′23″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Lambert-St. Louis International Airport, and within 4 miles southeast and 7 miles northwest of the Lambert-St. Louis International Airport Runway 24 ILS localizer course extending from the airport to 10.5 miles northeast of the ZUMAY LOM, and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis Airport Runway 12R ILS localizer course extending from the airport to 10.5 miles northwest of the OBLIO LOM, and within 4 miles southwest and 7.9 miles northeast of the Lambert-St. Louis Airport Runway 30L ILS localizer southeast course extending from the airport to 8.7 miles southeast of the airport, and within a 6.6-mile radius of Spirit of St. Louis Airport and within 2.6 miles each side of the 098° radial of the Foristell VORTAC extending from the 6.6-mile radius area to 8.3 miles west of the airport, and within a 6.4-mile radius of St. Charles County Smartt Airport, and within a 6.7-mile radius of St. Louis Regional Airport, and within 4 miles each side of the 014° bearing from the Civic Memorial NDB extending from the 6.7-mile radius to 7 miles north of the airport, and within 4.4 miles each side of the 190° radial of the St. Louis VORTAC extending from 2 miles south of the VORTAC to 22.1 miles south of the VORTAC.

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ACE MO E5 Monett, MO

Monett Municipal Airport, MO
(lat. 36°54′32″N., long. 94°00′45″W.)
Neosho VORTAC
(lat. 36°50′33″N., long. 94°26′09″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Monett Municipal Airport and within 1.8 miles each side of the Neosho VORTAC 079° radial extending from the 6.5-mile radius to 7 miles west of the airport.

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ACE MO E5 Butler, MO

Butler Memorial Airport, MO
(lat. 38°17′23″N., long. 94°20′24″W.)
Butler VORTAC
(lat. 38°16′20″N., long. 94°29′18″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Butler Memorial Airport and within 1.8 miles each side of the 082° radial of the Butler VORTAC extending from the 6.4-mile radius to the VORTAC.

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ACE MO E5 Monroe City, MO

Monroe City Regional Airport, MO
(lat. 39°38′04″N., long. 91°43′37″W.)
Quincy VORTAC
(lat. 39°50′53″N., long. 91°16′44″W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of Monroe City Regional Airport and within 3.5 miles each side of the Quincy VORTAC 239° radial extending from the 6.2-mile radius to 7 miles northeast of the airport.

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ACE MO E5 Farmington, MO

Farmington Regional Airport, MO
(lat. 37°45′42″N., long. 90°25′42″W.)
Farmington VORTAC
(lat. 37°40′24″N., long. 90°14′03″W.)
Perrine NDB
(lat. 37°45′54″N., long. 90°25′45″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Farmington Regional Airport and within 2.6 miles each side of the 034° bearing from the Perrine NDB extending from the 6.4 mile radius to 7.9 miles north of the airport, and within 2.6 miles each side of the 191° bearing from the Perrine NDB extending from the 6.4 mile radius to 7.9 miles south of the airport, and within 1.3 miles each side of the Farmington VORTAC 300° radial extending from the 6.4-mile radius to the VORTAC.

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ACE MO E5 Kansas City International Airport, MO

Kansas City International Airport, MO
(lat. 39°17′51″N., long. 94°42′50″W.)
Kansas City Downtown Airport, MO)
(lat. 39°07′24″N., long. 94°35′34″W.)
Fort Leavenworth, Sherman Army Airfield (AAF), KS
(lat. 39°22′06″N., long. 94°54′53″W.)
Kansas City VORTAC
(lat. 39°16′46″N., long. 94°35′29″W.)
DOTTE LOM
(lat. 39°13′15″N., long. 94°45′00″W.)
Riverside VOR/DME
(lat. 39°07′14″N., long. 94°35′48″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Kansas Coty Downtown Airport and within 3 miles each side of the 210° radial of the Riverside VOR/DME extending from the 6.7-mile radius to 12.6 miles southwest of the Downtown Airport, and within a 6.5 mile radius of the Sherman AAF, and within a 7.3-mile radius of the Kansas City International Airport and within 4.4 miles west of the Kansas City International Runway 19R ILS localizer north course and within 4.4 miles east of the Kansas City International Runway 19L ILS localizer north course extending from the 7.3-mile radius to 21.7 miles north of the DOTTE LOM and within 4.4 miles each side of the 096° radius of the Kansas City VORTAC extending from the Kansas City International Airport 7.3-mile radius to 5 miles east of the Kansas City VORTAC, and within 2.5 miles west of the Kansas City International Runway 1L ILS localizer south course and within 2.5 miles east of the Kansas City International Runway 1R ILS localizer course extending from the 7.3-mile radius to 9.5 miles south of the DOTTE LOM.

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ACE KS E5 Dodge City, KS

Dodge City Regional Airport, KS
(lat. 37°45′47″N., long. 99°57′56″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Dodge City Regional Airport.

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Issued in Kansas City, MO on May 10, 1996.

Bryan H. Burleson,

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 96–14263 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–13–M**

## Federal Highway Administration

## National Highway Traffic Safety Administration

## 23 CFR Part 1206

**[Docket No. 96–02; Notice 2]**

**RIN 2127–AG10**

## Rules of Procedure for Invoking Sanctions Under the Highway Safety Act of 1966

**AGENCY:** Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This rule replaces the outdated procedures contained in 23 CFR Part 1206 with new procedures as a part of the regulatory review directed by President Clinton on March 4, 1995. It changes the regulation to reflect the current sanction authority of 23 U.S.C. 402 and to replace the present burdensome hearing process with a simplified review process.

**EFFECTIVE DATE:** June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** In FHWA, Mila Plosky, Office of Highway Safety, 202–366–6902; or Raymond W. Cuprill, Office of the Chief Counsel, 202–366–1377. In NHTSA, Gary Butler,

Office of State and Community Services, 202–366–2121; or Heidi L. Coleman, Office of the Chief Counsel, 202–366–1834.

**SUPPLEMENTARY INFORMATION:**

Background

On March 4, 1995, President Clinton directed all Federal Departments and agencies to overhaul the nation's regulatory system. One of the actions required by the directive was to revise any regulation that had become outdated or otherwise in need of reform. The Department has identified 23 CFR Part 1206 as a regulation that should be revised to conform to the current provisions of 23 U.S.C. 402.

This regulation was first promulgated in May 1974. Since that time, 23 U.S.C. 402 has been amended to provide more flexibility to the States regarding the planning and implementation of highway safety programs.

When the Section 402 program was first established, under the Highway Safety Act of 1966, the Act required DOT to establish uniform standards for State highway safety programs to assist States and local communities in organizing their highway safety programs. Eighteen such standards were established. Until 1976, the Section 402 program was principally directed towards achieving State and local compliance with these 18 standards, which were considered mandatory requirements with financial sanctions for non-compliance.

Under the Highway Safety Act of 1976, Congress provided for a more flexible implementation of the program so the Department would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the standards became more like guidelines for use by the States, and management of the program shifted from enforcing standards, to problem identification and countermeasure development and evaluation, using the standards as a framework for State programs. In 1987, Section 402 of the Highway Safety Act was formally amended to provide that the standards be changed to guidelines.

To reflect these changes, the agencies published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on March 22, 1996 (61 FR 11794), proposing to amend the regulation by removing from Section 1206.1, Scope, the requirement that States must comply with highway safety program standards, and by removing the term ''highway safety program standards'' from the definitions contained in Section 1206.3. The notice also proposed to remove definitions of other obsolete terms from Section 1206.3.

This notice proposed to make additional revisions to the regulation to reflect other changes that have been made to the Section 402 statute, and to the manner in which the Section 402 program is implemented.

In 1974, when Part 1206 was first promulgated, States were required to submit to DOT both a Comprehensive Highway Safety Plan (a multi-year plan of the State and its political subdivisions for implementing the highway safety program standards) and an Annual Highway Safety Work Program (detailing the activities and proposed expenditures of the State and its political subdivisions for implementing selected components of the State's Comprehensive Highway Safety Plan during the year) for approval. Any state which was not implementing a highway safety program approved by DOT would be subject to the reduction of its Federal aid highway Section 104 apportionments by 10 percent.

The documentation States are required to submit for approval has since been dramatically reduced, and the sanction contained in Section 402 has been changed. The 10 percent reduction in Section 104 (Federal aid highway) apportionments was replaced in 1976 by a 50 percent reduction of Section 402 (highway safety grant) apportionments. The NPRM proposed to revise the definition of the term ''highway safety program'' contained in Section 1206.3, and provisions in Section 1206.4, Sanctions, to reflect these changes and to conform the regulation to the current provisions of 23 U.S.C. 402.

The regulation required that extensive procedures be followed to determine whether a sanction is to be invoked against a State. It provided, for example, that upon making a proposed recommended determination to invoke sanctions against a State, DOT must send to the Governor of that State and publish in the Federal Register a notice proposing the recommended determination. A hearing must be held before a three-member hearing board, and a prehearing conference and consent determination may be sought by the State or by DOT.

These procedures had not been followed since 1976, when the Section 402 program changed. Accordingly, the NPRM proposed to update and streamline these outdated procedures. It proposed to replace the extensive hearing process with a simplified process based on documentation. The agencies stated in the NPRM that they believe this revision to the regulation would continue to ensure that States have a full and fair opportunity to be heard on the issues involved, should the agencies propose to invoke sanctions against a State, but in a manner that would be less costly and burdensome for both the State and the Federal agencies.

Comments

The NPRM requested comments not later than May 6, 1996. No comments were received. Accordingly, the agencies have adopted the revision proposed in the NPRM without change in the final rule.

Regulatory Analyses and Notices

*Executive Order 12778 (Civil Justice Reform)*

This rule does not have any preemptive or retroactive effect. It imposes no requirements on the States, but simply revises outdated or burdensome provisions in the regulation. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

*Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The agencies have determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. This rule will not impose any additional burden on the public. It is technical in nature and will not change the requirements of the program. It is anticipated that there will be no economic impact as a result of this rulemaking. Accordingly, a full regulatory evaluation is not required.

*Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

*Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

*National Environmental Policy Act*

The agencies have analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that it will not have any significant impact on the quality of the human environment.

*Executive Order 12612 (Federalism Assessment)*

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

List of Subjects in 23 CFR Part 1206

Grant programs—transportation, Highway safety.

In accordance with the foregoing, Part 1206 of Title 23 of the Code of Federal Regulations is revised to read as follows:

## PART 1206—RULES OF PROCEDURE FOR INVOKING SANCTIONS UNDER THE HIGHWAY SAFETY ACT OF 1966

Sec.

1206.1 Scope
1206.2 Purpose
1206.3 Definitions
1206.4 Sanctions
1206.5 Review process.

Authority: 23 U.S.C. 402; delegation of authority at 49 CFR 1.48 and 1.50.

### § 1206.1 Scope.

This part establishes procedures governing determinations to invoke the sanctions applicable to any State that does not comply with the highway safety program requirements in the Highway Safety Act of 1966, as amended (23 U.S.C. 402).

### § 1206.2 Purpose.

The purpose of this part is to prescribe procedures for determining whether and the extent to which the 23 U.S.C. 402 sanctions should be invoked, and to ensure that, should sanctions be proposed to be invoked against a State, the State has a full and fair opportunity to be heard on the issues involved.

### § 1206.3 Definitions.

As used in this part:

(a) *Administrators* means the Administrators of the Federal Highway Administration and the National Highway Traffic Safety Administration.

(b) *Highway safety program* means an approved program in accordance with 23 U.S.C. 402, which is designed by a State to reduce traffic accidents, and death, injuries and property damage resulting therefrom.

(c) *Implementing* means both having and putting into effect an approved highway safety program.

### § 1206.4 Sanctions.

(a) The Administrators shall not apportion any funds under 23 U.S.C. 402 to any State which is not implementing a highway safety program.

(b) If the Administrators have apportioned funds to a State and subsequently determine that the State is not implementing a highway safety program, the Administrators shall reduce the funds apportioned under 23 U.S.C. 402 to the State by amounts equal to not less than 50 per centum, until such time as the Administrators determine that the State is implementing a highway safety program.

(c) The Administrators shall consider the gravity of the State's failure to implement a highway safety program in determining the amount of the reduction.

(d) If the Administrators determine that a State has begun implementing a highway safety program before the end of the fiscal year for which the funds were withheld, they shall promptly apportion to the State the funds withheld from its apportionment.

(e) If the Administrators determine that the State did not correct its failure before the end of the fiscal year for which the funds were withheld, the Administrators shall reapportion the withheld funds to the other States, in accordance with the formula specified in 23 U.S.C. 402(c), not later than 30 days after such determination.

### § 1206.5 Review process.

(a) In any fiscal year, if the Administrators determine, based on a preliminary review, that a State is not implementing a highway safety program in accordance with 23 U.S.C. 402, the Administrators shall issue jointly to the State an advance notice, advising the State that the Administrators expect to either withhold funds from apportionment under 23 U.S.C. 402, or reduce the State's apportioned funds under 23 U.S.C. 402. The Administrators shall state the amount of the expected withholding or reduction. The advance notice will normally be sent not later than ninety days prior to final apportionment.

(b) If the Administrators issue an advance notice to a State, based on a preliminary review, the State may, within 30 days of its receipt of the advance notice, submit documentation demonstrating that it is implementing a highway safety program. Documentation shall be submitted to the Administrator for NHTSA, 400 Seventh Street SW, Washington, D.C. 20590.

(c) If the Administrators decide, after reviewing all relevant information, that a State is not implementing a highway safety program in accordance with 23 U.S.C. 402, they shall issue a final notice, advising the State either of the funds being withheld from apportionment under 23 U.S.C. 402, or of the apportioned funds being reduced under 23 U.S.C. 402 and the amount of the withholding or reduction. The final notice of a withholding will normally be issued on October 1. The final notice of a reduction will be issued at the time of a final decision.

Issued on: May 31, 1996.

Rodney E. Slater,

*Administrator, Federal Highway Administration.*

Ricardo Martinez,

*Administrator, National Highway Traffic Safety Administration.*

[FR Doc. 96–14257 Filed 6–5–96; 8:45 am]

BILLING CODE 4910–59–P

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**National Highway Traffic Safety Administration**

**Federal Highway Administration**

**23 CFR Part 1215**

**[Docket No. 92–40; Notice 3]**

**RIN 2127–AG23**

## Use of Safety Belts and Motorcycle Helmets; Compliance and Transfer-of-Funds Procedures

**AGENCIES:** National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA).

**ACTION:** Final rule.

**SUMMARY:** This rule implements portions of the National Highway System Designation Act of 1995 that changed the transfer-of-funds provisions contained in section 153 of title 23, United States Code. As amended, section 153 subjects a State to a transfer of funds apportioned under its Federal-aid highway programs to its apportionment under the section 402

highway safety program if the State fails to enact safety belt use legislation. There is no longer a requirement that a State also enact motorcycle helmet use legislation in order to avoid the transfer of funds. Maine and New Hampshire are provided alternative compliance criteria to avoid the transfer of funds. This rule amends the existing regulation concerning determinations of compliance and transfers of funds to reflect these statutory changes.

**EFFECTIVE DATE:** June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** In NHTSA, Gary Butler, Office of State and Community Services, Room 5238, NHTSA, 400 Seventh Street, SW, Washington, D.C., 20590 (202–366–2674) or John Donaldson, Office of the Chief Counsel, Room 5219, NHTSA, 400 Seventh Street, SW, Washington, D.C., 20590 (202–366–1834). In FHWA, Mila Plosky, Office of Highway Safety, Room 3407, FHWA, 400 Seventh Street, SW, Washington, D.C., 20590 (202–366–6902) or Raymond Cuprill, Office of the Chief Counsel, Room 4217, FHWA, 400 Seventh Street, SW, Washington, D.C., 20590 (202–366–0834).

**SUPPLEMENTARY INFORMATION:**

Background

On November 28, 1995, Congress enacted the National Highway System Designation Act of 1995 (NHS), Pub. Law 104–59. Section 205(e) of the NHS amended Section 153(h) of title 23, United States Code, changing the circumstances giving rise to a transfer of funds. Prior to the amendment, Section 153(h) provided that a State that failed to put into effect both motorcycle helmet use and safety belt use legislation would be subject to a transfer of certain funds apportioned under the State's Federal-aid highway programs to its apportionment under the Section 402 program. Section 205(e) of the NHS removed the requirement that a State must enact motorcycle helmet use legislation in order to avoid the transfer of funds. As amended, Section 153 continues to require State enactment of safety belt use legislation, and provides for a transfer of funds if a State does not maintain in effect ''a law which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.''

Section 205(e) of the NHS has an effective date of September 30, 1995. Under 23 U.S.C. 153(h)(2), as amended by section 205(e), the transfer provision remains the same as before, but applies only in the absence of safety belt use legislation. (A parallel amendment to 23 U.S.C. 153(h)(1) is not treated in this notice as it has no applicability beyond FY 1995.) A State failing to have in effect a safety belt use law throughout a fiscal year will experience a transfer, in the succeeding fiscal year, of three percent of the funds apportioned to the State's Federal-aid highway programs under each of subsections 104(b)(1), (b)(2), and (b)(3) of title 23, United States Code, to the State's highway safety program apportionment under section 402 of that title.

In accordance with the provisions of Section 205(e) of the NHS, today's notice removes all references and requirements concerning motorcycle helmet use legislation from the regulation implementing Section 153. In addition, outdated provisions concerning previous fiscal years are deleted, consistent with the President's direction that the nation's regulatory system be overhauled and streamlined. Other portions of the regulation, including those describing compliance criteria and exemptions (insofar as they apply to safety belt use legislation) and the purposes for which transferred funds may be used remain unchanged.

Section 355 of the NHS created alternative compliance criteria available only to the States of New Hampshire and Maine, by which these States might avoid a transfer of funds due to non-compliance with the provisions of 23 U.S.C. 153. Section 355 provides that New Hampshire and Maine are each to be deemed in compliance with Section 153 upon certification by the Secretary of Transportation that the State has achieved a safety belt use rate ''in each of fiscal years 1995 and 1996, of not less than 50 percent'' and ''in each fiscal year thereafter of not less than the national average safety belt use rate, as determined by the Secretary.'' Section 355 additionally provides that if New Hampshire or Maine ''continues in effect'' a safety belt use law within 60 days after the section's enactment, the State is to be treated as if the law were in effect as of September 30, 1995. (Maine has enacted legislation satisfying this timeliness requirement, and will not be subject to the safety belt use rate requirements provided the legislation is continued in effect.) Finally, Section 355 provides for a reservation of funds prior to the transfer. These alternative compliance criteria and procedures are also addressed in today's notice.

Rulemaking Analyses and Notices

*(a) Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The agencies have not reviewed this rulemaking document under Executive Order 12866. This action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

*(b) Regulatory Flexibility Act (Pub. L. 96–354)*

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on small entities, and certify that this action will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

*(c) Executive Order 12612 (Federalism Assessment)*

The agencies have analyzed this action in accordance with Executive Order 12612, and have determined that it does not have federalism implications warranting the preparation of a federalism assessment. The action implements new legislation which reduces Federal requirements imposed on the States.

*(d) Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)*

This action does not affect a collection of information requirement, for purposes of the Paperwork Reduction Act.

*(e) National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

The agencies have reviewed this action for purposes of the National Environmental Policy Act, and determined that it will not have a significant effect on the quality of the human environment.

*(f) Executive Order 12778 (Civil Justice Reform)*

This action does not have any preemptive effect, and the only retroactive effect is one that removes a Federal requirement. It imposes no requirements on the States, but rather deletes provisions that are obsolete and removes restrictions on the States that have been rescinded by new legislation. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals pursue administrative remedies prior to filing suit in court.

*(g) Notice and Comment*

The agencies find that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because the agencies are not exercising discretion in a way that could be meaningfully affected by public comment. The amendments made by this action merely remove restrictions on the States, as mandated by new legislation, and delete provisions that are obsolete. Therefore, notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation. In addition, good cause exists to dispense with the 30-day delayed effective date requirement of 5 U.S.C. 553(d) because this final rule ''grants or recognizes an exemption or relieves a restriction'' in accordance with 5 U.S.C. 553(d)(1).

List of Subjects in 23 CFR Part 1215

Grant programs—Transportation, Highway safety.

For the reasons set forth in the preamble, Part 1215 of Title 23 of the Code of Federal Regulations is amended to read as follows:

## PART 1215—USE OF SAFETY BELTS AND MOTORCYCLE HELMETS—COMPLIANCE AND TRANSFER-OF-FUNDS PROCEDURES

1. The authority citation for part 1215 is revised to read as follows:

Authority: 23 U.S.C. 153; Secs. 205(e) and 355, Pub. L. 104–59; delegations of authority at 49 CFR 1.48 and 1.50.

2. The heading to part 1215 is revised to read as follows:

## PART 1215—USE OF SAFETY BELTS—COMPLIANCE AND TRANSFER-OF-FUNDS PROCEDURES

3. Section 1215.1 is revised to read as follows:

### § 1215.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 153, as amended, and Section 355 of the National Highway System Designation Act of 1995, for determining compliance with the requirement that States not having safety belt use laws be subject to a transfer of Federal-aid highway apportionments under 23 U.S.C. 104 (b)(1), (b)(2), and (b)(3) to the highway safety program apportionment under 23 U.S.C. 402.

4. Section 1215.2 is revised to read as follows:

### § 1215.2 Purpose.

This part clarifies the provisions which a State must incorporate into its safety belt law to prevent the transfer of a portion of its Federal-aid highway funds to the section 402 highway safety program apportionment, describes notification and transfer procedures, establishes parameters for the use of transferred funds, and provides alternate compliance criteria for New Hampshire and Maine.

5. In § 1215.3, the definition of ''motorcycle'' is removed and a new definition is added after the definition of ''safety belt,'' to read as follows:

### § 1215.3 Definitions.

* * * * *

*Secretary* means the Secretary of Transportation.

6. Section 1215.4 is revised to read as follows:

### § 1215.4 Compliance criteria.

(a) Except as provided in paragraphs (c) or (d) of this section, in order to avoid the transfer or reservation (as applicable) specified in § 1215.7, a State must have and continue in effect at all times during the fiscal year a law which makes unlawful throughout the State the operation of a passenger vehicle whenever an individual in a front seat of the vehicle (other than a child who is secured in a child restraint system) does not have a safety belt properly fastened about the individual's body.

(b) A State that enacts the law specified in paragraph (a) of this section will be determined to comply with 23 U.S.C. 153, provided that any exemptions are consistent with § 1215.5.

(c) If New Hampshire or Maine enacts a law described in paragraph (a) of this section by January 27, 1996, the State shall be deemed as having that law in effect on September 30, 1995.

(d)(1) If the Secretary certifies in a fiscal year that New Hampshire or Maine has achieved the safety belt use rate specified in paragraph (d)(2) of this section, the State shall be considered as complying with the provisions of paragraph (a) of this section.

(2) The safety belt use rate must be not less than 50 percent in each of fiscal years 1995 and 1996, and not less than the national average as determined by the Secretary in each fiscal year thereafter.

7. Section 1215.5 is revised to read as follows:

### § 1215.5 Exemptions.

(a) Safety belt use laws exempting persons with medical excuses, persons in emergency vehicles, persons in the custody of police, persons in public and livery conveyances, persons in parade vehicles, persons in positions not equipped with safety belts, and postal, utility and other commercial drivers who make frequent stops in the course of their business shall be deemed to comply with 23 U.S.C. 153.

(b) Safety belt use laws exempting vehicles equipped with air bags shall be deemed not to comply with 23 U.S.C. 153.

(c) An exemption not identified in paragraph (a) of this section shall be deemed to comply with 23 U.S.C. 153 only if NHTSA and FHWA determine that it is consistent with the intent of § 1215.4(a), and applies to situations in which the risk to occupants is very low or in which there are exigent justifications.

8. Section 1215.6 is revised to read as follows:

### § 1215.6 Review and notification of compliance status.

Review of each State's laws and notification of compliance status shall occur each fiscal year, in accordance with the following procedures:

(a) NHTSA and FHWA will review appropriate State laws for compliance with 23 U.S.C. 153. States initially found to be in non-compliance will be notified of such finding and of funds expected to be transferred or reserved (as applicable) under § 1215.7, through the advance notice of apportionments required under 23 U.S.C. 104(e), normally not later than ninety days prior to final apportionment.

(b) A State notified of non-compliance under paragraph (a) of this section may, within 30 days after its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance to the Associate Administrator for State and Community Services, NHTSA, 400 Seventh Street, SW, Washington, D.C., 20950.

(c) Each fiscal year, States determined to be in non-compliance with 23 U.S.C. 153 will receive notice of the funds being transferred or reserved (as applicable) under § 1215.7, through the certification of apportionments required under 23 U.S.C. 104(e), normally on October 1.

9. Section 1215.7 is revised to read as follows:

### § 1215.7 Transfer of funds

(a) Except as provided in paragraph (b) of this section, if at any time in a fiscal year beginning after September 30, 1994, a State does not have in effect a law described in § 1215.4(a), the Secretary shall transfer 3 percent of the funds apportioned to the State for the succeeding fiscal year under 23 U.S.C. 104 (b)(1), (b)(2) and (b)(3) to the apportionment of the State under 23 U.S.C. 402.

(b) For New Hampshire or Maine, except as provided in § 1215.4(c), if at any time in a fiscal year beginning after September 30, 1994, the State does not have in effect a law described in § 1215.4(a), the Secretary shall reserve 3 percent of the funds to be apportioned to the State for the succeeding fiscal year under 23 U.S.C. 104 (b)(1), (b)(2) and (b)(3) if the Secretary has not certified, in accordance with § 1215.4(d), that the State has achieved the applicable safety belt use rate.

(c) If, at the end of a fiscal year in which the funds are reserved for New Hampshire or Maine under paragraph (b) of this section, the Secretary has not certified that the State achieved the applicable safety belt use rate, the Secretary shall transfer the funds reserved from the State to the apportionment of the State under 23 U.S.C. 402.

(d) Any obligation limitation existing on transferred funds prior to the transfer will apply, proportionately, to those funds after transfer.

Issued on: May 31, 1996.

Rodney E. Slater,

*Administrator, Federal Highway Administration.*

Ricardo Martinez,

*Adminstrator, National Highway Traffic Safety Administration*

[FR Doc. 96–14258 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–59–P**

## Federal Highway Administration

## 23 CFR Part 1230

**[NHTSA Docket No. 95–83; Notice 1]**

**RIN 2127–AG10**

## Highway Safety Program Standards—Applicability to Federally Administered Areas

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule removes Part 1230 from title 23 of the Code of Federal Regulations (CFR). Part 1230 made the uniform highway safety standards, which were promulgated under 23 U.S.C. 402, applicable to federally administered areas where a Federal department or agency controlled the highways or supervised traffic operations. This regulation is being removed because 23 U.S.C. 402 was amended to provide that the Highway Safety Program Standards be changed to Guidelines. The FHWA and NHTSA will be working with appropriate Federal lands managing agencies to develop procedures and agreements for carrying out the intent of 23 U.S.C. 402, as amended.

**EFFECTIVE DATE:** July 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** In NHTSA: Mr. Gary Butler, Office of State and Community Services, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366–2121; or Ms. Sharon Y. Vaughn, Office of Chief Counsel, Room 5219, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366–1834. In FHWA: Ms. Mila Plosky, Office of Highway Safety, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366–6902; or Mr. Paul Brennan, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone (202) 366–0834.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton directed all Federal Departments and agencies to take four steps to overhaul the nation's regulatory system. The first step was to conduct a page-by-page review of all agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform. The review was to include careful consideration of a number of issues, including whether the regulation is obsolete, whether its intended goal can be achieved in more efficient less intrusive ways, or whether States or local governments can do the job (making Federal regulation unnecessary).

NHTSA and FHWA conducted a thorough, page-by-page review of all agency regulations, including those that pertain to State and community highway safety programs.

As a result of these efforts, NHTSA and FHWA have determined that Part 1230 should be removed from title 23 of the Code of Federal Regulations (CFR), because the underlying statutory basis for the requirements, 23 U.S.C. 402, has been amended to provide that the uniform highway standards be changed to uniform highway safety guidelines.

Section 402 of the Highway Safety Act of 1966, 23 U.S.C. 402, was enacted on September 9, 1966. It provided that:

> Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries and property damage resulting therefrom. Such programs shall be in accordance with uniform standards promulgated by the Secretary.

Section 402 provided further that:

> Such standards as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.

By 1972, the agencies had promulgated 18 uniform highway safety standards and, on July 13, 1973 (38 FR 18665), the agencies promulgated Part 1230, which made these uniform standards applicable to federally administered areas where a Federal department or agency controlled the highways or supervised traffic operations.

Part 1230 stated that its purpose was to ensure that the uniform standards established to regulate highway safety activities were applied uniformly throughout the United States to those highways and activities that were administered by Federal agencies.

Section 206 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100–17, amended U.S.C. 402 by changing the term ''standards'' to ''guidelines.''

However, the statutory amendment, which required that the standards be changed to guidelines in no way diminishes the integrity and significant importance of the national highway safety program.

Pursuant to Section 402, such guidelines as are applicable to State highway safety programs shall, to the extent determined appropriate by the Secretary of Transportation, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.

To ensure the continued operation of this program, the FHWA and NHTSA will meet with representatives of Federal lands managing agencies to develop agreements for carrying out the provisions of 23 U.S.C. 402. This activity will include updating any existing agreements between the U.S. Department of Transportation and the Federal lands managing agencies. In addition, the FHWA and NHTSA have developed the Highway Safety Grant Management Manual which includes a chapter on Uniform Guidelines for State Highway Safety programs. This information will be made available to Federal lands managing agencies.

Rulemaking Analyses and Notices

*(a) Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The agencies have considered the impact of the rulemaking action under E.O. 12866, ''Regulatory Planning and Review.'' This action has been determined to be not ''significant'' under the Department of Transportation's regulatory policies and procedures.

*(b) Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this rule on small entities. Based on the evaluation, the agencies hereby certify that this action will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

*(c) Executive Order 12612 (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 this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

*(d) Paperwork Reduction Act*

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

*(e) National Environmental Policy Act*

The agencies have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that this action would not have any effect on the quality of the environment.

*(f) Executive Order 12778 (Civil Justice Reform)*

This action does not have any preemptive or retroactive effect. It imposes no requirements on the States, but rather simply removes a regulation to reflect statutory changes. The enabling legislation does not establish a procedure for judicial review of the final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

Notice and Comment

Because the amendments relate to a grant program and are therefore not covered by the Administrative Procedure Act, and since they reflect statutory changes and do not impose any additional requirements, the amendments are being made without prior notice and opportunity to comment.

List of Subjects in 23 CFR Part 1230

Highway Safety Program Standards—Applicability to Federally Administered Areas.

## PART 1230—[REMOVED]

Under the authority of 49 CFR Parts 1.48 and 1.50, the Administrators of the National Highway Traffic Safety Administration and Federal Highway Administration amends Title 23 of the Code of Federal Regulations by removing part 1230.

Issued on: May 3, 1996.

Rodney E. Slater,

*Administrator, Federal Highway Administration.*

Ricardo Martinez,

*Administrator, National Highway Safety Traffic Administration.*

[FR Doc. 96–14259 Filed 6–05–96; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 7

**RIN 1024–AC29**

### Cape Lookout National Seashore, Airstrip Closure

**AGENCY:** National Park Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The National Park Service (NPS) is publishing this final rule to close the Portsmouth Village Airstrip at Cape Lookout National Seashore, North Carolina, to the operation of aircraft. The special regulation is necessary for the operation of the airstrip. Removal of the special regulation will effectively close the airstrip as a violation of 36 CFR 2.17. This action is necessary to prevent aircraft accidents and eliminate a use that is incompatible with preserving the historic scene in Portsmouth Village, a historic district listed on the National Register of Historic Places. This rule will protect the flying public by closing an airstrip that does not comply with Federal Aviation Administration (FAA) and North Carolina Department of Transportation safety standards. Closure of the airstrip will also eliminate the potential for an aircraft accident that could destroy one or more irreplaceable historic structures, eliminate the anachronistic intrusion of aircraft in a historic village and provide for the safety of park visitors who cross the airstrip runway as they walk from Portsmouth Village to the beach.

**EFFECTIVE DATE:** This final rule becomes effective on July 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** A. James Zahradka, Supervisory Park Ranger, Cape Lookout National Seashore, 131 Charles Street, Harkers Island, NC. 28531. Telephone 919–728–2250.

**SUPPLEMENTARY INFORMATION:**

Background

Portsmouth Village Airstrip (Airstrip) is located on the northeast corner of Portsmouth Village (Village). The Village is geographically remote because of its location on a part of the outer banks (Core Banks) not connected to the mainland by bridge. The origins of Portsmouth Village can be traced back to 1752, when it was authorized by the Colonial Legislature of North Carolina. There are no permanent residents in this well-preserved ''ghost town,'' although over 2,000 people visit annually. The historical significance of the Village is underscored by its listing on the National Register of Historic Places.

Long-term residents of the Village area report that the unpaved Airstrip was constructed by private individuals for recreational use shortly after World War II. In this earlier period, the Airstrip was not as long as it is today, but was leveled and extended to its present approximate length of 1640 feet in 1959.

The NPS began managing the Airstrip after the State of North Carolina ceded Core Banks to the Federal Government to establish Cape Lookout National Seashore (Seashore) in 1976. Operating or using aircraft on lands and waters managed by the NPS is prohibited (36 CFR 2.17(a)(1)) other than at locations designated pursuant to special regulations. In 1984, the NPS promulgated a special regulation (36 CFR 7.98(a)) legalizing aircraft operations on the Airstrip. Seashore management continued to maintain the grass surface and trimmed back encroaching woody vegetation to the extent that limited funding allowed.

Recently, the NPS became concerned about potential hazards related to aircraft operations on the Airstrip. These concerns stem from a report by an inspector of the North Carolina

Department of Transportation, Division of Aviation, that the Airstrip does not meet the following FAA recommended runway standards:

| Standard | Description |
|---|---|
| FAR, Part 77 | Each end of the runway should have a 20 to 4 approach slope. (Obstacles should not exceed more than one foot of rise for every 20-foot increment of horizontal distance from the end of a runway). |
| FAA AC 150/5300–1300 | Each side of the runway centerline should be clear of obstacles by at least 125 feet. |

Instead, brush and small trees up to 12 feet tall grow on the south end of the Airstrip. Dense brush and trees growing on the Airstrip edges narrow the area clear of obstacles from the centerline to an average of only 59 feet, less than half the recommended width.

Although several accidents have occurred to aircraft landing on or taking off from the Airstrip, only three accidents are officially documented with the National Transportation Safety Board (NTSB). A review of these NTSB reports indicates that the Airstrip is considered ''unsuitable terrain'' because it has a soft spot at its center and has ''high obstructions'' (dense brush and trees up to 20 feet tall) lining the runway.

Protecting irreplaceable historic structures and preserving the historic scene are also very important concerns related to aircraft use. One of the most important historic structures in the Village, the Portsmouth Life Saving Station (Station), is only 101 feet east of the airstrip centerline. A detached kitchen for the Station is only 78 feet east of the centerline and the Station stable is only 89 feet west of the centerline. The possibility of aircraft eventually colliding with structures so close to the center line is considered high with continued use of this narrow Airstrip. It would be necessary to move the Station and nearby associated structures to bring the Airstrip into compliance with FAA standards. Moving historic structures from their original locations seriously degrades their historical integrity and may affect their status on the National Register of Historic Places.

Direct impact is not the only concern of the NPS. The Airstrip and the Village lie in a mixed brush/maritime forest. Dense vegetation of this plant community grows inside the Village. Fire from an aircraft accident in the vicinity of the Airstrip could easily spread from the brush/forest into the Village and destroy many structures. Because of the isolated character of the Village, fire suppression services are minimal. The foot and vehicle trail from the Village to the beach crosses the Airstrip at the old Lifesaving Station. As a result, visitors potentially are exposed to aircraft takeoffs and landings without prior warning. Visitors also desire a quiet, historic scene when visiting the Village. Aircraft noise and visual intrusions are not conducive to preserving such a setting.

Approximately 300 of the 2,000+ people visiting the Village annually arrive by aircraft. (This estimate is based on approximately 75 aircraft landings recorded by staff annually, with an average of four visitors per aircraft.) An alternate airport, Ocracoke Island Airport, is just 6 miles from the Airstrip. NPS-authorized ferry boat services provide transportation between Ocracoke and the Village for $15 to $20 per person. At least one of these services offers free ground transportation between Ocracoke Island Airport and the ferry dock for groups that prefer landing at Ocracoke Island Airport rather than the Airstrip.

The anticipated costs, approximately $40,000, of clearing vegetation from the Airstrip centerline and repairing the runway surface (levelling and resodding) are prohibitive under present funding levels for the Seashore. The estimated annual cost for maintaining the grass surface of the Airstrip is $3,000, also prohibitive under present fiscal constraints.

*Summary of Comments Received*

On July 12, 1995, the NPS published proposed regulations that would close Portsmouth Village Airstrip to Aircraft use (60 FR 35887) and public comment was invited. The comment period closed August 12, 1995. During the public comment period, the NPS received two written responses regarding the proposed rule. One responder opposed the closure. The other sought clarification of the proposed closure.

1. Issue: *After affect of closure.* One responder was concerned that government agencies/entities would still use the Airstrip after the closure and wanted to know if the NPS was planning to post the Airstrip with signs such as ''Closed to the Recreational Users.'' This responder was also concerned as to whether the NPS would allow the Airstrip to revert to a natural state.

Response: The Airstrip will be closed to all aircraft use. The Airstrip has been removed from the 1996 North Carolina and National Aeronautical Charts and has been physically marked with an ''X'' at both ends. At present, the park mows the Airstrip at least once a week during the grass growing season. This frequency will not be necessary after the official closure of the airstrip.

The NPS intends to reduce the threat of fire to the historic district by brushing the undergrowth to bring the area back to its approximate appearance of the early 1900's. Portions of the present Airstrip will be maintained as open space.

2. Issue: *No reference to a visitor visiting the Village by an ultra-light aircraft or seaplane.*

Response: There is no documented history of the airstrip being used by an ultra-light aircraft. Seaplanes are prohibited under 36 CFR 2.17. 36 CFR 7.98(a) was promulgated to allow aircraft use of the Airstrip.

3. Issue: *Safety and the likelihood of damage to the historical structures at the end of the airstrip.* One responder questioned safety as a justification for the closure and that the FAA standards cited do not apply to this Airstrip. The responder felt that the history of minor damage to planes as a result of the soft runway is not justification for closure and that most pilots are proficient enough to prevent becoming stuck.

Response: On August 25, 1989, an Aviation Planner/Inspector with the North Carolina Department of Transportation visited the Airstrip to gather information for the FAA Airport Safety Data Program.

At that time, the NPS learned that the Airstrip was in violation of the ''recommended safety standards''. With the lack of fire and rescue protection at Portsmouth and, knowing that the airstrip is sub-standard, the NPS chooses not to add to the risk of the visiting public nor to increase the risk of damage to the historical structures. No funds are planned to be allocated in the future to maintain the Airstrip in a safe and operational condition. With each passing year, the Airstrip will continue to deteriorate and foot traffic in the area will increase.

4. Issue: *Historical use and significance.* One responder commented on the history of the Airstrip and the

role aviation played in making Portsmouth more accessible.

Response: The NPS's decision to preserve an area of historical importance is based on the criteria of its uniqueness and national significance. It was determined that Portsmouth would preserve American life in the early 1900's. Aviation history may be interpreted as part of Portsmouth's history, but preservation of an active airstrip is not necessary to interpret the area and is incompatible with the early 1900's scene. In recent history, with access to Portsmouth via private and public vessels and one vehicle ferry, the number of persons visiting Portsmouth will not be significantly affected by the closure of the Airstrip.

5. Issue: *Delay in concern for hazards.* One responder asked why it took the NPS 11 years to register a concern for the hazards if the Airstrip was in violation of safety regulations. Specifically, was a cut in the NPS budget a cause in the delay?

Response: The NPS became aware and concerned about the hazards as a result of the inspection by the North Carolina Department of Transportation on August 25, 1989. The NPS then developed cost estimates for meeting and maintaining the recommended safety standards. With a decline in use of the Airstrip, the already existing incompatibility concern, and the high cost of maintaining the Airstrip to standards, the NPS decided that the Airstrip should be closed. An ''X'' was placed on both ends of the Airstrip and persons who inquired were advised of the safety conditions. The budget was a factor in the decision to close the Airstrip, but it was not the only factor.

6. Issue: *Recent use statistics.* One responder inquired that there was no mention of historical use of the Airstrip. The responder used the example of ''1984 landings and takeoff's vs. 1994 landings and takeoffs.''

Response: No record has been maintained on the amount of use for the Airstrip other than the 74 flights per year, a figure derived in the late 1980's. Local observation is that there has been a decline in aircraft landings annually.

7. Issue: *Noise and visual intrusions including military operations.* One responder questioned the noise and visual intrusions, based on the number of aircraft landings and takeoffs, as not being significant enough to justify closure. The responder added that military air operations in the area pose a far greater intrusion to the quiet setting of Portsmouth Village.

Response: The NPS agrees that the noise level of military jets overhead presents an intrusion, but this intrusion is for a short duration measured in seconds. The NPS has a Memorandum of Understanding with the United States Marine Corps stating that air operations will be no closer than 2 miles to the south of the Village and at an altitude of not less than 500 feet.

Summary and Conclusion

The Airstrip does not comply with FAA safety standards and the flying public should not be exposed to the potential hazards associated with operating aircraft from a substandard airstrip. The taxpayer should not risk liability for an aircraft accident resulting from a defect in the Airstrip. Derogating the historical significance of nearby National Register structures to accommodate aircraft operations is not justifiable. Even if funding levels allowed compliance with safety standards, low visitor use and availability of a nearby alternate airport with connecting transportation services suggest that such an expenditure is neither cost-effective nor justifiable. For these reasons, the NPS is closing Portsmouth Village Airstrip by deleting Section 7.98(a) of Title 36 Code of Federal Regulations.

Drafting Information

The primary authors of this rule are Felix Revello, Chief Ranger, Fort Larned National Historic Site, Charles Harris, Chief of Operations, Cape Lookout National Seashore, and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

Paperwork Reduction Act

This final rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The economic effects of this rulemaking are local in nature and negligible in scope.

The NPS has determined that this final rule will not have a significant effect on the quality of human environment, health, and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce non-compatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rule is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Impact Statement (EIS) nor an Environmental Assessment (EA) has been prepared.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

## PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a, 462(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

**§ 7.98 [Removed]**

2. Section 7.98 is removed.

Dated: May 29, 1996.

George T. Frampton, Jr.,

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 96–14102 Filed 6–5–96; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF DEFENSE

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AH78**

### Veterans Education: Increased Allowances for the Educational Assistance Test Program

**AGENCY:** Department of Defense and Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the

rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 1995–96 academic year should be increased by 6% over the rates payable for the 1994–95 academic year. The regulations dealing with these rates are amended accordingly.

**EFFECTIVE DATE:** June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, 202–273–7187.

**SUPPLEMENTARY INFORMATION:** The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 6% in the 1994–95 academic year. Accordingly, this revision changes 38 CFR 21.5820 and 21.5822 to reflect a 6% increase in the rates payable in the 1995–96 academic year.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 there is good cause for finding that notice and public procedure are impractical, unnecessary, and contrary to the public interest and there is good cause for dispensing with a 30 day delay of the effective date. The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and record keeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 29, 1996.

Jesse Brown,

*Secretary of Veterans Affairs.*

Approved: May 30, 1996.

Samuel E. Ebbesen,

*Lieutenant General, USA, Deputy Assistant Secretary, (Military Personnel Policy) Department of Defense.*

For the reasons set out in the preamble, 38 CFR part 21, subpart H is amended as set forth below.

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H continues to read as follows:

Authority: 10 U.S.C. ch. 107, Pub. L. 96–342.

2. In § 21.5820, paragraph (b) is revised, to read as follows:

**§ 21.5820 Educational assistance.**

* * * * *

(b) *Amount of educational assistance.* (1) The amount of educational assistance shall be adjusted annually by regulation. For the 1995–96 standard academic year the amount of this assistance may not exceed $2,761.

(2) The amount of educational assistance payable to a servicemember, veteran, spouse or dependent child of a living servicemember or veteran for an enrollment period shall be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period, or

(ii) For the 1995–96 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $306.78 for a full-time student or by $153.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $10.23 for a full-time student or by $5.11 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by 2¢ for a full-time student and decreased by 1¢ for a part-time student.

(3) The amount of educational assistance payable to each surviving spouse or dependent child of a deceased servicemember or veteran for an enrollment period shall be the lesser of the following:

(i) The total charges for educational expenses the eligible individual incurs during the enrollment period, or

(ii) For the 1995–96 standard academic year an amount determined by:

(A) Multiplying the number of whole months in the enrollment period by $306.78 for a full-time student or by $153.39 for a part-time student;

(B) Multiplying any additional days in the enrollment period by $10.23 for a full-time student or by $5.11 for a part-time student; and

(C) Adding the two results. If the enrollment period is as long or longer than a standard academic year, this amount will be decreased by 2¢ for a full-time student and decreased by 1¢ for a part-time student; and

(D) Dividing the amount determined in paragraph (b)(3)(ii)(C) of this section by the number of the deceased veteran's dependents receiving educational assistance for that enrollment period. If one or more dependents is receiving educational assistance for part of the enrollment period, the amount calculated in paragraph (b)(3)(ii)(C) will be prorated on a daily basis. The amount for each day when more than one dependent is receiving educational assistance will be divided by the number of dependents receiving educational assistance on that day. The total amount for the days when only one dependent is receiving educational assistance will not be divided.

* * * * *

3. In § 21.5822, paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii) are revised, to read as follows:

**§ 21.5822 Subsistence allowance.**

* * * * *

(b) Amount of subsistence allowance. (1) * * *

(i) If a person is pursuing a course of instruction on a full-time basis, his or her subsistence allowance is $688 per month for training pursued during the 1995–96 academic year,

(ii) If a person is pursuing a course of instruction on other than a full-time basis, his or her subsistence allowance

is $344 per month for training pursued during the 1995–96 academic year,

* * * * *

(2) * * *

(i) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction full-time during the 1995–96 academic year by dividing $688 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day:

(ii) VA shall determine the monthly rate of subsistence allowance payable to a person for a day during which he or she is pursuing a course of instruction on other than a full-time basis during the 1995–96 academic year by dividing $344 per month by the number of the deceased veteran's dependents pursuing a course of instruction on that day;

* * * * *

[FR Doc. 96–14201 Filed 6–5–96; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 21

**RIN 2900–AH39**

### Veterans Education: Course Measurement for Graduate Courses

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule amendments to the ''Administration of educational benefits'' regulations which provide that all undergraduate courses taken by graduate students are to be measured by the graduate school (full time, half time, quarter time, etc.) or by the formula used for measuring undergraduate courses for undergraduate students, whichever results in a higher monthly rate for the veteran. Students receive benefits based on the assessment of their training time (full time, half time, quarter time, etc.). Graduate schools, often with unique programs, have the most expertise for assessing the training status for their own programs. Also, they realistically report the training status of graduate students. Even so, we do not believe that graduate students should be paid a lower monthly rate than undergraduate students for the same training. Hence, the adoption of this change streamlines the process while yielding equitable results.

**EFFECTIVE DATE:** June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration (202) 273–7187.

**SUPPLEMENTARY INFORMATION:** On February 12, 1996, the Department of Veterans Affairs (VA) published in the Federal Register (61 FR 5357) a proposed rule to provide a method of measuring a graduate student's enrollment when he or she enrolls in one or more graduate courses and one or more undergraduate courses. The public was given 60 days to submit comments. VA received two comments, one from an official of a large State university and one from the president of an association of officials who certify students' enrollments to VA. Both urged that the proposal be adopted.

Accordingly, based on the rationale set forth in the proposed rule document, we are adopting the provisions of the proposed rule as a final rule. This final rule also affirms the information in the proposed rule document concerning the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this final rule are 64.117, 64.120, and 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 22, 1996.

Jesse Brown,

*Secretary of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 21 is amended as set forth below.

## PART 21—VOCATIONAL REHABILITATION AND EDUCATION

### Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4273, paragraph (a)(2) is amended by removing ''assessed'' and adding, in its place, ''measured''; and paragraph (c) is revised and its authority citation is added to read as follows:

**§ 21.4273 Collegiate graduate.**

* * * * *

(c) *Undergraduate or combination.* If a graduate student is enrolled in both graduate and undergraduate courses concurrently, or solely in undergraduate courses, VA will measure such an enrollment using the provisions of § 21.4272 or the graduate school's assessment of training time, whichever will result in a higher monthly rate for the veteran.

(Authority: 38 U.S.C. 3668(b); Pub. L. 102–568)

[FR Doc. 96–14203 Filed 6–5–96; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 15 and 32

**[FRL–5513–1]**

**RIN 2030–AA38**

### Suspension, Debarment and Ineligibility for Contracts, Assistance, Loans and Benefits

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

**ACTION:** Final rule.

**SUMMARY:** This rule removes Part 15 (''Administration of the Clean Air Act and the Clean Water Act with Respect to Contracts, Grants, and Loans—List of Violating Facilities'') from Title 40 of the Code of Federal Regulations. This rule also amends 40 CFR Part 32, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drugfree Workplace (Grants), by adding procedures needed to administer the ineligibility provisions of the Clean Air Act (CAA), Clean Water Act (CWA), and EO 11738.

**EFFECTIVE DATE:** June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Meunier, EPA Suspending and Debarring Official, (3901F), 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–8030; or E-Mail to: meunier.robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

*A. Background*

On September 11, 1995, EPA published a Notice of Proposed Rulemaking (See 60 FR 47135) proposing to eliminate regulations at 40 CFR Part 15 governing the listing, and removal from the list, of facilities rendered ineligible to participate in Federal grants, contracts and loans pursuant to Section 306 of the Clean Air

Act (CAA) and Section 508 of the Clean Water Act (CWA). The Notice proposed to simultaneously amend 40 CFR Part 32, EPA's regulations implementing the Governmentwide nonprocurement common rule for suspension and debarment, to incorporate provisions relating to facility ineligibility and reinstatement pursuant to the CAA and CWA. The Notice provided a 60 day period ending November 13, 1995, to consider public comments on the proposed rule. No comments were received.

The publication of this final rule completes EPA's administrative consolidation of its statutory ineligibility and discretionary debarment authorities within a single office, the Office of Administration and Resources Management (OARM). All EPA debarment, ineligibility and/or reinstatement actions will now be subject to consistent policy development and flexible procedures applicable to OMB's Governmentwide suspension and debarment system.

Rulemaking Analysis

*B. Executive Order 12866*

This rulemaking has been determined not to be significant under EO 12866. However, it has been sent to the Office of Management and Budget for review for consistency with the OMB Common Rule.

*C. Regulatory Flexibility Act*

The EPA certifies that this rule does not have a significant economic impact on a substantial number of small entities.

*D. Paperwork Reduction Act*

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of OMB under 44 U.S.C. 3501 et seq.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duties on any of these governmental entities or the private sector. This rule does not change the current statutory and regulatory duties that arise from conditions of federal assistance which, as defined by UMRA, do not constitute a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.'' Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule eliminates the separate procedures in 40 CFR Part 15 for administering the Clean Air Act and Clean Water Act ineligibility provisions, and incorporates simplified ineligibility procedures in EPA's existing nonprocurement suspension and debarment rules (40 CFR Part 32). None of these amended procedures would impose significant or unique regulatory requirements on small governments. Therefore, the rule is not subject to section 203 of the UMRA.

List of Subjects in 40 CFR Parts 15 and 32

Environmental protection, Administrative practice and procedure, Debarment and suspension; Ineligibility.

Dated: May 23, 1996.

Alvin M. Pesachowitz,

*Acting Assistant Administrator, Office of Administration and Resources Management.*

For the reasons set out in the preamble, under the authority at 33 U.S.C. 1361(a), 40 CFR Chapter I is amended as follows:

1. Part 15 is removed.

2. The title of Part 32 is revised to read as follows:

## PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS); CLEAN AIR ACT AND CLEAN WATER ACT INELIGIBILITY OF FACILITIES IN PERFORMANCE OF FEDERAL CONTRACTS, GRANTS AND LOANS

3. The authority citation for Part 32 is revised to read as follows:

Authority: E.O. 12549; 41 U.S.C. 701 et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f, 4901, 6901, 7401, 9801 et seq.; E.O. 12689; E.O. 11738; Pub. L. 103–355 § 2455.

4. Section 32.100 is amended by adding new paragraph (e) as follows:

### § 32.100 Purpose.

* * * * *

(e) Facilities ineligible to provide goods, materials, or services under Federal contracts, loans or assistance, pursuant to Section 306 of the Clean Air Act (CAA) or Section 508 of the Clean Water Act (CWA) are excluded in accordance with the terms of those statutes. Reinstatement of a CAA or CWA ineligible facility may be requested in accordance with the procedures at § 32.321.

5. Section 32.105 is amended by adding in alphabetical order the following definitions.

### § 32.105 Definitions.

* * * * *

*CAA or CWA ineligibility.* The status of a facility which, as provided in section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), is ineligible to be used in the performance of a Federal contract, subcontract, loan, assistance award or covered transaction. Such ineligibility commences upon conviction of a facility owner, lessee, or supervisor for a

violation of section 113 of the CAA or section 309(c) of the CWA, which violation occurred at the facility. The ineligibility of the facility continues until such time as the EPA Debarring Official certifies that the condition giving rise to the CAA or CWA criminal conviction has been corrected.

* * * * *

*Facility.* Any building, plant, installation, structure, mine, vessel, floating craft, location or site of operations at which, or from which, a Federal contract, subcontract, loan, assistance award or covered transaction is to be performed. Where a location or site of operations contains or includes more than one building, plant, installation or structure, the entire location or site shall be deemed the facility unless otherwise limited by EPA.

* * * * *

6. Section 32.110 is amended by adding a new paragraph (d) as follows:

**§ 32.110 Coverage.**

* * * * *

(d) Except as provided in § 32.215 of this part, Federal agencies shall not use a CAA or CWA ineligible facility in the performance of any Federal contract, subcontract, loan, assistance award or covered transaction.

7. Section 32.115 is amended by revising paragraph (d) to read as follows:

**§ 32.115 Policy.**

* * * * *

(d) It is EPA policy to exercise its authority to reinstate CAA or CWA ineligible facilities in a manner which is consistent with the policies in paragraphs (a) and (b) of this section.

8. Section 32.215 is revised to read as follows:

**§ 32.215 Exception provision.**

(a) EPA may grant an exception permitting a debarred, suspended, or voluntarily excluded person, or a person proposed for debarment under 48 CFR part 9, subpart 9.4, to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 32.200. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 32.505(a).

(b) Any agency head, or authorized designee, may except any Federal contract, subcontract, loan, assistance award or covered transaction, individually or as a class, in whole or in part, from the prohibitions otherwise applicable by reason of a CAA or CWA ineligibility. The agency head granting the exception shall notify the EPA Debarring Official of the exception as soon, before or after granting the exception, as may be practicable. The justification for such an exception, or any renewal thereof, shall fully describe the purpose of the contract or covered transaction, and show why the paramount interest of the United States requires the exception.

(c) The EPA Debarring Official is the official authorized to grant exceptions under this section for EPA.

9. Section 32.315 is amended by adding a new paragraph (c) to read as follows:

**§ 32.315 Settlement and voluntary exclusion.**

* * * * *

(c) The EPA Debarring Official may consider matters regarding present responsibility, as well as any other matter regarding the conditions giving rise to alleged CAA or CWA violations in anticipation of entry of a plea, judgment or conviction. If, at any time, it is in the interest of the United States to conclude such matters pursuant to a comprehensive settlement agreement, the EPA Debarring Official may conclude the debarment and ineligibility matters as part of any such settlement, so long as he or she certifies that the condition giving rise to the CAA or CWA violation has been corrected.

10. Section 32.321 is added to Part 32 to read as follows:

**§ 32.321 Reinstatement of facility eligibility.**

(a) A written petition to reinstate the eligibility of a CAA or CWA ineligible facility may be submitted to the EPA Debarring Official. The petitioner bears the burden of providing sufficient information and documentation to establish, by a preponderance of the evidence, that the condition giving rise to the CAA or CWA conviction has been corrected. If the material facts set forth in the petition are disputed, and the Debarring Official denies the petition, the petitioner shall be afforded the opportunity to have additional proceedings as provided in § 32.314(b).

(b) A decision by the EPA Debarring Official denying a petition for reinstatement may be appealed under § 32.335.

**§ 32.330 [Removed]**

11. Section 32.330 is removed.

**§ 32.425 [Removed]**

12. Section 32.425 is removed.

[FR Doc. 96–14117 Filed 6–5–96; 8:45 am]

BILLING CODE 6560–50–P

## 40 CFR Part 55

**[FRL–5515–7]**

## Outer Continental Shelf Air Regulations Consistency Update for California

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

**ACTION:** Final rule-consistency update.

**SUMMARY:** EPA is finalizing the update of the Outer Continental Shelf (''OCS'') Air Regulations proposed in the Federal Register on January 29, 1996, September 11, 1995, and April 7, 1995. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act (''the Act''), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD), South Coast Air Quality Management District (South Coast AQMD), and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the requirements contained in ''Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources'' (April, 1996), ''South Coast Air Quality Management District Requirements Applicable to OCS Sources'' (Part I and II) (April, 1996), and ''Ventura County Air Pollution Control District Requirements Applicable to OCS Sources'' (April, 1996) is to regulate emissions from OCS sources in accordance with the requirements onshore.

**DATES:** This action is effective July 8, 1996.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency (LE–6102), 401 ''M'' Street, SW, Room M–1500, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

**SUPPLEMENTARY INFORMATION:**

Background

On January 29, 1996 in 61 FR 2761, September 11, 1995 in 60 FR 47140, and April 7, 1995 in 60 FR 17748, EPA proposed to approve the following requirements into the OCS Air Regulations: ''Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources'', ''South Coast Air Quality Management District Requirements Applicable to OCS Sources'' (Part I and II), and ''Ventura County Air Pollution Control District Requirements Applicable to OCS Sources''. These requirements are being promulgated in response to the submittal of rules from local air pollution control agencies. EPA has evaluated the above requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

A 30-day public comment period was provided in 61 FR 2761, 60 FR 47140, and 60 FR 17748, and no comments were received.

EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the proposals set forth in the January 29, 1996, September 11, 1995, and April 7, 1995 notices of proposed rulemaking. EPA is approving the submittal as modified under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore.

Administrative Requirements

*A. Executive Order 12866 (Regulatory Impact Analysis)*

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a ''significant impact on a substantial number of small entities.'' Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this final rule will not have a significant impact on a substantial number of small entities.

*C. Unfunded Mandates*

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

EPA has determined that the final action promulgated today does not include a Federal mandate that may result in estimated cost 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 the State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: May 8, 1996.

Felicia Marcus,

*Regional Administrator.*

Title 40 of the Code of Federal Regulations, Part 55, is to be amended as follows:

## PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. § 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraphs (e)(3)(ii)(F), (e)(3)(ii)(G), and (e)(3)(ii)(H) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of states seaward boundaries, by state.**

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* April, 1996.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I and Part II), April, 1996.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* April, 1996.

* * * * *

3. Appendix A to 40 CFR Part 55 is amended by revising paragraph (b) (6), (7), and (8) under the heading ''California'' to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

* * * * *

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* April 1996:

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)

Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 12/14/93)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 3/16/95)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 4/21/95)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 12/10/91)
Rule 342 Control of Oxides of Nitrogen ($NO_X$ from Boilers, Steam Generators and Process Heaters) (Adopted 03/10/92)
Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A.,B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 11/09/93)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources,* April 1996:

Rule 102 Definition of Terms (Adopted 11/4/88)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 8/12/94) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 8/12/94)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 6/10/94) except (e)(3)and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 6/10/94)
Rule 304.1 Analyses Fees (Adopted 6/10/94)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 6/10/94)
Rule 309 Fees for Regulation XVI (Adopted 6/10/94)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 7/9/93)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 10/2/92)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
Addendum to Regulation IV (Effective 1977)
Rule 701 General (Adopted 7/9/82)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 4/8/94)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 5/12/95)

Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous and Liquid-Fueled Internal Combustion Engines (Adopted 12/9/94)
Rule 1113 Architectural Coatings (Adopted 9/6/91)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 3/10/95)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 4/5/91)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
Rule 1136 Wood Products Coatings (Adopted 8/12/94)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Application (Adopted 12/10/93)
Rule 1171 Solvent Cleaning Operations (Adopted 5/12/95)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 Sumps and Wastewater Separators (Adopted 5/13/94)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 5/3/91)
Rule 1303 Requirements (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 9/11/92)
Rule 1306 Emission Calculations (Adopted 5/3/91)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1610 Old-Vehicle Scrapping (Adopted 1/14/94)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 10/15/93)
Rule 2001 Applicability (Adopted 10/15/93)
Rule 2002 Allocations for oxides of nitrogen ($NO_X$) and oxides of sulfur (SOx) Emissions (Adopted 3/10/95)
Rule 2004 Requirements (Adopted 10/15/93) except (l) (2 and 3)
Rule 2005 New Source Review for RECLAIM (Adopted 10/15/93) except (i)
Rule 2006 Permits (Adopted 10/15/93)
Rule 2007 Trading Requirements (Adopted 10/15/93)
Rule 2008 Mobiles Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SOx) Emissions (Adopted 10/15/93)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen ($NO_X$) Emissions (Adopted 10/15/93)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 10/15/93) except (b)(1)(G) and (b)(3)(B)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, April 1996:

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 12/13/94)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Timeframes for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Appendix II–B Best Available Control Technology (BACT) Tables (Adopted 12/86)
Rule 42 Permit Fees (Adopted 7/11/95)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants-Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 6/14/94)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)

Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/28/94)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of $NO_x$ (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 12/13/94)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs)(Adopted 6/13/95)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)
Rule 74.23 Stationary Gas Turbines (Adopted 3/14/95)
Rule 74.24 Marine Coating Operations (Adopted 3/8/94)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 5/17/94)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests (Adopted 12/86)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)

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[FR Doc. 96–14116 Filed 6–5–96; 8:45 am]
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## 40 CFR Part 73

**RIN 2060–AG41**

**[FRL–5513–4]**

## Acid Rain Program; Elimination of Direct Sale Program and IPP Written Guarantee Program: Final Rule

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

**ACTION:** Direct final rule.

**SUMMARY:** Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, (the Act) authorized the U.S. Environmental Protection Agency to establish the Acid Rain Program to reduce the adverse health and ecological effects of acidic deposition. Under the Acid Rain Program, electric utilities must have an allowance for each ton of sulfur dioxide ($SO_2$) that their generating facilities emit. Title IV mandates that EPA hold or sponsor yearly auctions and direct sales of allowances for a small portion of the total allowances allocated each year. EPA is also required to make available to new independent power producers (IPPs) guarantees ensuring priority in purchasing allowances in the direct sales.

Section 416(c)(7) of the Act directs the Administrator to terminate the direct sale program if, during any two-year period, less than 20 percent of the allowances available for direct sales have been purchased. The direct sale and IPP provisions were designed to help ensure that units, including new IPPs, have a public source of allowances beyond those already allocated initially. Because no allowances have been sold through the direct sale program since it began in June 1993, EPA is revising its regulations to terminate the direct sales. The allowances available previously in the direct sale program will now be available in the annual allowance auctions, the proceeds of which will continue to be returned to the utilities from which the allowances were withheld. In addition, because the IPP written guarantee program is implemented through the direct sales and no applications for such guarantees have been received, EPA is revising its regulations to terminate the guarantee program.

The rule revision is being issued as a direct final rule because the Act mandates this action and no adverse comment is expected.

**DATES:** This direct final rule will be effective on August 5, 1996, unless significant, adverse comments are received by July 8, 1996. If significant adverse comments are received on any portion of this direct final rule, that portion of the direct final rule will be withdrawn through a notice in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Kenon Smith, U.S. Environmental Protection Agency, Acid Rain Division (6204J), 401 M Street, SW, Washington, D.C. 20460, (202) 233–9164, call the Acid Rain Hotline at (202) 233–9620, or visit the Acid Rain Program web page at http://www.epa.gov/docs/acidrain/ardhome.html. All material supporting this notice is available for viewing and copying under Docket A–96–19, EPA Air Docket (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Telephone (202) 260–7548.

**SUPPLEMENTARY INFORMATION:** Any significant adverse comments received on any portion of this direct final rule, by the date listed above, will be addressed in a subsequent final rule. That final rule will be based on the relevant portion of the rule revision that is noticed as a proposed rule in the Proposed Rule Section of this Federal Register and that is identical to this direct final rule.

EPA's Acid Rain Program established an innovative, market-based allowance trading system to reduce $S0_2$ emissions, one of the primary precursors of acid rain. Under this system, fossil fuel-fired power plants, the principal emitters of $S0_2$, were allotted tradeable allowances based on their past fuel usage and emissions. Each allowance entitles a boiler unit in a plant to emit 1 ton of $S0_2$ during or after the year specified in the allowance serial number. At the end of the year, the number of allowances a unit holds must equal or exceed the total emissions at that unit; otherwise, stringent penalties will apply. After the year 2000, the total number of allowances allocated each year will be about half of what the utility industry emitted in 1980.

Allowances may be bought, sold, or banked like any other commodity. If a unit has surplus allowances, it may sell them to units whose emissions levels exceed their allowance supply, or it may bank the allowances for future years.

Because the availability of allowances is crucial to ensure the economic efficiency of the emissions limitation program and facilitate the addition of new electric-generating capacity, title IV mandates that EPA hold or sponsor yearly auctions and direct sales of allowances for a small portion of the total allowances allocated each year. The auction and the direct sales include both spot sales (allowances first usable in the year of sale) and advance sales (allowances first usable in the 7th year after the year of sale). In addition, title IV requires that EPA provide a written guarantee ensuring priority for certain new independent power producers in purchasing allowances in the direct sales. The auctions, sales, and IPP guarantee provisions of title IV were designed to help ensure that units, including new IPPs, would have a public source of allowances beyond those allocated initially.

To supply the sales and auctions with allowances, EPA, as directed by the Act, has set aside in a Special Allowance Reserve 2.8 percent of the total annual allowances allocated to all units. During Phase I, when the allowances allocated total 5.7 million allowances annually, 150,000 allowances are available every year for auctions. During Phase II, when allowance allocations total 8.95 million allowances yearly, 200,000 allowances are earmarked annually for auctions and 50,000 designated for the direct sales. The Act set the direct sale price for allowances to be $1,500 per allowance, adjusted by the Consumer Price Index.

Section 416(c)(7) of the Act directs the Administrator to terminate the direct sale subaccount and transfer such allowances to the auction subaccount ''[i]f the Administrator determines that, during any period of 2 consecutive calendar years, less than 20 percent of the allowances available in the subaccount for direct sales established under this subsection have been purchased.'' 42 U.S.C. 76510(c)(7); see also 4O CFR 73.73(b). Since no allowances have ever been sold through the direct sale program since it began in 1993, EPA is terminating the direct sale program, beginning with the 1996 direct sale, and removing the regulations that established the program.

EPA is also revising part 73 to provide that the allowances available previously in the direct sale program will now be available in the annual allowance auctions, the proceeds of which will continue to be returned to the utilities from which the allowances were originally withheld. As done in the previous three auctions, unsold advance allowances from the 1996 direct sale will be sold in the 6-year advance auction in the 1997 EPA auctions as allowances first usable in the 6th year after the year of sale. Allowances originally set aside for the advance direct sale in 1997, and each year thereafter, will be included in the advance auction of that respective year. Allowances originally set aside for the direct spot sales beginning in 2000, and each year thereafter, will be included in the spot auction of each respective year.

In addition, EPA is eliminating the IPP written guarantee program (and the relevant regulations) under which IPPs can apply for and receive priority for purchasing allowances in direct sales. Under section 417(c), the guarantee program is implemented exclusively through the direct sale program, which is being terminated. Further, since the publication of the regulations establishing the guarantee program in December 1991 (56 FR 65592 (December 17, 1991)), no applications have been submitted to obtain guaranteed allowances. Because the Act set the price of guaranteed allowances to be $1,500.00 per allowance, adjusted by the Consumer Price Index (CPI), EPA does not expect there to be any applications. Sufficient quantities of allowances are readily available in the private market at prices well below the guaranteed price.

## Administrative Requirements

### *A. Executive Order 12866*

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of § 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA responses to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **FOR FURTHER INFORMATION** section of this preamble.

### *B. Unfunded Mandates Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of § 100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, 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 Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this direct 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 Agency 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 Agency is not required to develop a plan with regard to small governments. However, as discussed in this preamble, the rule reduces the potential burden on regulated entities (which may include

some investor-owned or municipal utilities) of participating in direct sales or applying for written guarantees.

*C. Paperwork Reduction Act*

This rule does not provide for any new collection of information and, in fact, removes some information requirements of the current regulations. The removal of these requirements reduces the estimated burden, as compared to the burden under the current regulations, by an average of 48.5 hours per IPP guarantee application and 1.5 hours per direct sale application for an overall burden reduction from the original estimation of 4,850 hours. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An Information Collection Request document and estimates of the public reporting burden were prepared in connection with the current regulations establishing the direct sale and guarantee programs. 56 FR 65601.

Send comments regarding this collection of analysis or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, EPA, 401 M Street, SW. (Mail Code 2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601, et seq., requires each federal agency to consider potential impacts of its regulations on small business ''entities.'' Under 5 U.S.C. 604(a), an agency issuing a notice of proposed rulemaking must prepare and make available for public comment a regulatory flexibility analysis. Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

In the preamble of the current regulations establishing the direct sale and guarantee programs, the Administrator certified that those regulations, including the provisions revised by today's final rule, would not have a significant impact. 56 FR 65601. The final rule revisions adopted today are not significant enough to change the economic impact addressed in that preamble. Pursuant to the provisions of 5 U. S.C. 605(b), I hereby certify that the revised rule will not have a significant, adverse impact on a substantial number of small entities.

*E. Miscellaneous*

In accordance with section 117 of the Act, issuance of this rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Part 73

Environmental protection, Acid rain, Air pollution control, Electric utilities, Reporting and recordkeeping requirements, and Sulfur dioxide.

Dated: May 24, 1996.

Carol M. Browner,

*Administrator, U.S. Environmental Protection Agency.*

For the reasons set forth in the preamble, chapter I of title 40 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: 42 U. S.C. 7601 and 7651, et seq.

2. Section 73.70 is amended by revising table I of paragraph (a) as follows: **§ 73.70 Auctions.**

(a) * * *

TABLE I.—ALLOWANCE SCHEDULE FOR AUCTIONS

| Year of purchase | Spot auction | Advance auction | Advance auction* |
|---|---|---|---|
| 1993 ..... | 50,000 [a] | 100,000 [b] | |
| 1994 ..... | 50,000 [a] | 100,000 [b] | 25,000 [c] |
| 1995 ..... | 50,000 [a] | 100,000 [b] | 25,000 [c] |
| 1996 ..... | 150,000 | 100,000 [b] | 25,000 [c] |
| 1997 ..... | 150,000 | 125,000 [b] | 25,000 [c] |
| 1998 ..... | 150,000 | 125,000 [b] | |
| 1999 ..... | 150,000 | 125,000 [b] | |
| 2000 and after ..... | 125,000 | 125,000 [b] | |

[a] Not usable until 1995.
[b] Not usable until 7 years after purchase.
[c] Not usable until 6 years after purchase.
*These are unsold advance allowances from the direct sale program for 1993, 1994, 1995, and 1996 respectively.

* * * *

3. Section 73.72 is revised to read as follows:

**§ 73.72 Direct sales.**

Allowances that were formerly part of the direct sale program, which has been terminated under § 73.73(b), will be included in the annual allowance auctions in accordance with § 73.70(a).

4. Sections 73.74, 73.75, 73.76, and 73.77 are removed from subpart E.

[FR Doc. 96–14114 Filed 6–5–96; 8:45 am]
BILLING CODE 6560–50–P

## 40 CFR Part 80

**[FRL–5513–3]**

**RIN 2060–AD55**

## Prohibition on Gasoline Containing Lead or Lead Additives for Highway Use

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

**ACTION:** Final rule.

**SUMMARY:** EPA published a direct final rule and an associated notice of proposed rulemaking of the same title on February 2, 1996 (61 FR 3832 and 61 FR 3894, respectively). Both actions were to revise EPA regulations to reflect the Clean Air Act's statutory prohibition of the introduction into commerce of gasoline containing lead or lead additives for use as a motor vehicle fuel after December 31, 1995. EPA received adverse comment on 40 CFR 80.24(b) as published in both the direct final rule and associated notice of proposed rulemaking. In response to that comment, EPA withdrew 40 CFR 80.24(b) from the direct final rule on March 4, 1996 (61 FR 8221). All other actions of the direct final rule became effective on March 4, 1996. In today's action, EPA is finalizing the revised 40 CFR 80.24(b) based on the February 2, 1996 notice of proposed rulemaking.

**EFFECTIVE DATE:** This action will become effective on July 8, 1996.

**ADDRESSES:** Materials relevant to this rulemaking and written comments on the direct final rule and notice of proposed rulemaking have been placed in Public Docket No. A–95–13, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, SW., Washington, DC 20460. Documents may be inspected between the hours of 8 a.m. to 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket material.

**FOR FURTHER INFORMATION CONTACT:** Richard Babst, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 233–9473.

**SUPPLEMENTARY INFORMATION:**

I. Regulated Entities

Regulated categories and entities potentially affected by this action include:

| Category | Examples of regulated entities |
|---|---|
| Industry | Manufacturers of motor vehicles. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the provision at 40 CFR 80.24(b) dealing specifically with specifications for fuel filler inlet restrictors. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## II. Introduction

### *A. Background*

As amended in 1990, the Clean Air Act prohibits the introduction of gasoline containing lead or lead additives into commerce for use as a motor vehicle fuel after December 31, 1995. On February 2, 1996, EPA published in the Federal Register a direct final rule and associated notice of proposed rulemaking revising its regulations for consistency with this Clean Air Act prohibition.

Among other actions, the direct final rule and associated notice of proposed rulemaking revised 40 CFR 80.24(b). This paragraph had contained size specifications for the gasoline tank filler inlet of motor vehicles equipped with an emission control device that would be significantly impaired by the use of leaded gasoline. The purpose of the tank filler inlet restriction was to allow the insertion of an unleaded gasoline pump nozzle, but not a leaded gasoline pump nozzle. Specifically, paragraph 80.24(b) required that a manufacturer of motor vehicles ''equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline'' (per the former introductory language of paragraph 80.24) shall ''[m]anufacture such vehicle with each gasoline tank filler inlet having a restriction which prevents the insertion of a nozzle with a spout as described in § 80.22(f)(1) and allows the insertion of a nozzle with a spout as described in § 80.22(f)(2).'' Section 80.22(f)(1), which was deleted by the February 2, 1996 direct final rule, specified that ''[e]ach pump from which leaded gasoline is introduced into motor vehicles shall be equipped with a nozzle spout having a terminal end with an outside diameter of not less than 0.930 inch (2.363 centimeters).'' Section 80.22(f)(2), which the February 2, 1996 direct final rule left intact, specifies that ''[e]ach pump from which unleaded gasoline is introduced into motor vehicles shall be equipped with a nozzle spout which meets the following specifications: (I) The outside diameter of the terminal end shall not be greater than 0.840 inch (2.134 centimeters); (ii) . . .''

Paragraph 80.24(b) contained additional specifications to prevent misfueling of motor vehicles with leaded gasoline. Section 80.24(b)(1) required that the filler inlet restrictor must ''pool'' gasoline at the restrictor's opening, if fueling is attempted when the spout of a pump nozzle is not inserted into the restrictor opening. Historically, this has been accomplished by a spring-loaded door on the inside of the restrictor opening, which would be pushed open by inserting the spout of an unleaded gasoline nozzle. Since leaded gasoline nozzle spouts are larger than the inlet restrictor opening, they would not fit into the restrictor opening or push open the spring loaded door. Fueling with leaded gasoline would require the nozzle spout to be positioned in front of the restrictor opening and spring-loaded door. If fueling were attempted in this manner, the gasoline would pool at the restrictor opening and cause the nozzle's automatic shut-off device to activate. The related paragraph 80.24(b)(2) exempted motorcycle manufacturers from meeting the ''pooling'' requirements of paragraph 80.24(b)(1).

In the February 2, 1996 direct final rule and associated notice of proposed rulemaking, EPA removed various portions of section 80.24, including the introductory text, and modified section 80.24(b) to make the size requirements of the tank filler inlet applicable to all new motor vehicles, and not just to those equipped with an emission control device that would be significantly impaired by the use of leaded gasoline. EPA reasoned that retaining the tank filler inlet restrictor requirements would conform with the statutory ban prohibiting the use of gasoline containing lead or lead additives as a motor vehicle fuel. The restrictor requirements for motor vehicles would match the nozzle size requirement for dispensing unleaded gasoline, which EPA had retained in paragraph 80.22(f)(2). Further, General Motors and several gasoline pump nozzle manufacturers had requested that the specification for the fuel filler inlet size be retained so that automobile equipment will continue to be compatible with Stage II vapor recovery pump nozzles. EPA simplified the applicability language of paragraph 80.24(b) to refer to all motor vehicles, instead of motor vehicles equipped with an emission control device that would be significantly impaired by the use of leaded gasoline, because it thought that all motor vehicles are currently manufactured with tank filler inlet restrictors. The agency did not intend to broaden the applicability of 80.24(b).

In the February 2, 1996 direct final rule and associated notice of proposed rulemaking, EPA also removed sections 80.24(b)(1) and 80.24(b)(2). As stated in the February 2, 1996 direct final rule (see discussion of sections 80.24 and 80.22(d) and (e)), EPA believes misfueling is unlikely, making the paragraph 80.24(b)(1) ''pooling'' safeguard against misfueling unnecessary. Once section 80.24(b)(1) is removed, it is appropriate to remove section 80.24(b)(2) as well, since 80.24(b)(2) exempts motorcycle manufacturers from the requirements of 80.24(b)(1).

On February 22, 1996, EPA received an adverse comment from Harley Davidson, Inc. (Harley) on the revised language of 40 CFR 80.24(b).[1] In its comment, Harley states that motorcycles generally do not use emission control devices that would be significantly impaired by the use of leaded gasoline (e.g., catalytic converters) and are therefore not manufactured with tank filler inlet restrictors matching the requirements of the existing paragraph 80.24(b). The February 2, 1996 direct final rule and associated notice of proposed rulemaking would require these motorcycles to meet the fuel inlet size requirements of 40 CFR 80.24(b), thereby causing additional economic burden and manufacturing complexity for Harley.

EPA did not intend or foresee that it would be expanding the applicability of 80.24(b) by revising the applicability language. Because of this adverse comment, EPA published in the Federal Register a ''Partial Withdrawal of Direct Final Rule'' on March 4, 1996 (61 FR 8221). That action removed 40 CFR 80.24(b) from the direct final rule. All other provisions of the direct final rule became effective on March 4, 1996, as planned.

In addition to the above issue, EPA has determined that the version of 40 CFR 80.24(b) in the February 2, 1996 direct final rule and related notice of proposed rulemaking inadvertently

[1] This comment has been included in docket no. A–95–13.

tightened the specifications for the motor vehicle fuel inlet restrictor. The existing regulations at 40 CFR 80.24(b) require that the restrictor must prevent ''the insertion of a nozzle with a spout as described in § 80.22(f)(1).'' 40 CFR 80.22(f)(1) specified a nozzle spout having a terminal end with an ''outside diameter of not less than 0.930 inch (2.363 centimeters).'' Because the February 2, 1996 direct final rule and associated notice of proposed rulemaking deleted 40 CFR 80.22(f)(1), the text of the proposed 40 CFR 80.24(b) was changed. As proposed, 80.24(b) would specify that the restrictor must prevent the insertion of a nozzle of ''greater size than prescribed in § 80.22(f)(2).'' 40 CFR 80.22(f)(2) specifies a spout terminal end having an ''outside diameter . . . not . . . greater than 0.840 inch (2.134 centimeters).'' Thus, the proposed regulation would require that the fuel inlet restrictor prevent the insertion of a smaller-diameter nozzle spout than that allowed in the existing regulation.

*B. Statutory Authority*

EPA promulgates this final rule pursuant to its authority under Sections 211(c), 211(n), and 301(a) of the Clean Air Act, 42 U.S.C. 7545(c), 7545(n), 7601(a).

III. Description of Today's Action

Today's final rule revises 40 CFR 80.24(b) to complete the regulatory revisions contemplated by the February 2, 1996 direct final rule. Those regulatory revisions were rendered incomplete by the March 4, 1996 (61 FR 8221) partial withdrawal of the direct final rule.

*Section 80.24(b)(1) and (2).* As proposed, this rule deletes section 80.24(b)(1) and 80.24(b)(2), because EPA believes these ''pooling'' safeguards against misfueling are no longer necessary (see ''Background'' above).

*Section 80.24(b).* As finalized today, 40 CFR 80.24(b) differs from the proposal in two respects. First, the text of 40 CFR 80.24(b) has been changed from the proposal to retain its previous applicability. Specifically, EPA has incorporated into the revised paragraph 80.24(b) the introductory text previously contained in section 80.24 that described which motor vehicle manufacturers are subject to 80.24(b) fuel inlet restrictor specifications.[2]

EPA has changed the proposed language of 80.24(b) in this way to avoid creating additional compliance burdens for manufacturers of motorcycles and other motor vehicles currently produced without the fuel inlet restrictors. In its February 2, 1996 notice of proposed rulemaking, EPA proposed to expand the requirement for fuel inlet restrictors to all motor vehicles. EPA reasoned that retaining the fuel inlet restrictor requirement would conform with the statutory ban, and did not realize that some motor vehicles continue to be produced without fuel inlet restrictors. EPA therefore proposed to retain the fuel inlet restrictor requirement and simplify the applicability language to refer to all motor vehicles.

After reviewing the comment submitted by Harley, EPA now recognizes that the proposed revisions to the applicability language would impose additional burden for motor vehicles that are not required to have the fuel inlet restrictor under the previous regulations. The Agency believes that expansion of the applicability of the restrictor requirement is not appropriate. The economic burden of applying the restrictor requirement to motorcycles and any other motor vehicles not previously subject to the requirement outweighs the benefit of facilitating the statutory ban by installing restrictors on these vehicles.

Second, the text of 80.24(b) finalized today has been changed from the proposal to retain the size specifications for the fuel inlet restrictor set forth in the previous version of this regulation. As explained above (see ''Background''), that previous version referenced the specification set forth in section 80.22(f)(1), which was deleted by the February 2, 1996 direct final rule. The proposed text of 80.24(b) failed to incorporate the nozzle specification set forth in deleted 80.22(f)(1). In today's final rule, EPA has incorporated the nozzle specification contained in the previous section 80.22(f)(1). EPA makes this change to insure that the Agency does not increase the burden of complying with the fuel inlet restrictor size specifications of section 80.24(b).

IV. Environmental Impact

This rule is expected to have no net environmental impact.

V. Economic Impact

The Regulatory Flexibility Act (Act), 5 U.S.C. 601–612, requires that Federal Agencies examine the impacts of their regulations on small entities. The Act requires an Agency to prepare a regulatory flexibility analysis in conjunction with notice and comment rulemaking, unless the Agency head certifies that the rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b). The Administrator certifies that this rule will not have a significant impact on a substantial number of small entities. Because this rule deletes a previous requirement and retains another requirement without substantive change, it is not expected to result in any additional compliance cost to regulated parties, and in fact, is expected to reduce compliance cost to regulated parties.

VI. Effective Date

This action will become effective on July 8, 1996.

VII. Executive Order 12866

Under Executive Order 12866,[3] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[4]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VIII. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Pub. L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may

[2] The phrase ''leaded gasoline'' in the former introductory text is changed to ''gasoline other than unleaded gasoline'', because the term ''leaded gasoline'' has been deleted from the regulations. This textual change does not change the scope of the regulation, because the deleted term ''leaded gasoline'' encompassed all gasoline which did not qualify as unleaded gasoline.

[3] 58 FR 51735 (October 4, 1993).

[4] *Id.* at section 3(f)(1)-(4).

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, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that the final rule promulgated today does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

IX. Judicial Review

Because this action promulgates a control or prohibition under Section 211 of the Clean Air Act and is nationally applicable, under Section 307(b)(1) of the Clean Air Act judicial review of this action is available only by the filing of a petition for review in the U.S. Court of Appeals for the D.C. Circuit within sixty days of publication of this action in the Federal Register.

List of Subjects in 40 CFR Part 80

Environmental Protection, Air Pollution Control, Fuel Additives, Gasoline, Leaded Gasoline, Unleaded Gasoline, and Motor Vehicle Pollution.

Dated: May 24, 1996.

Carol M. Browner,

*Administrator.*

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Section 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.24 is amended by revising paragraph (b) to read as follows:

**§ 80.24 Controls applicable to motor vehicle manufacturers.**

* * * * *

(b) The manufacturer of any motor vehicle equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of gasoline other than unleaded gasoline shall manufacture such vehicle with each gasoline tank filler inlet having a restriction which prevents the insertion of a nozzle with a spout having a terminal end with an outside diameter of 0.930 inch (2.363 centimeters) or more and allows the insertion of a nozzle with a spout meeting the specifications of § 80.22(f)(2).

[FR Doc. 96–14307 Filed 6–5–96; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 73 and 74

**[FCC 96–218]**

### Implementation of Section 403(l) of the Telecommunications Act of 1996 (Silent Station Authorizations)

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is implementing Section 403(l) of the Telecommunications Act of 1996, which provides for the accelerated expiration of broadcast station licenses upon a broadcast station's failure to broadcast for 12 consecutive months. The action is necessary in order to conform the Commission's rules to section 403(l) of the Telecommunications Act, and the intended effect of the action is to conform the rules to those statutory provisions.

**EFFECTIVE DATE:** June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** Irene Bleiweiss, Mass Media Bureau, Audio Services Division (202) 418–2780.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Order (In the Matter of Implementation of section 403(l) of the Telecommunications Act of 1996 (Silent Station Authorizations)), adopted May 14, 1996, and released May 17, 1996. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Synopsis of Order

1. This Order implements section 403(l) of the Telecommunications Act of 1996 (''Telecom Act'') [Pub. L. No. 104–104, 110 Stat. 56 (1996)], which adopts a new section 312(g) of the Communications Act providing for accelerated expiration of broadcast station licenses upon failure to broadcast for 12 consectuive months.

2. New Section 312(g) states:

> If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary. 47 U.S.C. 312(g).

3. The Order provides that the first date of such license expiration will be February 9, 1997. The following broadcast stations will be affected: Commercial and noncommercial AM, FM, and TV stations, International Broadcast Stations, Low Power Television Stations, FM and TV Translator and Booster stations, broadcast experimental stations, and other classes of broadcast stations that may be established in the future. With the expiration of any AM, FM, or TV broadcasting station license, the licensee's associated remote pickup and auxiliary stations authorized in connection with the operation of the broadcast station would also necessarily expire. A station's other FCC applications and authorizations will not toll or extend the 12-month period, notwithstanding any provision in any authorization to the contrary.

4. *Administrative Matters.* We are revising the rules as detailed below without providing prior notice and an opportunity for comment. We find that notice and comment procedures are unnecessary, and that this action therefore falls within the ''good cause'' exception of the Administrative Procedure Act (''APA''). *See* 5 U.S.C. 553(b)(B) (notice requirements inapplicable ''when the agency for good cause * * * finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest''). We further find for the same reasons that good cause exists to make the rule changes adopted herein effective upon publication of this Order in the Federal Register. *See id.* at section 553(d)(3). The rule changes adopted in this Order do not involve discretionary action by the Commission. Rather, they simply codify provisions of the Telecom Act.

5. *Effective Dates.* The rules adopted in the Order will become effective upon publication in the Federal Register. The ''clock'' for periods of continued silence triggering automatic expiration began to run on the date of enactment of the Telecom Act (February 8, 1996). The first date of accelerated license

expiration will be 12 months later, on February 9, 1997.

6. *Ordering Clause.* Accordingly, it is ordered that, pursuant to section 403(l) of the Telecommunications Act of 1996, codified as section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. section 312(g), parts 73 and 74 of the Commission's rules, 47 CFR part 73 and part 74 are amended as set forth below. We find good cause to make these rule changes effective less than 30 days after publication in the Federal Register. These changes merely modify the Commission's rules to conform with provisions of the 1996 Act that have already taken effect.

List of Subjects

*47 CFR Part 73*

Radio broadcasting, Television broadcasting.

*47 CFR Part 74*

Radio broadcasting, Television broadcasting.

Federal Communications Commission

LaVera F. Marshall,
*Acting Secretary.*

Rule Changes

Parts 73 and 74 of Title 47 of the Code of Federal Regulations are amended as follows:

## PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.561 is amended by adding a last sentence to paragraph (d) to read as follows:

**§ 73.561 Operating schedule; time sharing.**

* * * * *

(d) * * * The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

* * * * *

3. Section 73.733 is revised to read as follows:

**§ 73.733 Normal license period.**

All international broadcasting station licenses will be issued so as to expire at the hour of 3 a.m. local time and will be issued for a normal license period of 7 years expiring November 1. However, the license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

4. Section 73.761 is amended by adding a last sentence to paragraph (c) to read as follows:

**§ 73.761 Time of operation.**

* * * * *

(c) * * * The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

5. Section 73.1020 is amended by adding a new paragraph (c) to read as follows:

**§ 73.1020 Station license period.**

* * * * *

(c) The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

6. Section 73.1615 is amended by adding a new paragraph (c)(2) to read as follows:

**§ 73.1615 Operation during modification of facilities.**

* * * * *

(c) * * *

(2) The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license or construction permit to the contrary.

* * * * *

7. Section 73.1635 is amended by adding a last sentence to paragraph (a)(4) to read as follows:

**§ 73.1635 Special temporary authorizations (STA).**

(a) * * *

(4) * * * The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any STA or provision, term, or condition of the license to the contrary.

* * * * *

8. Section 73.1740 is amended by adding a new paragraph (c) to read as follows:

**§ 73.1740 Minimum operating schedule.**

* * * * *

(c) The license of any broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

9. Section 73.1750 is amended by adding a last sentence to read as follows:

**§ 73.1750 Discontinuance of operation.**

* * * The license of any broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.

## PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

10. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 554.

11. Section 74.15 is amended by adding a new paragraph (g) to read as follows:

**§ 74.15 Station license period.**

* * * * *

(g) The license of an experimental broadcast station, FM translator or FM broadcast booster, TV translator or TV broadcast booster, or low power TV station will expire as a matter of law upon failure to transmit broadcast signals for any consecutive 12-month period notwithstanding any provision, term, or condition of the license to the contrary. Further, if the license of any AM, FM, or TV broadcasting station licensed under part 73 of this chapter expires for failure to transmit signals for any consecutive 12-month period, the licensee's authorizations under part 74, subparts D, E, F, and H in connection with the operation of that AM, FM, or TV broadcasting station will also expire notwithstanding any provision, term, or condition to the contrary.

* * * * *

12. Section 74.112 is amended by revising paragraph (e) to read as follows:

**§ 74.112 Supplementary statement with application for construction permit.**

* * * * *

(e) That any authorization issued pursuant to the application may be cancelled at any time without notice or hearing, and will expire as a matter of law if the station fails to transmit broadcast signals for any consecutive 12-month period, notwithstanding any provision, term, or condition of the license to the contrary.

* * * * *

13. Section 74.763 is amended by revising paragraph (c) to read as follows:

**§ 74.763 Time of operation.**

* * * * *

(c) Failure of a low power TV, TV translator, or TV booster station to operate for a period of 30 days or more, except for causes beyond the control of the licensee, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the FCC. Furthermore, the station's license will expire as a matter of law, without regard to any causes beyond control of the licensee, if the station fails to transmit broadcast signals for any consecutive 12-month period, notwithstanding any provision, term, or condition of the license to the contrary.

* * * * *

14. Section 74.1263 is amended by revising paragraph (e) to read as follows:

**§ 74.1263 Time of operation.**

* * * * *

(e) Failure of an FM translator or booster station to operate for a period of 30 or more consecutive days, except for causes beyond the control of the licensee or authorized pursuant to paragraph (c) of this section, shall be deemed evidence of discontinuation of operation and the license of the station may be cancelled at the discretion of the Commission. Furthermore, the station's license will expire as a matter of law, without regard to any causes beyond control of the licensee or to any authorization pursuant to paragraph (c) of this section, if the station fails to transmit broadcast signals for any consecutive 12-month period, notwithstanding any provision, term, or condition of the license to the contrary.

[FR Doc. 96–14239 Filed 6–05–96; 8:45 am]

**BILLING CODE 6712–01–P**

## 47 CFR Part 95

**[WT Docket No. 95–102; FCC 96–215]**

## Establishment of the Family Radio Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action revises the Personal Radio Service rules to establish a very short distance, unlicensed, two-way voice personal radio service called the Family Radio Service (FRS). The rule amendments are necessary so that families, friends and associates could have the capability to communicate with one another over a very short range, typically a few city blocks. The effect of this action is to provide a high-quality low-cost communications service that will be useful to hunters, campers, hikers, bicyclists and other outdoor activity enthusiasts who need to communicate with other members of their party who are out of speaking range or sight but still in the same general area.

**EFFECTIVE DATE:** July 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** William T. Cross, Federal Communications Commission, Washington, DC 20554, (202) 418–0680.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, adopted May 14 , 1996, and released May 15, 1996. The complete text of this Commission action, including the rule amendments, is available for inspection and copying at the Federal Communications Commission, Room 246, 1919 M Streeet, NW., Washington, DC. The complete text of this Report and Order may also be obtained from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800, and from the FCC's internet World Wide Web homepage, http://www.fcc.gov

Summary of Report and Order

1. By this action, we are amending the Personal Radio Service rules to establish the FRS.

2. Also, by this action, we are also amending the technical standards to establish standards for FRS transmitters.

3. The amended rules are set forth below, effective July 8, 1996.

4. This Report and Order and the rule amendments are issued under the authority contained in 47 U.S.C. 154(i), 303(r), and 307(e).

List of Subjects in 47 CFR Part 95

Communications equipment, Radio.

Federal Communications Commission

William F. Caton,

*Acting Secretary.*

Rule Changes

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 95—PERSONAL RADIO SERVICES

1. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Subpart B, §§ 95.191 through 95.194, is added to part 95 to read as follows:

**Subpart B—Family Radio Service (FRS)**

General Provisions

Sec.

95.191 (FRS Rule 1) Eligibility and responsibility.
95.192 (FRS Rule 2) Authorized locations.
95.193 (FRS Rule 3) Types of communications.
95.194 (FRS Rule 4) FRS units.

Subpart B—Family Radio Service (FRS)

General Provisions

**§ 95.191 (FRS Rule 1) Eligibility and responsibility.**

(a) Unless you are a representative of a foreign government, you are authorized by this rule to operate an FCC certified FRS unit in accordance with the rules in this subpart. No license will be issued.

(b) You are responsible for all communications that you make with the FRS unit. You must share each channel with other users. No channel is available for the private or exclusive use of any user.

**§ 95.192 (FRS Rule 2) Authorized locations.**

(a) Provided that you comply with these rules, you are authorized to operate an FRS unit:

(1) Within or over any area of the world where radio services are regulated by the FCC (this area includes the fifty United States and the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands (50 islets and cays), American Samoa (seven islands), the Commonwealth of Northern Marianna Islands, and Guam Island);

(2) Within or over any other area of the world, except within or over the territorial limits of areas where radio services are regulated by an agency of the United States other than the FCC or any foreign government (you are subject to its rules);

(3) Aboard any vessel or aircraft registered in the United States, with the permission of the captain, that is within or over any area of the world where radio services are regulated by the FCC or upon or over international waters;

(4) or; Aboard any unregistered vessel or aircraft owned or operated by a United States citizen or company that is within or over any area of the world where radio services are regulated by the FCC or upon or over international waters.

(5) You must operate the FRS unit only according to any applicable treaty to which the United States is a party.

The FCC will make public notice of any such conditions.

(b) Your use of an FRS unit must not cause harmful interference to a FCC monitoring facility. Doing so could result in imposition of restrictions upon the operation of the FRS unit within 0.8 km (0.5 mile) of the facility by its Engineer-in-Charge. (Geographical coordinates of the facilities that require protection are listed in § 0.121(c) of this chapter.)

(c) The FCC may impose additional restrictions on a FRS station if the station is located at a point within the National Radio Quiet Zone (an area within the States of Maryland, Virginia and West Virginia). The Zone is the area bounded by:

(1) 39° 15′ N. on the North;
(2) 78° 30′ W. on the East;
(3) 37° 30′ N. on the South; and
(4) 80° 30′ W. on the West.

**§ 95.193 (FRS Rule 3) Types of communications.**

(a) You may use an FRS unit to conduct two-way voice communications with another person. You may use the FRS unit to transmit one-way communications only to establish communications with another person, send an emergency message, provide traveler assistance, make a voice page, or to conduct a brief test.

(b) The FRS unit may transmit tones to make contact or to continue communications with a particular FRS unit. If the tone is audible (more than 300 Hertz), it must last no longer than 15 seconds at one time. If the tone is subaudible (300 Hertz or less), it may be transmitted continuously only while you are talking.

(c) You must not use an FRS unit in connection with any activity which is against federal, state or local law.

(d) You must, at all times and on all channels, give priority to emergency communication messages concerning the immediate safety of life or the immediate protection of property.

(e) No FRS unit may be interconnected to the public switched network.

**§ 95.194 (FRS Rule 4) FRS units.**

(a) You may only use an FCC certified FRS unit. (You can identify an FCC certified FRS unit by the label placed on it by the manufacturer.)

(b) You must not make, or have made, any internal modification to an FRS unit. Any internal modification cancels the FCC certification and voids your authority to operate the unit in the FRS.

(c) You may not attach any antenna, power amplifier, or other apparatus to an FRS unit that has not been FCC certified as part of that FRS unit. There are no exceptions to this rule and attaching any such apparatus to a FRS unit cancels the FCC certification and voids everyone's authority to operate the unit in the FRS.

## Subpart D—Citizens Band (CB) Radio Service

3. Section 95.401 is revised to read as follows:

**§ 95.401 (CB Rule 1) What are the Citizens Band Radio Services?**

The Citizens Band Radio Services are:

(a) The Citizens Band (CB) Radio Service—a private, two-way, short-distance voice communications service for personal or business activities of the general public. The CB Radio Service may also be used for voice paging.

(b) The Family Radio Service (FRS)—a private, two-way, very short-distance voice communications service for facilitating family and group activities. The rules for this service are contained in Subpart B of this part.

## Subpart E—Technical Regulations

4. Section 95.601 is revised to read as follows:

**§ 95.601 Basis and purpose.**

These rules provide the technical standards to which each transmitter (apparatus that converts electrical energy received from a source into RF (radio frequency) energy capable of being radiated) used or intended to be used in a station authorized in any of the Personal Radio Services must comply. They also provide requirements for obtaining type acceptance of such transmitters. The Personal Radio Services are the GMRS (General Mobile Radio Service), the Family Radio Service (FRS), the R/C (Radio Control Radio Service), and the CB (Citizens Band Radio Service). For operating rules, see Part 95, Subpart A–GMRS; Subpart B–FRS; Subpart C–R/C; and Subpart D–CB.

5. Section 95.603 is amended by revising the section heading and adding paragraph (d) to read as follows:

**§ 95.603 Type acceptance or certification required.**

* * * * *

(d) Each FRS unit (a transmitter that operates or is intended to operate in the FRS) must be certified for use in the FRS in accordance with Subpart J of Part 2 of this chapter.

6. Section 95.605 is revised to read as follows:

**§ 95.605 Type acceptance and certification procedures.**

Any entity must request type acceptance for its transmitter when the transmitter is used in the GMRS, R/C or CB Radio Service, or IVDS following the procedures in Part 2 of this chapter. Any entity must request certification for its transmitter when the transmitter is used in the FRS following the procedures in Subpart J of Part 2 of this chapter.

**§§ 95.627 through 95.669 (Redesignated as §§ 95.629 through 95.671)**

7. Sections 95.627 through 95.669 are redesignated as 95.629 through 95.671 and a new Section 95.627 is added to read as follows:

**§ 95.627 FRS unit channel frequencies.**

(a) The FRS unit channel frequencies are:

| Channel No. | (MHz) |
|---|---|
| 1 | 462.5625 |
| 2 | 462.5875 |
| 3 | 462.6125 |
| 4 | 462.6375 |
| 5 | 462.6625 |
| 6 | 462.6875 |
| 7 | 462.7125 |
| 8 | 467.5625 |
| 9 | 467.5875 |
| 10 | 467.6125 |
| 11 | 467.6375 |
| 12 | 467.6625 |
| 13 | 467.6875 |
| 14 | 467.7125 |

(b) Each FRS unit must be maintained within a frequency tolerance of 0.00025%.

8. Newly redesignated § 95.629 is amended by revising paragraph (b), redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively, and adding a new paragraph (d) to read as follows:

**§ 95.629 Emission types.**

* * * * *

(b) An R/C transmitter may transmit any appropriate non-voice emission which meets the emission limitations of § 95.633.

* * * * *

(d) An FRS unit may transmit only emission type F3E. A non-voice emission is limited to selective calling or tone-operated squelch tones to establish or continue voice communications.

* * * * *

9. Newly redesignated § 95.631 is amended by adding a new paragraph (c) to read as follows:

**§ 95.631 Emission bandwidth.**

* * * * *

(c) The authorized bandwidth for emission type F3E transmitted by a FRS unit is 12.5 kHz.

10. Newly redesignated § 95.633 is amended by revising paragraph (b) to read as follows:

**§ 95.633 Unwanted radiation.**

* * * * *

(b) The power of each unwanted emission shall be less than TP as specified in the applicable paragraph:

| Transmitter | Emission type | Applicable paragraphs |
|---|---|---|
| GMRS | A1D, A3E, F1D, G1D, F3E, G3E with filtering | (1), (3), (7) |
| | A1D, A3E, F1D, G1D, F3E, G3E without filtering | (5), (6), (7) |
| | H1D, J1D, R1D, H3E, J3E, R3E | (2), (4), (7) |
| FRS | F3E with filtering | (1), (3), (7) |
| Note: Filtering refers to the requirement in § 95.635(b) R/C: | | |
| 27 MHz band | As specified in § 95.629(b) | (1), (3), (7) |
| 72–76 MHz band | As specified in § 95.629(b) | (1), (3), (7), (10), (11), (12) |
| CB | A1D, A3E | (1), (3), (8), (9) |
| | H1D, J1D, R1D, H3E, J3E, R3E | (2), (4), (8), (9) |
| | A1D, A3E type accepted before September 10, 1976 | (1), (3), (7) |
| | H1D, J1D, R1D, H3E, J3E, R3E type accepted before September 10, 1986 | (2), (4), (7) |

* * * * *

11. Newly redesignated § 95.635 is amended by revising paragraph (a) to read as follows:

**§ 95.635 Modulation standards.**

(a) A GMRS transmitter that transmits emission types F1D, G1D, or G3E must not exceed a peak frequency deviation of plus or minus 5 kHz. A GMRS transmitter that transmits emission type F3E must not exceed a peak frequency deviation of plus or minus 5 kHz. A FRS unit that transmits emission type F3E must not exceed a peak frequency deviation of plus or minus 2.5 kHz, and the audio frequency response must not exceed 3.125 kHz .

* * * * *

12. Newly redesignated § 95.637 is amended by adding a new paragraph (d) to read as follows:

**§ 95.637 Maximum transmitter power.**

* * * * *

(d) No FRS unit, under any condition of modulation, shall exceed 0.500 W effective radiated power (ERP).

13. Newly redesignated § 95.645 is revised to read as follows:

**§ 95.645 FRS unit and R/C transmitter antennas.**

The antenna of each FRS unit, and the antenna of each R/C station transmitting in the 72–76 MHz band, must be an integral part of the transmitter. The antenna must have no gain (as compared to a half-wave dipole) and must be vertically polarized.

14. Newly redesignated § 95.647 is revised to read as follows:

**§ 95.647 Power capability.**

No CB or R/C station transmitter or FRS unit shall incorporate provisions for increasing its transmitter power to any level in excess of the limit specified in § 95.637.

15. Newly redesignated § 95.649 is revised to read as follows:

**§ 95.649 Crystal control required.**

All transmitters used in the Personal Radio Services must be crystal controlled, except an R/C station that transmits in the 26–27 MHz frequency band, and a FRS unit.

16. Appendix 1 to Subpart E is amended by adding the definition for ''FRS'', in alphabetical order, to read as follows:

Appendix 1 To Subpart E-Glossary of Terms

* * * * *

FRS. Family Radio Service.

* * * * *

[FR Doc. 96–14140 Filed 6–5–96; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Part 192

**[Docket PS–124; Amdt. 192–76]**

**RIN 2137–AC25**

## Regulatory Review; Gas Pipeline Safety Standards

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule changes miscellaneous gas pipeline safety regulations to provide clarity, eliminate unnecessary or burdensome requirements, and foster economic growth. The changes result from a comprehensive review of the regulations RSPA has completed under President Clinton's Regulatory Reinvention Initiative to reduce the burden of government regulations. The changes are intended to reduce the costs of compliance without compromising safety.

**EFFECTIVE DATE:** This final rule is effective July 8, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** A. C. Garnett, (202) 366–2036, or L. M. Furrow, (202) 366–4559, regarding the subject matter of this amendment, or the Dockets Unit, (202) 366–5046 regarding copies of this amendment or other material in the docket.

**SUPPLEMENTARY INFORMATION:**

Background

Early in 1992, RSPA began an extensive review of the federal gas pipeline safety regulations (49 CFR part 192) and invited the public to participate (57 FR 4745, Feb. 7, 1992). The review was to see what changes were necessary to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. As a result of the review, RSPA published a Notice of Proposed Rulemaking (NPRM), proposing changes to 38 regulations in part 192 (Notice 1; 57 FR 39572, Aug. 31, 1992).

Then the National Association of Pipeline Safety Representatives (NAPSR) reported on a separate but related review of part 192. RSPA had asked NAPSR to identify regulations in part 192 that may not assure safety or

that may be hard to enforce. Because the NAPSR report concerned a few of the regulations covered by the NPRM and had similar goals, we published the report and requested public comment on its various recommended rule changes (Notice 2; 58 FR 59431, Nov. 9, 1993). At the same time, we announced that in developing final rules under the NPRM, we would consider comments on any NAPSR recommendations that addressed the same issues as the NPRM. The period for public comment on the NAPSR recommendations was extended 90 days until April 11, 1994 (Notice 3; 58 FR 68382, Dec. 27, 1993).

Later on, President Clinton launched the Regulatory Reinvention Initiative (memorandum for Heads of Departments and Agencies; March 4, 1995), which, among other things, directed DOT and other Federal agencies to review and revise existing regulations to remove unnecessary or burdensome requirements. Today's publication of this Final Rule is a major step in carrying out that directive with respect to DOT's pipeline safety regulations.

## Advisory Committee

The Technical Pipeline Safety Standards Committee (TPSSC), consisting of 15 members, was established by statute to consider the feasibility, reasonableness, and practicability of proposed pipeline safety regulations. In developing the final regulations, RSPA considered all final TPSSC votes and comments on the NPRM, including minority positions. A more detailed consideration of the TPSSC action is contained in the following section-by-section discussion of comments. A record of the TPSSC deliberation is available in the docket.

## Discussion of Comments

RSPA received comments on the NPRM from 36 pipeline operators, 9 pipeline-related associations, 1 state agency, and 8 other commenters. More commenters submitted views on the NAPSR recommendations: 58 pipeline operators, 10 pipeline-related associations, 4 state agencies, and 5 other commenters.

The following discussion on development of the final rules explains how we treated TPSSC positions, comments on the NPRM, and comments on NAPSR recommendations related to NPRM proposals (§§ 192.3, 192.475, 192.485, and 192.607). We appreciate the comments on NAPSR recommendations that were not related to NPRM proposals. They will help us decide appropriate responses to those recommendations in an action separate from this rulemaking.

*Small Gas Systems.* The NPRM invited comments on the idea of whether RSPA should develop separate, more appropriate safety standards for small gas distribution systems. Such systems include master meter systems and petroleum gas systems serving mobile home or apartment complexes.

Although TPSSC did not address this matter, RSPA received comments from two pipeline operators, one state agency, and one mobile home association. The state agency said that it is not clear that separate regulations are required. This commenter suggested that a less complicated remedy might be to excerpt those portions of the regulations specifically applicable to small operators (deleting, for example, sections applicable to transmission lines) and publish the result as a guide or as instructional material.

Three commenters supported the need for more appropriate standards for small gas distribution systems. A mobile home association endorsed the idea of developing standards for small gas distribution systems, such as master-meter systems serving mobile home parks, and publishing the standards as a new part of title 49 of the Code of Federal Regulations. The mobile home association commented that if it were not for the Guidance Manual for Operators of Small Gas Systems published by RSPA, the average mobile home park operator would have difficulty determining which regulations in part 192 apply to master-meter systems.

RSPA believes that each of the suggestions has merit and will be useful in developing future pipeline safety agendas.

### *Section 192.1, Scope of Part*

Section 192.1(b)(1) excepts from the scope of part 192 certain gathering lines on the outer continental shelf (OCS), but does not except similar gathering lines located in State offshore waters. Section 192.1(b)(1) reads as follows: ''This part does not apply to * * * (o)ffshore gathering of gas upstream from the outlet flange of each facility on the outer continental shelf where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream.'' Because RSPA treats OCS and State offshore gathering alike under part 192, we proposed to delete the phrase ''on the outer continental shelf'' so the exception would cover offshore gathering no matter where located. We also proposed to replace ''offshore gathering of gas'' with ''offshore pipelines,'' recognizing that the excepted pipelines may be either production or gathering lines.

Twelve TPSSC members voted for the proposal, two supported it but recommended a change, one member opposed it, and one abstained. The recommended change was that ''gathering of gas'' should be retained in § 192.1(b)(1), since proposed § 192.9 refers to gathering under § 192.1.

We did not adopt the TPSSC minority's recommended change because the excepted pipelines located upstream from the referenced offshore facilities may be either production lines or gathering lines. Also, the term ''offshore pipelines'' was used in a similar revision of 49 CFR 195.1(b)(5) that we made to clarify the jurisdiction of the hazardous liquid pipeline regulations over offshore pipelines (Docket PS–127; 59 FR 33388; June 28, 1994). As discussed below under the § 192.9 heading, § 192.9 has already been revised to cross-reference § 192.1. Since the cross- reference does not refer specifically to gathering lines, deleting the words ''gathering of gas'' from § 192.1(b)(1) should not hinder the understanding of § 192.9.

RSPA received 14 comments on the proposed rule change, nine from operators, four from pipeline-related associations, and one from a state agency. None of these comments opposed the proposal to change § 192.1(b)(1).

### *Section 192.3, Definitions*

1. *Petroleum Gas.* A revised definition of ''petroleum gas'' is discussed below under the § 192.11 heading.

2. *Secretary.* The proposed revision of the definition of ''Secretary'' is no longer needed. Because the term ''Secretary'' is not used in part 192, the definition of ''Secretary'' was removed from § 192.3 in an earlier rulemaking (59 FR 17281; April 12, 1994).

3. *Transmission Line.* A longstanding RSPA interpretation holds that the definition of ''transmission line'' in § 192.3 encompasses lines that link gathering lines or transmission lines to large volume customers, such as factories or power plants. This interpretation was founded on the definition of ''transmission line'' in the 1968 edition of the American Society of Mechanical Engineers [ASME] B31.8 Code. This code, which was the cornerstone of part 192, defined transmission to end at large volume customers. RSPA proposed to codify the interpretation by restating the definition of ''transmission line'' under part 192 to

include a ''large volume customer'' as an end point of transmission.

Eleven TPSSC members voted for the proposal, three supported it with a recommended change, and one abstained. The members who recommended a change thought that RSPA should define ''large volume customer.'' As discussed further below, the final definition includes an explanation of this term.

Twenty-six entities commented on the NPRM proposal, including 19 pipeline operators, five pipeline-related associations, one state agency, and one industrial consumer. Of these commenters, only eight expressed unqualified support. Three commenters completely opposed the proposal, saying it was not needed or would create confusion.

RSPA continues to believe that the proposed change is needed. The present definition does not reflect RSPA's interpretation that the term ''transmission line'' includes pipelines that connect large volume customers to gathering or transmission lines.

Nine commenters thought the proposed definition would reclassify as transmission those pipelines that connect large volume customers to high pressure distribution lines. RSPA did not intend for the proposed change to alter the classification of distribution lines that supply large volume customers. To avoid this unintended outcome, the definition explicitly does not include lines serving large volume customers downstream from a distribution center.

Four commenters said that the volume of gas transported is not an appropriate indicator of transmission. This group suggested that engineering characteristics, such as high pressure, stress level, or connection to a pressure limiting station are more indicative of transmission than the volume of gas transported. However, the purpose of the transmission proposal was not to open discussion on whether volume is an appropriate indicator of transmission. The purpose was to recognize that, by interpretation of the present definition, volume already is an established indicator of transmission, and that the interpretation should be codified. None of the commenters challenged the correctness of the interpretation. Moreover, before publishing the proposed definition, we referred to the 1992 edition of the ASME B31.8 Code, a widely recognized code of voluntary standards for gas piping. Section 803.21 of the ASME B31.8 Code (1992 edition) defined ''transmission line'' as ''pipe installed for the purpose of transmitting gas from a source or sources of supply to one or more distribution centers or to one or more *large volume customers* * * *'' (emphasis added). And this definition is the same in the current 1995 edition of the code. Given our longstanding interpretation and the ASME B31.8 Code definition, we find it reasonable to add ''large volume customer'' to the definition of transmission line as proposed.

Three commenters wanted RSPA to define ''large volume customer.'' We agree that an explanation of ''large volume customer'' would make the final definition more precise. Thus, we added a statement to the final definition to explain that ''large volume customer'' includes factories, power plants, and institutional users of gas.

We did not specify a minimum volume of gas a pipeline must transport to a customer to qualify as transmission. Volumes vary, and setting an arbitrary threshold might unfairly reclassify some existing lines. However, since ''large volume customer'' and ''distribution center'' each mark the end of transmission under the definition, operators may use the volume of gas supplied to distribution centers as a guide to identifying large volume customers.

The NAPSR report recommended changing the part 192 definition of ''transmission line'' so that pipelines beginning at gathering or transmission lines and ending at ''distribution systems and other load centers'' would be classified as transmission lines. Under this alternative wording, load centers conceivably would include large volume customers.

Most of the persons who commented directly on this NAPSR recommendation opposed it. A primary objection was that the recommended definition would needlessly reclassify as transmission low stress pipelines between communities or between distribution systems and high pressure transmission lines. In this regard, many commenters felt transmission should be limited to pipelines that operate at 20 percent or more of specified minimum yield strength (SMYS) of pipe, one of the characteristics under the present definition. The lack of definition of the term ''load center'' was another frequently stated reason for opposing the NAPSR recommendation. Commenters argued that introducing this term into the definition would lead to more, not less, confusion. Also several commenters thought the definition of transmission line should remain unchanged until RSPA completes its project to redefine the term ''gathering line,'' which appears in the transmission line definition. After considering these concerns, we agree that the NAPSR recommendation would not strengthen the present definition and could cause reclassification of many lines. Therefore, we did not adopt the recommendation in the final definition.

*Section 192.5, Class Locations*

RSPA proposed to clarify § 192.5 to minimize the possibility that a pipeline is classified higher than required. Inasmuch as part 192 regulations become more stringent as pipeline classification increases, any over-classification results in needless expenditures.

Fourteen TPSSC members voted for the proposal and one abstained. Eight operators and one pipeline-related association commented on the proposed change. While these commenters generally supported the need to clarify § 192.5, two operators suggested alternative wording. Based on one suggestion, RSPA has combined proposed §§ 192.5 (c)(2) and (c)(3) into final § 192.5(c)(2).

One focus of the NPRM was the cluster exception in existing §§ 192.5(f)(2) and (f)(3). This exception provides that if a cluster of buildings intended for human occupancy requires a Class 2 or 3 location, the classification ends 220 yards from the nearest building in the cluster, rather than at the end of the 1-mile class location unit that would otherwise be the basis for classification. In the NPRM (at 39573), we stated that adding buildings outside a cluster to those inside the cluster would result in over-classification of the class location unit. However, this statement was incorrect. The history of § 192.5 (35 FR 13251, August 19, 1970) shows that the cluster exception applies only when all buildings in a 1-mile class location unit are in a single cluster. If a class location unit contains buildings outside a cluster or more than one cluster of buildings, all buildings in the unit must be counted to determine the classification of the unit. The final rule clarifies this point.

The association that commented thought we should define the term ''cluster.'' However, the term is used in its ordinary dictionary sense, and, in RSPA's experience, has not been a significant source of misunderstanding.

*Section 192.7, Incorporation by Reference*

Section 192.7 describes the incorporation by reference in part 192 of documents or portions of documents relevant to gas pipeline safety. RSPA proposed to revise § 192.7(a) to clarify that when a regulation in part 192

references a document, the entire document is not necessarily incorporated by reference. Rather, only those portions of the document that are specifically referenced in the regulation or are essential for compliance with the regulation are incorporated by reference. Such portions may or may not comprise the whole document, depending on the scope of the reference.

Fourteen TPSSC members voted for the proposal and one abstained. Commenters on the proposed change, seven operators and one pipeline-related association, all favored the proposal. However, two of these commenters wanted RSPA to change the rule in a manner not proposed. They advised changing § 192.7 to require operators to follow the latest published editions of documents, instead of particular editions, which can become obsolete before RSPA updates the references. RSPA believes this recommended action is inappropriate because it would hand over an established governmental function, rulemaking, to the private organizations who produce the referenced documents. Each newly published edition would automatically change a pipeline safety rule and bypass the Federal rulemaking process, which ensures fair treatment of all affected parties.

*Section 192.9, Gathering Lines*

When the NPRM was published, § 192.9 required gathering lines to comply with part 192 standards applicable to transmission lines without indicating that certain gathering lines are excepted from part 192 by § 192.1. To highlight this exception and provide a clear understanding of which gathering lines must meet transmission line standards, we proposed to cross-reference § 192.1 in § 192.9.

Thirteen TPSSC members voted for the proposal and two abstained. RSPA received seven comments on the proposed change, six from operators and one from a pipeline-related association. Only one commenter opposed the proposal, saying it did not see how the change would clarify the present rule.

Then in 1994, in a separate, unrelated action concerning the passage of pigs, RSPA revised § 192.9 to include a cross-reference to § 192.1 (59 FR 17281, April 12, 1994). Thus, § 192.9 has already been changed consistent with the proposal in this proceeding, and no further action is necessary.

*Section 192.11, Petroleum Gas Systems (Including Changes to §§ 192.1 and 192.3)*

RSPA proposed several changes to the special rules in § 192.11 for petroleum gas systems: First, we proposed to require that peak shaving plants supplying petroleum gas by pipeline to a natural gas distribution system as well as pipeline systems transporting only petroleum gas or petroleum gas/air mixtures comply with part 192 standards and the National Fire Protection Association (NFPA) Standards 58 and 59. Downstream from the point where a peak shaving plant injects petroleum gas into a natural gas distribution system, only part 192 would apply. Next, we proposed that the NFPA Standards prevail in the event of a conflict between part 192 and NFPA Standards 58 or 59. At the same time, we said that a conflict does not exist when NFPA Standards 58 and 59 are silent or nonspecific on a subject (such as for corrosion protection or leak detection). In this case, the operator would have to comply with any applicable part 192 rule. Finally, we proposed to add a definition of ''petroleum gas'' to § 192.3, and to clarify under § 192.1(b)(4) which petroleum gas systems are excepted from part 192.

Ten TPSSC members voted for the proposal, one member supported it with a recommended change, three members opposed it, and one abstained. Two TPSSC members disagreed with the proposal that NFPA standards should prevail in the event of a conflict with part 192. One TPSSC member voted yes, but recommended that in the event of conflict the most stringent requirement should prevail.

We explained in the NPRM why we believe the NFPA standards should have priority in direct conflict situations. The main reason is that in contrast to part 192, the NFPA Standards specifically cover petroleum gas transportation. Also, NFPA Standards 58 and 59 reflect current petroleum gas technology and safety practices. Given this special attention to petroleum gas, we do not think there is sufficient reason to require operators to follow part 192 instead of the NFPA Standards in the event of conflict, even if part 192 is more stringent.

RSPA received eight comments in favor and three comments in opposition to the proposed changes to § 192.11. Those commenters who opposed the proposal were concerned that compliance with NFPA Standards 58 and 59 would involve significant capital expenditures. However, § 192.11 already requires petroleum gas systems to meet NFPA Standards 58 and 59. And, in accordance with 49 U.S.C. § 60104(b), none of the design, installation, construction, initial testing, or initial inspection requirements of NFPA Standards 58 and 59 would apply under part 192 to peak shaving plants now in existence. So, retrofitting existing plants would not be required. Although all plants would have to comply with the operation and maintenance requirements of NFPA Standards 58 and 59, overall compliance costs should be small because, as NFPA stated in its petition, most, if not all, existing plants already comply with NFPA Standards 58 and 59 to qualify for insurance coverage. Thus, § 192.11 is revised as proposed in the NPRM.

Proposed § 192.1(b)(4)(i) would exclude from part 192 pipeline systems that transport only petroleum gas or petroleum gas/air mixtures to fewer than 10 customers, if no portion of the system is located in a public place. This exclusion is in the present § 192.11(a), but in proposing to relocate it to § 192.1(b)(4)(i), we omitted the parenthetical phrase ''(such as a highway).'' One commenter objected to the omission, saying it would leave the meaning of ''public place'' open to interpretation. However, our experience has been that the parenthetical phrase has hindered more than helped the understanding of public place. We have consistently interpreted ''public place'' to mean a place which is generally open to all persons in a community as opposed to being restricted to specific persons. We consider churches, schools, and commercial property as well as any publicly owned right-of-way or property which is frequented by persons to be public places. Although § 192.11(a) refers to a highway as an example of a public place, many operators have incorrectly considered the example to restrict, rather than define, the coverage of petroleum gas systems with fewer than 10 customers.

Proposed § 192.1(b)(4)(ii) would clarify that part 192 does not apply to single-tank, single-customer petroleum gas systems located entirely on the customer's premises, but partially in a public place. These systems exist, for example, at churches or restaurants, where the gas is used for heating or cooking. The proposal was based on the jurisdiction of part 192 over the distribution of gas. As indicated by the definition of ''service line'' (§ 192.3), part 192 does not apply to gas distribution beyond the point where metered gas enters customer piping. For single-tank, single-customer systems on the customer's premises, this point normally occurs at the tank.

Three commenters protested that part 192 would still apply to single-customer, multi-tank systems on the customer's premises, regardless of tank size. For example, the proposed rule

would not exclude a two-tank system partly in a public place, even if the total quantity of stored gas is less than in a large single-tank system. Because the proposed exclusion did not rest on the quantity of gas delivered to the customer, we agree that the number of tanks should not be a factor in the exclusion of single-customer systems on the customer's premises. Therefore, final § 192.1(b)(4)(ii) omits the term ''single-tank.''

The proposed definition of ''petroleum gas'' drew no objections from either the TPSSC or commenters. So the definition is adopted as proposed.

*Sections 192.14 and 192.553, Conversion and Uprating*

If a steel pipeline to be converted to gas service under part 192 has not been designed and constructed to meet part 192 standards, it must be converted according to § 192.14 (§ 192.13(a)(2)). Section 192.14(a)(4) requires that each pipeline must be pressure tested under subpart J of part 192 to substantiate the maximum allowable operating pressure (MAOP) permitted by subpart L of part 192. Under subpart L, to compute the MAOP of a pipeline being converted, an operator must determine the design pressure of the weakest element of the pipeline (§ 192.619(a)(1)).

Design pressure is also a factor under § 192.553, which establishes general requirements for increasing any pipeline's MAOP (uprating). Under § 192.553(d), an increased maximum allowable operating pressure may not exceed the MAOP part 192 allows for a new pipeline constructed of the same materials in the same location. Thus, to uprate a pipeline within this MAOP limit, an operator must determine the design pressure of the weakest element of the pipeline (§ 192.619(a)(1)).

Because of the role of design pressure, a steel pipeline may not be converted or uprated when any of the pipe characteristics needed to calculate design pressure under § 192.105 is unknown. Therefore, RSPA proposed to amend §§ 192.14(a)(1) and 192.553(d) to permit the conversion or uprating of steel pipelines based on an approach found in paragraph 845.214 and Appendix N of the ASME B31.8 Code. Under the proposal, when design pressure is unknown, operators would have to pressure test the pipeline under Appendix N until pipe yield occurs. The first pressure that produces pipe yield, reduced by 20 percent and the appropriate factor under § 192.619(a)(2)(ii), would be used instead of design pressure to calculate MAOP.

Twelve TPSSC members voted for the proposed revision of § 192.14, one member supported it with a recommended change, one member opposed it but suggested changes, and one member abstained. Eleven members voted for the proposal regarding § 192.553, two supported it with a recommended change, one opposed it, and one abstained. The recommended changes were to make yield testing mandatory instead of permissive, and to allow yield testing that is based on other than the ''first pressure'' that produces yield, since Appendix N does not use that term. The reasons against the proposal were that yield testing appeared to be mandatory, and use of the Appendix N method should be discretionary.

RSPA has adopted the recommended change regarding mandatory yield testing. Although, in the proposed rules, yield testing may have appeared permissive, RSPA clearly intended such testing to be the only alternative when design pressure is unknown. Therefore, in the final rule, if factors in the design formula are unknown, a pipeline to be converted or uprated would have to be pressure tested under Appendix N to determine pipe yield, except as discussed below for low-stress pipe.

The TPSSC member's recommendation to delete ''first pressure'' from the proposed rule was not adopted. Although Appendix N does not refer to the first pressure that produces yield, paragraph 845.214(a)(2) of the ASME B31.8 Code, which applies to the establishment of MAOP when design pressure is unknown, provides that only the first test to yield can be used to determine MAOP. The proposed rules were consistent with this B31.8 standard, which precludes the use of higher yield pressures that can result from successive testing.

RSPA did not adopt the TPSSC member's comment that use of the Appendix N method should be discretionary. When MAOP is determined without knowing the pipeline's design pressure, conformity to a standardized practice (Section N5.0 of Appendix N) assures additional safety to offset the lack of knowledge about design pressure.

RSPA received comments on the proposed rules from 11 operators and three pipeline-related associations. Four operators and one pipeline-related association recommended removal of the proposed requirement to use the ''first pressure'' that produces yield. Our position on this subject is given above in response to a similar comment by a TPSSC member.

One operator and one pipeline-related association suggested locating the proposed amendments in § 192.105 instead of §§ 192.14 and 192.553. RSPA did not adopt this suggestion because § 192.105 affects the design of new pipelines, a subject the proposed rules did not address.

One operator and two pipeline-related associations argued that pressure testing to yield is unnecessary to qualify low-stress distribution lines (generally lines 12¾ inches or less in nominal outside diameter operating at pressures less than 200 psig) for conversion or uprating. Part 192 recognizes that low-stress pipelines present a much lower risk to public safety than high-stress lines, all other factors being equal. For example, certain welding standards in subpart E are less stringent for pipelines to be operated below 20 percent of SMYS. Because of the lower risk, the final rule provides that pipelines 12¾ inches or less in nominal outside diameter to be operated at a pressure less than 200 psig may be converted or uprated without testing to yield. The MAOP of such pipelines may be determined under § 192.619(a)(1) by using 200 psig as design pressure.

An operator argued that pressure testing to yield should be discretionary, because sufficient safety would be provided by the proposed pressure reduction factors regardless of the level of test pressure. The commenter was also concerned that pressure testing to yield for an extended time could cause the growth of defects that later cause failure during operation. Two hours was suggested as the optimum hold time for yield testing, based on ongoing studies.

RSPA did not adopt these comments. Pressure testing to yield exposes more material and construction defects than does testing to a lower pressure. With fewer defects remaining after testing to yield, greater long-term protection against failures due to the growth of unexposed defects results. RSPA intended this extra protection, combined with the proposed pressure reduction factors, to offset the absence of design pressure as a limit on MAOP. Pressure testing to yield appears to be reasonable since many operators already strength test their pipelines at or above yield for safety and efficiency reasons. Also, none of the other commenters or TPSSC members objected to pressure testing to yield, except as discussed above for low-stress lines. As to the optimum hold period for yield testing, because the matter is still being studied by industry and is not addressed by the procedure for yield testing under Appendix N, it is too soon to consider

establishing a special hold period for yield testing under part 192.

The final rules have been drafted to improve clarity, to show their relation to design pressure and MAOP under § 192.619, and to include the changes discussed above. The proposed amendments to §§ 192.14(a)(1) and 192.553(d) are revised and published as an amendment to § 192.619(a)(1), because this section deals specifically with design pressure and MAOP. Final § 192.619(a)(1), set forth below, provides that when design pressure is unknown for steel pipelines being converted or uprated, a reduced value of first yield hydrostatic test pressure, instead of design pressure, is used to compute MAOP. As discussed below, final § 192.619(a)(1) does not include the reduction factors proposed for butt and lap welded pipe under § 192.14(a)(1)(ii). If the pipeline to be converted is 12¾ inches or less in nominal outside diameter, 200 psig, instead of design pressure, may be used if the line is not yield tested. Section 192.553(d) is also revised to refer to amended § 192.619(a)(1). Also, because the 1992 edition of the ASME B31.8 Code is now out-of-print, the 1995 edition is referenced in § 192.619(a)(1) as shown by the revisions to Appendix A of part 192 (see below).

*Section 192.107, Yield Strength (S) for Steel Pipe*

For pipe made according to a specification not listed in part 192 or whose specification or tensile properties are unknown, § 192.107(b)(1) provides that yield strength may be established by tensile testing in accordance with section II–D of appendix B to part 192. When yield strength is determined by such tensile testing, paragraph (b)(1) requires that the yield strength used in the design formula of § 192.105 be the lower of either 80 percent of the average yield strength determined by tensile testing or the lowest yield strength determined by tensile testing, but not over 52,000 psi. RSPA proposed to remove this 52,000 psi upper limit on yield strength, because higher strength pipe has become available since this limitation was adopted, and tensile testing is a generally accepted method of determining material properties.

Twelve TPSSC members voted for the proposal, one member supported it with a recommended change and two abstained. The member recommending the change felt that the proposal would be better justified if we knew the proportion of higher strength pipe that lacks tensile documentation and why this information is unknown. RSPA believes this information is not essential in deciding whether to adopt the proposal because the proposed amendment has limited application. We expect operators would use the proposed amendment to qualify stock pipe they have stored for maintenance and emergencies and to qualify used pipe being reclaimed. In either case, the amount of pipe that would be qualified under proposed § 192.107(b)(1)(ii) should be very small compared with all pipe being qualified for use in gas pipeline systems.

RSPA received six comments on the proposed amendment. The comments came from five operators and one pipeline-related association, and all supported the proposal. In addition, one operator recommended that RSPA further amend § 192.107 to permit the use of recognized statistical methods to determine yield strength from tensile tests. RSPA did not adopt this comment because this concept was not addressed in the NPRM and would require further public comment and study.

Accordingly, § 192.107 is amended as proposed in the NPRM.

*Section 192.121, Design of Plastic Pipe*

RSPA proposed to add the following formula to § 192.121, which would allow use of the Standard Dimension Ratio (SDR) in determining design pressure for plastic pipe:

$$P = \frac{2S}{(SDR - 1)} 0.32$$

SDR is a commonly used plastic pipe characteristic in the gas pipeline industry.

Thirteen TPSSC members voted for the proposal and two abstained. RSPA received eight responses from the public, all in favor of the proposed rule. Therefore, the final rule is issued as proposed in the NPRM, except that the proposed definition is reworded to conform to standard usage. The final definition agrees with the SDR definition given in the voluntary standard referenced in part 192 for the manufacture of thermoplastic pipe: American Society for Testing and Materials (ASTM) Designation D 2513, ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings'' (1990c edition).

*Section 192.123, Design Limitations for Plastic Pipe*

Under § 192.123, plastic pipe may not be used where pipe operating temperatures are below −20°F. RSPA proposed to lower this limit to −40°F in light of improvements in pipe technology. Additionally, RSPA proposed to clarify § 192.123(b)(2), which sets the maximum operating temperature for thermoplastic pipe and reinforced thermosetting plastic pipe.

Thirteen TPSSC members voted for the proposal and two abstained. RSPA received nine comments on the proposed rule changes: six from operators, one from a pipeline-related association, and two from manufacturers. The operators and the association supported the proposal or did not object to it. However, the manufacturers opposed the proposal stating that many components other than pipe that are made for use in gas pipeline systems do not have a low temperature rating of −40°F, although they perform satisfactorily at −20°F. One of these commenters argued that unsafe operation could occur if pipeline designers assumed that all components, such as repair and connection devices, fittings, valves, meters, and regulators, may be used at −40°F.

RSPA shares the manufacturers' concern. Therefore, the final rule allows the use of plastic pipe at temperatures between −20°F and −40°F only if all pipe and pipeline components whose operating temperature will be below −20°F have a manufacturer's temperature rating consistent with that operating temperature.

*Section 192.179, Transmission Line Valves*

Gas transmission lines must have sectionalizing block valves spaced according to population density under § 192.179(a). RSPA proposed to revise this rule to allow the RSPA Administrator to approve alternative spacing where the operator demonstrates an equivalent level of pipeline safety.

Thirteen TPSSC members voted for the proposal, one against, and one abstained.

RSPA received comments from 12 operators, two pipeline-related associations, and a state agency. Thirteen commenters gave their full or qualified approval, but one association and the state agency argued against the proposal. Those commenters expressing qualified support generally felt that the proposal offered some benefit to pipeline operators. However, they urged that operators be permitted to determine spacing based on criteria similar to those for hazardous liquid pipelines in 49 CFR 195.260(c).

RSPA did not adopt the comment that transmission line valve spacing should be governed by criteria similar to those in 49 CFR 195.260(c). While those criteria may be appropriate for hazardous liquid pipelines, we have no indication they are suitable for gas

transmission lines. In fact, the widely accepted voluntary standard for valve spacing, paragraph 846.11 of the ASME B31.8 Code, differs little from existing § 192.179.

As for the comments opposing the proposal, RSPA has considered the state agency's concern that the proposed rule would infringe on the authority of state agencies to grant waivers from § 192.179 for intrastate transmission lines. (See 49 U.S.C 60118(d)). However, this concern has been addressed by a procedural rule (49 CFR 190.9) that RSPA adopted to handle petitions for finding or approval under the federal pipeline safety regulations. Under this rule, which would apply to petitions for alternative spacing under § 192.179, operators of intrastate pipelines subject to the safety regulatory jurisdiction of a certified state agency must submit their petitions to that agency for review and recommendation before final action by the Administrator.

RSPA does not agree with the pipeline-related association's suggestion that since the underlying rule is not justified, the proposed amendment is not needed. The basis for existing § 192.179 was the 1968 edition of the ASME B31.8 Code. As noted above, the current edition of that code continues to specify valve spacing similar to § 192.179.

*Section 192.203, Instrument, Control, and Sampling Pipe and Components*

Under § 192.203(b)(2), each takeoff line must have a shutoff valve as near as practicable to the point of takeoff. RSPA proposed an exception for takeoff lines on pressure regulators when the lines can be isolated by other valves from their source of pressure.

Eleven TPSSC members voted for the proposal, one voted against it, two members supported it with a recommended change, and one abstained. The two members recommended that we also except instrument control lines that are capable of being isolated from their source of pressure.

Although the industry's use of isolatable regulators gave rise to the proposed rule change, isolation of a takeoff line from its pressure sources applies to any takeoff line capable of such isolation, not just takeoff lines on regulators. Therefore, the final rule excepts any takeoff line capable of being isolated from its sources of pressure. Thus, the term ''takeoff line'' includes instrument control lines that are designed as takeoff lines.

RSPA received 13 public comments, all in favor of changing the regulation. One of these commenters offered a rewording intended to broaden the regulation to include control lines at both measuring and regulating stations. As explained above, such control lines will be covered by the exception when they are takeoff lines capable of isolation from their sources of pressure.

*Section 192.227, Qualification of Welders, and § 192.229, Limitations on Welders*

Welders qualified to weld on pipe to be operated at any hoop stress (§ 192.227(a)) must requalify every 6 months (§ 192.229(c)). However, welders qualified to weld only on pipe to be operated at low hoop stress (less than 20 percent of SMYS) need only requalify once a year (§ 192.227(b)), and the requalification requirements are less comprehensive than those for other welders.

RSPA proposed to revise §§ 192.227 and 192.229 to allow welders initially qualified for any hoop stress level, but who weld only on pipe to be operated at low hoop stress, to requalify under the low-stress requirements. Such welders would then not be permitted to weld on pipe to be operated at 20 percent or more of SMYS unless they again qualify under § 192.227(a).

Twelve TPSSC members voted for and one against the proposed revision of § 192.227, and two abstained. The TPSSC members' vote on § 192.229 was the same as on § 192.227. Eight pipeline operators and two pipeline-related associations also agreed with the proposal.

A commenter suggested that the final rule make clear that either existing § 192.229(c) or § 192.227(b) can be used to requalify welders to weld on pipe to be operated at less than 20 percent of SMYS. RSPA adopted the substance of this comment by adding a sentence concerning low stress requalification to the final § 192.229(c).

The commenter who opposed the proposal claimed that qualification under §§ 192.227(a) and (b) is inadequate. However, RSPA finds no justification for this claim. Section 192.227 became effective in February 1970. Our accident data in the intervening 26 years have not indicated that field welding of steel materials in pipelines presents a significant safety problem.

In the final rules, proposed § 192.227(c) is redesignated as § 192.229(d). Thus, all requalification requirements appear in one section.

*Section 192.241, Inspection and Test of Welds*

Section 192.241 requires inspection and test of welds on steel materials in pipelines, except welds made during the manufacture of pipe and pipeline components. Under existing § 192.241(c) and appendix A to part 192, the acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of API Standard 1104 (17th edition).

The Appendix of API Standard 1104, which is based on fracture mechanics principles, provides more detailed acceptance standards for weld flaws than the criteria in section 6 of API Standard 1104. RSPA proposed to amend § 192.241(c) to permit use of the Appendix as an alternative acceptance standard for girth weld flaws, except welds unacceptable because of a crack.

Eleven TPSSC members voted for the proposal, three members supported it with a recommended change and one abstained. The three members suggested that the word ''flaw'' be changed to ''defect''.

In existing § 192.241, neither the word ''flaw'' nor ''defect'' is used. The rule is written in terms of weld acceptability. Therefore, in response to the comments of the TPSSC members, the final rule is written without using either ''flaw'' or ''defect.''

Eleven pipeline operators and three pipeline-related associations agreed with the proposed change. Only one commenter was opposed to allowing use of the Appendix of API Standard 1104. This commenter was concerned that industry inspection personnel may not be qualified to apply the complicated engineering criteria found in the Appendix. On the contrary, personnel who would use the Appendix must be able to apply it correctly. Under §§ 192.243(b) and (c), operators must ensure that nondestructive testing is performed in accordance with written procedures by persons who have been properly trained and qualified.

The final rule indicates that use of the Appendix is restricted to girth welds to which the Appendix applies. For example, as Section A.1 of the Appendix provides, welds used to connect fittings and valves are not covered. Also, the Appendix applies only to girth welds between pipe of equal nominal wall thickness.

*Section 192.243, Nondestructive Testing*

For pipelines subject to nondestructive testing under part 192, § 192.243(d)(4) requires such testing for all field butt welds at pipeline tie-ins. RSPA proposed to amend § 192.243(d)(4) to add the phrase ''including tie-ins of replacement sections.'' This change was meant to clarify that tie-ins occur in pipeline

replacement, as well as in new construction.

Fourteen TPSSC members voted for the proposal and one abstained.

Comments were received from five pipeline operators and one pipeline-related association, and all favored the proposed rule change. Section 192.243 is amended as proposed in the NPRM.

*Section 192.281, Plastic Pipe*

This rule establishes standards governing the joining of plastic pipe. RSPA proposed to revise § 192.281(c), which applies to heat-fusion joints, to cover electrofusion, a method of heat-fusion joining. The proposal was that electrofusion joints must be made with equipment and techniques expressly prescribed by the fittings manufacturer.

Thirteen TPSSC members voted for the proposal, one member supported it with a recommended change, and one abstained. The recommended change was that ''or the equivalent'' be added so that operators could use equipment and techniques equivalent to that prescribed by fittings manufacturers.

RSPA received 15 comments on the proposed change to § 192.281(c). Eleven commenters fully or partially agreed with the proposed rule, while four commenters objected. A commenter who partially agreed recommended that electrofusion be specifically addressed in § 192.285. However, RSPA finds that step unnecessary because electrofusion is a type of heat fusion, and heat fusion is covered by § 192.285(b)(2).

The objections focused on RSPA's proposal that operators must use ''equipment and techniques expressly prescribed by the fittings manufacturer.'' One commenter said that electrofusion equipment is expensive and that most electrofusion fittings can be installed only by using the fittings manufacturer's equipment. As a result, most operators have only a single source of electrofusion fittings. However, the commenter stated that electrofusion equipment under development will allow the installation of several different brands of electrofusion fittings, and that those additional sources would encourage competitive pricing. Other operators argued they should not be denied the use of procedures and equipment not expressly prescribed by the fittings manufacturer, as long as the procedures are qualified for use under § 192.283.

Since the proposal was intended to relax the current regulatory requirement, RSPA accepts the recommendations that operators should have latitude in choosing equipment and techniques for use in electrofusion joining. We have adopted a slight revision of the wording proposed by three pipeline operators and one pipeline-related association. This wording meets the ''or the equivalent'' recommendation made by the TPSSC member. Additionally, this wording responds to the commenter's concern that the proposed wording would deter competitive pricing. The adopted wording requires that the joints be joined using equipment and techniques of the fittings manufacturer or equipment and techniques shown, by testing to certain criteria of ASTM Designation F1055, ''Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing,'' to be at least equivalent to those of the fittings manufacturer. The ASTM criteria are those adopted under the next heading for qualifying electrofusion joining procedures.

*Section 192.283, Plastic Pipe: Qualifying Joining Procedures*

Section 192.283 prescribes criteria for qualifying procedures used to join plastic pipe. RSPA proposed to amend this section by adding more appropriate criteria for procedures used to join polyethylene plastic pipe by electrofusion. The proposed criteria are contained in certain sections of ASTM Designation F1055 (1987 edition).

Fourteen TPSSC members voted for the proposal and one member abstained.

RSPA received eight comments on the proposal: seven from pipeline operators and one from a pipeline-related association. Seven commenters supported the proposal. But one opposed it, saying that the proposal should be withdrawn or rewritten to accept any procedure that demonstrates a suitable quality of joint. We believe, however, that allowing operators to judge the quality of an electrofusion joint without applying a recognized safety standard would be unacceptable. Because of the failure risk of plastic pipe joints, the present rule requires heat fusion joining methods to be qualified under generally recognized voluntary standards, ASTM D2513 and ASTM D2517. In the absence of safety data to the contrary, as a heat fusion method, electrofusion procedures should likewise be qualified under an appropriate recognized standard. Accordingly, proposed § 192.283(a)(iii) is adopted as final. However, the proposed reference to the 1987 edition of ASTM Designation F1055 is updated to the 1995 edition, as shown by the revisions to Appendix A of part 192 (see below). And the referenced title of paragraph 9.4 is corrected to read ''Joint Integrity Tests.''

*Sections 192.317(a), Protection From Hazards*

This section requires that gas transmission lines and mains be protected from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or sustain abnormal loads. Additionally, offshore pipelines must be protected from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations. RSPA recognized that in areas susceptible to these hazards, such as offshore pipelines in areas where hurricanes usually pass, complete protection against the hazards may not be feasible. We, therefore, proposed to change the regulation to require that in construction of transmission lines and mains, operators ''take all practicable steps to protect'' the pipeline against the cited hazards.

Eleven TPSSC members voted for the proposal, one member supported it with a recommended change, two members were opposed and one member abstained. The two members who opposed it said that ''all practicable steps to protect'' would be difficult to interpret.

Comments were received from seven pipeline operators and two pipeline-related associations. All commenters gave their full or qualified approval.

RSPA has issued the final rule as proposed in the NPRM. The ''all practicable steps to protect'' wording was left in the rule to allow operators flexibility in compliance; any tightening of this performance wording would diminish that flexibility. RSPA will interpret or apply the rule in light of customary pipeline design and construction practices in the industry.

*§§ 192.319(c) and 192.327(e), Offshore Pipe in the Gulf of Mexico and Its Inlets*

Under § 192.612, operators had to inspect gas pipelines in the Gulf of Mexico and its inlets in waters up to 15 feet deep. If the pipelines were found exposed or to be a hazard to navigation (i.e., buried less than 12 inches below the seabed), the operator had to bury them to a depth of 36 inches in soil or 18 inches in rock.

The part 192 review disclosed that §§ 192.319(c) and 192.327(e), which govern the installation of pipe offshore, are incompatible with the objectives of § 192.612. In water between 12 and 200 feet deep, § 192.319(c) permits pipe to be installed at or above the natural bottom. And in water less than 12 feet deep, in certain circumstances § 192.327(e) permits pipe to be buried less than 36 inches in soil or 18 inches

in rock. RSPA proposed to amend §§ 192.319(c) and 192.327(e) to require that when pipe is installed offshore in the Gulf of Mexico and its inlets, the pipe must be installed consistent with the burial standards of § 192.612.

Thirteen TPSSC members voted for the proposal, one member supported it with a recommended change, and one abstained. One member supported the proposal but recommended rewording and rearrangement for clarity, and that § 192.319(c) be moved to § 192.327.

Seven operators and four pipeline-related associations supported the proposed changes to §§ 192.319(c) and 192.327(e). However, five commenters recommended wording changes and rearrangement for clarity, and five commenters suggested that § 192.319(c) be moved to § 192.327. In light of the recommendations, RSPA has clarified the final rule text, as set forth below.

One pipeline-related association opposed the proposal. It maintained that pipe installed in water between 12 and 15 feet deep with less than 12 inches of cover (now acceptable under § 192.319(c) but not § 192.612) might not be an actual hazard to navigation. But the proposal concerned the inconsistency of § 192.612 with other pipeline safety rules, a problem that can be resolved without reopening the question of what is a ''hazard to navigation'' in the Gulf of Mexico and its inlets. A ''hazard to navigation'' is defined in § 192.3 to mean ''a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.'' This definition was adopted in the proceeding on § 192.612 (Docket No. PS–120). Any remaining controversy over the definition may be raised by submitting a petition for rulemaking under 49 CFR part 106.

*Section 192.321, Installation of Plastic Pipe; and § 192.375, Service Lines: Plastic*

Section 192.321(a) requires that plastic pipe be installed below ground level. RSPA proposed to allow the temporary use of uncased (i.e., not encased) plastic pipe above ground level under certain conditions. The proposed conditions limited the use to (1) 30 days; (2) locations where the pipe is unlikely to be damaged (or is protected from damage) by external forces; (3) pipe that is resistant to the exposure to ultraviolet light and temperature extremes; and (4) pipe that has not been previously used above ground level.

Nine TPSSC members voted for the proposal, one against, three members supported it with a recommended change, and two abstained. The recommended changes were similar to those made by the commenters as discussed below.

RSPA received 18 comments on this proposal. Each commenter agreed partially with the proposed rule. Some commenters said the current rule should be amended to permit the permanent use of plastic above ground when the pipe is encased in steel conduit. However, since the proposal concerned only temporary usage, this comment was not adopted in the final rule.

Many commenters argued that the 30-day period would be too brief. They suggested a longer period, such as 60 or 90 days, in view of the time it may take to complete a permanent installation. They cited the time associated with planning, obtaining governmental permits, acquiring easements, engaging contractors, competing work demands, and other unforeseen events. Several commenters suggested that no specific time limit be defined and that performance language be used.

Commenters also maintained that the proposed prohibition against the subsequent reuse of plastic pipe above ground level is not justified, since commercially available plastic pipe can be exposed to ultraviolet light for at least 2 years with no degradation of its properties. These commenters argued that the rule should permit reuse of plastic pipe provided such use does not exceed the pipe manufacturer's exposure limits.

RSPA agrees that in most cases 30 days may not be enough time for operators to take full advantage of a temporary aboveground plastic pipe installation. In a recent waiver of § 192.321(a), we allowed the applicant to install plastic pipe above ground for a time that does not exceed the manufacturer's recommended maximum period of exposure (60 FR 55752; Nov. 2, 1995). Although commenters indicated that extending the limit to 2 years might not adversely affect pipeline safety, we are not certain 2 years would be safe for all plastic materials. Some pipe manufacturers may recommend less exposure time. Therefore, we have chosen the manufacturer's recommended maximum period of exposure but not longer than 2 years as the limit on the temporary use of plastic pipe above ground. If a manufacturer has no recommended maximum exposure period, then the limit would be 2 years. RSPA does not believe a performance standard would provide a suitable time limit, because the safe service life of plastic pipe exposed above ground is too uncertain.

RSPA agrees that the final rule should not unduly hinder the use of plastic pipe. Thus, the proposed ban on reusing plastic pipe above ground level does not appear justified. The final rule permits cumulative aboveground use for the manufacturer's recommended maximum period of exposure but not longer than 2 years, provided the operator can demonstrate the cumulative time of aboveground use. In monitoring compliance, RSPA will consider credible evidence that demonstrates cumulative time of use, such as business records, work orders, or affidavits related to the pipe concerned.

RSPA recognized that the changes to § 192.321 affected only plastic mains and transmission lines. However, the need for these changes applies as well to plastic service lines. As with transmission lines and mains, in some situations operators may be able to save material and construction costs of service lines located outside buildings by temporarily installing the lines above ground. Thus, § 192.375(a), which requires that plastic service lines outside buildings be installed below ground, is revised to allow temporary aboveground installations in accordance with § 192.321(g).

*Section 192.455, External Corrosion Control: Buried or Submerged Pipelines Installed After July 31, 1971*

Under § 192.455(a)(2), a pipeline must have a cathodic protection system designed to protect the pipeline in its entirety. RSPA proposed to remove the phrase ''in its entirety'' because it is unnecessary to convey the meaning of the rule, and some operators have incorrectly assumed that pipeline casings also must be protected.

In addition, § 192.455(f)(1) exempts from corrosion control requirements certain metal fittings in plastic pipelines if the fitting is protected against corrosion by alloyage. RSPA recognized that the word ''alloyage'' is not in common usage and proposed its replacement with ''alloy composition'' to improve understanding.

Twelve TPSSC members voted for the proposal, two members supported it with a recommended change and one abstained. The two members recommended that in proposed paragraph (f)(1), the term ''corrosion resistance'' be replaced by ''corrosion control,'' which is the term used in the existing rule and throughout subpart I. RSPA has made this replacement in the final rule.

Comments were received from six pipeline operators and one pipeline-related association. Six commenters gave their full approval and the seventh was noncommittal. Therefore, except for the previously discussed wording

changes, § 192.455 is adopted as proposed in the NPRM.

*Section 192.475, Internal Corrosion Control: General.*

Section 192.475(c) limits the hydrogen sulfide content of natural gas stored in pipe-type or bottle-type holders to 0.1 grain per 100 standard cubic feet of gas. An operator proposed that this rule be relaxed to allow a concentration of 0.25 grain per 100 standard cubic feet of gas. Because the 0.25 limit is within customary industry contract limits and is still lower than maximum allowable safe limits set by other government agencies, RSPA proposed to increase the allowable hydrogen sulfide limit in gas to be stored in pipe-type and bottle-type holders to 0.25 grain per 100 standard cubic feet of gas. This action would lower the cost of processing natural gas that contains small quantities of hydrogen sulfide.

Thirteen TPSSC members voted for the proposal, one against, and one member abstained.

Seven commenters supported the proposed change. No commenters opposed the change. One state agency suggested that hydrogen sulfide levels be expressed in parts per million in addition to grains per 100 standard cubic feet of gas. The NAPSR report also made this recommendation, and all comments on the subject were supportive. RSPA agrees the allowable level should be stated in parts per million and has included this designation in the final rule.

*Section 192.485, Remedial Measures: Transmission Lines*

RSPA's review of § 192.485, which prescribes remedial measures for corroded transmission lines, disclosed that many operators need guidance on how to determine the remaining strength of corroded pipe. RSPA proposed to provide this guidance by referencing ASME B31G Manual for Determining the Remaining Strength of Corroded Pipelines in a new § 192.485(c).

Fourteen TPSSC members voted for the proposal and one member abstained.

Comments relevant to proposed § 192.485(c) were received from 10 pipeline operators and two pipeline-related associations. Six commenters gave their full or partial support. Another six said the proposal was unnecessarily restrictive because it did not allow the use of other proven industry-developed methods for determining the remaining strength of corroded pipelines.

The most noteworthy method mentioned was the method in the American Gas Association (AGA) report for Project PR 3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe,'' (December 22, 1989; AGA catalog No. L51609). Project PR 3–805 was undertaken to devise a criterion that, while still assuring adequate pipeline integrity, would eliminate, as much as possible, the excess conservatism embodied in the ASME B31G Manual. For a complex analysis, the modified criterion can be applied by using a computer program called RSTRENG, which is furnished with the report. The modified criterion can also be applied with a long-hand equation, or if a simplified analysis is preferred, with tables or curves.

Evaluating the strength of corroded pipe by procedures in ASME B31G or the associated AGA report is subject to the limitations specified in the procedures. For example, the procedures are not appropriate for determining the ability of pipe to withstand stresses other than stress from internal pressure. Thus, if corroded pipe is under significant secondary stress (e.g., bending stress), an additional method must be used to determine the pipe's remaining strength.

The NAPSR report recommended amending § 192.483 to require the use of appropriate guides, such as those published by ASME and the Gas Piping Technology Committee, whenever the remaining strength of corroded pipelines must be determined. The majority of commenters who addressed this NAPSR recommendation opposed mandatory use of the guides. They said operators should retain the flexibility to decide when calculations under the guides are necessary. Even those commenters who supported the recommendation thought the rule should permit the use of other valid methods.

After considering the comments on proposed § 192.485(c) and the NAPSR recommendation, we believe the NAPSR recommendation would be unduly restrictive. Operators are now free to use any valid method to determine the remaining strength of corroded pipe, and we see no compelling reason to restrain this flexibility. The NPRM simply proposed to reference guidance documents that are generally available for operators to use at their discretion. Moreover, the proposal was written in a permissive sense to assist, but not restrict, operator decision-making. So we have amended the regulation essentially as proposed, but referenced both ASME B31G and the AGA report, with RSTRENG, to expand the information provided.

*Section 192.491, Corrosion Control Records*

Under § 192.491(a), operators must maintain records or maps showing the location of cathodically protected piping, cathodic protection facilities, other than unrecorded anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system. RSPA proposed to amend this requirement to relieve operators of the burden of making precise field measurements and preparing and maintaining records or maps showing the specific location of millions of individual anodes.

The TPSSC members voted unanimously for the proposal.

Comments on proposed § 192.491(a) were received from six pipeline operators, two pipeline-related associations, and one state agency. Eight commenters expressed their full or partial support with one commenter opposed. RSPA has accepted the recommendation of two operators that in the second sentence of proposed paragraph (a), the phrase ''Records and maps * * *'' should, for consistency with the rest of this section, be changed to ''Records or maps * * *.''

Section 192.491(b)(2) requires that operators retain records of corrosion control tests, surveys, and inspections for ''as long as the pipeline remains in service.'' RSPA proposed to reduce this retention period to at least 5 years for many records, because 5 years was thought to be adequate for compliance investigations and analysis of possible corrosion problems.

The proposal did not, however, extend to records under §§ 192.465 (a) and (e) and 192.475(b). These records relate to tests and inspections to determine the adequacy of, or need for, external and internal protection on existing lines. RSPA felt strongly that these records should continue to be kept for the service life of the pipeline, because they provide a valuable database for use in assessing corrosion problems.

The TPSSC unanimously supported the proposal.

Three pipeline-related associations, 10 operators, and one state agency commented on the proposal. Four of these commenters agreed with the proposal as written; the rest qualified their support by recommending changes.

Five commenters, including two pipeline-related associations and a state agency, were not persuaded of the importance of keeping records of

corrosion monitoring under § 192.465 for the life of the pipe. Most of these commenters declared that 5 years would be adequate, but did not explain why a longer period is excessive. Lacking any convincing documentation to the contrary, RSPA believes the current rule should stay in effect. In our experience, a history of corrosion monitoring sheds light on the possible causes of a pipeline's condition. Such history has proven to be a valuable resource in deciding the extent and kind of remedial action needed when corrosion problems emerge on a pipeline.

Regarding the proposed 5-year retention time for records other than those required by §§ 192.465 (a) and (e) and 192.475(b), two commenters said the minimum time should be 3 years to coincide with the longest interval between inspections. Two others suggested that instead of a set time, we adopt a performance standard for record retention, basing it on the time needed to observe trends, inquire into compliance, or collect superseding data. All these comments provide a reasonable basis for record retention. However, our main concern is that operators keep records for a period that is compatible with the occurrence of routine compliance investigations. Therefore, for simplicity and uniformity, we have decided to adopt the proposed 5-year minimum retention time.

The state agency that commented objected to the 5-year proposal on grounds that it would sacrifice information about why external or atmospheric corrosion control was not installed on pipelines under §§ 192.455, 192.457, and 192.479. RSPA believes the loss of this information after 5 years would not be significant, because the pipelines involved are covered by requirements for periodic inspections or tests for corrosion under §§ 192.465 and 192.481.

*Section 192.553, General Requirements*

(See previous discussion under § 192.14).

*Section 192.607, Determination of Class Location and Maximum Allowable Operating Pressure*

Because § 192.607 has no continuing effect and the deadlines for compliance have expired, RSPA proposed to remove § 192.607 from part 192.

Fourteen TPSSC members voted for the proposal and one member abstained.

Five operators, one pipeline-related association, and one state agency commented on the proposed removal of § 192.607. Four operators and the association favored the idea. One operator and the state agency disagreed with removal, believing the rule is needed to tie a pipeline's maximum allowable operating pressure (MAOP) to its class location. Similarly, the NAPSR report recommended that we only remove the past compliance deadlines from § 192.607, leaving the rest of the rule in place to regulate the relation of class location to stress level on high-stress pipelines.

Section 192.607 was a transitional requirement. Its purpose was to establish plans under which operators initially determined class locations and confirmed or revised the MAOPs of their high-stress pipelines commensurate with their class locations. Section 192.607 provides that the plans had to be executed in accordance with § 192.611. This latter section together with § 192.609 are sufficient to require that operators have up-to-date class location determinations for high-stress pipelines, and maintain the MAOPs of those lines commensurate with their class locations.

Accordingly, § 192.607 is removed from part 192.

*Section 192.611, Change in Class Location*

Section 192.611 requires confirmation or revision of a pipeline's MAOP within 18 months after a change in class location. RSPA proposed to reorganize § 192.611 to clarify the requirement that the MAOP resulting from confirmation or revision may not exceed the pipeline's previous MAOP. This requirement is currently set forth in § 192.611(a)(3)(ii), suggesting that it applies only to confirmations or revisions under paragraph (a)(3), which is not the intent.

Fourteen TPSSC members voted for the proposal and one member abstained.

Five operators and one pipeline-related association commented on the proposal; each agreed with the proposal. Section 192.611 is, therefore, adopted as proposed in the NPRM.

*Section 192.614, Damage Prevention Program*

To decrease excavation damage to pipelines, § 192.614(b)(2) requires operators to notify excavators and the public about the need to locate buried pipelines before excavating. The NPRM proposed to amend the rule to clarify that in contrast to the actual notification required for excavators, only general notification is required for the public. General notice can be given through newspapers, radio, television, or other means of mass communication, as appropriate for the public in the vicinity of the pipeline.

Fourteen TPSSC members voted for the proposal and one member abstained.

Six pipeline operators and two pipeline-related organizations commented. Seven commenters gave their full or qualified approval and one commenter opposed the proposal. The qualified and negative comments were that the rule should inform operators of the acceptable means of notification. We do not feel it is necessary for the rule to do so, however, because the available means of giving general public notice are well known. The amendment to paragraph (b)(2) is adopted as proposed.

*Section 192.619, Maximum Allowable Operating Pressure: Steel or Plastic Pipelines*

Section 192.619(a) prescribes six pressure limits for use in determining the MAOP of steel and plastic pipelines, the lowest of which establishes the MAOP. Paragraph (a)(4) limits the MAOP of furnace butt welded pipe to 60 percent of the mill test pressure. Paragraph (a)(5) limits the MAOP of other steel pipe to 85 percent of the highest test pressure to which the pipe has been subjected, whether by mill test or by the post installation test.

RSPA proposed to repeal paragraphs (a)(4) and (a)(5), primarily because mill tests are not an adequate MAOP consideration. However, to assure consideration of longitudinal joint efficiency, RSPA also proposed, in paragraph (a)(2)(iii), that the class location pressure limit under existing paragraph (a)(2)(ii) be reduced for furnace butt welded pipe and lap welded pipe.

Eleven TPSSC members voted for the proposal, one member supported it with a recommended change, two members opposed it, and one abstained. A member recommended that RSPA not adopt proposed paragraph (a)(2)(iii) because design pressure (under paragraph (a)(1)) adequately covers longitudinal joint concerns.

RSPA concurs with this view as explained below in response to public comment.

Thirteen operators, four pipeline-related associations, and one state agency commented on the proposed amendment. Two operators, one pipeline-related association, and one state agency commented that proposed paragraph (a)(2)(iii) could require operators to reduce the operating pressure of some pipelines or test them to higher pressures than they previously were tested, possibly damaging the pipelines. In addition, some commenters stated that proposed paragraph (a)(2)(iii) would duplicate use of longitudinal joint factors.

Upon further consideration of our joint efficiency concern, RSPA concurs with these comments. Further, RSPA has no data showing that pipelines covered by proposed paragraph (a)(2)(iii) pose a risk that warrants pressure reduction or retesting. Therefore, although the final rule repeals paragraphs (a)(4) and (a)(5) as proposed, proposed paragraph (a)(2)(iii) is not adopted.

*Section 192.625, Odorization of Gas*

Section 192.619(f) requires operators to conduct periodic samplings of gas to assure the proper concentration of odorant. Based on a suggestion by the Oregon Public Utility Commission, the NPRM proposed to allow operators of master meter systems to comply with this sampling requirement by (1) receiving written verification from their gas supplier that odorant meets the required concentration, and (2) conducting periodic sniff tests at system extremities to confirm that the gas contains odorant.

Thirteen TPSSC members voted for the proposal, one against, and one member abstained.

Comments were received from eight pipeline operators, two pipeline-related associations, a mobile home association, and a consultant. One commenter favored the proposal and 11 commenters opposed it. Commenters opposing the proposal argued that (1) gas from a transmission line may be unodorized; (2) gas suppliers may be unwilling to provide written verification of odorization levels because of potential legal liability and the increased burden of providing the written verifications; (3) the frequencies of sniff tests and written verifications are unclear; and (4) the proposal would relax odorant monitoring requirements on gas systems which, in general, have a relatively high leakage rate.

The purpose of the proposal was to ease the sampling requirement for operators of master meter systems, who largely do not have the training or resources to adequately carry out the requirement. The alternative of getting written verifications and conducting sniff tests should be much less burdensome than purchasing, maintaining, and using an odorometer or contracting for odorant testing.

We do not feel this potential advantage is outweighed by any of the negative considerations the commenters raised. First of all, most master meter system operators purchase odorized gas from local distribution companies. Although some operators may receive unodorized gas from transmission lines and have to odorize the gas themselves, this situation does not warrant rejecting the proposed alternative. Those operators who receive unodorized gas simply would not be able to take advantage of the alternative. Similarly, operators could not take advantage of the alternative if their gas suppliers are unwilling to provide requested verifications of odorant level. But again this difficulty is no reason to deny the alternative to other operators. Regarding the frequency of verifications and sniff tests, the proposal called for an initial written verification from the gas supplier and periodic sniff tests thereafter. As with periodic sampling, the frequency of sniff tests would depend on the performance history of odorization in the system: the longer the period of satisfactory odorization, the longer the period between tests to assure proper odorant levels. Testing details would be specified in the operator's operations and maintenance manual under § 192.605 and reviewed for adequacy by government inspectors. Finally, the charge that master meter systems have a high leakage rate was unsupported. In a 1984 report, ''Exercise of Jurisdiction Over Master Meter Gas Operators,'' RSPA concluded that master meter systems probably have a small leakage rate in comparison to the leakage rate of utility distribution systems. And more recent safety data continue to substantiate that conclusion. Therefore, after weighing the comments and favorable TPSSC vote, we have decided to amend § 192.625(f) as proposed.

*Section 192.705, Transmission Lines: Patrolling*

Operators of transmission lines must patrol their rights-of-way for indications of certain adverse conditions. Because of repeated questions about whether patrols may be done from the air, RSPA proposed to change § 192.705 to include aerial patrols as an optional method of compliance.

Fourteen TPSSC members voted for the proposal and one abstained.

Six operators and one pipeline-related association commented on the proposal. All but two of these commenters agreed with the proposal. One commenter that disagreed said a list of methods of compliance might be considered exclusive, thus disallowing other appropriate methods. The other commenter that disagreed thought the rule change unnecessary.

RSPA believes the phrase ''or other appropriate means of traversing the right-of-way'' in the proposed and final rule eliminates any chance the list of compliance methods might be considered exclusive. Also, the need for the rule change is based on RSPA's experience in explaining the meaning of ''patrol'' under § 192.705. The change to § 192.705 is, therefore, adopted as proposed.

*Section 192.709, Transmission Lines: Record Keeping*

Section 192.709 requires operators to keep various records about transmission lines for as long as the line remains in service. RSPA proposed a shorter retention span that would not affect the usefulness of records in determining an operator's level of compliance effort or in constructing the history of an accident or safety problem. RSPA proposed a minimum 5-year retention period for records of patrols, surveys, inspections, and tests, and a 1-year retention period for records of repairs on facilities other than pipe. We also proposed to clarify the information to be recorded.

Ten TPSSC members voted for the proposal, three members supported it with a recommended change, one member opposed it, and one abstained. The recommended changes were that 5 years should be changed to 3–5 years or to 10 years, and that leaks and linebreaks should also be recorded as the current § 192.709 provides. The ''No'' vote was predicated on an alleged need to keep records of repairs on valves, compressors, and other non-pipe components for 3–5 years.

As with final § 192.491(c), RSPA's main concern about non-pipe records is that operators keep records for a minimum period that is compatible with the occurrence of routine compliance investigations. The suggested 3–5 years would not be long enough, and 10 years would be excessive. Therefore, we have adopted the proposed 5-year minimum period.

Repair records, as currently required, already provide information about leaks and linebreaks. Thus, requirements to keep the records of leaks and linebreaks were omitted from the proposed rule as unnecessary in view of this existing requirement.

As for the ''No'' vote, RSPA has adopted this minority TPSSC position as explained below in response to a comment by a state agency.

Eight operators, two pipeline-related associations, and one state agency commented on the proposed changes to § 192.709. Five of the operators supported the proposal without suggesting any modification.

Two other operators suggested 3 years as an alternative to the proposed 5-year minimum. But, as explained above, 3 years is insufficient for compliance monitoring purposes.

One operator thought the words ''for the useful life of the pipe'' under proposed § 192.709(a) could be misinterpreted. This commenter suggested that instead we adopt the words used in § 192.491(c): ''for as long as the pipeline remains in service.'' We agree that for consistency the two sections should use similar wording to describe similar record retention requirements. This comment was, therefore, adopted in the final rule.

One pipeline-related association recommended that § 192.709 be like 49 CFR 195.404(c), which applies to hazardous liquid pipelines. We did not adopt this comment because § 195.404(c) specifies a 2-year retention period for records of inspections and tests, a time we now find to be insufficient for purposes of compliance investigations. Otherwise the two sections are parallel. The other association reiterated its previous comment, which we opposed as discussed above, that record retention requirements should be performance based.

The state agency that commented objected to the proposed 1-year retention time for non-pipe repairs, saying it was inconsistent with the proposal to keep for at least 5 years records of inspections that may show the need for repair. This commenter reasoned that an inspector might not find any record showing the needed repair was made. RSPA agrees that the two requirements should be congruent. Therefore, the final rule requires that records of non-pipe repairs made as a result of a required patrol, survey, inspection, or test be kept for the same time required for records of such patrol, survey, inspection, or test.

*Section 192.721, Distribution Systems: Patrolling*

This section governs the frequency at which operators must patrol mains in distribution systems. The regulation is written in performance terms, except that mains located where anticipated movement or loading could cause leakage must be patrolled at intervals not exceeding 4½ months, but at least four times a year. RSPA proposed a more moderate patrol frequency of twice a year for such mains in Class 1 or 2 locations, in recognition of the lower risk in these less densely populated locations.

Twelve TPSSC members voted for the proposal, one against, one member supported it with a proposed change, and one abstained. The member against the proposal said that separating requirements on the basis of class locations is not always workable for distribution systems. Our response to this minority view is given below following similar comments by operators.

Four operators and two pipeline-related associations commented on the proposal. Three of the operators and one association supported the proposal, but the other operator and association thought class location should not be used as a basis for patrol frequency in distribution systems. One commenter suggested ''rural areas'' as an alternative to Class 1 and 2 locations.

RSPA agrees that the class location concept is not easy to apply in all distribution systems. Therefore, in the final rule, we have used the term ''business district'' to represent areas of higher risk and ''outside business districts'' to represent areas of lower risk. A similar classification method is already in place under § 192.723 for leakage surveys in distribution systems. The new patrol requirement matches that method. The term ''rural area'' was not adopted because it lacks precedent in part 192.

Rulemaking Notices and Analyses

*Paperwork Reduction Act*

This Final Rule revises information collection requirements in part 192 that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The following revised regulations reduce the existing paperwork burden by 28,326 hours:

- §§ 192.491 (a) and (b), ''Corrosion Control Records,'' reduces the paperwork burden by 22,486 hours by reducing the number of records, the precision of the measurements, and the amount of time the records must be kept.
- § 192.709, ''Transmission Lines; Record keeping,'' reduces the paperwork burden by 5,840 hours by reducing the amount of time the records must be kept.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has approved the revised information collection requirements of part 192 through May 31, 1999 (OMB No. 2137–0049).

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

OMB considers this final rule to be a significant regulatory action under section 3(f) of Executive Order 12866. Therefore, OMB has reviewed the final rule. Also, DOT considers the final rule to be significant under its regulatory policies and procedures (44 FR 11034, February 26, 1979).

A final regulatory evaluation has been prepared and is available in the Docket. RSPA estimates the changes to existing rules will result in savings of $33,000,000 a year, without associated costs and with no adverse effect on safety. As discussed above, these savings come from the use of new technology, greater flexibility in constructing, maintaining, and operating pipelines, improved clarity, and the elimination of burdensome requirements.

*Regulatory Flexibility Act.*

RSPA criteria for small companies or entities are those with less than $1,000,000 in revenues and are independently owned and operated. Few of the companies subject to this rulemaking meet these criteria. Accordingly, based on the facts available concerning the impact of this final rule, I certify under Section 605 of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

*E. O. 12612*

The final rule would not have substantial direct effects on states, on the relationship between the Federal 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 (52 FR 41685; October 30,1987), RSPA has determined that the final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR part 192 as follows:

## PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; 49 CFR 1.53.

2. In § 192.1, paragraph (b)(1) is revised and paragraph (b)(4) is added to read as follows:

**§ 192.1 Scope of part.**

* * * * *

(b) This part does not apply to:

(1) Offshore pipelines upstream from the outlet flange of each facility where hydrocarbons are produced or where

produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream;

* * * * *

(4) Any pipeline system that transports only petroleum gas or petroleum gas/air mixtures to—

(i) Fewer than 10 customers, if no portion of the system is located in a public place; or

(ii) A single customer, if the system is located entirely on the customer's premises (no matter if a portion of the system is located in a public place).

3. In § 192.3, a definition of ''Petroleum gas'' is added and the definition of ''Transmission line'' is revised to read as follows:

**§ 192.3 Definitions.**

* * * * *

*Petroleum gas* means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominantly of these gases, having a vapor pressure not exceeding 1434 kPa (208 psig) at 38°C (100°F).

* * * * *

*Transmission line* means a pipeline, other than a gathering line, that:

(a) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center;

(b) Operates at a hoop stress of 20 percent or more of SMYS; or

(c) Transports gas within a storage field. A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

* * * * *

4. Section 192.5 is revised to read as follows:

**§ 192.5 Class locations.**

(a) This section classifies pipeline locations for purposes of this part. The following criteria apply to classifications under this section.

(1) A ''class location unit'' is an onshore area that extends 220 yards on either side of the centerline of any continuous 1- mile length of pipeline.

(2) Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(b) Except as provided in paragraph (c) of this section, pipeline locations are classified as follows:

(1) A Class 1 location is:

(i) An offshore area; or

(ii) Any class location unit that has 10 or fewer buildings intended for human occupancy.

(2) A Class 2 location is any class location unit that has more than 10 but fewer than 46 buildings intended for human occupancy.

(3) A Class 3 location is:

(i) Any class location unit that has 46 or more buildings intended for human occupancy; or

(ii) An area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)

(4) A Class 4 location is any class location unit where buildings with four or more stories above ground are prevalent.

(c) The length of Class locations 2, 3, and 4 may be adjusted as follows:

(1) A Class 4 location ends 220 yards from the nearest building with four or more stories above ground.

(2) When all buildings intended for human occupancy within a Class 2 or 3 location are in a single cluster, the class location ends 220 yards from the nearest building in the cluster.

5. Section 192.7(a) is revised to read as follows:

**§ 192.7 Incorporation by reference.**

(a) Any documents or portions thereof incorporated by reference in this part are included in this part as though set out in full. When only a portion of a document is referenced, the remainder is not incorporated in this part.

* * * * *

6. Section 192.11 is revised to read as follows:

**§ 192.11 Petroleum gas systems.**

(a) Each plant that supplies petroleum gas by pipeline to a natural gas distribution system must meet the requirements of this part and ANSI/NFPA 58 and 59.

(b) Each pipeline system subject to this part that transports only petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of ANSI/NFPA 58 and 59.

(c) In the event of a conflict between this part and ANSI/NFPA 58 and 59, ANSI/NFPA 58 and 59 prevail.

7. Section 192.107(b)(1)(ii) is revised to read as follows:

**§ 192.107 Yield strength (S) for steel pipe.**

* * * * *

(b) * * *

(1) * * *

(ii) The lowest yield strength determined by the tensile tests.

* * * * *

8. Section 192.121 is revised to read as follows:

**§ 192.121 Design of plastic pipe.**

Subject to the limitations of § 192.123, the design pressure for plastic pipe is determined in accordance with either of the following formulas:

$$P = 2S\frac{t}{(D-t)}0.32$$

$$P = \frac{2S}{(SDR-1)}0.32$$

Where:

P=Design pressure, gauge, kPa (psig).

S=For thermoplastic pipe, the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to 23°C (73°F), 38°C (100°F), 49°C (120°F), or 60°C (140°F); for reinforced thermosetting plastic pipe, 75,842 kPa (11,000 psi).

t=Specified wall thickness, mm (in).

D=Specified outside diameter, mm (in).

SDR=Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute preferred number series 10.

9. Section 192.123(b) is revised to read as follows:

**§ 192.123 Design limitations for plastic pipe.**

* * * * *

(b) * * *

(1) Below −29°C (−20°F), or −40°C (−40°F) if all pipe and pipeline components whose operating temperature will be below −29°C (−20°F) have a temperature rating by the manufacturer consistent with that operating temperature; or

(2) Above the following applicable temperatures:

(i) For thermoplastic pipe, the temperature at which the long-term hydrostatic strength used in the design formula under § 192.121 is determined. However, if the pipe was manufactured before May 18, 1978 and its long-term hydrostatic strength was determined at 23°C (73°F), it may be used at temperatures up to 38°C (100°F).

(ii) For reinforced thermosetting plastic pipe, 66°C (150°F).

* * * * *

10. The introductory text of § 192.179(a) is revised to read as follows:

**§ 192.179 Transmission line valves.**

(a) Each transmission line, other than offshore segments, must have sectionalizing block valves spaced as follows, unless in a particular case the Administrator finds that alternative spacing would provide an equivalent level of safety:

* * * * *

11. Section 192.203(b)(2) is revised to read as follows:

**§ 192.203 Instrument, control, and sampling pipe and components.**

* * * * *

(b) * * *

(2) Except for takeoff lines that can be isolated from sources of pressure by other valving, a shutoff valve must be installed in each takeoff line as near as practicable to the point of takeoff. Blowdown valves must be installed where necessary.

* * * * *

12. Section 192.227(b) is revised to read as follows:

**§ 192.227 Qualification of welders.**

* * * * *

(b) A welder may qualify to perform welding on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in section I of Appendix C of this part. Each welder who is to make a welded service line connection to a main must first perform an acceptable test weld under section II of Appendix C of this part as a requirement of the qualifying test.

13. In § 192.229, paragraph (c) is revised and paragraph (d) is added to read as follows:

**§ 192.229 Limitations on welders.**

* * * * *

(c) A welder qualified under § 192.227(a)—

(1) May not weld on pipe to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS unless within the preceding 6 calendar months the welder has had one weld tested and found acceptable under section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in Appendix A of this part may weld but may not requalify under that earlier edition; and

(2) May not weld on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS unless the welder is tested in accordance with paragraph (c)(1) of this section or requalifies under paragraph (d)(1) or (d)(2) of this section.

(d) A welder qualified under § 192.227(b) may not weld unless—

(1) Within the preceding 15 calendar months, but at least once each calendar year, the welder has requalified under § 192.227(b); or

(2) Within the preceding 7½ calendar months, but at least twice each calendar year, the welder has had—

(i) A production weld cut out, tested, and found acceptable in accordance with the qualifying test; or

(ii) For welders who work only on service lines 2 inches or smaller in diameter, two sample welds tested and found acceptable in accordance with the test in section III of Appendix C of this part.

14. Section 192.241(c) is revised to read as follows:

**§ 192.241 Inspection and test of welds.**

* * * * *

(c) The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of API Standard 1104. However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if the Appendix to API Standard 1104 applies to the weld, the acceptability of the weld may be further determined under that Appendix.

15. Section 192.243(d)(4) is revised to read as follows:

**§ 192.243 Nondestructive testing.**

* * * * *

(d) * * *

(4) At pipeline tie-ins, including tie-ins of replacement sections, 100 percent.

* * * * *

16. In § 192.281, paragraph (c)(3) is redesignated as paragraph (c)(4) and paragraph (c)(3) is added to read as follows:

**§ 192.281 Plastic pipe.**

* * * * *

(c) * * *

(3) An electrofusion joint must be joined utilizing the equipment and techniques of the fittings manufacturer or equipment and techniques shown, by testing joints to the requirements of § 192.283(a)(1)(iii), to be at least equivalent to those of the fittings manufacturer.

* * * * *

17. In § 192.283, the word ''or'' is removed from the end of paragraph (a)(1)(i), paragraph (a)(1)(ii) is revised, and paragraph (a)(1)(iii) is added to read as follows:

**§ 192.283 Plastic pipe; qualifying joining procedures.**

(a) * * *

(1) * * *

(ii) In the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517; or

(iii) In the case of electrofusion fittings for polyethylene pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Test), paragraph 9.2 (Sustained Pressure Test), paragraph 9.3 (Tensile Strength Test), or paragraph 9.4 (Joint Integrity Tests) of ASTM Designation F1055.

* * * * *

18. Section 192.317(a) is revised to read as follows:

**§ 192.317 Protection from hazards.**

(a) The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads. In addition, the operator must take all practicable steps to protect offshore pipelines from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations.

* * * * *

19. Section 192.319(c) is revised to read as follows:

**§ 192.319 Installation of pipe in a ditch.**

* * * * *

(c) All offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, except pipe in the Gulf of Mexico and its inlets under 15 feet of water, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. Pipe in the Gulf of Mexico and its inlets under 15 feet of water must be installed so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

20. In § 192.321, paragraph (a) is revised and paragraph (g) is added to read as follows:

**§ 192.321 Installation of plastic pipe.**

(a) Plastic pipe must be installed below ground level unless otherwise permitted by paragraph (g) of this section.

* * * * *

(g) Uncased plastic pipe may be temporarily installed above ground level under the following conditions:

(1) The operator must be able to demonstrate that the cumulative aboveground exposure of the pipe does not exceed the manufacturer's recommended maximum period of exposure or 2 years, whichever is less.

(2) The pipe either is located where damage by external forces is unlikely or is otherwise protected against such damage.

(3) The pipe adequately resists exposure to ultraviolet light and high and low temperatures.

21. In § 192.327, the introductory text of paragraph (a) is revised, paragraph (e) is revised, and paragraphs (f) and (g) are added to read as follows:

**§ 192.327 Cover.**

* * * * *

(a) Except as provided in paragraphs (c), (e), (f), and (g) of this section, each buried transmission line must be installed with a minimum cover as follows:

* * * * *

(e) Except as provided in paragraph (c) of this section, all pipe installed in a navigable river, stream, or harbor must be installed with a minimum cover of 48 inches in soil or 24 inches in consolidated rock between the top of the pipe and the natural bottom.

(f) All pipe installed offshore, except in the Gulf of Mexico and its inlets, under water not more than 200 feet deep, as measured from the mean low tide, must be installed as follows:

(1) Except as provided in paragraph (c) of this section, pipe under water less than 12 feet deep, must be installed with a minimum cover of 36 inches in soil or 18 inches in consolidated rock between the top of the pipe and the natural bottom.

(2) Pipe under water at least 12 feet deep must be installed so that the top of the pipe is below the natural bottom, unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means.

(g) All pipelines installed under water in the Gulf of Mexico and its inlets, as defined in § 192.3, must be installed in accordance with § 192.612(b)(3).

22. Section 192.375(a) is revised to read as follows:

**§ 192.375 Service lines: Plastic.**

(a) Each plastic service line outside a building must be installed below ground level, except that—

(1) It may be installed in accordance with § 192.321(g); and

(2) It may terminate above ground level and outside the building, if—

(i) The above ground level part of the plastic service line is protected against deterioration and external damage; and

(ii) The plastic service line is not used to support external loads.

* * * * *

23. In § 192.455, paragraphs (a)(2) and (f)(1) are revised to read as follows:

**§ 192.455 External corrosion control: Buried or submerged pipelines installed after July 31, 1971.**

(a) * * *

(2) It must have a cathodic protection system designed to protect the pipeline in accordance with this subpart, installed and placed in operation within 1 year after completion of construction.

* * * * *

(f) * * *

(1) For the size fitting to be used, an operator can show by test, investigation, or experience in the area of application that adequate corrosion control is provided by the alloy composition; and

* * * * *

24. Section 192.475(c) is revised to read as follows:

**§ 192.475 Internal corrosion control: General.**

* * * * *

(c) Gas containing more than 0.25 grain of hydrogen sulfide per 100 standard cubic feet (4 parts per million) may not be stored in pipe-type or bottle-type holders.

25. Section 192.485(c) is added to read as follows:

**§ 192.485 Remedial measures: Transmission lines.**

* * * * *

(c) Under paragraphs (a) and (b) of this section, the strength of pipe based on actual remaining wall thickness may be determined by the procedure in ASME/ANSI B31G or the procedure in AGA Pipeline Research Committee Project PR 3–805 (with RSTRENG disk). Both procedures apply to corroded regions that do not penetrate the pipe wall, subject to the limitations prescribed in the procedures.

26. Section 192.491 is revised to read as follows:

**§ 192.491 Corrosion control records.**

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records or maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

(b) Each record or map required by paragraph (a) of this section must be retained for as long as the pipeline remains in service.

(c) Each operator shall maintain a record of each test, survey, or inspection required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least 5 years, except that records related to §§ 192.465 (a) and (e) and 192.475(b) must be retained for as long as the pipeline remains in service.

27. Section 192.553(d) is revised to read as follows:

**§ 192.553 General requirements.**

* * * * *

(d) *Limitation on increase in maximum allowable operating pressure.* Except as provided in § 192.555(c), a new maximum allowable operating pressure established under this subpart may not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location. However, when uprating a steel pipeline, if any variable necessary to determine the design pressure under the design formula (§ 192.105) is unknown, the MAOP may be increased as provided in § 192.619(a)(1).

**§ 192.607 [Removed and reserved]**

28. Section 192.607 is removed and reserved.

**§ 192.611 [Amended]**

29. In § 192.611, paragraphs (b) and (c) are redesignated as (c) and (d), respectively; paragraph (a)(3)(ii) is redesignated as paragraph (b), and paragraph (a)(3)(iii) is redesignated as paragraph (a)(3)(ii).

30. In § 192.614, the introductory text of paragraph (b)(2) is revised to read as follows:

**§ 192.614 Damage prevention program.**

* * * * *

(b) * * *

(2) Provide for general notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of the following as often as needed to make them aware of the damage prevention program:

* * * * *

31. In § 192.619, paragraph (a)(1) is revised to read as follows, paragraphs (a)(4) and (a)(5) are removed, paragraph (a)(6) is redesignated as paragraph (a)(4), and paragraph (b) is amended by removing ''(a)(6)'' and adding ''(a)(4)'' in its place:

**§ 192.619 Maximum allowable operating pressure: Steel or plastic pipelines.**

(a) * * *

(1) The design pressure of the weakest element in the segment, determined in accordance with subparts C and D of this part. However, for steel pipe in pipelines being converted under § 192.14 or uprated under subpart K of this part, if any variable necessary to determine the design pressure under the design formula (§ 192.105) is unknown, one of the following pressures is to be used as design pressure:

(i) Eighty percent of the first test pressure that produces yield under section N5.0 of Appendix N of ASME B31.8, reduced by the appropriate factor in paragraph (a)(2)(ii) of this section; or

(ii) If the pipe is 324 mm (12¾ in) or less in outside diameter and is not tested to yield under this paragraph, 1379 kPa (200 psig).

* * * * *

32. Section 192.625 (f) is revised to read as follows:

**§ 192.625 Odorization of gas.**

* * * * *

(f) Each operator shall conduct periodic sampling of combustible gases to assure the proper concentration of odorant in accordance with this section. Operators of master meter systems may comply with this requirement by—

(1) Receiving written verification from their gas source that the gas has the proper concentration of odorant; and

(2) Conducting periodic ''sniff'' tests at the extremities of the system to confirm that the gas contains odorant.

33. Section 192.705(c) is added to read as follows:

**§ 192.705 Transmission lines: Patrolling.**

* * * * *

(c) Methods of patrolling include walking, driving, flying or other appropriate means of traversing the right-of-way.

34. Section 192.709 is revised to read as follows:

**§ 192.709 Transmission lines: Record keeping.**

Each operator shall maintain the following records for transmission lines for the periods specified:

(a) The date, location, and description of each repair made to pipe (including pipe-to-pipe connections) must be retained for as long as the pipe remains in service.

(b) The date, location, and description of each repair made to parts of the pipeline system other than pipe must be retained for at least 5 years. However, repairs generated by patrols, surveys, inspections, or tests required by subparts L and M of this part must be retained in accordance with paragraph (c) of this section.

(c) A record of each patrol, survey, inspection, and test required by subparts L and M of this part must be retained for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

35. Section 192.721(b) is revised to read as follows:

**§ 192.721 Distribution systems: Patrolling.**

* * * * *

(b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled—

(1) In business districts, at intervals not exceeding 4½ months, but at least four times each calendar year; and

(2) Outside business districts, at intervals not exceeding 7½ months, but at least twice each calendar year.

36. In Appendix A, section I. is amended by redesignating subsections A. through F. as subsections B. through G., respectively, and by adding a new subsection A.; and section II. is amended by redesignating subsections A. through E. as subsections B. through F., respectively, by adding a new subsection A. and a new subsection 12. to newly designated C., by redesignating newly designated subsections D.3. through D.5. as subsections D.5. through D.7., respectively, and by adding new subsections D.3. and D.4. as follows:

Appendix A—Incorporated by Reference

I. * * *

A. American Gas Association (AGA), 1515 Wilson Boulevard, Arlington, VA 22209.

* * * * *

II. * * *

A. American Gas Association (AGA):

1. AGA Pipeline Research Committee, Project PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (December 22, 1989).

* * * * *

C. * * *

12. ASTM Designation: F1055 ''Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing'' (F1055–95).

D. * * *

3. ASME/ANSI B31G ''Manual for Determining the Remaining Strength of Corroded Pipelines'' (1991).

4. ASME/ANSI B31.8 ''Gas Transmission and Distribution Piping Systems'' (1995).

* * * * *

Issued in Washington, DC, on May 28, 1996.

D.K. Sharma,

*Administrator.*

[FR Doc. 96–13787 Filed 6–5–96; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 663

**[Docket No. 960304057–6151–02; I.D. 020596A]**

**RIN 0648–AH84**

## Pacific Coast Groundfish Fishery; Framework for Treaty Tribe Harvest of Pacific Groundfish and 1996 Makah Whiting Allocation

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is establishing a framework to implement the Washington coastal treaty Indian tribes' rights to harvest Pacific groundfish. NMFS also announces the allocation of 15,000 metric tons (mt) of Pacific whiting to the Makah Indian Tribe (Makah) for 1996 only, under the provisions of the regulatory framework.

**EFFECTIVE DATE:** May 31, 1996.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) may be obtained from the Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140.

**SUPPLEMENTARY INFORMATION:** NMFS is issuing this rule under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson Fishery Conservation and Management Act (Magnuson Act). It amends the FMP's implementing regulations to establish a clear procedure to accommodate the Washington coastal treaty Indian tribes' rights to harvest Pacific groundfish. At the same time, NMFS is modifying the groundfish regulations to consolidate regulations on treaty Indian fishing into one section and to provide for the treaty trawl harvest of midwater groundfish species. Under the provisions of this rule, NMFS announces the allocation of 15,000 mt of Pacific whiting to the Makah for 1996. For purposes of this rule, Washington coastal treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

This rule is implemented under authority of section 305(d) of the Magnuson Act, which gives NMFS,

acting on behalf of the Secretary of Commerce (Secretary), responsibility to ''carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act.'' With this rule, NMFS will ensure that the Pacific coast groundfish FMP is implemented in a manner consistent with treaty rights of the four Washington coastal treaty tribes to fish in their ''usual and accustomed grounds and stations'' in common with non-tribal citizens. *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash., 1974).

NMFS published a proposed rule at (61 FR 10303, March 13, 1996), requesting comments through April 12, 1996. NMFS received 17 comments on the proposed rule, which are responded to below. The background and rationale for this rule appear in the proposed rule and the EA/RIR/IRFA prepared for this action (see **ADDRESSES**).

Description of the Rule

Under the framework established by this rule, NMFS will be able to accommodate the rights of the treaty tribes to fish for groundfish in their ocean fishing grounds by setting aside appropriate amounts of fish through the FMP's framework process for setting annual harvest specifications or by means of specific regulations. The framework process will be initiated by a request to NMFS from one or more Washington coastal treaty Indian tribes prior to the first of the two annual groundfish meetings of the Pacific Fishery Management Council (Council). NMFS will consider the tribal requests, recommendations from the Council, and comments of the public, and will determine the amount of the set-aside for each species and/or appropriate regulatory language. NMFS will generally announce the tribal set asides in the Federal Register when the annual harvest and allocation specifications for the groundfish fishery are announced. Tribal groundfish set-asides will be managed by the tribes under their regulations.

This rule also describes the physical boundaries of the usual and accustomed fishing grounds (U&A) for the Washington Coastal treaty Indian tribes. These areas are the same as those set out in NMFS regulations for salmon since 1987 and for Pacific halibut since 1986. The boundaries may be changed by future decisions of a Federal court.

Participation in a tribal fishery for Pacific Coast groundfish authorized under these regulations will not require a Federal limited entry permit. However, fishing by members of a Washington coastal treaty Indian tribe outside the tribe's U&A grounds or for a species not covered by a set-aside or regulation under this rule will be subject to the same regulations as other, non-treaty persons participating in the fishery.

Harvests from tribal fisheries under this regulation will not be subject to, or alter rules concerning, harvesting or processing apportionments in the non-treaty fisheries; the whiting allocation regulations at § 663.23(b)(4) are modified to clarify this. This rule also allows release to the non-treaty fishery of whiting set aside for the tribes that the tribes will not use.

This rule also re-codifies regulations governing tribal harvest of black rockfish into § 663.23 in order to consolidate all tribal regulations into one section. In addition, the harvest guideline is changed from a harvest guideline for all rockfish to one for black rockfish for the reason explained in the proposed rule. When the current tribal rockfish regulation was adopted, the only tribal fishery that harvested rockfish was the hook-and-line fishery. This rule modifies the current regulation to clarify that the harvest guideline only applies to the hook-and-line fishery. Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation, and will be subject to the trip landing and frequency and size limits applicable to the limited entry fishery.

Allocation of Pacific Whiting to the Makah

In June of 1995, the Makah informed NMFS and the Council that the Tribe intends to exercise its treaty rights to harvest Pacific whiting, *Merluccius productus.* At the August 1995 Council meeting, the Makah requested that 25,000 mt of whiting be set aside from the 1996 U.S. harvest guideline for exclusive harvest by the Makah. The Council voted 7–4 to recommend that NMFS not recognize that the Washington coastal treaty tribes have treaty rights to Pacific whiting, and not set aside any whiting for harvest by the Makah in 1996.

NMFS cannot accept the Council's recommendation because it is contrary to treaty fishing rights law as construed by the Federal courts. Consequently, NMFS published a proposed rule to accommodate the tribal right to harvest groundfish, and sought public comment on the amount of whiting that should be set aside for exclusive harvest by the Makah in 1996.

NMFS and the Makah continue to disagree on the appropriate quantification of the Makah treaty right to Pacific whiting. The basis for this disagreement is explained in the proposed rule at 61 FR 10305 (March 13, 1996).

At the October 1995 Council meeting, the Makah proposed a quantification of their treaty entitlement that would have given the Makah 25 percent of the U.S. harvest guideline. Based on a 1996 U.S. harvest guideline of 212,000 mt, the Makah proposal would have resulted in an allocation to the Makah of 53,000 mt in 1996. NMFS has proposed a biomass-based quantification of the Makah treaty entitlement that is linked to the Makah U&A and adjusted according to the conservation necessity principle. The NMFS proposal would have allocated 6.5 percent of the U.S. harvest guideline to the Makah in 1996, or 13,800 mt. During discussions between NMFS and the Makah, the Makah advanced a compromise 1-year interim allocation of 15,000 mt. The proposed 15,000-mt allocation did not reflect either the NMFS or the Makah view of the amount of whiting to which the Makah are entitled under the Treaty. It represented a compromise proposal by the Makah that reflected the minimum amount of whiting necessary to initiate a fishery in 1996 by the Tribe.

In view of continuing differences between the Makah and NMFS regarding the appropriate quantification of the Makah treaty entitlement, and in recognition of the unresolved legal and technical difficulties in quantifying the treaty right to Pacific whiting, NMFS has decided to implement the proposed compromise and allocate 15,000 mt to the Makah for 1996 only. Based on the U.S. harvest guideline of 212,000 mt, the allocation of 15,000 mt to the Makah is slightly greater than the 13,800 mt that would have been allocated under the NMFS proposal and much less than the amount originally proposed by the Makah. NMFS believes that the 1-year compromise proposal gives NMFS and the Makah additional time to determine an appropriate quantification of the Makah treaty entitlement. To that end, the Makah have initiated a subproceeding in *United States* v. *Washington* (*subproceeding 96–2*) intended to resolve whether the Makah have a treaty right to whiting and the quantification of that right. The 15,000-mt compromise applies to the 1996 fishing year only and is not intended to set a precedent regarding either quantification of the Makah's treaty entitlement or future allocations.

The Makah also plan to harvest midwater species other than whiting, using trawl gear. Rather than attempt to quantify its treaty entitlement to these species at this early point in the process,

the Tribe has agreed that its vessels will trawl for these other midwater species in conformance with trip limits established for the limited entry fishery. NMFS agrees that this is a reasonable accommodation of the treaty right, particularly in view of the data limitations and the uncertainty in quantifying treaty rights.

Response to Comments

NMFS received 17 comments on the proposed rule from: The States of Washington and Oregon; three Washington coastal treaty tribes; and members of the non-Indian fishing and processing community who currently fully utilize the U.S. harvest guideline. Many comments addressed two major issues: (1) Whether the Washington coastal treaty tribes have a treaty entitlement to Pacific groundfish, particularly Pacific whiting; and (2) the appropriate quantification of the treaty right. NMFS received other comments regarding the impacts on non-Indian fishers, processors, coastal communities, the whiting resource, and bycatch, particularly chinook salmon listed under the Endangered Species Act (ESA); NMFS' description of tribal U&A; the implementation process; and the framework.

*Treaty Entitlement*

Many commenters asserted that the tribes do not have a treaty right to whiting, because they did not harvest whiting at the time the Stevens treaties were signed. NMFS disagrees with this statement. The treaties themselves refer to the right of taking fish, without any species limitation. As explained in the proposed rule, in the shellfish subproceeding (89–3) in *United States* v. *Washington*, 873 F. Supp. 1422 (W.D. Wash., 1994) (appeals pending), the court found that the right to take fish that was reserved in the treaties must be read to cover fish without any species limitation. The court found:

> The fact that some species were not taken before treaty time—either because they were inaccessible or the Indians chose not to take them—does not mean that their *right* to take such fish was limited * * * Because the ''right of taking fish'' must be read as a reservation of the Indians' pre-existing rights, and because the right to take *any* species, without limit, pre-existed the Stevens Treaties, the Court must read the ''right of taking fish'' without any species limitation. [emphasis in original] *Id.* at 1430

Commenters argue that this case is on appeal and dealt with shellfish, not groundfish; therefore it is inappropriate for this ruling to be applied to whiting. The decision has not been stayed pending appeal. As such, NMFS has no choice but to apply the law consistent with interpretations by the District Court.

In addition, the Makah have submitted evidence supporting the conclusion that the Makah did harvest whiting at treaty time. Dr. Barbara Lane, an anthropologist and expert witness in *United States* v. *Washington*, states that ''a lack of documentation in the published literature is of no help in assessing whether or not the Makah fished *M. productus* at treaty times.'' She goes on to say:

> The best that can be done is to interpolate from archeological evidence, the available ethnographic record, linguistic knowledge, oral history, and ethnology. Based upon these sources, which comprise the best available evidence, it is my opinion that if *M. productus* was accessible to Makah fishermen at treaty time, this species would have been utilized.
>
> Letter from Barbara Lane to Marc D. Slonim (legal counsel for the Makah tribe), February 29, 1996.

Dr. Gary Wessen (Wessen & Associates, Archeological Services), in comments submitted by the Makah, reviewed some of the available archeological evidence and concluded:

> Use of this fish [*M. productus*] probably extends over much of the region and has been occurring for a considerable period of time. Within the context of this regional pattern, the case for Makah use of hake/whiting is quite good. At least one site in Makah territory contains the bones of this fish, as do other sites which represent close relatives of the Makah.
>
> Letter from Gary C. Wessen, Ph.D. to Marc D. Slonim, November 24, 1995.

Several commenters argued that the Makah must follow the procedure set out by Judge Boldt in one of his early decisions at 459 F. Supp. 1020, 1037–38, where the court said prior to exercising off-reservation fishing rights to non-anadromous fish and shellfish, a tribe shall present *prima facie* evidence of such right, ''pending final determination of tribal treaty-right entitlement to non-anadromous fish and shellfish.'' NMFS believes that this does not apply to the whiting fishery. First, as explained above, the *United States* v. *Washington* court has already ruled that tribes have treaty rights to all fish available in their U&A; thus the treaty-right entitlement has been determined. Second, in the halibut subproceeding in *United States* v. *Washington*, when Judge Rothstein determined that the tribes have treaty rights to halibut, she did not order NMFS to start accommodating the treaty right because she had previously judicially determined they had a right. Rather, she found that the Makah treaty right had been violated in past regulatory schemes. The necessary implication of this finding is that the treaty right should have been accommodated prior to her judicial determination. *Makah Indian Tribe* v. *Brown*, No. C85–1606R, and *United States* v. *Washington*, Civil No. 9213—Phase I, Subproceeding No. 92–1 (W.D. Wash., Order on Five Motions Relating to treaty Halibut Fishing, Dec. 29, 1993). Third, the judicial procedure was set up in the early days of the treaty fishing rights litigation, in relation to fishing within the jurisdiction of the State of Washington (which did not recognize the fishing rights in question) in order to ensure an orderly implementation of new fisheries. The whiting fishery is primarily under the jurisdiction of NMFS, which recognizes the treaty right and which is working with the tribe to implement an orderly fishery. Thus, the *United States* v. *Washington* procedure is not required for Federally regulated fisheries to the extent that there is no disagreement between the tribes and the Federal government. The administrative procedures set up by this rule should ensure the orderly implementation of new treaty fisheries without the need to resort to the courts except in unusual circumstances.

Four commenters agreed with NMFS that the Makah have a treaty right to harvest whiting.

*Moderate Living*

One commenter argued that the total treaty right to a ''moderate living'' has been satisfied; therefore no extension of the tribal fishery is authorized. The commenter is referring to what has become known as the ''Moderate Living Standard'', which was set out by the Supreme Court as follows:

> It bears repeating, however, that the 50% figure imposes a maximum but not a minimum allocation. As in *Arizona* v. *California* and its predecessor cases, the central principle here must be that the Indian treaty rights to a natural resource that once was thoroughly and exclusively exploited by the Indians secures so much as, but no more than, is necessary to provide the Indians with a livelihood—that is to say, a moderate living. Accordingly, while the maximum possible allocation to the Indians is fixed at 50 percent [footnote omitted], the minimum is not; the latter will, upon proper submissions to the District Court, be modified in response to changing circumstances. If, for example, a tribe should dwindle to just a few members, or if it should find other sources of support that lead it to abandon its fisheries, a 45 percent or 50 percent allocation of an entire run that passes through its customary fishing grounds would be manifestly inappropriate because the livelihood of the tribe under those

circumstances could not reasonably require an allotment of a large number of fish.

*State of Washington et al.* v. *Washington State Commercial Passenger Fishing Vessel Association, et al.* 443 U.S. 658 at 686–687.

The commenter refers to an affidavit of Professor Robert Thomas, Associate Professor of Economics, University of Washington, that compares the income of the Makah Tribe and its households with three definitions of the poverty level. Professor Thomas concludes that the average Makah household lives above the poverty level, and, therefore, the Makah Tribe enjoys a livelihood, or a moderate living. A similar analysis, also prepared by Dr. Thomas, was submitted to, and rejected by, the court in the shellfish subproceeding.

The Court finds that no persuasive evidence has been presented to the Court by the State and the intervenors showing that a substantial change in circumstances has occurred, [fn omitted] so that the Tribes could maintain a moderate living without the exercise of their fishing rights, or that the Tribes have voluntarily abandoned their fisheries. Therefore, the Court declines to apply the Moderate Living Doctrine to these facts.

873 F.Supp at 1445.

In the shellfish case, the tribes submitted a report by Dr. Phil Meyer, entitled, ''Analysis of the Material Circumstances of 17 Washington Tribes'', which included information on the Makah tribe. The court accepted Dr. Meyer's analysis as more appropriate than Dr. Thomas's, and declined to apply the Moderate Living Doctrine to reduce the tribes share of fish. *Id.* at 1446.

The Makah, in their comments, submitted information showing that the Makah are a geographically isolated community, which lacks alternative economic opportunities. Unemployment is nearly twice that of Clallam County (where the Makah reservation is located) and a 1988 survey of 102 Makah households showed that 63 percent considered fishing to be the main occupation of their household. The Makah commercial salmon catch has declined by approximately 87 percent for chinook and coho salmon and 20 percent for chum salmon over the last 5 years. The Makah's gross revenues from all salmon fisheries have declined by approximately 72 percent over the last 5 years. The Makah also referred to the ruling in the shellfish subproceeding explained above.

In conclusion, NMFS does not believe there is sufficient evidence that the Moderate Living Doctrine requires reduction of the tribal share of the resource. In any event, that issue must be presented to the court in *United States* v. *Washington*, subproceeding 96–2 for determination before the treaty share is reduced by application of the Moderate Living Doctrine.

*Equitable Considerations*

One commenter argued that Judge Rafeedie's consideration of equitable factors in the shellfish subproceeding should be taken into account here. The Stevens treaties guaranteed the tribes the right to take shellfish, except from beds that have been ''staked or cultivated.'' In the shellfish subproceeding Judge Rafeedie adopted a broad definition of ''cultivated'' bed with regard to beds found on private property. His ruling only applies to the activities of a private property owner in making his tidelands more productive of shellfish; in that case the Judge ruled that the tribes cannot reap the fruits of the grower's labors in farming a particular piece of private property. In the case of whiting, there are no private property rights involved. Whiting is a common property resource, just like salmon and halibut. While the tribes have not harvested whiting in recent years, that does not defeat their treaty right. Judge Rafeedie in the shellfish decision explained

The Supreme Court and the Ninth Circuit have consistently held that time-related defenses such as latches, waiver, estoppel, and adverse possession are not available to defeat Indian treaty rights. [citations omitted]

873 F. Supp. 1422 at 1446.

*Definition of Tribal U&A*

NMFS received comments on the tribes' U&A from the States of Washington and Oregon, from three coastal tribes, and from two individuals.

One commenter argued the Makah U&A could not extend beyond 3 miles (4.83 km), the limit of the territorial sea at the time of the treaties. The Federal Court, however, specifically found the Makah U&A extended 40 miles (64.37 km) offshore to the limits of United States maritime jurisdiction. See *United States v. Washington,* 626 F. Supp. 1466, 1467 (W.D. Wash., 1982), aff'd 730 F.2d 1314 (9th Cir. 1984).

Under this rule, NMFS recognizes the same U&A areas that have been implemented in Federal salmon and halibut regulations for a number of years. The States and the Quileute tribe point out that the western boundary has only been adjudicated for the Makah tribe. NMFS agrees. NMFS, however, in establishing ocean management areas, has taken the adjudicated western boundary for the Makah tribe, and extended it south as the western boundary for the other three ocean treaty tribes. NMFS believes this is a reasonable accommodation of the tribal fishing rights, absent more specific guidance from a court. NMFS regulations, including this regulation, contain the notation that the boundaries of the U&A may be revised by order of the court.

The State of Oregon points out that the western boundaries for the Hoh, Quileute, and Quinault have not been specifically adjudicated. The State goes on to argue that because Judge Boldt, in another portion of his opinion, states that the case is limited to adjacent offshore waters that are within the jurisdiction of the State of Washington, the U&A cannot extend more than 3 miles (4.83 km) from shore. NMFS disagrees with this interpretation because, as explained above, the court has specifically found the Makah U&A extends offshore 40 miles. Thus, the State's reading of Judge Boldt's language is too constraining.

The Quinault Nation points out the northern and southern boundaries of the Quileute Tribe's U&A described in the proposed rule (and finalized in this rule) are currently at issue in subproceeding No. 96–1 in *United States* v. *Washington*. The tribe does not object to the description of the U&A contained in this regulation as long as it is without prejudice to proceedings in *United States* v. *Washington*. NMFS agrees that this rule is without prejudice to the court proceedings. As stated above, NMFS will modify the boundaries in the regulation consistent with orders of the Federal Court. NMFS has not taken a position on the Quileute U&A boundaries in the pending subproceeding.

The Makah Tribe supports the rule, and does not object to the description of its U&A.

Another commenter argued that the boundaries of the U&A for salmon and halibut are not necessarily relevant to the Pacific whiting resource. NMFS disagrees. Judge Rafeedie, in the shellfish subproceeding (83–6) in *United States* v. *Washington* found ''that, as a matter of treaty interpretation, the Tribes' usual and accustomed grounds and stations cannot vary with the species of fish.'' 873 F. Supp. 1422 at 1431 (W.D. Wash., 1994)(appeals pending). The commenter also doubted whether the tribes usually and customarily utilized their canoes in fishing operations 20 miles (32.19 km) and beyond the shorelines. The explanation of the western boundaries is set out above.

*Magnuson Act*

Two commenters argued that NMFS does not have authority under section

305(d) of the Magnuson Act to promulgate this rule. NMFS disagrees. The Magnuson Act at section 305(d) gives the Secretary general authority to carry out any fishery management plan in accordance with the provisions of the Magnuson Act. Section 303(d) requires that any management measure be consistent with other applicable law. One of the laws applicable to the groundfish FMP is the treaty right to groundfish. Fishery management plans and implementing regulations must be consistent with Indian treaty rights. *Washington State Charterboat Ass'n v. Baldrige,* 702 F.2d 820 at 823 (9th Cir. 1983); *Hoh Indian Tribe* v. *Baldrige,* 522 F.Supp. 683 at 685 (W.D. Wash., 1981); *Washington Crab Producers, Inc.* v. *Mosbacher,* 924 F.2d 1438, 1439 (9th Cir. 1990). The FMP itself acknowledges treaty rights, and accommodations for treaty rights to sablefish and black rockfish have been made under existing regulations. However, the FMP's implementing regulations (codified at 50 CFR part 663) currently lack an explicit provision requiring accommodation of treaty rights and a specific process for doing so. NMFS is remedying that deficiency through this regulation.

Two commenters stated that if there were a treaty right, the appropriate procedure for implementing the tribal allocation would be a Secretarial amendment to the FMP. This procedure is available to the Secretary; however, implementing the tribal groundfish rights does not require NMFS to amend the FMP. As explained above, the framework established by the regulation is consistent with the plan, and NMFS has adequate implementing authority under the Magnuson Act.

One commenter argued that the plan amendment process should have been utilized, because numerous applicable laws that govern the process were not complied with here. NMFS disagrees. The other procedural laws to which NMFS assumes the commenter was referring have been complied with, as explained below. The same suite of laws applies to a regulation whether it initially implements a plan or amendment, or whether it is a regulatory amendment to regulations implementing an already approved plan; the scope and substance of the rule controls what laws apply.

One commenter argued that to make an Indian treaty allocation, Indian treaty fishing rights had to be included in the FMP. The commenter noted that the FMP does not include provision to allocate whiting under Indian Treaties, and yet the FMP was adopted and approved as consistent with the Magnuson Act years ago. In fact, the FMP addresses treaty fishing rights, although not as concretely and explicitly as this rule. Section 11.7.6 of the FMP states that some tribes have a treaty right to fish in areas covered by the FMP, that at the time the FMP was prepared, the Makah sablefish fishery was the only active tribal groundfish fishery known by the Council, and that the FMP may need to be amended in the future to address other fisheries that may develop. In section 14.1.5 the FMP acknowledges that the treaty Indian fisheries are not covered by the limited entry program. The FMP acknowledges treaty fishing rights. The FMP also indicates that it may need to be amended in the future, but does not require such an amendment. The rights to both sablefish and black rockfish have been accommodated under this FMP. As the law has developed in recent years (see above), it is appropriate to further implement this FMP consistent with the developing law regarding treaty rights.

Many commenters argued that this rule is inconsistent with National Standard 4, which requires that conservation and management measures be fair and equitable, reasonably calculated to promote conservation; and carried out in such manner that no particular individual, corporation or other entity acquires an excessive share of such privileges. This framework and allocation implements a treaty fishing right, which is not the same as other discretionary allocations the Council and NMFS might adopt. NMFS has determined this rule is consistent with National Standard 4, and is required by the treaties with the Northwest tribes, which are ''other applicable law'' with which management measures must be consistent.

Other commenters argued that this rule violates other national standards, because it is not based on the best scientific evidence available, however, they did not submit information NMFS had not considered. NMFS has gathered the best scientific information known to the agency.

This allocation does not discriminate between residents of different states. While the affected treaty tribes are located in the State of Washington, the criteria of the allocation is not state residence, it is treaty tribe status. This is no different than the longstanding allocation of salmon to the treaty tribes.

One commenter claimed that allocating Pacific groundfish to the treaty tribes contravenes the Council and the fishing industry's attempts to reduce overcapitalization in the groundfish industry. NMFS agrees that the new tribal fishers will increase the groundfish fleet, especially for whiting. However, as described above, this framework and allocation implements a treaty fishing right, which is not the same as other discretionary allocations the Council and NMFS might adopt. NMFS has determined that this rule is required by the treaties with the Northwest tribes, which are ''other applicable law'' with which other management measures must be consistent.

Commenters argued allocating groundfish to treaty tribes in their U&A is not managing groundfish as a unit throughout its range, and is in violation of National Standard 3. It does manage throughout its range because it takes all groundfish into account. Mere allocation in relationship to a specific area does not violate National Standard 3. In addition, National Standard 3 says a stock of fish should be managed throughout its range ''to the extent practicable.'' Since this rule implements a treaty right, which must be accommodated, that right would have to be considered in determining whether a management measure is practicable.

One commenter argued that this rule has economic allocation as its purpose, in violation of National Standard 5. National Standard 5 only prohibits management measures that have economic allocation as their sole purpose. The purpose of this regulation, however, is implementation of treaty fishing rights.

One commenter argued that the Makah petition for whiting did not comply with requirements to formally commence Administrative Procedure Act (APA) rulemaking. While this rule is not in response to a formal APA petition, it meets the requirements for rulemaking set forth in 5 U.S.C. 553.

Some commenters argued that because the Council voted to deny the Makah a treaty allocation, NMFS has no authority to overrule the Council vote. NMFS disagrees with this statement.

The determination of whether the tribes have a treaty right is a legal determination. NMFS, not the Council, is charged with determining whether FMPs and management measures comply with other applicable law. See 16 U.S.C. 1854(a)(1)(B). Indian treaty rights are constitutionally recognized as the ''supreme law of the land'' and thus are ''other applicable law.'' NMFS, like all Federal agencies, has an obligation to ensure that Indian treaty rights are not abrogated or infringed absent a specific Act of Congress.

One commenter asserted that NMFS had not complied with the requirements of E.O. 12866 once the Office of

Management and Budget (OMB) had determined that the proposed regulation was ''significant'' under that executive order. NMFS disagrees. NMFS complied with the submission requirements of section 6(a)(3)(B) of E.O 12866 by providing OMB the appropriate documentation for review after being informed that OMB determined the proposed regulation to be ''significant.''

*Tribal Authority*

The Quileute Tribe commented:

The proposed rule, while recognizing treaty rights to groundfish, fails to recognize the sovereign status and co-manager role of Tribes over shared federal and Tribal resources. Paragraph (d) gives complete process control to NMFS. The paragraph should be rephrased to implement a Federal-Tribal consensus process in the implementation of all treaty allocations or regulations.

NMFS has revised paragraph (d) of § 663.24 by adding two final sentences as follows:

The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

The Quinault Nation commented:

§ 663.24(i) of the proposed rule provides that fishing by members of Washington Coastal Tribes for species not covered by an allocation or special tribal regulation is subject to the same regulations as fishing by non-treaty fishers. This provision ignores the well-established conservation limitation on both federal and state regulation of treaty hunting and fishing activities. The government bears the burden of demonstrating that regulations which it seeks to apply to Indians exercising treaty hunting and fishing rights are reasonable and necessary for conservation. See, *United States* v. *Williams*, 898 F.2d 727, 729–30 (9th Cir. 1990); *United States* v. *Sohappy*, 770 F.2d 816, 824 (9th Cir. 1985).

NMFS should identify, in consultation with affected tribal governments, those general regulations applicable to species for which there is no allocation or special regulation accommodating tribal rights, whose application to treaty Indians NMFS believes to be reasonable and necessary for conservation. Blanket application of general regulations whose application to treaty Indians has not been demonstrated to be reasonable and necessary for conservation is an impermissible effort to avoid the limitation on NMFS authority to regulate treaty Indian fishing and violates the due process rights of treaty fishers to proper notice of those regulations which NMFS may lawfully enforce.''

In the situation addressed by the comment (where groundfish species within a tribe's U&A are not covered by an allocation or regulation under § 663.24), NMFS believes that application of the Federal groundfish regulations in 50 CFR part 663 to fishing by tribal members is reasonable and necessary for conservation.

Under this rule, the four affected Indian tribes may request an allocation for a new species; then, an appropriate allocation would be determined and announced in NMFS's annual specifications. Treaty fisheries for that species are then managed pursuant to tribal regulations and any additional regulations promulgated by NMFS under § 663.24. Until a tribe applies for an allocation and implements tribal regulations, fishing by tribal members would be unregulated unless it were controlled by the Federal groundfish regulations. In the absence of applicable tribal or state regulations, the Federal regulations, which include management measures necessary to keep the fishery within the harvest guidelines established for the numerous groundfish species, are reasonable and necessary for conservation. This rule ensures orderly implementation of new fisheries for which the exact quantification of the treaty right has not been determined.

*Quantification of the Treaty Right*

Three commenters agreed with NMFS that the proportion of the coastwide Pacific whiting biomass found in the Makah U&A is the appropriate basis for determining the amount of Pacific whiting to allocate to the Makah. However, several of the same commenters took issue with NMFS' application of a 1.375 exploitation rate multiplier in recognition of the conservation necessity principle. Noting that the 1.375 multiplier was based on the observed exploitation rate in the Eureka International North Pacific Fisheries Commission (INPFC) area in 1989, one commenter argued that the multiplier was incorrect for two reasons. First, the Eureka area provides only 2 percent of the catch at a measured 33 percent exploitation rate, whereas the remaining areas provide 98 percent of the catch at a 24 percent exploitation rate. Second, the biomass estimates are made in the summer but the Eureka area fishery occurs in the spring. The biomass estimates show a relatively low biomass in the Eureka area because whiting have migrated north after the spring fishery. The commenters assume that the Eureka area had a higher biomass at the time of the fishery, and, therefore, the multiplier is overestimated. Another commenter noted that the 1992 and 1995 hydroacoustic biomass surveys have shown that the 1989 and earlier surveys and biomass estimates missed a substantial offshore biomass. If earlier surveys are corrected for the missing offshore biomass, the exploitation rate in the affected areas would be reduced from what was estimated in 1989.

NMFS agrees that the ''calculation of the exploitation rate by area in the 1989 and 1992 survey years is less precise because the timing of the U.S. fishery changed. In 1989, the at-sea fishery was completed in June, prior to the start of the hydroacoustic survey. The 1989 data indicate a higher exploitation rate in the Eureka area; however, this exploitation rate would overestimate the true rate if there were further northward movement of fish before the survey occurred'' (September 27, 1995, memorandum from Richard Methot to Bill Robinson). NMFS also agrees that hydroacoustic surveys prior to the 1992 survey likely missed a substantial biomass offshore of the survey area. The United States and Canada, pursuant to the negotiation of a U.S.-Canadian bilateral whiting allocation, have tasked a joint technical team to develop an offshore expansion factor that can be applied to survey results between 1977 and 1989 to correct the survey results for the unsurveyed biomass. Thus, NMFS agrees that the 1.375 multiplier used by NMFS in its proposed quantification of the Makah whiting entitlement might later be shown to be too high. NMFS notes, however, that in 1989, 51 percent of the catch came from the Eureka area, not the 2 percent claimed by the commenter.

The Makah comments claim that recent ''allocations to shore-based processing facilities have had the effect of concentrating the harvest in the vicinity of those facilities,'' presumably resulting in higher exploitation rates in areas smaller than the Eureka INPFC area. The Makah comments go on to say that ''NMFS has made no effort to evaluate the extent to which exploitation rates in areas the size of the Makah fishing grounds have deviated from the average'' and that this type of calculation could be used as a basis for a larger expansion factor. NMFS agrees that it has not developed exploitation rate data for any specific small areas of the coast, including the Makah U&A. The 1.375 multiplier used by NMFS was calculated using the larger INPFC catch reporting and stock assessment areas. NMFS agrees that calculations using smaller areas, if possible, could result in an expansion factor larger than 1.375. As stated earlier, a major reason that NMFS is implementing the 15,000-mt compromise for 1996 is to provide additional time to deal with the extremely complex task of relating the

biology, migration, and conservation of Pacific whiting to the legal principles necessary to establish a treaty-based allocation that is consistent with the ''conservation necessity principle.''

One commenter argued that since the average whiting catch taken from the Makah U&A is 9.9 percent of the U.S. harvest guideline, the Makah should be allocated no more than 4.95 percent of the U.S. harvest guideline (50 percent of 9.9). This is the allocation method (based on historical harvest) used for halibut in *Makah* v. *Brown*. Since the historical halibut harvest in the Tribe's U&A was allowed to greatly exceed the biomass, the court assumed that it reflected a safe level of harvest. For whiting, the historical harvest and biomass in the U&A are roughly equivalent. However, NMFS has no evidence that a somewhat higher level of harvest from the U&A cannot be accommodated without triggering conservation concerns. Thus, basing the allocation on historical harvest in the U&A does not properly take into account the ''conservation necessity principle''.

Another commenter argued that the Makah allocation should be based only on the proportion of the biomass found in the Tribe's U&A. This argument was rejected in *Makah* v. *Brown*, specifically because it did not take into account the ''conservation necessity principle.'' In making the allocation to the Makah, NMFS must, by law, take into account the ''conservation necessity principle.'' How to apply the ''conservation necessity principle'' to the biology of whiting is a complex and difficult issue over which NMFS and the Makah do not agree. NMFS is implementing the 15,000-mt compromise proposal to afford more time for NMFS to consult with other Federal agencies, the Tribes, and the States to resolve this issue.

One commenter argued that due to the migratory behavior of whiting, they are available in the Makah U&A only 7 months of the year. As a result, the commenter proposed that the Makah treaty entitlement be 50 percent of 7/12 of the biomass in the Makah U&A. NMFS disagrees. There are no precedents in treaty law pertaining to either Pacific halibut or salmon that use seasonality as a discounting factor in determining the treaty entitlement. Pacific salmon, for example, may be available in a tribe's U&A for only a portion of the year, but that has never reduced the tribal share. The best available information regarding the amount of whiting in the tribal U&A are the triennial hydroacoustic surveys, which likely measure the maximum biomass in the area since the survey occurs at the peak of the northward summer migration.

The Makah in their comments also raise the issue of migration in the context of asserting that dense concentrations of whiting occur both south and north of the Makah U&A and may either move in and out or pass through the Tribe's area during the course of their northerly migration. As mentioned above, other than the triennial survey, there is little or no data regarding the proportion of whiting that pass either through or offshore of the Makah U&A during other times of the year or during the northerly migration. Based on recent surveys that have identified substantial biomass offshore of what was once thought to be the range of whiting biomass, it is reasonable to conclude that a significant proportion migrates seaward of (outside) the tribal area. However, the triennial survey remains the only quantitative estimate to date, and should be considered the best available information.

NMFS continues to believe that the appropriate method to quantify the Makah whiting treaty entitlement is to rely on biomass and harvest estimates for Pacific whiting, which are the only data available, and to base the Makah treaty entitlement on the whiting biomass in the Makah U&A, taking into account the conservation necessity principle. *Makah* v. *Brown* held that:

> In formulating his allocation decisions, the Secretary must accord treaty fishers the opportunity to take 50 percent of the harvestable surplus of halibut in their usual and accustomed fishing grounds, and the harvestable surplus must be determined according to the conservation necessity principle.

*Makah Indian Tribe* v. *Brown*, No. C85–160R, and *United States* v. *Washington*, Civil No. 923—Phase I, Subproceeding No. 92–1 (W.D. Wash., Order on Five Motions Relating to treaty Halibut Fishing, Dec. 29, 1993).

This determination is difficult because, with the exception of *Makah* v. *Brown* (the Pacific halibut case), most of the legal and technical precedents are based on the biology, harvest and conservation requirements for Pacific salmon, which are very different from those for Pacific whiting. Quantifying the tribal right to whiting is also complicated by data limitations, and by the uncertainties of Pacific whiting biology and conservation requirements.

The Makah Tribe has not stated what it believes is the appropriate method to use in quantifying the treaty right. The Makah initially proposed an allocation that would result in their harvesting up to approximately 25 percent of the total U.S. harvest guideline in the Makah U&A. After further discussions with NMFS, the Makah made a compromise proposal for an allocation of 15,000 mt for 1996.

The Makah comments on the proposed rule do not offer a definitive method of quantifying the tribal treaty right, but instead focus on criticizing the basis for the NMFS proposed method. The Makah agree that their treaty right affords the tribe the opportunity to take 50 percent of the harvestable surplus in their U&A grounds and that the harvestable surplus must be determined in accordance with the conservation necessity principle. The Makah argue that, before NMFS can limit the Tribe's harvest, NMFS must demonstrate that its determination of the harvestable surplus ''is required to prevent demonstrable harm to the actual conservation of fish.'' See, *United States* v. *Washington*, 384 F. Supp. 312, 415 (W.D. Wash., 1974). The Makah claim that NMFS has not demonstrated that it is necessary for conservation to limit the harvest in the Makah area to the amount set by the NMFS' formula. The Makah also claim that NMFS has not applied the same management principle it invokes for the Tribe's fishery to non-treaty fisheries.

NMFS' proposal, described in detail in the proposed rule, is to quantify the Tribe's treaty right by a method that is linked to the biomass within the Tribe's U&A grounds (9.4 percent of the U.S. portion of the biomass), enlarged by a multiplier, currently estimated as 1.375, which represents an estimate of the highest harvest level that can be sustained over the long term without raising conservation concerns. Whiting stock assessments (which are used to establish the annual ABC and harvest guideline) assume that whiting are exploited at the same rate throughout the management area. NMFS believes that this assumption of uniform exploitation rate is the safest biological assumption until it can be demonstrated that a different geographic pattern of harvest is not harmful.

If the quantification of the treaty right were based solely on the Makah arguments that NMFS must show demonstrable harm to resource before limiting the Makah harvest, given the biology and biomass distribution of whiting, the Makah could logically argue that the treaty right entitled the tribe to 50 percent of the entire coastwide harvest (between Central California and the U.S.-Canadian border) despite the fact that only about 10 percent of both the biomass and the historical harvest occur within the Makah U&A. NMFS does not believe

that this is an appropriate application of the conservation necessity principle for the purpose of determining a treaty entitlement, because it does not take into account the amount of fish available in the U&A and would shift the distribution of a large proportion of the coastal harvest into the Makah U&A, which is a small geographical area (approximately 8.4 percent of the Columbia/Vancouver INPFC areas where most of the whiting harvest occurs).

As stated in the proposed rule, NMFS believes that a high degree of harvest concentration creates a conservation concern if (1) it involves a large fraction of the total harvest, (2) it is a large deviation from the average harvest rate for the fishing area, and/or (3) it will occur indefinitely. Although data are not presently available that would allow NMFS to evaluate exactly the biological effects of the Makah proposal, it raises all three of these concerns.

NMFS acknowledges that many difficult questions have been raised, and that there is much uncertainty regarding what is a complex and difficult technical and legal issue. NMFS believes that allocating 15,000 mt of whiting to the Makah for 1996, although a compromise, provides both a reasonable accommodation of the treaty right and additional time for NMFS to work with other Federal agencies, the States, and the tribes to resolve these issues. Because the 15,000 mt allocated to the Makah for 1996 is not significantly greater than the quantity of fish NMFS would have allocated in 1996 under its own proposal (13,800 mt), NMFS believes that the compromise is within the range of the treaty right. NMFS intends to seek resolution of the treaty right quantification issue either through continued discussions with the tribes or in the context of the recent subproceeding 96–2 in *United States* v. *Washington*.

Three commenters supported the 15,000-mt compromise allocation for 1996.

*Economic Impacts on Non-Indian Fishers, Processors and Coastal Communities*

Four commenters claimed that the framework for allocating groundfish to the tribes and the proposed allocation of Pacific whiting to the Makah would have a significant economic impact on a substantial number of small entities. The commenters estimated that an allocation of between 13,800 and 25,000 mt would reduce the shoreside processing season by 6 to 13 days, which would reduce revenues and employment at shoreside processing plants. One commenter claimed that decreasing the whiting available to the non-Makah fishing industry will adversely impact other groundfish fisheries as a result of transfer of effort to other groundfish species.

NMFS agrees that any allocation of groundfish to the treaty tribes comes at the expense of the fully-utilized non-Indian groundfish industry. The framework procedures implemented by this rule, however, do nothing more than establish the steps by which NMFS implements treaty rights. It determines neither which species will be allocated to the tribes, nor the specific amounts of groundfish to be allocated. As such, the framework procedures have little or no economic impact. At the time that NMFS determines the specific treaty entitlement for each groundfish species, it will assess the economic impacts of the allocation. However, treaty Indian rights are ''other applicable law'' with which Magnuson Act regulatory actions must be consistent.

Allocating 15,000 mt of Pacific whiting to the Makah reduces the non-Indian harvest guideline by about 7 percent. That economic impact, which is divided among the at-sea and shoreside catching and processing sectors and must be considered in the context of fisheries income from non-whiting species during the remainder of the year, is not likely to be significant relative to any single fishing business in 1996. As discussed in the EA/RIR/IRFA, due to a substantial increase in harvestable biomass, all industry sectors will catch and process more whiting in 1996 than during 1995, and this is expected to extend several years into the future. To the extent that other coastal treaty tribes develop a whiting fishery in the future, and depending on how the treaty right to whiting is ultimately quantified, future allocations to the treaty tribes may have a significant economic impact on the non-Indian whiting industry.

*Other Species*

Six commenters argued that NMFS must conduct a formal consultation under Section 7 of the ESA to take into account a localized fishery of a significant nature that could incidentally harvest endangered species of salmon. NMFS conducted a formal Section 7 consultation for the Pacific Groundfish FMP and issued a biological opinion dated August 28, 1992, that determined that fishing activities conducted under the FMP and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. Subsequent reinitiations of the consultation on September 27, 1993, and May 15, 1996, reached the same conclusion. Allocating 15,000 mt of whiting to the Makah for 1996 only does not increase the total U.S. whiting harvest, nor will it result in a whiting catch in the Makah U&A any greater than has occurred periodically in the past. Thus, the impacts on listed salmon species are not likely to be different from those assessed in the current biological opinion.

One commenter expressed concern about stocks of salmon that are subject to management under the Pacific Salmon Treaty, particularly Fraser River salmon stocks. The most abundant Fraser River salmon stocks are sockeye and pink salmon. The salmon bycatch in the whiting fishery is predominantly chinook salmon with some pink salmon during odd-numbered years. Fraser River chinook salmon are far-north migrating stocks which are not abundant in areas where the U.S. whiting fishery occurs, including the Makah U&A. Some Fraser River pink salmon may be taken incidentally during odd-numbered years, but the numbers are not significant. The tribal fishery approved for 1996 should not have impacts greater than what has occurred in the past.

One commenter claimed that the NMFS proposal to manage rockfish under the limited entry trip limit regime (until such time a treaty entitlement and allocation is determined) does not limit the tribal rockfish catch to the amount that can be safely landed from the tribal U&A. The Makah will begin to fish whiting for the first time in 1996. Based on the allocation of 15,000 mt of whiting to the Makah, it is not likely that Makah fishermen will utilize more than two or three trawl vessels to harvest their allocation. Those tribal vessels may also land rockfish when the Makah whiting fishery is closed. NMFS does not believe that three additional fishing vessels landing rockfish under the relatively restrictive limited entry trip limit regime will result in rockfish catches in excess of what can be safely allowed to occur. The fishery is managed under an overall harvest guideline that is designed to protect the stocks. This fishery will operate within that harvest guideline.

Finally, one commenter asserted that there was ''no assurance of the assumption the tribal fisheries will abide by limited entry fishery-trip limit regime(s) for other species.'' NMFS has received assurances from the tribes that tribal fisheries for non-whiting groundfish species with harvest

guidelines and/or trip limits under the limited entry fishery trip limits will abide by those trip limits. NMFS knows of no evidence that the coastal treaty tribes have condoned fishing in violation of either tribal or Federal regulations at any time or for any species.

Secretarial Action

NMFS, acting on behalf of the Secretary, allocates 15,000 mt of Pacific whiting to the Makah Tribe in 1996.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this final rule is necessary for management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

NMFS prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. The EA concludes that the biological and physical impacts are most likely indistinguishable from those of the limited entry trawl-fleet in general for most groundfish species which the Makah have agreed to manage under the current limited entry trawl-trip limits, and for the allocation of 15,000 mt of whiting to the Makah for 1996. On the basis of the EA, the Assistant Administrator concluded that there would be no significant impact on the environment.

NMFS prepared an initial regulatory flexibility analysis as part of the regulatory impact review, which describes the impact of this rule on small entities. That analysis concluded that the allocation of 15,000 mt of Pacific whiting to the Makah in 1996 would result in a decline in whiting revenue to the non-Indian participants in the whiting fishery that would represent between 1 and 3 percent of total gross fishing revenues from all fishing activities. Based on that analysis, the Assistant Administrator determined that neither the framework nor the 15,000-mt whiting allocation to the Makah would have a significant economic impact on a substantial number of small businesses. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. Therefore a final regulatory flexibility analysis was not required.

This final rule has been determined to be not significant under E.O. 12866. The proposed rule on this matter was determined to be significant under E.O. 12866. However, after OMB review of the proposed rule and discussions with the Department of Commerce and the Department of the Interior, it was determined that this final rule is not significant under E.O. 12866.

The Director, Northwest Region, NMFS, initially determined that the proposed rule was consistent with applicable state coastal zone management programs, as required. The initial determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. The State of Oregon concurred with the determination, the State of Washington had no comments, and the State of California did not respond so its concurrence is inferred.

A formal section 7 consultation under the ESA was concluded for the Pacific Coast Groundfish FMP. In a biological opinion dated August 28, 1993, and subsequent reinitiations of consultation dated September 27, 1993, and May 15, 1996, the Assistant Administrator determined that fishing activities conducted under the FMP and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. This rule is within the scope of those consultations.

The 15,000-mt whiting allocation to the Makah in 1996 must be implemented by June 1, 1996, to assure there is enough whiting available to accommodate the tribal allocation without exceeding the U.S. annual harvest guideline. The U.S. whiting harvest guideline currently is divided 60 percent for all fishing vessels and 40 percent for vessels that deliver whiting to shore-based processing plants. The Makah whiting allocation must be deducted from the overall harvest guideline to determine the appropriate allocation for the all-vessel and the shore-based fishery. The fishery for all vessels began May 15 and it is expected that the 60 percent allocation will be reached by June 1. This rule must be effective by June 1 so that the fishery for all vessels can be closed before it exceeds its revised allocation. Therefore, NMFS finds good cause pursuant to 5 U.S.C. 553(d)(3) to implement this rule by June 1, 1996, rather than delaying effectiveness for 30 days after publication in the Federal Register.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 31, 1996.

Gary Matlock,

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 663 is amended as follows:

## PART 663—PACIFIC COAST GROUNDFISH FISHERY

l. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 663.2 the definition for ''commercial harvest guideline or commercial quota'' is added, in alphabetical order, to read as follows:

### § 663.2 Definitions.

* * * * *

*Commercial harvest guideline* or *commercial quota* means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty Indian tribes or for recreational fisheries. Limited entry and open access allocations are based on the commercial harvest guideline or quota.

* * * * *

3. In § 663.7, paragraphs (n) and (o) are revised to read as follows:

### § 663.7 Prohibitions.

* * * * *

(n) Process Pacific whiting in the fishery management area during times or in areas where at-sea processing is prohibited, unless the fish were received from a member of a Pacific Coast treaty Indian tribe fishing under § 663.24. .

(o) Take and retain or receive, except as cargo, Pacific whiting on a vessel in the fishery management area that already possesses processed Pacific whiting on board, during times or in areas where at-sea processing is prohibited, unless the fish were received from a member of a Pacific Coast treaty Indian tribe fishing under § 663.24; when taking and retention is prohibited under § 663.23(b)(4)(iv), fail to keep the trawl doors on board the vessel and attached to the trawls on a vessel used to fish for whiting.

* * * * *

4. In § 663.23, paragraphs (b)(1) and (b)(4)(i) through (b)(4)(iv) are revised to read as follows:

### § 663.23 Catch restrictions.

* * * * *

(b) * * *

(1) *Black rockfish.* The trip limit for black rockfish (*Sebastes melanops*) for commercial fishing vessels using hook-and-line gear between the U.S.-

Canadian border and Cape Alava (48°09′30″ N. lat.), and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), is 100 lb (45.36 kg) or 30 percent by weight of all fish on board, whichever is greater, per vessel per fishing trip.

* * * * *

(4) * * *

(i) *The shoreside reserve.* When 60 percent of the commercial harvest guideline for Pacific whiting has been or is projected to be taken, further at-sea processing of Pacific whiting will be prohibited pursuant to paragraph (b)(4)(iv) of this section. The remaining 40 percent is reserved for harvest by vessels delivering to shoreside processors.

*(ii) Release of the reserve.* That portion of the commercial harvest guideline that the Regional Director determines will not be used by shoreside processors by the end of that fishing year shall be made available for harvest by all fishing vessels, regardless of where they deliver, on August 15 or as soon as practicable thereafter. NMFS may again release whiting at a later date if it becomes obvious, after August 15, that shore-based needs have been substantially over-estimated, but only after consultation with the Council and only to ensure full utilization of the resource. Pacific whiting not needed in the fishery authorized under § 663.24 also may be made available.

(iii) *Estimates.* Estimates of the amount of Pacific whiting harvested will be based on actual amounts harvested, projections of amounts that will be harvested, or a combination of the two. Estimates of the amount of Pacific whiting that will be used by shoreside processors by the end of the fishing year will be based on the best information available to the Regional Director from state catch and landings data, the survey of domestic processing capacity and intent, testimony received at Council meetings, and/or other relevant information.

(iv) *Announcements.* The Assistant Administrator will announce in the Federal Register when 60 percent of the commercial harvest guideline for whiting has been, or is about to be, harvested, specifying a time after which further at-sea processing of Pacific whiting in the fishery management area is prohibited. The Assistant Administrator will publish a document in the Federal Register to announce any release of the reserve on August 15, or as soon as practicable thereafter. In order to prevent exceeding the limits or underutilizing the resource, adjustments may be made effective immediately by actual notice to fishermen and processors, by phone, fax, Northwest Region computerized bulletin board (contact 206–526–6128), letter, press release, and/or U.S. Coast Guard Notice to Mariners (monitor channel 16 VHF), followed by publication in the Federal Register, in which instance public comment will be sought for a reasonable period of time thereafter. If insufficient time exists to consult with the Council, the Regional Director will inform the Council in writing of actions taken.

* * * * *

5. Section 663.24 is added to read as follows:

**§ 663.24 Pacific Coast treaty Indian fisheries.**

(a) Pacific Coast treaty Indian tribes have treaty rights to harvest groundfish in their usual and accustomed fishing areas in U.S. waters.

(b) For the purposes of this part, Pacific Coast treaty Indian tribes means the Hoh, Makah, and Quileute Indian Tribes and the Quinault Indian Nation.

(c) The Pacific Coast treaty Indian tribes' usual and accustomed fishing areas within the fishery management area (FMA) are set out below in paragraphs (c)(1) through (c)(4) of this section. Boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

(1) *Makah*—That portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.

(2) *Quileute*—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat.(Queets River) and east of 125°44′00″ W. long.

(3) *Hoh*—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.

(4) *Quinault*—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long.

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Director, prior to the first of the Council's two annual groundfish meetings. The Secretary generally will announce the annual tribal allocation at the same time as the annual specifications developed under section II.H. of the Appendix to this part. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

(e) *Identification.* A valid treaty Indian identification card issued pursuant to 25 CFR part 249, subpart A, is *prima facie* evidence that the holder is a member of the Pacific Coast treaty Indian tribe named on the card.

(f) A limited entry permit under subpart C is not required for participation in a tribal fishery described in paragraph (d) of this section.

(g) Fishing under this section by a member of a Pacific Coast treaty Indian tribe within their usual and accustomed fishing area is not subject to the provisions of other sections of this part.

(h) Any member of a Pacific Coast treaty Indian tribe must comply with this section, and with any applicable tribal law and regulation, when participating in a tribal groundfish fishery described in paragraph (d) of this section.

(i) Fishing by a member of a Pacific Coast treaty Indian tribe outside the applicable Indian tribe's usual and accustomed fishing area, or for a species of groundfish not covered by an allocation or regulation under this section, is subject to the regulations in the other sections of this part.

(j) *Black rockfish.* Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established annually for the areas between the U.S.-Canadian border and Cape Alava (48°09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), in accordance with the procedures for implementing annual specifications in section II.H of the Appendix to this part. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of this part.

(k) *Groundfish without a tribal allocation.* Makah tribal members may use midwater trawl gear to take and retain groundfish for which there is no tribal allocation and will be subject to the trip landing and frequency and size

limits applicable to the limited entry fishery.

6. The Appendix to this part is amended by revising the first paragraph in section II.H. to read as follows:

Appendix to Part 663—Groundfish Management Procedures

* * * * *

II. * * *

H. * * *

Annually, the Council will develop recommendations for specification of ABCs, identification of species or species groups for management by numerical harvest guidelines and quotas, specification of the numerical harvest guidelines and quotas, and apportionments to DAP, JVP, DAH, TALFF, and the reserve over the span of two Council meetings. The Council also will develop recommendations for the specification of allocations for Pacific Coast treaty Indian tribes as described at § 663.24.

* * * * *

[FR Doc. 96–14141 Filed 5–31–96; 4:42 pm]

BILLING CODE 3510–22–P

## 50 CFR Part 663

**[Docket No. 951227306–6117–02; I.D. 053096A]**

## Pacific Coast Groundfish Fishery; Whiting At-Sea Processing

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

**ACTION:** Fishing restrictions.

**SUMMARY:** NMFS announces the prohibition of further processing at sea of Pacific whiting at 1200 hours (local time) on June 1, 1996, based on its projection that 60 percent (118,200 metric tons (mt)) of the 1996 commercial harvest guideline for Pacific whiting will have been harvested by that time. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and is necessary to provide adequate amounts of whiting for shoreside processors and to achieve the allocations adopted for 1996.

**EFFECTIVE DATE:** May 31, 1996, through 2400 hours (local time) May 14, 1997.

**ADDRESSES:** Submit comments to William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN-C15700, Seattle, WA 98115–0070.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140.

**SUPPLEMENTARY INFORMATION:** On April 13, 1994, NMFS issued regulations (59 FR 17491) to allocate annually the U.S. Pacific whiting harvest guideline in the years 1994 through 1996 between fishing vessels that either catch and process at sea or catch and deliver to at-sea processors (the at-sea sector) and fishing vessels that catch and deliver to processors located on shore (the shore-based sector). In each year, after 60 percent of the annual harvest guideline (or quota) for Pacific whiting has been or is projected to be taken, further at-sea processing of Pacific whiting in the exclusive economic zone is prohibited. This provision was modified in 1996 by a rule that established a framework to implement the Washington coastal Indian tribes' treaty rights to harvest Pacific groundfish. That rule also allocated 15,000 mt of whiting to the Makah Indian Tribe for 1996. The tribal allocation is subtracted from the harvest guideline to derive the ''commercial harvest guideline.'' When 60 percent of the commercial harvest guideline is projected to be taken (by both at-sea and shore-based sectors), at-sea processing of whiting is prohibited. The remaining 40 percent of the commercial harvest guideline is reserved initially for harvest by vessels delivering to shore-based processors. The regulations require that the Assistant Administrator for Fisheries, NOAA, announce in the Federal Register when 60 percent of the commercial harvest guideline has been, or is about to be, harvested, specifying a time after which further at-sea processing of Pacific whiting in the fishery management area is prohibited.

The most recent catch data available on May 31, 1996, indicate that approximately 96,000 mt of Pacific whiting have been harvested through May 28, 1996, and 60 percent (118,200 mt) of the 197,000–mt commercial harvest guideline for Pacific whiting is projected to be reached by 1200 hours (local time) on June 1, 1996.

### Secretarial Action

For the reasons given above, and in accordance with 50 CFR 663.23(b)(4)(i) and (iv), after 1200 hours (local time) on June 1, 1996, at-sea processing of Pacific whiting is prohibited (except for Pacific whiting that was on board the processing vessel prior to that time), and the taking and retaining, or receiving (except as cargo) of Pacific whiting by a vessel in the fishery management area with processed whiting on board is prohibited. Any vessel used to fish for whiting for processing at sea must have its trawl doors on board and attached to the trawl (50 CFR 663.7(o)).

### Classification

The determination that 60 percent of the commercial harvest guideline is about to be harvested is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Director, Northwest Region (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 663.23 (b)(4)(i), and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 31, 1996.

Richard W. Surdi,

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 96–14148 Filed 5–31–96; 3:49 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 61, No. 110
Thursday, June 6, 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.

## FEDERAL LABOR RELATIONS AUTHORITY

### 5 CFR Part 2429

### Miscellaneous and General Requirements

**AGENCY:** Federal Labor Relations Authority.

**ACTION:** Notice of opportunity to provide comments.

**SUMMARY:** The FLRA is considering revising its regulations to permit the filing and/or service of documents by facsimile transmissions. The FLRA is also considering revising the method of determining the date of filing and service of documents by private delivery services. By separate notice published today, the Federal Service Impasses Panel, an entity within the FLRA, is proposing to revise its regulations to, among other things, permit filing and service of documents by facsimile transmissions.

**DATES:** Written comments in response to this notice will be considered if received by close of business on July 8, 1996. Extensions of time will not be granted.

**ADDRESSES:** Mail or deliver written comments to the FLRA, 607 14th Street, NW., Suite 415, Washington, D.C. 20424–0001. Copies of all written comments will be available for inspection and photocopying between 8 a.m. and 5 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** James H. Adams, Acting Director, Case Control Office, FLRA, 607 14th Street, NW., Suite 415, Washington, D.C. 20424–0001, Telephone: FTS or Commercial (202) 482–6540.

**SUPPLEMENTARY INFORMATION:** To assist the Authority, the Office of Administrative Law Judges, the Office of the General Counsel, and the Regional Offices (collectively referred to herein as the ''FLRA'') in determining whether to revise the FLRA's regulations governing the filing and/or service of documents, the FLRA invites responses to the following questions. Questions 1 through 9 concern facsimile transmissions; question 10 concerns private delivery services.

It appears that amending the FLRA's regulations to permit the filing and/or service of documents by facsimile transmissions may be desirable to parties attempting to achieve timely filings and service. However, allowing filing and service by facsimile raises questions relating to such matters as how to determine (and resolve disputes over) the timeliness of filing and/or service; potential difficulties caused by transmission of lengthy documents and/or attachments; and the current requirement that the parties file with the Authority an original and four copies of all documents and attachments. In considering matters such as these, the FLRA invites the views of all interested persons on any or all of the following questions.

1. The number of pages transmitted by facsimile may exceed the capacity of the receiving facsimile equipment, and the time necessary to receive facsimile transmissions of lengthy documents may, in turn, affect others' abilities to use that equipment to complete filings and/or service. In view of these technical concerns, should there be a limitation on the number of pages that may be transmitted to the FLRA and parties by facsimile? If so, what limitations?

2. In addition, or as alternatives, to any page limitations, should the filing and/or service of documents by facsimile transmissions be limited to particular types of cases or documents? For example:

a. Should filing and/or service by facsimile be limited to documents that must be filed within short time limits and that usually are not lengthy, such as requests for extensions of time and motions for reconsideration?

b. Should filing and/or service by facsimile be limited to cases for which filing forms have been developed, such as unfair labor practice charges and representation petitions?

3. Should attachments be permitted to be filed by facsimile? If not, what should be the time limit for the filing of attachments after filing of the main documents by facsimile?

4. What should be the requirements for establishing proof of filing and/or service by facsimile?

5. In order to facilitate the successful transmission of documents by facsimile by, for example, ensuring that the facsimile equipment receiving the documents is functioning properly, should a party be required to obtain ''permission to transmit'' from the FLRA or the parties, as applicable, before filing and/or service? If so, what should constitute proof of permission to file or serve by facsimile transmission? What should be the consequences if permission to transmit is denied?

6. What approach should be used to determine the date of service of a document that is delayed because, for example, a facsimile machine at the receiving office—either the FLRA or the receiving parties—is not functioning properly or because the document is placed in a long queue? Should applicable time limits be tolled or extended? What if the time limit establishes jurisdiction?

7. What should be the procedure when a facsimile transmission is incomplete?

8. Assuming that a ''hard copy'' of a document filed by facsimile transmission is required, what should be the time limit for submitting that copy?

9. Should the FLRA offices and/or the offices of the parties on whom documents are served accept facsimile transmissions on a 24-hour basis or only during regular office hours? If the answer is a 24-hour basis, how should the timeliness of documents be determined when a facsimile transmission is not completed because problems occur, such as an equipment malfunction, outside regular office hours?

10. Currently, the date of filing or service of a document that is filed or served by private delivery service is the date the document is received by the FLRA or the party served. Should the FLRA revise its regulations to provide that the date of filing and/or service of documents that are filed by private delivery service is the date the document is deposited with the private delivery service? How would a party establish proof of filing and/or service by private delivery service?

In addition to the foregoing, please address any other concerns, issues and matters that may arise as a result of revisions to the regulations governing the filing of documents with the

Authority, the Office of Administrative Law Judges, the General Counsel, and the Regional Offices and the service of documents on other parties.

Dated: May 31, 1996.

For the FLRA.

James H. Adams,

*Acting Director, Case Control Office.*

[FR Doc. 96–14099 Filed 6–5–96; 8:45 am]

**BILLING CODE 6727–01–P**

## 5 CFR Parts 2470, 2471, 2472, and 2473

## Federal Service Impasses Panel; General; Procedures of the Panel; Impasses Arising Pursuant to Agency Determinations Not to Establish or to Terminate Flexible or Compressed Work Schedules; Miscellaneous Requirements

**AGENCY:** Federal Service Impasses Panel, FLRA.

**ACTION:** Notice of proposed rulemaking with request for comments.

**SUMMARY:** The Federal Service Impasses Panel proposes to revise its regulations to take advantage of existing technology and to make them more easily understood by agencies, labor organizations, and individuals. The proposed revisions will allow parties to file requests for Panel assistance, and other documents, by facsimile transmission and will generally reorganize and modify those portions of the rules pertaining to filing and service. A proposed new section will establish procedures by which a party to a Panel proceeding may seek to obtain a subpena. These proposed revisions will make the regulations clearer and more user-friendly and will provide quicker access to the Panel's procedures. By separate notice published today, the Federal Labor Relations Authority is providing interested persons with the opportunity to submit written comments concerning, among other things, contemplated revisions to the FLRA's regulations to permit the filing and/or service of documents by facsimile transmissions.

**DATES:** Written comments in response to this notice will be considered if received by close of business on July 8, 1996. Extensions of time will not be granted.

**ADDRESSES:** Mail or deliver written comments to the Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, D.C. 20424–0001. Copies of all written comments will be available for inspection and photocopying between 8 a.m. and 5 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Linda A. Lafferty, Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, D.C. 20424–0001. Telephone (202) 482–6670.

**SUPPLEMENTARY INFORMATION:** The Federal Service Impasses Panel established an internal work group to study and evaluate its regulations. The following section-by-section analysis reflects proposed revisions to Parts 2470—General; Part 2471—Procedures of the Panel; and Part 2472—Impasses Arising Pursuant to Agency Determinations Not to Establish or to Terminate Flexible or Compressed Work Schedules. Following this analysis, an explanation of proposed Part 2473—Miscellaneous Requirements, which contains a new section on subpenas, is provided.

Part 2470

*Section 2470.1*

A new last sentence has been added to reflect the Panel's longstanding policy of encouraging parties to resolve disputes on terms that are mutually agreeable without the need for Panel action.

Part 2471

*Section 2471.2*

A form is available for use in filing a request for assistance with the Panel, but its use is not required, provided that the request includes all of the information set forth in § 2471.3. This provides a filing party with the choice of using the prepared form or submitting the required information in some other format. The Panel's address and phone number are updated to reflect its current office location.

*Section 2471.3*

Requiring the filing party to provide the addresses, phone numbers, and facsimile numbers of the parties to a dispute will facilitate communication between the Panel and parties and will result in enhanced customer service. The revision in paragraph (b)(4) reflects developments in FLRA case law, set forth in *Commander, Carswell Air Force Base, Texas and American Federation of Government Employees, Local 1364,* 31 FLRA 620 (1988), which allows the Panel to resolve duty-to-bargain questions under certain circumstances.

*Section 2471.4*

The Panel's address and phone number are updated to reflect its current office location. The Panel's facsimile number is provided consistent with the changes described in § 2471.5 which allow filing of requests for assistance, and other documents, by this method.

*Section 2471.5*

The Panel recognizes that the use of facsimile systems have become more prevalent in both the private and public sectors and that private delivery services are commonly used as an alternative to the United States Postal Service. After careful consideration, it has been determined that allowing the limited use of these methods of communication will provide parties with quicker access to the Panel's services.

Paragraph (a) establishes the requirements for filing and service of requests for Panel assistance and requests for approval of a binding arbitration procedure. Paragraph (a)(1) allows a filing party to submit a request by a variety of methods, including facsimile transmission and private delivery service. A party filing a request by facsimile transmission must submit an original for the Panel's records, but failure to do so shall not affect the validity of the filing, if otherwise proper. Paragraph (a)(2), which establishes service requirements, provides the same variety of methods as paragraph (a)(1), except that the filing party may use facsimile transmission only with the permission of the person receiving the request.

Paragraph (b) establishes the requirements for filing and service of documents other than requests for assistance. Paragraphs (b)(1) and (b)(2) provide for filing and service of documents with the Panel by the same methods established in paragraph (a)(1) and (a)(2) except that advance permission is required before a document other than a request may be filed with the Panel by facsimile transmission.

Paragraph (d) establishes a method for determining the date of service for documents served by private delivery service or by facsimile transmission.

Paragraph (e) establishes a revised format for documents filed with the Panel; it also states affirmatively that nonconforming documents may, at the Panel's discretion, be rejected.

*Section 2471.6*

Paragraph (a)(2) establishes that when the Panel asserts jurisdiction, it may recommend procedures for impasse resolution and/or directly assist the parties through whatever methods the Panel considers appropriate. The most common procedures used by the Panel are now listed.

Paragraph (b) provides a streamlined approach for handling requests for approval of a binding arbitration procedure. All requests filed under this section will now be approved or disapproved normally within 5 workdays.

*Section 2471.7*

The amended wording clarifies that a notice of hearing is issued to the parties only when the Panel appoints one or more of its designees to conduct a factfinding hearing. Such a notice will not be issued when a hearing is conducted by a private factfinder.

*Section 2471.8*

The heading is changed slightly to clarify that the provisions of the section apply to factfinding, and other, hearings.

*Section 2471.9*

Since the reports and recommendations referred to in § 2471.7, 2471.8, and 2471.9 are issued following a factfinding hearing, the first sentence of paragraph (a) is amended accordingly.

Part 2472

*Section 2472.2*

Former paragraphs (d) through (n) are renumbered to become new paragraphs (e) through (o). A new paragraph (d) is added which defines ''*duly authorized delegatee*'' as ''an official who has been delegated the authority to act for the head of the agency in the matter concerned.'' Since the amended wording of § 2472.4(a)(6) includes this term, its definition is provided in this section for clarity.

New paragraph (j) is amended by eliminating the words ''arbitration hearing'' from the definition of the term ''*hearing.*'' Under 5 U.S.C. 6131, only the Panel, acting as a body, is authorized to decide impasses arising from an agency determination not to establish, or to terminate, a flexible or compressed work schedule. Since arbitration is inconsistent with this statutory requirement, it is not an available procedural option. The reference, therefore, is deleted.

*Section 2472.3*

A form is available for use in filing a request for assistance with the Panel in cases arising under the Federal Employees Flexible and Compressed Work Schedules Act, but its use is not required, provided that the request includes all of the information set forth in § 2472.4. This provides a filing party with the choice of using the prepared form or submitting the required information in some other format. The Panel's address and phone number are updated to reflect its current office location.

*Section 2472.4*

Consistent with the changes to § 2471.3, paragraph (a)(1) requires the filing party to provide the addresses, phone numbers, and facsimile numbers of the parties to a dispute.

The amendment to paragraph (a)(6) reflects the fact that in considering impasses under 5 U.S.C. 6131, the Panel is charged with deciding whether an agency-head finding, that a flexible or compressed work schedule has had, or would have, adverse agency impact, is supported by evidence. This amendment requires the filing party to submit the finding as part of the initial request. In addition, although 5 U.S.C. 6131 identifies ''the head of an agency'' as the individual responsible for making the finding, it is the Panel's experience that in most cases, the finding is actually made by some other individual. This being the case, evidence of a specific delegation of authority is required in order to comply with the terms of 5 U.S.C. 6131.

*Section 2472.5*

These changes are consistent with those set forth in § 2471.4. The Panel's address and phone number are updated to reflect its current office location. The Panel's facsimile number is provided consistent with the changes described in new § 2472.6 which allow filing of requests, and other documents, by this method.

*Section 2472.6*

This section is eliminated because many parties were confused as to their obligations under it. Since new § 2472.7 provides for investigation of requests filed under this part, this section is unnecessary. Former § 2472.7 through 2472.12 are renumbered to become § 2472.6 through 2472.11, respectively.

New § 2472.6 (a) and (b) establish the same methods of filing and completing service as described in § 2471.5 (a) and (b) except that no reference is made to service upon a mediation service, since under this part, mediation is not a prerequisite to seeking Panel assistance. Consistent with the amendments to § 2471.5, paragraph (d) establishes a method for determining the date of service for documents served by private delivery service or by facsimile transmission, and paragraph (e) establishes a revised format for documents filed with the Panel. Paragraph (f) is revised to clarify that a request filed under this part must be perfected before any Panel action will be taken.

*Section 2472.7*

Paragraph (b) is revised to set forth a more expansive list of procedures that are used by the Panel when considering impasses filed under this part.

*Section 2472.8*

Consistent with the amended wording of § 2471.7, this section clarifies that a notice of hearing is issued to the parties only when the Panel appoints one or more of its designees to conduct a factfinding hearing. Such a notice will not be issued when a hearing is conducted by a private factfinder.

*Section 2472.10*

This section is modified to reflect the fact that reports are issued after factfinding hearings and not after informal conferences. This being the case, the reference to informal conferences is deleted.

*Section 2472.11*

Paragraph (b) is modified to clarify that if the finding on which an agency determination under 5 U.S.C. 6131(c)(2) or (c)(3) is based is not supported by evidence that the schedule is likely to cause, or has caused, an adverse agency impact, the Panel shall take whatever action is appropriate. This revision clarifies that the Panel has broad discretion in resolving impasses, as described in 5 U.S.C. 7119.

Part 2473

*Section 2473.1*

This section is added to establish a procedure whereby a party may seek to obtain a subpena requiring the attendance and testimony of witnesses at a hearing and the production of documentary or other evidence. Paragraph (a) identifies those individuals who may issue a subpena. Paragraph (b) describes the circumstances where no subpena is necessary. Paragraph (c) establishes the method and time limits for submitting a request to the Executive Director or appropriate presiding official during a hearing. Paragraph (d) prescribes the contents of the request; sets forth a standard for the granting, or denying, of a request; and establishes service requirements. Paragraph (e) provides a process for challenging a subpena through a petition to revoke. Paragraph (f) deals with enforcement of a subpena, and paragraph (g) establishes additional filing and service requirements. Paragraph (h) provides for witness fees and expenses.

List of Subjects

*5 CFR Part 2470*

Government employees, Labor-management relations.

*5 CFR Parts 2471, 2472, and 2473*

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons set forth in the preamble, the Federal Service Impasses Panel proposes to amend 5 CFR Ch. XIV, Parts 2470, 2471, and 2472, and add 5 CFR Ch. XIV, Part 2473, as follows:

## PART 2470—GENERAL

1. The authority citation for Part 2470 continues to read as follows:

Authority: 5 U.S.C. 7119, 7134.

2. In § 2470.1, a new last sentence is added to read as follows:

### § 2470.1 Purpose.

* * * It is the policy of the Panel to encourage labor and management to resolve disputes on terms that are mutually agreeable at any stage of the Panel's procedures.

## PART 2471—PROCEDURES OF THE PANEL

3. The authority citation for Part 2471 continues to read as follows:

Authority: 5 U.S.C. 7119, 7134.

4. Section 2471.2 is revised to read as follows:

### § 2471.2 Request form.

A form is available for use by the parties in filing a request for consideration of an impasse or approval of a binding arbitration procedure. Copies are available from the Office of the Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, D.C. 20424–0001. Telephone (202) 482–6670. Use of the form is not required provided that the request includes all of the information set forth in § 2471.3.

5. Section 2471.3 is amended by revising paragraphs (a)(1), (b)(1), and (b)(4) to read as follows:

### § 2471.3 Content of request.

(a) * * *

(1) Identification of the parties and individuals authorized to act on their behalf, including their addresses, telephone numbers, and facsimile numbers;

* * * * *

(b) * * *

(1) Identification of the parties and individuals authorized to act on their behalf, including their addresses, telephone numbers, and facsimile numbers;

* * * * *

(4) Statement as to whether any of the proposals to be submitted to the arbitrator contain questions concerning the duty to bargain and a statement of each party's position concerning such questions; and

* * * * *

6. Section 2471.4 is revised to read as follows:

### § 2471.4 Where to file.

Requests to the Panel provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be addressed to the Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, D.C. 20424–0001. Telephone (202) 482–6670. Facsimile (202) 482–6674.

7. Section 2471.5 is amended by revising the section heading and paragraphs (a), (b), (d), and (e) to read as follows:

### § 2471.5 Filing and service.

(a) *Filing and service of request.* (1) Any party submitting a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel. A clean copy may be submitted for the original. Requests may be submitted in person or by registered mail, certified mail, regular mail, or private delivery service. Requests may also be accepted by the Panel if transmitted to the facsimile machine of its office. A party submitting a request by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

(2) The party submitting the request shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any mediation service which may have been utilized. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a request may be made in person or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the request, service may be made by facsimile transmission or by any other agreed-upon method. When the Panel acts on a request from the Federal Mediation and Conciliation Service or acts on a request from the Executive Director under § 2471.1(a), it will notify the parties to the dispute, their counsel of record, if any, and any mediation service which may have been utilized.

(b) *Filing and service of other documents.* (1) Any party submitting a response to, or other document in connection with, a request for Panel consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Panel. A clean copy may be submitted for the original. Documents may be submitted to the Panel in person or by registered mail, certified mail, regular mail, or private delivery service. Documents may also be accepted by the Panel if transmitted to the facsimile machine of its office, but only with advance permission, which may be obtained by telephone. A party submitting a document by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the submission, if otherwise proper.

(2) The party submitting the document shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a document may be made in person or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the document, service may be made by facsimile transmission or by any other agreed-upon method.

* * * * *

(d) The date of service or date served shall be the day when the matter served, if properly addressed, is deposited in the U.S. mail or is delivered in person or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service. Where service is made by facsimile transmission, the date of service shall be the date on which transmission is received.

(e) Unless otherwise provided by the Panel or its designated representatives, any document or paper filed with the Panel under this section, together with any enclosure filed therewith, shall be typewritten on 8½ x 11 inch plain white paper, shall have margins no less than 1 inch on each side, shall be in typeface no smaller than 10 characters per inch, and shall be numbered consecutively. Nonconforming papers may, at the Panel's discretion, be rejected.

8. Section 2471.6 is amended by revising the section heading and paragraphs (a)(2) and (b) to read as follows:

**§ 2471.6 Investigation of request; Panel procedures; approval of binding arbitration.**

(a) * * *

(1) * * *

(2) Assert jurisdiction and—

(i) Recommend to the parties procedures for the resolution of the impasse; and/or

(ii) Assist the parties in resolving the impasse through whatever methods and procedures the Panel considers appropriate. The procedures utilized by the Panel may include, but are not limited to: informal conferences with a Panel designee; factfinding (by a Panel designee or a private factfinder); written submissions; show cause orders; oral presentations to the Panel; and arbitration or mediation-arbitration (by a Panel designee or a private arbitrator). Following procedures used by the Panel, it may issue a report to the parties containing recommendations for settlement.

(b) Upon receipt of a request for approval of a binding arbitration procedure, the Panel or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Panel shall promptly approve or disapprove the request, normally within five (5) workdays.

9. The section heading and the first sentence of § 2471.7 are revised and paragraphs (b) (1) through (6) are redesignated as (a) through (b), respectively. The revisions read as follows:

**§ 2471.7 Preliminary factfinding procedures.**

When the Panel determines that a factfinding hearing is necessary under § 2471.6, and it appoints one or more of its designees to conduct such hearing, it will issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any.

* * * * *

10. The section heading of § 2471.8 is revised to read as follows:

**§ 2471.8 Conduct of factfinding and other hearings; prehearing conferences.**

* * * * *

11. Section 2471.9 is amended by revising paragraph (a) to read as follows:

**§ 2471.9 Report and recommendations.**

(a) When a report is issued after a factfinding hearing is conducted pursuant to §§ 2471.7 and 2471.8, it normally shall be in writing and, when authorized by the Panel, shall contain recommendations.

* * * * *

## PART 2472—IMPASSES ARISING PURSUANT TO AGENCY DETERMINATIONS NOT TO ESTABLISH OR TO TERMINATE FLEXIBLE OR COMPRESSED WORK SCHEDULES

12. The authority citation for Part 2472 is revised to read as follows:

Authority: 5 U.S.C. 6131.

13. In § 2472.2, paragraphs (d) through (n) are redesignated as paragraphs (e) through (o), new paragraph (d) is added, and paragraph (j) is revised to read as follows:

**§ 2472.2 Definitions.**

* * * * *

(d) The term ''*duly authorized delegatee*'' means an official who has been delegated the authority to act for the head of the agency in the matter concerned.

* * * * *

(j) The term ''hearing'' means a factfinding hearing or any other hearing procedures deemed necessary to accomplish the purpose of 5 U.S.C. 6131.

* * * * *

14. Section 2472.3 is revised to read as follows:

**§ 2472.3 Request for Panel consideration.**

Either party, or the parties jointly, may request the Panel to resolve an impasse resulting from an agency determination not to establish or to terminate a flexible or compressed work schedule by filing a request as hereinafter provided. A form is available for use by the parties in filing a request with the Panel. Copies are available from the Office of the Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, D.C. 20424–0001. Telephone (202) 482–6670. Use of the form is not required provided that the request includes all of the information set forth in § 2472.4.

15. Section 2472.4 is amended by revising paragraphs (a)(1) and (a)(6) to read as follows:

**§ 2472.4 Content of request.**

(a) * * *

(1) Identification of the parties and individuals authorized to act on their behalf, including their addresses, telephone numbers, and facsimile numbers;

* * * * *

(6) A copy of the agency's written determination and the finding on which the determination is based, including, in a case where the finding is made by a duly authorized delegatee, evidence of a specific delegation of authority to make such a finding; and

* * * * *

16. Section 2472.5 is revised to read as follows:

**§ 2472.5 Where to file.**

Requests to the Panel provided for in these rules, and inquiries or correspondence on the status of impasses or other related matters, should be directed to the Executive Director, Federal Service Impasses Panel, 607 14th Street, NW., Suite 220, Washington, D.C. 20424–0001. Telephone (202) 482–6670. Facsimile (202) 482–6674.

17. Section 2472.6 is removed and § 2472.7 through 2472.12 are redesignated as § 2472.6 through 2472.11, respectively.

18. Newly designated § 2472.6 is amended by revising the section heading and paragraphs (a), (b), (d), (e), and (f) to read as follows:

**§ 2472.6 Filing and service.**

(a) *Filing and service of request.* (1) Any party submitting a request for Panel consideration of an impasse filed pursuant to § 2472.3 shall file an original and one copy with the Panel. A clean copy may be submitted for the original. Requests may be submitted in person or by registered mail, certified mail, regular mail, or private delivery service. Requests will also be accepted by the Panel if transmitted to the facsimile machine of its office. A party submitting a request by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the filing by facsimile, if otherwise proper.

(2) The party submitting the request shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, and upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a request may be made in person or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the request, service may be made by facsimile transmission or by any other agreed-upon method.

(b) *Filing and service of other documents.* (1) Any party submitting a response to, or other document in connection with, a request for Panel consideration of an impasse filed pursuant to § 2472.3 shall file an original and one copy with the Panel. A

clean copy may be submitted for the original. Documents may be submitted to the Panel in person or by registered mail, certified mail, regular mail, or private delivery service. Documents may also be accepted by the Panel if transmitted to the facsimile machine of its office, but only with advance permission, which may be obtained by telephone. A party submitting a document by facsimile shall also file an original for the Panel's records, but failure to do so shall not affect the validity of the submission, if otherwise proper.

(2) The party submitting the document shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party. Service of a document may be made in person or by registered mail, certified mail, regular mail, or private delivery service. With the permission of the person receiving the document, service may be made by facsimile transmission or by any other agreed-upon method.

* * * * *

(d) The date of service or date served shall be the day when the matter served, if properly addressed, is deposited in the U.S. mail, is delivered in person, or is deposited with a private delivery service that will provide a record showing the date the document was tendered to the delivery service. Where service is made by facsimile transmission, the date of service shall be the date on which transmission is received.

(e) Unless otherwise provided by the Panel or its designated representatives, any document or paper filed with the Panel under this part, together with any enclosure filed therewith, shall be typewritten on 8½×11 inch plain white paper, shall have margins no less than 1 inch on each side, shall be in typeface no smaller than 10 characters per inch, and shall be numbered consecutively. Nonconforming papers may, at the Panel's discretion, be rejected.

(f) An impasse arising pursuant to section 6131(c) (2) or (3) of the Act will not be considered to be filed, and no Panel action will be taken, until the party initiating the request has complied with §§ 2472.4, 2472.5, of this section.

19. Newly designated § 2472.7 is amended by revising paragraph (b) to read as follows:

**§ 2472.7 Investigation of request; Panel assistance.**

* * * * *

(b) The procedures utilized by the Panel shall afford the parties an opportunity to present their positions, including supporting evidence and arguments orally and/or in writing. They include, but are not limited to: informal conferences with a Panel designee; factfinding (by a Panel designee or a private factfinder); written submissions; show cause orders; and oral presentations to the Panel.

20. Newly designated § 2472.8 is revised to read as follows:

**§ 2472.8 Preliminary hearing procedures.**

When the Panel determines that a hearing shall be held, and it appoints one or more of its designees to conduct such a hearing, it will issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The notice will state:

(a) The names of the parties to the dispute;

(b) The date, time, place, type, and purpose of the hearing;

(c) The date, time, place, and purpose of the prehearing conference, if any;

(d) The name of the designated representative(s) appointed by the Panel;

(e) The issue(s) to be resolved; and

(f) The method, if any, by which the hearing shall be transcribed.

21. Newly designated § 2472.10 is revised to read as follows:

**§ 2472.10 Reports.**

When a report is issued after a hearing conducted pursuant to § 2472.8 and 2472.9, it normally shall be in writing and shall be submitted to the Panel, with a copy to each party, within a period normally not to exceed 30 calendar days after the close of the hearing and receipt of briefs, if any.

22. In newly designated § 2472.11, the introductory text of paragraph (a) and paragraph (b) are revised to read as follows:

**§ 2472.11 Final action by the Panel.**

(a) After due consideration of the parties' positions, evidence, and arguments, including any report submitted in accordance with § 2472.10, the Panel shall take final action in favor of the agency's determination if:

* * * * *

(b) If the finding on which an agency determination under 5 U.S.C. 6131(c)(2) or (c)(3) is based is not supported by evidence that the schedule is likely to cause or has caused an adverse agency impact, the Panel shall take whatever final action is appropriate.

* * * * *

## PART 2473—MISCELLANEOUS REQUIREMENTS

23. Part 2473 is added to read as follows:

Sec.

2473.1 Subpenas.

Authority: 5 U.S.C. 7119, 7134.

**§ 2473.1 Subpenas.**

(a) Any member of the Panel, the Executive Director, or other person designated by the Panel, may issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no such subpena need be sought.

(c) A request for a subpena by any person, as defined in 5 U.S.C. 7103(a)(1), shall be in writing and filed with the Executive Director, not less than fifteen (15) days prior to the opening of a hearing, or with the appropriate presiding official(s) during the hearing.

(d) All requests shall name and identify the witnesses or documents sought, and state the reasons therefor. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall grant the request upon the determination that the testimony or documents appear to be necessary to the matters under consideration and the request describes with sufficient particularity the documents sought. Service of an approved subpoena is the responsibility of the party on whose behalf the subpoena was issued. The subpoena shall show on its face the name and address of the party on whose behalf the subpoena was issued.

(e) Any person served with a subpoena who does not intend to comply shall within (5) days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the party on whose behalf the subpoena was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Executive Director. A petition to revoke a subpoena filed during the hearing, and a written statement of service shall be filed with

the appropriate presiding official(s). The Executive Director, or the appropriate presiding official(s) will, as a matter of course, cause a copy of the petition to revoke to be served on the party on whose behalf the subpoena was issued, but shall not be deemed to assume responsibility for such service. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall revoke the subpoena if the evidence the production of which is required does not relate to any matter under consideration in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The Panel, Executive Director, or any other person designated by the Panel, as appropriate, shall make a simple statement of procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) Upon the failure of any person to comply with a subpoena issued, upon the request of any party to the proceeding, the Solicitor of the FLRA shall, on behalf of such party, institute proceedings in the appropriate district court for the enforcement thereof, unless, in the judgment of the Solicitor of the FLRA, the enforcement of such subpoena would be inconsistent with law and the policies of the Federal Service Labor-Management Relations Statute. The Solicitor of the FLRA shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court thereafter.

(g) All papers submitted to the Executive Director under this section shall be filed in duplicate, along with a statement of service showing that a copy has been served on the other party to the dispute.

(h)(1) Witnesses (whether appearing voluntarily or under a subpoena) shall be paid the fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States: Provided, that any witness who is employed by the Federal Government shall not be entitled to receive witness fees in addition to compensation received in conjunction with official time granted for such participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status.

(2) Witness fees and mileage allowances shall be paid by the party at whose instance the witnesses appear except when the witness receives compensation in conjunction with official time as described in paragraph (h)(1) of this section.

Dated: May 31, 1996.

By direction of the Panel.

Linda A. Lafferty,

*Executive Director, Federal Service Impasses Panel.*

[FR Doc. 96–14098 Filed 6–5–96; 8:45 am]

BILLING CODE 6727–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Chapter I

**[Summary Notice No. PR–96–2]**

## Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**FOR FURTHER INFORMATION CONTACT:**

Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on June 3, 1996.

Donald P. Byrne,

*Assistant Chief Counsel for Regulations.*

Disposition of Petitions

*Docket No.:* 23755.

*Petitioner:* Mr. John G. Rutty.

*Regulations Affected:* 14 CFR 91.131 and 91.205.

*Description of Rulechange Sought:* To require antiblocking and ''stuck'' microphone relief circuitry in aircraft voice communication radios employed in certain high-density air traffic areas, referred to as Group I terminal control areas (TCA's), later reclassified as Class B airspace.

*Petitioner's Reason for the Request:* The petitioner feels antiblocking device (ABD) circuitry would provide significant safety benefits to the public. In addition, the petitioner contends that ABD circuitry would improve communication efficiency and reduce air traffic controller workload; the necessity of ''go-arounds,'' deviations, and delays resulting in less wastage of fuel; and pilot fatigue and frustration caused by blocked messages.

*Denial; May 17, 1996.*

[FR Doc. 96–14265 Filed 6–5–96; 8:45 am]

BILLING CODE 4910–13–M

## 14 CFR Part 71

**[Airspace Docket No. 95–ASW–07]**

## Proposed Establishment of Class E Airspace; Sonora, TX

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a Notice of Proposed Rulemaking (NPRM) that proposed to establish the Class E airspace at Canyon Ranch Airport, Sonora, TX. The proposal was to establish the controlled airspace extending upward from 700 feet above the ground (AGL) needed to contain aircraft executing a Very High Frequency Omnidirectional Range (VOR)/Distance Measuring Equipment (DME) standard instrument approach procedure (SIAP) to Runway (RWY) 32. The Class E airspace dimensions described in the NPRM contained a significant error; therefore, the proposal is withdrawn.

**DATES:** The proposed rule is withdrawn June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Donald J. Day, Operations Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530; telephone: (817) 222–5593.

**SUPPLEMENTARY INFORMATION:** On July 17, 1995, an NPRM was published in the Federal Register (60 FR 36371) to establish Class E airspace at Canyon Ranch Airport, Sonora, TX. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing the VOR/DME SIAP to RWY 32 at Canyon Ranch Airport. After publication of the NPRM, a significant error in the description of the proposed Class E airspace was discovered. Accordingly, the proposed rule is withdrawn.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 95–ASW–07, as published in the Federal Register on July 17, 1995 (60 FR 36371), is withdrawn.

Authority: 49 U.S.C. 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Fort Worth, TX on May 15, 1996.

Albert L. Viselli,

*Acting Manager, Air Traffic Division, Southwest Region.*

[FR Doc. 96–13928 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 946

**[Docket No. 960418114–6137–02]**

**RIN 0648–AF72**

## Weather Service Modernization Criteria

**AGENCY:** National Weather Service, National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Proposed amendment; request for comments.

**SUMMARY:** In accordance with the Weather Service Modernization Act, 15 U.S.C. 313n. (the Act), the National Weather Service (NWS) is proposing to amend its criteria governing the taking of certain modernization actions. This amendment would add criteria unique to closing a field office to ensure that closure actions will not result in any degradation of service.

**DATES:** Comments are requested by July 8, 1996.

**ADDRESSES:** Requests for copies of documents stated in the preamble as being available upon request and comments should be sent to Julie Scanlon, NOAA/NWS, SSMC2, Room 9332, 1325 East-West Highway, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Scheller, 301–713–0454.

**SUPPLEMENTARY INFORMATION:** Section 704(a) of the Act requires the NWS to contract with the National Research Council (NRC) for a review of the scientific and technical criteria for specified modernization actions. The NRC conducted this review and submitted the required report assessing the criteria to the Secretary of Commerce on July 28, 1993. Readers may obtain a copy of this Report from the contact and at the address provided above.

Section 704(b) of the Act requires the NWS to publish the criteria in the Federal Register, based on the NRC Report, after providing an opportunity for public comment and after consulting with the NRC and the Modernization Transition Committee (the Committee) established by section 707 of the Act. The NWS has already published all of the required criteria except those for closing a field office, the final step in the modernization process. These existing criteria are, or will be, set forth in Appendices A and B to the basic modernization regulations at 15 CFR part 946.

On March 2, 1994, the NWS published many of the required criteria as Appendix A to the general modernization regulations at 15 CFR part 946 (*see* 59 FR 9921). These criteria were published in four categories as follows:

(1) Those for modernization actions that do not require prior certification of no degradation of service, i.e., commissioning new weather observation systems and decommissioning outdated NWS radars (Appendix A, Section I.);

(2) Those for modernization actions that do require certification and are common to all such actions, e.g. providing appropriate notification in the National Implementation Plan; describing local weather characteristics and related weather concerns; and comparing services before and after the action (Appendix A, Section II.A.); [1]

(3) Those for modernization actions that require certification and that are unique to consolidating field offices (Appendix A, Section II.B.); and

(4) Those for modernization actions that require certification and that are unique to relocating field offices (Appendix A, Section II.C.).

On May 2, 1996, the NWS published proposed criteria unique to automation (*see* 61 FR 19594). The comment period closes on June 1, 1996. These criteria will be added as Section II.D. to Appendix A and a new Appendix B, after the NWS has time to respond to the public comments, consult with the NRC and the Committee, and publish the final version.

The present Notice proposes to further amend Appendix A to add the remaining criteria, those for final closure of a field office, as Section II.E. The proposed criteria are based on the July 28, 1993 NRC report.

Summary of NWS Modernization

The proposed closure criteria can better be understood within the context of the overall NWS modernization program. A total of 118 Weather Forecast Offices (WFO) supported by the National Centers for Environmental Prediction (NCEP) and 13 modernized River Forecast Centers (RFC) will exist in the modernized and restructured NWS. Each WFO will have responsibility for all warnings and forecasts within its assigned area of responsibility which, on average, will be half a state. Modernized operations will allow forecasters to comprehensively address the air-sea environment in their assigned area. Observation and analysis of current and expected weather conditions can be quickly and reliably completed, critical decisions made, and immediate warnings and forecasts issued.

The concept of the local data base is central to modernized operations at the WFO. The high volume of data from the local Doppler weather surveillance radar and Geostationary Operational Environmental Satellites combined with the high frequency observations from the Automated Surface Observing Systems will flow directly to the WFO. The most complete data sets will only be available to the local WFO. The modernization is allowing NWS to convert its pre-modernization network of 52 Weather Service Forecast Offices, about 200 smaller Weather Service Offices, and about 35 meteorological observatories into the modernized network of WFOs, RFCs and NCEP. For more information, see the Strategic Plan for the Modernization and Associated Restructuring of the National Weather Service, March 1989.

Transition Process

Closing a field office is the final step in an often complex transition process in which a field office is carefully

[1] The criteria common to all modernization actions requiring certification is a subset of the criteria that will be used to certify closure actions. This section of the previously published criteria is attached for reference (Attachment 1).

phased out at the same time as one or more associated WFOs assume the service responsibilities for that office. Closure may trigger any or all of the following actions: Reassignment of remaining NWS staff; removal of remaining equipment; disposal of facility; and restoration of site. Generally, phasing out the old office will involve one or both of the following major steps prior to closure:

- Consolidation—consists of transferring the personnel from the old office after commissioning the NEXRAD(s) at one or more of the WFOs that will assume responsibility for that office; this action occurs after county warning and NOAA Weather Radio responsibilities have been reassigned to the associated WFO(s); services with users have been confirmed; and the old radar, if there is one, has been decommissioned.
- Automation—consists of transferring the personnel taking surface observations after commissioning an Automated Surface Observing System (ASOS) at the old office; this action occurs after any augmentation/backup responsibility has been transferred to the Federal Aviation Administration (FAA); a supplementary data program is operational at the associated WFO(s) responsible for the field office to be automated; and services with users have been confirmed.

A more detailed description of this overall transition process can be found in the Federal Register notices publishing the basic modernization regulations (see 58 FR 18316—proposed; 58 FR 64088—final). A more detailed description of the consolidation and automation processes can be found in the Federal Register notices establishing or proposing the criteria unique to certifying these actions (see 59 FR 9921—consolidation; 61 FR 19594—automation).

Closure Prerequisites

Both consolidation and automation are major steps in the transition process requiring certification that they will not result in any degradation of service. Almost all of the field offices planned for closure will carry out at least one of these two actions and most will carry out both. (Only 11 field offices planned for closure will carry out neither). The current version of the annual National Implementation Plan for Modernization of the National Weather Service provides a listing of all field offices planned for closure and the applicability of consolidation and/or automation.

Each field office that does carry out a consolidation and/or an automation will have to complete all of the requirements for certification for the relevant action(s) as a prerequisite to closure. Consequently, completion of these prerequisite certification requirements, as applicable, are the first two modernization criteria for closure.

In some cases, the action(s) to consolidate and/or automate an office may be proposed concurrently with the proposed closure action. In these cases the proposed closure certification may be combined with the proposed certification(s) for consolidation and/or automation, as long as all the requirements for these prerequisite actions are met by the time the closure certification is proposed. In these cases the relevant criteria for closure are not completion of the relevant certifications but documentation of all the requirements for the relevant certifications so that all required certifications can be reviewed concurrently.

After consolidation and automation occur, there may be some service or observational responsibilities remaining at a field office planned for closure. In these cases, reassignment of remaining service responsibilities and/or modernized arrangements for remaining observational responsibilities will require an additional capability to be operational (e.g., Advanced Weather Interactive Processing System (AWIPS) at a future WFO). Thus the third criterion for closure ensures that any remaining service or observational responsibilities have been transitioned.

The fourth criterion for closure relates to user acceptance of modernization by the users of weather services. Similar criteria where established as part of both consolidation and automation certifications. NWS has developed an extensive and proactive program to gain user acceptance and endorsement of changes resulting from modernization. This program includes:

- User Awareness—informational briefings and mailings to the many and varied users at the National, state and local levels on a frequent and recurring basis throughout the transition period;
- Notification and Technical Coordination—advanced notification of when specific modernization activities are scheduled to occur both in the annual submission of the National Implementation Plan, and by mailings from NWS field office managers to users in their local areas; and coordination of specific technical aspects of activities with users to ensure they understand the change and have sufficient lead time to make any adjustments needed to take full advantage of modernization; and
- Service Confirmation—follow-up with users after a change has been made to ensure that services they receive have remained intact, accessible and of an acceptable quality, and to resolve any outstanding issues or problems they might have.

The MIC's recommendation for certification will address service confirmation by users.

The fifth criterion for closure deals with warning and forecast verification. Verification is used to objectively measure the accuracy and timeliness of warnings and forecasts. The closure criteria related to verification are designed to support certification requirements that ensure that closure actions will not result in any degradation of service.

The warning verification will focus on warnings that are most often localized, short-lived, and associated with the most destructive and life-threatening severe weather. Forecast verification will focus on the basic elements of public and aviation forecasts.

For closure certification, verification statistics will be compared before and during the transition period prior to closure. The statistical measures that will be utilized to ensure no degradation of service will conform to those reviewed by the National Research Council in 1993.

Special Circumstances

It should be noted that two of the criteria that were published with those criteria common to all types of certification actions (see Attachment 1) are primarily applicable to closure certifications. These are:

(1) Air Safety Appraisal—Section 706(e)(1) of the Act requires the Secretary of Commerce, in consultation with the Secretary of Transportation and the Committee, to conduct an air safety appraisal prior to closure or relocation of a field office located at an airport, to determine that such action will not result in degradation of service that affects aircraft safety. The NWS and FAA have jointly determined the nature of this air safety appraisal. They have agreed to conduct this air safety appraisal on a programmatic basis during establishment of final modernization criteria for automation and closure certification. A copy of the completed air safety appraisal will be included with each closure certification.

(2) Evaluation of Services to In-state Users—the field offices planned for closure that are the only field office in a state are: Weather Services Offices in Baltimore, MD; Concord, NH; Hartford, CT; Providence, RI; and Wilmington, DE. The required evaluation will be addressed in the MIC's recommendation for certification.

*A. Classification Under Executive Order 12866*

These proposed regulations establish procedures and criteria for certifying that certain actions to modernize NWS will not result in any degradation of weather services to the affected service area. They will not result in any direct or indirect economic impacts, and have been determined not to be significant for purposes of E.O. 12866.

*B. Regulatory Flexibility Act Analysis*

These regulations set forth the criteria for certifying that certain modernization actions will not result in a degradation of service to the affected area. These criteria will be appended to the Weather Service Modernization regulations. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that these criteria, if adopted as proposed, will not have a significant economic impact on a substantial number of small entities. These proposed criteria are intended for internal agency use, and will not directly affect small business. The proposed criteria do not directly affect ''small government jurisdictions'' as defined by Pub. L. 96–354, the Regulatory Flexibility Act. Accordingly, no initial regulatory flexibility analysis has been prepared.

*C. Paperwork Reduction Act of 1980*

These regulations will impose no information collection requirements of the type covered by Pub. L. 96–511, the Paperwork Reduction Act of 1980.

*D. E.O. 12612*

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

*E. National Environmental Policy Act*

NOAA has concluded that publication of this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. A programmatic Environmental Impact Statement (EIS) regarding NEXRAD was prepared in November 1984, and an Environmental Assessment to update the portion of the EIS dealing with the bioeffects of NEXRAD non-ionizing radiation was issued in 1993.

List of Subjects in 15 CFR Part 946

Administrative practice and procedure, Certification, Commissioning, Decommissioning, National Weather Service, Weather service modernization.

Dated: June 1, 1996.

Elbert W. Friday, Jr.,

*Assistant Administrator for Weather Services.*

For the reasons set out in the preamble, 15 CFR part 946 is proposed to be amended as follows:

## PART 946—[AMENDED]

1. The authority citation for part 946 continues to read as follows:

Authority: Title VII of Pub. L. 102–567, 106 Stat 4303 (15 U.S.C. 313n).

## Appendix A to Part 946—[Amended]

2. Appendix A to part 946 is amended by adding a new Subsection (E) under Section II. Criteria for Modernization Actions Requiring Certification, to read as follows:

(E) Proposed Modernization Criteria Unique to Closure Certifications.

1. Consolidation Certification; If the field office proposed for closure has or will be consolidated, as defined in § 946.2 of the basic modernization regulations, this action has been completed as evidenced by the approved certification or can be completed as evidenced by all of the documentation that all of the requirements of sections II.A. and II.B. of this Annex have been completed.

2. Automation Certification: If the field office proposed for closure has or will be automated, as defined in § 946.2 of the basic modernization regulations, this action has been completed as evidenced by the approved certification or can be completed as evidenced by documentation that all of the requirements of sections II.A. and II.C. of this Annex have been completed.

3. Remaining Services and/or Observations: All remaining service and/or observational responsibilities, if applicable to the field office proposed for closure, have been transitioned as addressed in the MIC's recommendation for certification.

4. User Confirmation of Services: Any valid user complaints received related to provision of weather services have been satisfactorily resolved and the issues addressed in the MIC's recommendation for certification.

5. Warning and Forecast Verification: Warning and forecast verification statistics, produced in accordance with the Closure Certification Verification Plan, have been utilized in support of the MIC's recommendation for certification.

Attachment 1

*Appendix A to Part 946—National Weather Service Modernization Criteria (Relevant portions)*

II. Criteria for Modernization Actions Requiring Certification

*(A). Criteria Common to all Types of Certifications (except as noted)*

1. Notification: Advanced notification and the expected date of the proposed certification have been provided in the National Implementation Plan.

2. Local Weather Characteristics and Weather Related Concerns: A description of local weather characteristics and weather related concerns which affect the weather services provided to the affected service area is provided.

3. Comparison of Services: A comparison of services before and after the proposed action demonstrates that all services currently provided to the affected service area will continue to be provided.

4. Recent or Expected Modernization of NWS Operations in the Affected Service Area: A description of recent or expected modernization of NWS operations in the affected service area is provided.

5. NEXRAD Network Coverage: NEXRAD network coverage or gaps in coverage at 10 feet over the affected service area are identified.

6. Air Safety Appraisal (applies only to relocation and closure of field offices at an airport): Verification that there will be no degradation of service that affects aircraft safety has been made by conducting an air safety appraisal in consultation with the Federal Aviation Administration.

7. Evaluation of Service to In-state Users (applies only to relocation and closure of the only field office in a state): Verification that there will be no degradation of weather services provided to the state has been made by evaluating the effects on weather services provided to in-State users.

8. Liaison Officer: Arrangements have been made to retain a Liaison Officer in the affected service area for at least two years to provide timely information regarding the activities of the NWS which may affect service to the community, including modernization and restructuring; and to work with area weather service users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

9. Meteorologist-In-Charge's (MIC) Recommendation to Certify: The MIC of the future WFO that will have responsibility for the affected service area has recommended certification in accordance with 15 CFR 946.7(a).

10. Regional Director's Certification: The cognizant Regional Director has approved the MIC's recommended certification of no degradation of service to the affected service area in accordance with 15 CFR 946.8.

[FR Doc. 96–14254 Filed 6–5–96; 8:45 am]

BILLING CODE 3510–12–M

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 1

## Rule Amendment Concerning Trading Records

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule amendment.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'')

proposes to amend its Regulation to clarify a procedure specified for the correction of erroneous information on trading cards and to make that procedure applicable to other trading records. The amendment would specify that a member of a contract market who needs to correct an error on a trading record may do so only by crossing out the erroneous information with no more than a single line through each character, without obliterating or otherwise making illegible any of the originally recorded information. Contract markets would be required to maintain rules that require errors on trading records to be corrected in the prescribed manner.

**DATES:** Comments on the proposed amendment must be submitted on or before July 8, 1996.

**ADDRESSES:** Comments on the proposed amendment should be sent to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, Attention: Secretariat.

**FOR FURTHER INFORMATION CONTACT:** Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5490.

**SUPPLEMENTARY INFORMATION:**

I. Introduction

On March 7, 1990 the Commission published in the Federal Register a number of final amendments to Regulation 1.35,[1] which governs the records of cash commodity, futures, and options transactions which must be prepared and maintained for all purchases and sales of commodities for future delivery or commodity options on designated contract markets. These amendments were intended, among other things, to limit the opportunity for the fabrication or alteration of trading records and to enhance exchange audit trails and trade surveillance. The amendments imposed obligations directly on contract market members and required each contract market to promulgate implementing rules to that effect.

Although many of the amendments' provisions were targeted to trading cards, other provisions were made specifically applicable to all trading records in order to limit the opportunity to alter or fabricate such trading records. The trading record collection requirement of Regulation 1.35(j)(1), designed to expeditiously transfer control of the documents from the executing members, is applicable to all trading records on which the contract market or clearing member relies as an original source document for clearing submission purposes.[2] The requirement that trades be recorded in non-erasable ink, designed to provide added protection against improper alteration of trading records through erasures, is applicable to customer order tickets,[3] as well as trading cards.[4]

Notwithstanding these provisions, the Commission has found, based upon its oversight activities, instances in which it appears that members have altered or created fictitious trading records to facilitate illegal purposes. It appears that, in some instances, trade prices and quantities have been altered subsequent to trade execution to the detriment of customers and favorable trades for customers have been allocated to traders' personal accounts. The Commission believes that this type of activity may be facilitated by the manner in which traders, under the guise of correcting erroneous information on a trading record, obscure the information originally recorded. This practice, which has been observed to occur with respect to both trading cards and order tickets, also makes it more difficult to detect potentially fraudulent activity.

The Commission believes that obscuring the trade information originally recorded can be used to facilitate or itself constitute illegal fraudulent conduct. As previously stated, the amendments to Regulation 1.35 were intended, among other things, to limit the opportunity for fabrication or alteration of trading records and to enhance exchange audit trails and trade surveillance. Correcting erroneous information by obliteration of the original data enhances the opportunity to facilitate illegal purposes and increases the difficulty involved in creating and maintaining adequate audit trail and trade practice surveillance programs. Nonetheless, in order to eliminate any ambiguity in this area, the Commission is now proposing to expressly address the issue by amending the method by which a member of a contract market may correct errors on a hard copy trading record.

II. Proposed Amendment

In light of the foregoing, the Commission proposes to amend Regulation 1.35 in two respects. First, paragraph (d)(7), which addresses, among other things, the preparation of trading cards, would be made applicable to all trading records. Second, paragraph (d)(7)(ii), which requires the use of non-erasable ink and addresses correction of errors, would be modified to require that erroneous trade information be crossed out with no more than a single line through each character, without obliterating or otherwise making illegible any of the originally recorded information.

*A. Proposed Paragraph (d)(7)*

The Commission proposes to amend paragraph (d)(7) to make it applicable to all trading records. In so doing, the Commission is making the error correction provisions of paragraph (d)(7)(ii) applicable to all trading records, not just trading cards. Thus, this amendment places other trading records under the same standards currently in existence with regard to the correction of errors on trading cards.[5] Further, it requires contract markets to maintain in effect rules that require errors on other trading records to be corrected in the manner prescribed by paragraph (d)(7)(ii).

The other trading records to which this provision applies include order tickets prepared under Regulation 1.35(a-1), as well as order tickets received on the floor through electronic order routing systems and trading records prepared for ''flashed'' orders. It is the Commission's belief that preventing the obliteration of data is effectively a prophylactic requirement intended to prevent fraudulent alteration of trading records.

*B. Proposed Paragraph (d)(7)(ii)*

The Commission proposes to amend paragraph (d)(7)(ii) to require that erroneous information crossed out on a trading record must be crossed out with no more than a single line through each character, without obliterating or otherwise making illegible any of the

[1] 55 FR 8127 (March 7, 1990).

[2] Regulation 1.35(j)(1) requires that each contract market maintain in effect rules which require, among other things, that trading records prepared pursuant to paragraphs (a–1) and (d) of this section be submitted to contract market personnel or the clearing member within 15 minutes of designated intervals not to exceed 30 minutes. Paragraph (a–1) requires the creation of order tickets; paragraph (d) requires the preparation of trading cards or other records showing purchases or sales executed on or subject to the rules of a contract market.

[3] Regulation 1.35(a–1) (2) and (4).

[4] Regulation 1.35(d)(7)(ii) and (j)(8). Regulation 1.35(j)(8) requires that each contract market maintain in effect rules which require that members complete trades in non-erasable ink as prescribed by paragraph (d)(7)(ii).

[5] With regard to trading cards only, the member could still correct erroneous information by rewriting the trading card. Pursuant to paragraph (d)(6), the member would remain accountable for any trading card that is subsequently rewritten. The Commission requests comments regarding the continued advisability of this provision.

originally recorded information. Thus, the erroneous information being crossed out would not be obliterated and an audit should reveal the original information recorded on the trading record, as well as any information subsequently recorded. Because the amendment to paragraph (d)(7) would make this provision applicable to all trading records, the Commission believes that this amendment would further limit the opportunity for the fabrication or alteration of trading records.

The Commission believes that erroneous data normally should be crossed out using the same or a similar pen as is used by the member to record trade executions. In any event, the use of a felt pen or marker that obliterates the original recorded information, even if the information is crossed out with no more than a single line, would not be in compliance with this amended regulation. Overwriting erroneous information with corrected information, rather than crossing out the erroneous information in the prescribed manner, also would not be in compliance with this amended regulation.

III. Other Matters

*A. Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et. seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that contract markets are not ''small entities'' for purposes of the RFA, and that the Commission need not, therefore, consider the effect of proposed amendments on contract markets in relation to the RFA. 47 FR 18618, 18619 (April 30, 1982). The Commission has also determined that FCMs should be excluded from the definition of ''small entity'' based upon the fiduciary nature of the FCM/customer relationships as well as the fact that FCMs must meet minimum financial requirements. 47 FR 18618, 18619 (April 30, 1982).

With respect to contract market members, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all members that would be affected by the rule should be considered small entities and, if so, to analyze the economic impact on such entities at that time. 47 FR 18618, 18620 (April 30, 1982). The contract market members affected by the proposed amendment, other than clearing members, would be floor brokers and floor traders.

The Commission recognizes that contract market members would be subject to the proposed amendments and that certain contract market members could be considered to be small entities for the purposes of the RFA. However, the Commission believes that the proposed amendment, as designed, would not impose a significant economic burden on members.

Accordingly, the Acting Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

*B. Paperwork Reduction Act: Comment Request*

The Paperwork Reduction Act of 1980 (''ACT''), 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Act. While this proposed rule has no burden, the group of rules (3038–0022) of which this is a part has the following burden:

Average burden hours per response-3,546.

Number of Respondents—15,286.

Frequency of Response—On occasion.

Persons wishing to comment on the information which would be required by this proposed/amended rule should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418–5170.

List of Subjects in 17 CFR Part 1

Commodity futures, Commodity options, Contract markets, Customers, Members of contract markets, Noncompetitive trading, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, Sections 5, 5a, 5b, 6(a), 6b, 8a(7), 8a(9) and 8c, 7 U.S.C. 7, 7a, 7b, 8(a), 8b, 12a(7), 12a(9), and 12c, the Commission hereby proposes to amend Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

2. Section 1.35 is proposed to be amended by revising paragraph (d)(7) to read as follows:

**§ 1.35 Records of Cash Commodity, Futures, and Option Transactions.**

* * * * *

(d) * * *

(7) Trading records prepared by a member of a contract market pursuant to contract market rules must:

(i) Be submitted in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section; and

(ii) Be completed in non-erasable ink. A member may correct any errors (A) by crossing out erroneous information with no more than a single line through each character, without obliterating or otherwise making illegible any of the originally recorded information or (B) with regard to trading cards only, by rewriting the trading card; provided, however, that the member is accountable pursuant to paragraph (d)(6) of this section for any trading card that is subsequently rewritten.

* * * * *

Issued in Washington, DC on May 31, 1996 by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 96–14129 Filed 6–05–96; 8:45 am]

BILLING CODE 6351–01–P

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Parts 19, 113 and 144

**RIN 1515–AB86**

## Duty-Free Stores

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Customs Regulations principally with respect to duty-free stores in order to reduce the overall paperwork burden for proprietors thereof as well as for Customs. In particular, for purposes of Customs audit of, and control over, such facilities, greater reliance would be placed on the use of records generated and maintained by proprietors and importers in the ordinary course of business, instead of on the use of specially prepared Customs forms. The proposed amendments would provide

benefits in this regard to other classes of Customs bonded warehouses as well.

**DATES:** Comments must be received on or before August 5, 1996.

**ADDRESSES:** Written comments (preferably in triplicate) must be submitted to the U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., Suite 4000, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Michael Jackson, Customs Management Center, Seattle, (206–553–6944).

**SUPPLEMENTARY INFORMATION:**

Background

By a final rule document published in the Federal Register as T.D. 92–81 on August 20, 1992 (57 FR 37692), the Customs Regulations were amended to designate duty-free stores as a new class of Customs bonded warehouse, and to incorporate operating procedures for the administration of these facilities.

However, in letters dated October 6 and 13, 1992, a major trade association voiced a number of concerns with respect to the final rule. Prompted by these correspondences, Customs, by a document published in the Federal Register (57 FR 47409) on October 16, 1992, delayed the October 19, 1992, effective date of the final rule until further notice, in order to review various aspects of the duty-free store rules. Before any changes could be made to the final rule, however, Customs concluded that its indefinite suspension was legally inoperative and proceeded to reinstate the original effective date thereof, by a document published in the Federal Register (58 FR 29349) on May 20, 1993.

After lengthy study, Customs has now determined that specific revisions to the duty-free store regulations are in order. The proposed changes would also provide some benefits to other classes of bonded warehouses, and are intended to reduce the overall paperwork burden both for warehouse proprietors and for Customs.

Discussion of Principal Changes

The following sections of the Customs Regulations would be amended: §§ 19.1, 19.2, 19.4, 19.6, 19.11, 19.12, 19.35, 19.36, 19.37, 19.39, 113.63, 144.34, 144.36, 144.37, 144.39 and 144.41.

Proposed Changes to Part 19

A sentence would be added to § 19.1(a)(9) to clarify that all distribution warehouses used exclusively to provide individual duty-free sales locations and storage cribs with conditionally duty free merchandise are also Class 9 warehouses.

Section 19.1(c) would be deleted. While language concerning warehouse security would be added to § 19.4(b)(6), warehouse construction requirements will not be set forth in the regulations. The warehouse construction is a factor that will be considered by the port director in deciding whether to approve the application.

Section 19.2(a) would be amended to require that all bonded warehouse applicants have available an inventory control and recordkeeping system procedures manual. Also, the application would have to include a certification that the inventory control and recordkeeping system meets the requirements of § 19.12.

Section 19.2(b) would be modified to specify that the procedures for inventory control, recordkeeping and delivery methods must be set forth in the proprietor's procedures manual which must be furnished to Customs upon request.

References to § 19.3 (e) and (f) would be deleted from § 19.2(g).

Sections 19.4 and 19.12 would be reformatted to move the storage and security requirements from § 19.12 and consolidate them in § 19.4. Section 19.12 would be devoted to the inventory control and recordkeeping system requirements.

The heading of § 19.4 would be changed to ''Customs and proprietor responsibility and supervision over warehouses'', and two subsections would be added: (a) Customs supervision and (b) ''Proprietor responsibility and supervision. Subsection (b) is divided into nine sections: (1) Supervision, (2) Customs access, (3) Safekeeping of merchandise and records, (4) Records maintenance, (5) Record retention in lieu of originals, (6) Warehouse and merchandise security, (7) Storage conditions, (8) Manner of storage, and (9) Miscellaneous responsibilities. The intent of these proposed changes is to clarify the proprietors' responsibilities.

Proposed § 19.4(a), entitled ''Customs supervision'', and proposed § 19.4(b)(2), entitled ''Customs access'', contain the current § 19.4 language relating to Customs supervision over warehouses.

The requirements of current § 19.12(b)(1), concerning supervision by the warehouse proprietor, would be moved to § 19.4(b)(1) and expanded to cover all activities that a bonded warehouse proprietor is authorized to perform.

The restrictions on unauthorized disclosure of proprietary information would be moved from current § 19.12(a)(7) to § 19.4(b)(3). The last sentence in current § 19.12(a)(7) has been deleted because the consequence of unauthorized disclosure is covered by § 19.3(e)(8).

Proposed § 19.4(b)(4) summarizes the proprietor's responsibilities relating to records maintenance.

Proposed § 19.4(b)(5), dealing with the retention of copies of records in lieu of the originals, provides proprietors with the convenience of storing required records on microfilm, microfiche, CD ROM (compact disk, read-only memory), or other medium. Those approved for this storage method could do so any time after the final withdrawal of merchandise covered by the entry to which the records pertain. Duty-free store operators could use the aforementioned means to store sales ticket information after six months from the date of sale. This provision would greatly reduce the physical space required to maintain the volumes of hard-copy originals. Proprietors would be required to provide authenticated copies upon demand for audit purposes. Approval would be obtained from the appropriate regulatory audit field director.

Proposed § 19.4(b)(6), concerning warehouse and merchandise security, incorporates the requirements of current § 19.12(b) (3) and (4) relating to security of warehouses and bonded tanks. Specific reference to T.D. 72–56 is replaced with references to more general security standards.

The ''safe and sanitary storage'' requirements would be moved from § 19.12(b)(5) to § 19.4(b)(7). The sentences concerning prompt removal of trash and waste and prohibition of fires would be deleted because Customs believes that the first sentence in this paragraph provides adequate coverage.

Proposed § 19.4(b)(8), entitled ''Manner of storage'', is based on current § 19.12(b)(6), and would allow proprietors to store merchandise covered by a single entry number or unique identifier in more than one location within the warehouse, provided the inventory control system could identify the quantities in each location upon demand by Customs. It also provides regulatory recognition of First-In-First-Out (FIFO) inventory control systems for the first time.

Section 19.6(a)(1) would be amended to change the time requirement for filing a discrepancy report from two business days to five business days.

Section 19.6(d)(1) would be amended to allow a duty-free sales enterprise to use a blanket permit for withdrawal for transportation to another port.

Section 19.6(d)(2) would be amended to reflect a new cross-reference.

Section 19.6(d)(4), entitled ''Blanket permit summary'', would be redesignated as § 19.6(d)(5). A proposed new § 19.6(d)(4) would add a provision describing procedures under which blanket withdrawals for aircraft and vessel supplies from more than one warehouse entry could be combined on one Customs Form 7512.

Section 19.11(h) would be amended to change the phrase ''saleable units'' to ''smallest irreducible unit'', for purposes of clarification. Under the provisions for blanket permit to destroy, the phrase ''upon receipt'' would be deleted. Goods may be determined ''nonsaleable'' long after receipt. The dollar amount covered by a blanket permit for destruction would be increased from $100 to less than 5 percent of the value of the merchandise at the time of entry or $1250, whichever is less, in its undamaged condition. This increase is being proposed in order to reduce the number of permits for destruction that would otherwise be required under the circumstances.

Proposed § 19.12 is based on the inventory control and recordkeeping requirements in current § 19.12 which would thus be modified to more clearly describe the proprietor's responsibilities and what constitutes an adequate inventory control and recordkeeping system.

Proposed § 19.12(c)(1) includes the requirement for a proprietor receipt for merchandise transported to his warehouse by himself or his agent, as provided for by T.D. 94–81. Proposed changes to subsection (d)(1) and (d)(2) clarify the requirements for accounting for merchandise entered in the warehouse.

Proposed § 19.12(d)(3) modifies existing requirements relating to theft, shortage, overage or damage. To accommodate proprietors, the proposed modification extends the time for providing written confirmation for any theft, overage, extraordinary shortage or damage from two business days to five business days after the discrepancy is discovered. The definition of extraordinary shortage or damage would be expanded to cover missing merchandise on which duties and taxes in excess of $100 are due. The time for paying applicable duties and taxes on thefts and shortages would be extended from 10 business days after discovery to 20 calendar days following the end of the calendar month in which the shortage is discovered.

The following new requirements would be added by Customs under proposed § 19.12(d)(3) in order to clarify that the proprietor should ensure that the following actions are taken when discovered discrepancies occur: (1) An entry must be filed for all overages within five business days of the date of discovery; (2) When cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or cumulative duties and taxes are in excess of $100, the reporting and payment requirements of this paragraph must be met; (3) All shortages and overages must be recorded in the inventory control and recordkeeping system at the time of discovery, whether or not they must be reported to Customs at that time; (4) Duties and taxes applicable to any non-extraordinary shortage or damage, and not required to be paid earlier, shall be submitted at the time the Customs Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due.

A proposed new § 19.12(d)(4)(ii), entitled ''Review'', the substance of which is currently set forth in § 19.12(a)(4), would change the permit file folder filing requirement for entries after final withdrawal from 30 business days to 30 calendar days. This is intended to provide greater ease in calculating the due date.

In an effort to reduce paperwork requirements for both warehouse proprietors and Customs, proposed § 19.12(d)(4)(iii), contains new provisions which would allow for exemption from maintaining the permit file folder (PFF), if the proprietor has a system which can provide a summary of all transactions relating to an entry, appropriately cross-referenced to supporting documents which are readily retrievable. Proposed § 19.12(d)(4)(iv) would also allow port directors to accept formal notification of final withdrawal in lieu of submission of the PFF or entry activity summary and only require submission of the PFF or alternative documentation on a selective basis. Failure to provide requested documentation would result in reinstatement of the requirements to maintain PFFs and to submit the PFF to Customs upon final withdrawal. This change would eliminate the current requirement that the proprietor maintain records in a specified method required by Customs and would allow the proprietor to use his normal recordkeeping system to satisfy Customs requirements. It would also allow the port director the option to review the number of permit file folders or the approved alternative system on a selective basis.

Proposed § 19.12(d)(5) would add a new requirement that proprietors must take at least an annual physical inventory, report any discrepancies discovered to the port director, record appropriate adjustments in the inventory control and recordkeeping system, and make any required entries and payments to Customs. The proprietor would have to advise Customs in advance of dates that the inventories would be taken so that Customs could observe or participate in the inventory process, if deemed necessary.

Although many warehouses currently use the FIFO inventory method for fungible merchandise, the current regulations do not provide any guidance for use of inventory control systems other than direct identification by Customs entry number. The acceptability of a FIFO inventory system has been recognized by Customs since issuance of C.S.D. 83–63, 17 Cust. Bull. 869 (1983), but the regulations were never revised to cover FIFO systems. Proposed § 19.12(f) is based on appropriate sections of the Bonded Warehouse Manual and would incorporate requirements into the regulations governing an acceptable FIFO inventory control system.

Proposed § 19.12(g) contains the requirement for the annual warehouse proprietor submission currently set forth in § 19.12(a)(5). A provision is added to allow use of an alternative format if prior written approval is obtained from the Customs field director of regulatory audit. Additional instructions are included for proprietors who have merchandise covered by one entry, but stored in multiple locations as provided for under proposed § 144.34.

To reduce paperwork requirements for the proprietor and handling by Customs, proposed § 19.12(h) discontinues the requirement to file a Customs Form 300, Warehouse Proprietor's Submission, for class 2, importers' private bonded warehouses and classes 4, 5, 6, 7, 8 and 9 warehouses if the warehouse proprietor and the importer are the same party. Instead, under the proposed revision, they must prepare a reconciliation report at the end of each fiscal year which will be kept on file. A certification would have to be sent to the field director, regulatory audit, stating that the reconciliation has been performed and is accurate.

Proposed § 19.12(i) requires all proprietors to perform an annual internal review of the inventory control and recordkeeping system, and to prepare and maintain on file a report

identifying deficiencies discovered and the corrective action taken.

Proposed § 19.12(j) provides special instructions for preparation of the Customs Form 300 or reconciliation when merchandise transferred from one warehouse continues to be accounted for under the original warehouse entry rather than under a rewarehouse entry, as provided for under proposed § 144.34(c).

In proposed § 19.13(g), specific reference to T.D. 72–56 is replaced with reference to the more general security standards contained in proposed § 19.4(b)(6).

Section 19.13a would be modified to delete the reference to § 19.12(a) and substitute references to §§ 19.4(b) and 19.12.

Section 19.13a(b) would be modified to delete the reference to § 19.12(a)(5) and substitute reference to § 19.12(g).

Section 19.35(c), entitled ''Integrated locations'', would be modified to accommodate duty-free stores which do not have inventory control systems which automatically reduce inventory balances on a real time basis. Proposed § 19.35(c) would allow multiple noncontiguous sales and crib locations to be treated by Customs as one location if inventory records are updated no less frequently than at the end of each business day to reflect that day's activity. Integrated locations are defined as separate sales and storage locations within a close proximity to one another, *e.g.*, multiple outlets at an airport. Under the proposed revision, language is added to allow the proprietor discretion in determining if integrated status is desired and the word ''will'' is replaced with ''may'' in ''* * * may be treated by Customs as one location * * *''.

Section 19.35(f) would be modified to delete the reference to § 19.12(b)(3) and substitute a reference to § 19.4(b)(6).

Section 19.36(e) would be modified by deleting the requirement that purchasers know whether or not a commodity is either duty-paid or U.S.-origin.

Section 19.36(g) would be modified to replace the reference to § 19.12(a) with § 19.12 (d), (e) and (f).

Section 19.37(a), dealing with crib operations, would be modified by deleting the word ''small'' in the first sentence. Concerning the amount of goods which may be stored in a crib, the phrase, ''* * * limited to an amount estimated to be a two weeks' supply * * *'', appearing in the fourth sentence of § 19.37(a) would be removed, and the following phrase would be added in its place: ''* * * an amount requested by the proprietor which is commercially necessary for the delivery operations for a period, if approved by the port director.''.

Section 19.39(c)(2), entitled ''Passenger delivery'', would be modified by deleting the last three sentences to eliminate the requirement for airline officials to certify the proprietor's certificate of lading. It is the proprietor's responsibility to establish procedures to ensure exportation. The regulation as currently written creates an undue burden on both the proprietor and the airline.

Section 19.39(c)(3), entitled ''Aircraft delivery'', would be modified to include the statutory language that duty-free purchases must be laden on board the same aircraft on which the passenger will depart. It is the proprietor's obligation to establish procedures satisfactory to the port director to provide reasonable assurance of exportation.

A proposed new § 19.39(c)(4)(ii) would be added to clarify that unit-load delivery methods could be used only on the same aircraft as the passenger who purchased the conditionally duty-free merchandise will depart the United States. Existing paragraphs (c)(4) (ii)–(iv) of § 19.39 would be renumbered.

A revision of paragraph (c)(5) of § 19.39 is proposed to establish procedures to handle deliveries of duty-free merchandise to passengers whose flights have to be rescheduled by the airline. Customs believes that the rescheduling of a cancelled or aborted flight should not require the proprietor to retrieve the goods until the passenger departs on the rescheduled flight. The Customs Service believes that the revenue risk is minimal because the passenger has no control over rescheduling a flight that is cancelled by the airline. Merchandise would only be delivered to a passenger who has already bought a ticket that usually is far in excess of any possible duty savings. Customs believes that to monitor the period between the cancellation of the passenger's original flight and the departure of the passenger on the rescheduled flight is wasteful of Customs and trade resources because of that risk assessment. With respect to merchandise delivered to an airline on behalf of a passenger who fails to board the flight, the proprietor must coordinate with the airline to establish a procedure to retrieve the merchandise because in that situation the passenger has acted contrary to the stated intention to export the goods and there is no reason to believe that the passenger will reschedule a different flight.

Also, § 19.39(e) would be modified by adding the phrase, ''or bonded carriers'', after the reference to ''licensed cartmen''. See T.D. 94–81, 59 FR 51496.

Warehouse Withdrawals and Rewarehouse Entries

An extensive change to the procedures governing transfers of warehoused merchandise is proposed.

Currently, the procedure to transfer warehoused merchandise requires the transfer to be done by Customs bonded cartage operators or carriers. The transfer in the same port may require a rewarehouse entry into the destination warehouse when both warehouses are within the same port. A rewarehouse entry is required if the transfer is between warehouses in different ports. The current procedure will be retained in § 144.34 (a) and (b).

An alternative procedure for merchandise in Class 2 or Class 9 warehouses is proposed in a new paragraph (c) to § 144.34. Under the alternative, the merchandise would be treated as remaining in the warehouse in which it was originally entered for warehouse. The importer and the proprietor of that warehouse would be liable for duties and for the proprietor's custodial responsibilities, respectively. To ensure that the parties in interest are fully aware of their responsibilities, the proposal requires the importer, all proprietors, and their sureties to sign the application to use the alternative procedure. Section 113.63 would be revised by adding new paragraphs (a)(4) and (b)(4), and by revising paragraph (d), in order to secure the obligors' custodial performance here.

The primary attribute of the proposed alternative is the eligibility requirement that the applicant have a centralized inventory control system so that Customs is able to spot check and verify the status of warehoused merchandise, by location, at all times. Although the proposal requires that each warehouse location keep subordinate or secondary records of merchandise at the location, the concept of the proposal is that the importer and the warehouse into which the merchandise was first entered remain liable as though the merchandise was present in that warehouse. That concept, implemented by the required centralized inventory system, is expected to ensure that Customs can administer its obligations to protect the revenue and ensure that no merchandise is released from Customs custody before any required charge, such as a lien, has been satisfied.

The alternative would eliminate the documentary transfers of liability for custodians because conceptually the

warehoused merchandise is treated as not having left the original warehouse. For that reason, no significant change to § 144.39 is proposed as a result of the alternative to the procedures in paragraphs (a) and (b) of § 144.34.

Section 144.36(c) would be substantially revised to allow for withdrawals for transportation from a single warehouse, via a single conveyance, consigned to the same consignee and to be deposited into a single warehouse to be combined on one Customs Form 7512. The exemption contained in proposed § 144.34(c), addressed above, would be incorporated into §§ 144.36 (f) and (g).

The signature requirement on sales tickets contained in § 144.37(h)(2)(v) would be deleted for all purchases. Also, the address requirement would be deleted for all purchases except alcoholic beverages in quantities in excess of 4 liters and cigarettes in quantities in excess of 3 cartons.

Section 144.37(h)(3) would be modified by deleting the reference ''§ 19.6(d)(4)'' and substituting a reference to ''§ 19.6(d)(5)'' in place thereof.

Section 144.41(c), entitled ''Combining separate shipments'', would be modified and expanded to allow multiple withdrawals from a single warehouse which are transported on a single conveyance to be rewarehoused, at the proprietor's discretion, as one or more rewarehouse entries. To ensure the five-year provision of 19 U.S.C. 1557 is met, the combined rewarehouse entries will assume the import date of the oldest warehouse entry in the new combined entry. This provision will reduce the number of rewarehouse entry transactions at the receiving port.

## Comments

Before adopting the proposed amendments, consideration will be given to any written comments that are timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

## Regulatory Flexibility Act and Executive Order 12866

For the reasons set forth in the preamble, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604. Nor would the proposed amendments result in a ''significant regulatory action'' under E.O. 12866.

## Paperwork Reduction Act

The collection of information in this document is contained in §§ 19.2, 19.4, 19.6, 19.11, 19.12, 19.36, 19.37, 19.39, 144.36, 144.37 and 144.41. This information is required and will be used to ensure the exportation of merchandise from duty-free stores and other Customs bonded warehouses, and to otherwise satisfy the requirements of law and the protection of the revenue. This notice of proposed rulemaking is intended to simplify recordkeeping requirements for duty-free stores and other Customs bonded warehouses. The likely respondents and/or recordkeepers are business or other for-profit institutions.

The collection of information contained in this notice of proposed rulemaking has already been approved by the Office of Management and Budget (OMB) under 1515–0005. An Inventory Control Worksheet will be submitted to OMB, which will reflect any changes in the information collection burdens occasioned by this rule, together with a request for a suitable extension of the existing approval.

Estimated annual reporting and/or recordkeeping burden: 61,000 hours.

Estimated average annual burden per respondent/recordkeeper: 10 hours.

Estimated number of respondents and/or recordkeepers: 10,000.

Estimated annual frequency of responses: On-Occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection 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 collection of the 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.

## Drafting Information

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

## List of Subjects

*19 CFR Part 19*

Customs duties and inspection, Imports, Exports, Warehouses.

*19 CFR Part 113*

Customs bonds.

*19 CFR Part 144*

Customs duties and inspection, Imports, Warehouses.

## Proposed Amendments

It is proposed to amend parts 19, 113 and 144, Customs Regulations (19 CFR parts 19, 113 and 144) as set forth below.

## PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 and the specific authority for §§ 19.1, 19.6, 19.11, and 19.35–19.39 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

Section 19.6 also issued under 19 U.S.C. 1555;

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Section 19.11 also issued under 19 U.S.C. 1556, 1562;

* * * * *

Sections 19.35–19.39 also issued under 19 U.S.C. 1555;

* * * * *

2. It is proposed to amend § 19.1 by adding a sentence at the end of paragraph (a)(9) to read as set forth below, and by removing paragraph (c).

### § 19.1 Classes of customs warehouses.

(a) * * *

(9) * * * All distribution warehouses used exclusively to provide individual

duty-free sales locations and storage cribs with conditionally duty-free merchandise are also Class 9 warehouses.

* * * * *

3. It is proposed to amend § 19.2 by revising its heading, by adding three sentences at the end of paragraph (a), and by revising paragraphs (b)(2) and (g), to read as follows:

**§ 19.2 Applications to bond.**

(a) * * * The applicant must prepare and have available at the warehouse a procedures manual describing the inventory control and recordkeeping system that will be used in the warehouse. A certification by the proprietor that the inventory control and recordkeeping system meets the requirements of § 19.12 will be submitted with the application. The physical security of the facility must meet the approval of the port director.

(b) * * *

(2) A description of the store's procedures, which includes inventory control, recordkeeping, and delivery methods. These procedures must be set forth in the proprietor's procedures manual. Such manual and subsequent changes therein must be furnished to the port director upon request. The procedures in the manual shall provide reasonable assurance that conditionally duty-free merchandise sold therein will be exported;

* * * * *

(g) The port director shall promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification shall state the grounds for denial. The decision of the port director will be the final Customs administrative determination in the matter.

4. It is proposed to revise § 19.4 to read as follows:

**§ 19.4 Customs and proprietor responsibility and supervision over warehouses.**

(a) *Customs supervision.* The character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in this part shall be in accordance with § 161.1 of this chapter. Independent of any need to appraise or classify merchandise, the port director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, storage, security, or safety in a warehouse facility.

(b) *Proprietor responsibility and supervision.*—(1) *Supervision.* The proprietor shall supervise all transportation, receipts, deliveries, sampling, recordkeeping, repacking, manipulation, destruction, physical and procedural security, conditions of storage, and safety in the warehouse as required by law and regulations. Supervision by the proprietor shall be that which a prudent manager of a storage and manipulation facility would be expected to exercise.

(2) *Customs access.* The warehouse proprietor shall permit access to the warehouse by any Customs officer.

(3) *Safekeeping of merchandise and records.* The proprietor is responsible for safekeeping of merchandise and records concerning merchandise entered in Customs bonded warehouses. The proprietor or his employees shall safeguard and shall not disclose proprietary information contained in or on related documents to anyone other than the importer, importer's transferee, or owner of the merchandise to whom the document relates or their authorized agent.

(4) *Records maintenance.*—(i) *Maintenance.* The proprietor shall:

(A) Maintain the inventory control and recordkeeping system in accordance with the provisions of § 19.12 of this part;

(B) Retain all records required in this part and defined in § 162.1(a) of this chapter, pertaining to bonded merchandise for 5 years after the date of the final withdrawal under the entry; and

(C) Protect proprietary information in its custody from unauthorized disclosure.

(ii) *Availability.* Records shall be readily available for Customs review at the warehouse. In addition, a proprietor may keep records at another location for Customs review, but only if the proprietor first receives written approval for such storage from the port director.

(5) *Record retention in lieu of originals.* A warehouse proprietor may utilize alternative storage methods in lieu of maintaining records in their original formats, if such storage is approved by Customs under paragraph (b)(5)(i) of this section. For Customs purposes, original records may be stored in alternate form at any time after the final withdrawal under the entry to which these records pertain, except that duty-free store operators may store original sales tickets in alternate form at any time beginning six months after date of sale. If the proprietor chooses to use alternative storage methods, the following conditions must be met:

(i) *Approval.* The proprietor may request approval to maintain records in an alternative format by writing and describing the system of storage, the conversion techniques used and the security safeguards to be employed to prevent alteration, to the director of the regulatory audit field office closest to the party's headquarters operation. If satisfied that the alternative storage proposed will ensure the accuracy and availability of the records when required, the director will grant written approval.

(ii) *Retention of reproductions.* The proprietor shall retain and keep available an original and one duplicate of each microfilm, microfiche, cd ROM (compact disk, Read-Only Memory), or other storage medium used, for five years from the date of the final withdrawal under the entry to which these records pertain. Duty-free store operators must keep alternate storage media containing sales tickets for five years from the date of the final withdrawal or five years from the date of the sale, whichever is shorter.

(iii) *Hard-copy reproductions.* The proprietor must have the capability of making direct hard-copy reproductions of the data stored on the microfilm, microfiche, cd ROM, or other storage medium. The proprietor shall bear the expense of making hard-copy reproductions of any or all records required by any proper official of the U.S. Customs Service for the audit or inspection of books and records.

(iv) *Standards required for reproducing records.* Proprietors shall maintain the integrity of the original records by insuring that copies are true reproductions of the original records and serve the purpose for which such records were created. The following shall be observed: Copies shall contain all significant record detail shown on the original; copies of the record shall be so arranged, identified, and indexed that any individual document or component of the records can be located with reasonable facility; any indexes, registers, or other finding aids shall be contained on the storage medium at the beginning of the records to which they relate; each time reproductions are made, a written certification will be executed by a responsible company official (see § 191.6(a) of this chapter; the same parties who have authority to sign drawback documents are ''responsible company officials'' for purposes of this section), stating that the reproductions stored on the microfilm,

microfiche, cd ROM, or other storage medium constitute a true, complete and accurate reproduction of the original documents; and the proprietor shall maintain and make available a manual describing procedures for reproducing original records on alternative storage media and controls in effect for assuring completeness and accuracy of the reproductions. The procedures shall incorporate reasonable controls for assuring accuracy and completeness of alternative records. The proprietor is responsible for assuring that these controls are executed each time original records are reproduced.

(v) *Revocation of alternative record storage method.* Failure to maintain the records in accordance with these conditions and requirements will constitute a breach of the proprietor's bond and may result in the revocation by Customs of the privilege of maintaining records in a form other than the original format.

(6) *Warehouse and merchandise security.* The warehouse proprietor shall maintain the warehouse facility in a safe and sanitary condition and establish procedures adequate to ensure the security of all merchandise under Customs custody stored in the facility. The warehouse construction will be a factor that will be considered by the port director in deciding whether to approve the application. The facility shall be built in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry easy to detect. If a portion of the facility is to be used for the storage of non-bonded merchandise, the port director shall designate the means for effective separation of the bonded and non-bonded merchandise, such as a wall, fence, or painted line. All inlets and outlets to bonded tanks shall be secured with locks and/or in-bond seals.

(7) *Storage conditions.* Merchandise in the bonded area shall be stored in a safe and sanitary manner to minimize damage to the merchandise, avoid hazards to persons, and meet local, state, and Federal requirements applicable to specific kinds of goods. Aisles shall be established and maintained, and doors and entrances left unblocked for access by Customs officers and warehouse proprietor personnel.

(8) *Manner of storage.* Packages shall be received in the warehouse and recorded in the proprietor's inventory and accounting records according to their marks and numbers. Packages containing weighable or gaugeable merchandise not bearing shipping marks and numbers shall be received under the weighers or gaugers numbers. Packages with exceptions due to damage or loss of contents, or not identical as to quantity or quality of contents shall be stored separately until the discrepancy is resolved with Customs. Merchandise received in the warehouse shall be stored in a manner directly identifying the merchandise with the entry, general order, or seizure number; using a unique identifier for inventory categories composed of fungible merchandise accounted for on a First-In-First-Out (FIFO) basis; or using a unique identifier for inventory categories composed of fungible merchandise accounted for using another approved alternative inventory method.

(i) *Direct identification.* The warehouse proprietor shall mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. Containers covered by a given warehouse entry, general order or seizure shall not be mixed with goods covered by any other entry, general order or seizure. Merchandise covered by a given warehouse entry, general order or seizure may be stored in multiple locations within the warehouse if the proprietor's inventory control system specifically identifies all locations where merchandise for each entry, general order or seizure is stored and the quantity in each location. The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location, covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance.

(ii) *FIFO.* A proprietor may account for fungible merchandise on a First-In-First-Out (FIFO) basis instead of specific identification by warehouse entry number, provided the merchandise meets the criteria for fungibility and the recordkeeping requirements contained in § 19.12 of this part are met. As of the beginning date of FIFO procedures, each kind of fungible merchandise in the warehouse under FIFO shall constitute a separate inventory category. Each inventory category shall be assigned a unique number or other identifier by the proprietor to distinguish it from all other inventory categories under FIFO. All of the merchandise in a given inventory category shall be physically placed so as to be segregated from merchandise under other inventory categories or merchandise accounted for under other inventory methods. The unique identifier shall be marked on the merchandise, its container, or the location where it is stored so as to clearly show the inventory category of each article under FIFO procedures. Merchandise covered by a given unique identifier may be stored in multiple locations within the warehouse if the proprietor's inventory control system specifically identifies all locations where merchandise for a specific unique identifier is stored and the quantity in each location. The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location, covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance.

(iii) *Other alternative inventory methods.* Other alternative inventory systems may be used, if Customs approval is obtained. Importers or proprietors who wish to use an alternative inventory method other than FIFO must apply to Customs Headquarters, Office of Regulations and Rulings, for approval.

(9) *Miscellaneous responsibilities.* The proprietor is responsible for complying with requirements for transport to his warehouse, deposit, manipulation, manufacture, destruction, shortage or overage, inventory control and recordkeeping systems, and other requirements as specified in this part.

5. It is proposed to amend § 19.6 by revising the fourth sentence of paragraph (a)(1), paragraph (d)(1), and the sixth sentence of paragraph (d)(2), by redesignating paragraph (d)(4) as (d)(5) and by adding a new paragraph (d)(4), to read as follows:

**§ 19.6 Deposits, withdrawals, blanket permits to withdraw and sealing requirements.**

(a)(1) *Deposit in warehouse.* * * * A copy of any joint report of discrepancy shall be made within five business days of agreement and provided to the port director on the appropriate cartage documents as set forth in § 125.31 of this chapter. * * *

* * * * *

(d) *Blanket permits to withdraw.* (1) *General.* (i) Blanket permits may be used to withdraw merchandise from bonded warehouses for:

(A) Delivery to individuals departing directly from the Customs territory for exportation under the sales ticket procedure of § 144.37(h) of this chapter (Class 9 warehouses only);

(B) Aircraft or vessel supplies under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317); or

(C) The personal or official use of personnel of foreign governments and

international organizations set forth in subpart I, part 148 of this chapter; or

(D) A combination of the foregoing.

(ii) Blanket permits to withdraw may be used only for delivery at the port where withdrawn and not for transportation in bond to another port, except for a withdrawal for transportation to another port by a duty-free sales enterprise which meets the requirements for exemption as stated in § 144.34(c) of this chapter. Blanket permits to withdraw may not be used for delivery to a location for retention or splitting of shipments under the provisions of § 18.24 of this chapter. A withdrawer who desires a blanket permit shall state in capital letters on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, that ''Some or all of the merchandise will be withdrawn under blanket permit per section 19.6(d), C.R.'' Customs acceptance of the entry will constitute approval of the blanket permit. A copy of the entry will be delivered to the proprietor, whereupon merchandise may be withdrawn under the terms of the blanket permit. The permit may be revoked by the port director in favor of individual applications and permits if the permit is found to be used for other purposes, or if necessary to protect the revenue or properly enforce any law or regulation Customs is charged with administering. Merchandise covered by an entry for which a blanket permit was issued may be withdrawn for purposes other than those specified in this paragraph if a withdrawal is properly filed as required in subpart D, part 144, of this chapter.

(2) *Withdrawals under blanket permit.* * * * A copy of the withdrawal shall be retained in the records of the proprietor as provided in § 19.12(d)(4) of this part. * * *

* * * * *

(4) *Withdrawals under blanket permit for aircraft or vessel supplies.* Multiple withdrawals under a blanket permit for aircraft or vessel supplies, if consigned to the same daily aircraft flight number or vessel sailing, may be filed on one Customs Form 7512; however, an attachment form, developed by the warehouse proprietor and approved by the port director may be used for all withdrawals. This attachment form shall provide a sufficient summary of the goods being withdrawn, and shall include the warehouse entry number, the quantity and weight being withdrawn, the Harmonized Tariff Schedule of the United States number(s), the value of the goods, import and export lading information, the duty rate and amount, and any applicable Internal Revenue Tax Calculation, for each warehouse entry being withdrawn. A copy of Customs Form 7512 and the summary attachment must be attached to each permit file folder unless the warehouse proprietor qualifies for the permit file folder exemption under § 19.12(d)(4)(iii) of this part.

* * * * *

6. It is proposed to amend § 19.11 by revising paragraph (h) to read as follows:

**§ 19.11 Manipulation in bonded warehouses and elsewhere.**

* * * * *

(h) Merchandise which has been entered for warehouse and placed in a Class 9 warehouse (duty-free store) may be unpacked into its smallest irreducible unit for sale without a prior permit issued by the port director. The port director may issue a blanket permit to a duty-free store for up to one year permitting the destruction of merchandise covered by any entry and found to be nonsaleable, if the merchandise to be destroyed is valued at less than 5 percent of the value of the merchandise at entry or $1250, whichever is less, in its undamaged condition. Such permit may be revoked in favor of a permit for each entry and/or destruction whenever necessary to assure proper destruction and protection of the revenue. The proprietor shall maintain a record of unpacking merchandise into saleable units and destruction of nonsaleable merchandise in its inventory and accounting records.

7. It is proposed to revise § 19.12 to read as follows:

**§ 19.12 Inventory control and recordkeeping system.**

(a) *Systems capability.* The proprietor shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

(1) Accounting for all merchandise transported, deposited, stored, manipulated, manufactured, smelted, refined, destroyed in or removed from the bonded warehouse and all merchandise collected by a proprietor or his agent for transport to his warehouse. The records shall provide an audit trail from deposit through manipulation, manufacture, destruction, and withdrawal from the bonded warehouse either by specific identification or other Customs authorized inventory method. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by Customs of the proprietor's compliance with these regulations and correctness of his annual submission or reconciliation;

(2) Producing accurate and timely reports and documents as required by this part; and

(3) Identifying shortages and overages of merchandise in sufficient detail to determine the quantity, description, tariff classification and value of the missing or excess merchandise so that appropriate reports can be filed with Customs on a timely basis.

(b) *Procedures manual.* (1) The proprietor shall have available at the warehouse an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The proprietor shall keep current its procedures manual and shall submit to the port director a new certification at the time any change in the system is implemented.

(c) *Entry of merchandise into a warehouse.*—(1) *Identification.* All merchandise collected by a proprietor or his agent for transport to his warehouse shall be receipted. In addition, all merchandise entered in a warehouse will be recorded in a receiving report or document using a Customs entry number or unique identifier if an alternate inventory control method has been approved. All merchandise will be traceable to a Customs entry and supporting documentation.

(2) *Quantity verification.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the port director as provided in § 19.6(a).

(3) *Recordation.* Merchandise received will be accurately recorded in the accounting and inventory system records from the receiving report or document using the Customs entry number or unique identifier if an alternative inventory control method has been approved.

(d) *Accountability for merchandise in a warehouse.*—(1) *Identification of merchandise.* The Customs entry number or unique identifier, as applicable under § 19.4(b)(8), will be used to identify and trace merchandise.

(2) *Inventory records.* The inventory records will specify by Customs entry number or unique identifier if an alternative inventory control method is approved:

(i) The location of the merchandise within the warehouse;

(ii) The cost or value of the merchandise, unless the proprietor's financial records maintain cost or value and the records are made available for Customs review; and

(iii) The beginning balance, cumulative receipts and withdrawals, adjustments, destructions, and current balance on hand by date and quantity.

(3) *Theft, shortage, overage or damage.* Any theft or suspected theft or overage or any extraordinary shortage or damage (one percent or more of the value of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of $100) shall be immediately brought to the attention of the port director, and confirmed in writing within five business days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to make entry within five business days of the date of discovery. The applicable duties, taxes and interest on thefts and shortages so reported shall be paid by the responsible party to Customs within 20 calendar days following the end of the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment. These same requirements shall apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed $100. Upon identification, the proprietor shall record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor shall also record all shortages and overages as required in the Customs Form 300 or annual reconciliation report under paragraphs (f) or (g) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier shall be submitted to the port director at the time the Warehouse Proprietor's Submission, Customs Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) and (h) of this section.

(4) *Permit file folders.—(i)* Maintenance. Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, withdrawals, removals and blanket permit summaries within five business days after the event occurs. The permit file folders shall be kept in a secure area and shall be made available for inspection by Customs at all reasonable hours.

(ii) *Review.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall: Review the permit file folder to ensure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry; notify Customs of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed; and file the permit file folder with Customs within 30 calendar days after final withdrawal, except as allowed by paragraph (b)(4)(iv) of this section. The permit file folder for merchandise not withdrawn during the general order period shall be submitted to the port director upon receipt from Customs of the Customs Form 6043.

(iii) *Exemption to maintenance requirement.* Maintenance of permit file folders will not be required, if the proprietor has an automated system capable of: satisfactorily summarizing all actions by Customs warehouse entry; providing upon demand by Customs an entry activity summary report which lists all individual receipts, withdrawals, destructions, manipulations and adjustments by warehouse entry and is cross-referenced to the source documents for each transaction; and maintaining source documents so that the documents can be readily retrieved upon request. Failure to provide the entry activity summary report or documentation supporting the entry activity summary report upon demand by the port director or the field director of regulatory audit could result in reinstatement by the port director of the requirement to maintain the permit file folder for all warehouse entries. When final withdrawal is made, the proprietor must submit the entry activity summary report to Customs. Prior to submission, the proprietor must ensure the accuracy of the summary report and assure that all supporting documentation is on file and available for review if requested by Customs.

(iv) *Exemption to submission requirement.* At the discretion of the port director, a proprietor may be allowed to furnish formal notification of final withdrawal in lieu of the requirement to submit the permit file folder or entry activity summary within 30 calendar days of each final withdrawal. If approved to use this procedure the proprietor could be required by the port director to submit permit file folders or entry activity summaries on a selective basis. Failure to promptly provide the permit file folder or entry activity summary upon request by the port director or the field director of regulatory audit could result in withdrawal of this privilege.

(5) *Physical inventory.* The proprietor shall take at least an annual physical inventory of all merchandise in the warehouse, or periodic cycle counts of selected categories of merchandise such that each category is counted at least once during the year, with prior notification of the date(s) given to Customs so that Customs personnel may observe or participate in the inventory if deemed necessary. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the facility where the original entry was filed must reconcile the on-hand balances at all locations with the record balance for those entries with merchandise in multiple locations. The proprietor shall notify the port director of any discrepancies, record appropriate adjustments in the inventory control and recordkeeping system, and make required payments and entries to Customs, in accordance with paragraph (d)(3) of this section. Discrepancies found in a Class 9 warehouse with integrated locations as set forth in § 19.35(c) will be the net discrepancies for a specific identifier such that overages within one sales location will be offset against shortages in another location that is within the integrated location. A Class 9 proprietor who transfers merchandise between facilities in different ports without being required to file a rewarehouse entry in accordance with § 144.34 of this chapter may offset overages and shortages within the same specific identifier for merchandise located in stores in different ports.

(e) *Withdrawal of merchandise from a warehouse.* All bonded merchandise withdrawn from a warehouse will be accurately recorded within the inventory control and recordkeeping system. The inventory control and recordkeeping system must have the capability to trace all withdrawals back to a Customs entry and to ultimate disposition of the merchandise by the proprietor.

(f) *Special provisions for use of FIFO inventory procedures.*—(1) *Notification.* A proprietor who wishes to use FIFO procedures for all or part of the merchandise in a bonded warehouse shall provide the port director a written certification that: the proprietor has read and understands Customs FIFO procedures set forth in this section; the

proprietor's procedures are in accordance with Customs FIFO procedures, and the proprietor agrees to abide by those procedures; and the proprietor of a public warehouse will obtain the written consent of any importer using the warehouse before applying FIFO procedures to their merchandise.

(2) *Qualifying merchandise.* FIFO inventory procedures may be used only for fungible merchandise. For purposes of this section, ''fungible merchandise'' means merchandise which is identical and interchangeable for all commercial purposes. While commercial interchangeability is usually decided between buyer and seller or between proprietor and importer, Customs is the final arbiter of fungibility in bonded warehouses. The criteria for determining whether merchandise is fungible include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification, value, brand name, unit of quantity (such as barrels, gallons, pounds, pieces), model number, style and same kind and quality.

(3) *Merchandise specifically excluded.* FIFO procedures cannot be applied to the following merchandise, as well as any other merchandise which does not comply with the requirements of paragraph (f)(2) of this section:

(i) Merchandise subject to quota, visa or export restrictions chargeable to different countries of origin;

(ii) Textile and textile products of different quota categories;

(iii) Merchandise with different tariff classifications or rates of duty, except where the difference is within the merchandise itself (such as kits, merchandise in unusual containers) or where the tariff classification or dutiability is determined only by conditions upon withdrawal (for example, withdrawal for vessel supplies, bonded wool transactions);

(iv) Merchandise with different legal requirements for marking, labelling or stamping;

(v) Merchandise with different trademarks;

(vi) Merchandise of different grades or qualities;

(vii) Merchandise with different importers of record;

(viii) Damaged or deteriorated merchandise;

(ix) Restricted merchandise; or

(x) General order, abandoned or seized merchandise.

(4) *Maintenance of FIFO.* FIFO procedures used for merchandise in any inventory category, must be used consistently throughout the warehouse storage and recordkeeping practices and procedures for the merchandise. For example, merchandise may not be added to inventory by FIFO but withdrawn by bypassing certain inventory layers to reach a specific warehouse entry other than the oldest one. However, this does not preclude the use of specific identification for some merchandise in a warehouse entry and FIFO for other merchandise, so long as they are segregated in physical storage and clearly distinguished in the inventory and accounting records.

(5) *FIFO recordkeeping.* In the inventory and accounting records, the proprietor shall establish an inventory layer for each warehouse entry represented in each inventory category. The layers shall be established in the order of time of acceptance of the entry or by the date of importation of merchandise covered by each applicable warehouse entry. There shall be no mixing of layering both by time of acceptance and date of importation in the same warehouse. Records for each layer shall, as a minimum, show the warehouse entry number, date of acceptance, date of importation, quantity and unit of quantity. They shall also show for each entry the type of warehouse withdrawal number or other specific removal event charged against the entry, by date and quantity. Each addition to or deduction from the inventory category shall be posted in the appropriate inventory category within 2 business days after the event occurs. All FIFO records and documentation shall consistently use the same unit of quantity within each inventory category.

(6) *Entry requirements.* Warehouse entries covering any merchandise to be accounted for under FIFO must be prominently marked ''FIFO'' on the face of the entry document. The entry document or an attachment thereto shall show the unique identifier of each inventory category to be accounted for under FIFO, the quantity in each inventory category and the unit of quantity.

(7) *Receipts.* Any shortages, overages, or damage found upon receipt shall be attributed to the entry under which the merchandise was received. FIFO procedures will not take effect until the merchandise is physically placed in the storage location for the inventory category represented in the entry.

(8) *Manipulation.* When manipulation results in a product with a different unique identifier, the inventory and accounting records shall show the quantities of merchandise in each inventory category appearing in the product covered by the new unique identifier. The withdrawal shall show the unique identifiers of both the materials used in the manipulation and the product as manipulated. The quantities of the original unique identifiers will be deducted from their respective warehouse entries on a FIFO basis when the resultant product is withdrawn.

(9) *Discontinuance of FIFO.* A proprietor may voluntarily discontinue the use of FIFO procedures for all or part of the merchandise currently under FIFO by providing written notification to the port director. The notification shall clearly describe the merchandise, by commercial names and unique identifiers, to be removed from FIFO. Following notification, the merchandise shall be segregated in both the recordkeeping system and the physical location by warehouse entry number and the quantities so removed shall be deducted from the appropriate FIFO inventory category balances. Merchandise so removed shall be maintained under the specific identification inventory method. FIFO procedures which were voluntarily discontinued may be reinstated, but not for merchandise covered by any warehouse entry for which FIFO was discontinued.

(g) *Warehouse proprietor submission.* Except as otherwise provided in paragraph (h) of this section or § 19.19(b) of this part, the warehouse proprietor shall file with the field director of regulatory audit within 45 calendar days from the end of his business year a Warehouse Proprietor's Submission on Customs Form 300. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the CF 300 shall cover all locations and warehouses of the proprietor. An alternative format may be used for providing the information required on the CF 300, if prior written approval is obtained from the field director of regulatory audit.

(h) *Annual reconciliation.*—(1) *Report.* Instead of filing Customs Form 300 as required under paragraph (g) of this section, the proprietor of a class 2, importers' private bonded warehouse, and proprietors of classes 4, 5, 6, 7, 8, and 9 warehouses if the warehouse proprietor and the importer are the same party, shall prepare a reconciliation report within 90 days after the end of the fiscal year unless the port director authorizes an extension for reasonable cause. The proprietor shall retain the annual reconciliation report for 5 years from the end of the fiscal year covered by the report. The report must be available for a spot check or audit by

Customs, but need not be furnished to Customs unless requested. There is no form specified for the preparation of the report.

(2) *Information required*. The report must contain the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; a description of merchandise for each entry or unique identifier, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under § 144.34 of this chapter, the reconciliation shall cover all locations and warehouses of the proprietor at the same port. If the annual reconciliation includes entries for which merchandise was transferred to a warehouse without filing a rewarehouse entry, as allowed under § 144.34, the annual reconciliation must contain sufficient detail to show all required information by location where the merchandise is stored. For example, if merchandise covered by a single entry is stored in warehouses located in 3 different ports, the annual reconciliation should specify individually the beginning and ending inventory balances, cumulative receipts, transfers, and positive and negative adjustments for each location.

(3) *Certification*. The proprietor shall submit to the field director of regulatory audit within 10 business days after preparation of the annual reconciliation report, a letter signed by the proprietor certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must contain the proprietor's IRS number; date of fiscal year end; the name and street address of the warehouse; the name, title, and telephone number of the person having custody of the records; and the address where the records are stored. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with paragraph (d)(3) of this section. Any previously unreported shortages and overages should be reported to the port director and any unpaid duties, taxes and fees should be paid at this time.

(i) *System review*. The proprietor shall perform an annual internal review of the inventory control and recordkeeping system and shall prepare and maintain on file a report identifying any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

(j) *Special requirements*. A warehouse proprietor submission (CF 300) or annual reconciliation must be prepared for each facility or location as defined in §§ 19.2(a) and 19.35(c) of this part. When merchandise is transferred from one facility or location to another without filing a rewarehouse entry, as provided for in § 144.34(c) of this chapter, the submission/reconciliation for the warehouse where the entry was originally filed should account for all merchandise under the warehouse entry, indicating the quantity in each location.

8. It is proposed to amend § 19.13 by revising the fourth sentence of paragraph (g) to read as follows:

**§ 19.13 Requirements for establishment of warehouses.**

* * * * *

(g) *Secure storage*. * * * The areas for storage of bonded material and manufactured products shall be secured in accordance with the standards prescribed in § 19.4(b)(6) of this part. * * *

* * * * *

9. It is proposed to amend § 19.13a by revising the first sentence of its introductory text and by revising paragraph (b) to read as follows:

**§ 19.13a Recordkeeping requirements.**

The proprietor of a manufacturing warehouse shall comply with the recordkeeping requirements of §§ 19.4(b) and 19.12.* * *

* * * * *

(b) Take an annual physical inventory of the merchandise as provided in § 19.12(d)(5) in conjunction with the annual submission required by § 19.12(g); and

* * * * *

10. It is proposed to amend § 19.35 by revising the introductory text of paragraph (c) and by revising paragraphs (c)(2) and (f) to read as follows:

**§ 19.35 Establishment of duty-free stores (Class 9 warehouses).**

* * * * *

(c) *Integrated locations*. A Class 9 warehouse with multiple noncontiguous sales and crib locations (see § 19.37(a) of this part) containing conditionally duty-free merchandise and requested by the proprietor may be treated by Customs as one location if:

* * * * *

(2) The recordkeeping system is centralized up to the point where a sale is made so as to automatically reduce the sale quantity by location from centralized inventory or inventory records must be updated no less frequently than at the end of each business day to reflect that day's activity.

* * * * *

(f) *Security of sales rooms and cribs*. The physical and procedural security requirements of § 19.4(b)(6) of this part shall be applied to the security of the sales rooms and cribs by the port director. The proprietor shall establish procedures to safeguard the merchandise so as to accommodate the movement of purchasers and prospective purchasers of conditionally duty-free merchandise contained in duty-free sales rooms and cribs.

* * * * *

11. It is proposed to amend § 19.36 by revising the last sentence of paragraph (e) and the third sentence of paragraph (g) to read as follows:

**§ 19.36 Requirements for duty-free store operations.**

* * * * *

(e) *Merchandise eligible for warehousing*. * * * However, such merchandise must be either identified or marked ''DUTY-PAID'' or ''U.S.-ORIGIN'', or similar markings, as applicable, so that Customs officers can easily distinguish conditionally duty-free merchandise from other merchandise in the sales or crib area.

* * * * *

(g) *Inventory procedure*. * * * The inventory shall be reconcilable with the accounting and inventory records and the permit file folder requirements of § 19.12(d), (e) and (f) of this part. * * *

12. It is proposed to amend § 19.37 by revising the first and fourth sentences, and the fifth (and last) sentence of paragraph (a) to read as follows:

**§ 19.37 Crib operations.**

(a) *Crib*. A crib means a bonded area, separate from the storage area of a Class 9 warehouse, for the retention of a supply of articles for delivery to persons departing from the United States. * * * The quantity of goods in the crib may be an amount requested by the proprietor which is commercially necessary for the delivery operations for a period, if approved by the port director. The port director may increase or decrease the quantity as deemed necessary for the protection of the revenue and proper administration of U.S. laws and regulations, or may order the return to the storage area of goods remaining unsold.

* * * * *

13. It is proposed to amend § 19.39 by removing the last three sentences of

paragraph (c)(2); it is further proposed to amend § 19.39 by revising the first sentence of paragraph (c)(3), by redesignating paragraphs (c)(4)(ii), (c)(4)(iii) and (c)(4)(iv), as (c)(4)(iii), (c)(4)(iv) and (c)(4)(v), respectively, and adding a new paragraph (c)(4)(ii), and by revising paragraphs (c)(5) and (e), to read as set forth below:

**§ 19.39 Delivery for exportation.**

* * * * *

(c) * * *

(3) *Aircraft Delivery*. The merchandise will be delivered by a licensed cartman for lading as baggage directly on the aircraft on which the passenger will depart. * * *;

(4) Unit-load delivery. * * *

(ii) Merchandise shall be placed on the aircraft on which the passenger departs the United States for carriage as passenger baggage;

* * * * *

(5) *Cancelled or aborted flights or no-show passengers*. (i) *Cancelled or aborted flights*. The proprietor shall, upon request, make available to Customs the purchaser's name and address, the purchaser's airline ticket number and the identity and quantity of the merchandise delivered by the proprietor to the purchaser (if the merchandise was delivered to the airline rather than the passenger, the name of the airline employee to whom the merchandise was delivered), and the date and time of that delivery in lieu of retrieving the merchandise for safekeeping until the purchaser actually departs.

(ii) *No-show passengers*. A proprietor who delivers merchandise directly to an airline for delivery to a passenger who does not board the flight shall establish a procedure to obtain redelivery of that merchandise from the airline.

* * * * *

(e) *Delivery method*. Delivery of conditionally duty-free merchandise to persons for exportation will be made by licensed cartmen or bonded carriers under the procedures in subpart D, part 125, and § 144.34(a), of this chapter, or under a local control system approved by the port director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse.

* * * * *

## PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 would continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

2. It is proposed to amend § 113.63 by redesignating paragraph (a)(4) as (a)(5) and adding a new paragraph (a)(4), by adding a new paragraph (b)(4), and by revising the first sentence of paragraph (d), to read as follows:

**§ 113.63 Basic custodial bond conditions.**

(a) * * *

(4) If authorized to use the alternative transfer procedure set forth in § 144.34(c) of this chapter, to operate as constructive custodian for all merchandise transferred under those procedures, thereby assuming primary responsibility for the continued proper custody of the merchandise notwithstanding its geographical location;

* * * * *

(b) * * *

(4) If authorized to use the alternative transfer procedure set forth in § 144.34(c) of this chapter, to keep safe any merchandise so transferred.

* * * * *

(d) * * * If the principal is designated a bonded carrier, or licensed to operate a cartage or lighterage business, or authorized to use the alternative transfer procedure set forth in § 144.34(c) of this chapter, the principal agrees to redeliver timely, on demand by Customs, any merchandise delivered to unauthorized locations or to the consignee without the permission of Customs. * * *

* * * * *

## PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The general authority citation for part 144 and the specific authority for § 144.37 would continue to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624;

* * * * *

Section 144.37 also issued under 19 U.S.C. 1555, 1562.

2. It is proposed to amend § 144.34 by adding a new paragraph (c) to read as follows:

**§ 144.34 Transfer to another warehouse.**

* * * * *

(c) *Transfers between integrated bonded warehouses*.—(1) *Eligibility*.

(i) Only an importer who will transfer warehoused merchandise among Class 2 and 9 warehouses listed on the application in paragraph (c)(2) of this section is eligible to participate.

(ii) The importer must have a centralized inventory control system that shows the location of all of the warehoused merchandise at all times, including merchandise in transit.

(iii) The importer and its surety must sign the application. If the application to use this alternative procedure is approved by the appropriate port director, the importer's entry bond containing the conditions provided under § 113.62 of this chapter will continue to attach to any merchandise transferred under these alternative procedures.

(iv) Each proprietor of a warehouse listed on the application and each surety who underwrites that proprietor's custodial bond coverage under § 113.63 of this chapter shall sign the application.

(2) *Application*. Application must be made in writing to the port director of the port in which the applicant's centralized inventory control system exists, with copies to all affected port directors, for exemptions from the requirements for transfer of merchandise from one bonded warehouse to another set forth in paragraphs (a) and (b) of this section. The application must list all bonded warehouses to and from which the merchandise may be transferred; all such warehouses must be covered by the same centralized inventory control system. Only blanket exemption requests will be considered; exemptions will not be considered for individual transfers. The application may be in letter form, signed by all participants, and contain a certification to the port director by the applicant that he maintains accounting records, documents and financial statements and reports that adequately support Customs activities.

(3) *Operation*. An importer who receives approval to transfer merchandise between bonded warehouses in accordance with the provisions of this section may, after entry into the first warehouse, transfer that merchandise to any other warehouse without filing a withdrawal from warehouse or a rewarehouse entry. The warehoused merchandise will be treated as though it remains in the first warehouse so long as the actual location of the merchandise at all times is recorded as provided under the provisions of this section.

(4) *Inventory control requirements*. The records required to be maintained must include a centralized inventory control system and supporting documentation which meets the following requirements:

(i) Provide Customs upon demand with the proper on-hand balance of each inventory item in each warehouse

facility and each storage location within each warehouse;

(ii) Provide Customs upon demand with the proper on-hand balance for each open warehouse entry and the actual quantity in each warehouse facility;

(iii) If an alternative inventory system has been approved, provide Customs upon demand with the proper on-hand balance for each unique identifier and the quantity related to each open warehouse entry and the quantity in each warehouse facility;

(iv) Maintain documentation for all intracompany movements, including authorizations for the movement, shipping documents and receiving reports. These documents must show the appropriate warehouse entry number or unique identifier, the description and quantity of the merchandise transferred, and must be properly authorized and signed evidencing shipment from and delivery to each location;

(v) Maintain a consolidated permit file folder at the location where the merchandise was originally warehoused. The consolidated permit file folder must meet the requirements of § 19.12(d)(4) of this chapter regardless of the warehouse facility in which the action occurred. Documentation for all intracompany movements, including authorizations for movement, shipping documents, receiving reports, as well as documentation showing ultimate disposition of the merchandise must be filed in the consolidated permit file folder within seven business days; and

(vi) Maintain a subordinate permit file at all intracompany locations where merchandise is transferred containing copies of documentation required by § 19.12(d)(4) of this chapter and by paragraph (c)(3)(v) of this section relating to merchandise quantities transferred to the location. A copy of all documents in the subordinate permit file folder must be filed in the consolidated permit file folder within seven business days; no exceptions will be granted to this requirement. When the final withdrawal is made on the respective entry, the subordinate permit file shall be considered closed and filed at the intracompany location to which the merchandise was transferred.

(vii) File the withdrawal from Customs custody at the original warehouse location at which the merchandise was entered.

(5) *Waiver of permit file folder requirements.* The permit file folder requirements of paragraphs (c)(3)(v) and (c)(3)(vi) of this section may be waived if the proprietor's recordkeeping and inventory control system qualifies under the requirements of § 19.12(d)(4)(iii) of this chapter at all locations where bonded merchandise is stored.

(6) *Procedure not available.* (i) *Liens.* The transfer procedures permitted under paragraph (c) of this section shall not be available for merchandise with respect to which Customs is notified of the existence of a lien, as prescribed in § 141.112 of this chapter (see 19 U.S.C. 1564), until proof shall be produced at the original warehouse location that the lien has been satisfied or discharged.

(ii) *Restricted merchandise.* Merchandise subject to a restriction on release such as covered by a licensing, quota or visa requirement, is not eligible.

3. It is proposed to amend § 144.36 by revising paragraphs (c) and (f), and by adding the word ''or'' at the end of paragraph (g)(5) and adding a new paragraph (g)(6) thereafter, to read as follows:

**§ 144.36 Withdrawal for transportation.**

* * * * *

(c) *Form.* (1) A withdrawal for transportation shall be filed on Customs Form 7512 in five copies. An extra copy or copies of the Customs Form 7512 may be required for use in connection with the delivery of the merchandise to the bonded carrier and, in the case of alcoholic beverages, two extra copies shall be required for use in furnishing the duty statement to the port director at destination.

(2) Separate withdrawals for transportation from a single warehouse, via a single conveyance, consigned to the same consignee, and deposited into a single warehouse, can be filed on one Customs Form 7512, under one control number, provided that there is an attachment, to be certified by a Customs officer, providing the information for each withdrawal, as required in paragraph (d) of this section. This procedure shall not be allowed for merchandise which is in any way restricted (for example, quota/visa).

(3) The requirement that a Customs Form 7512 be filed and the information required in paragraph (d) of this section be shown shall not be required if the merchandise qualifies under the exemption in § 144.34(c).

* * * * *

(f) *Forwarding procedure.* The merchandise shall be forwarded in accordance with the general provisions for transportation in bond (§§ 18.1 through 18.8 of this chapter). However, when the alternate procedures under § 144.34(c) are employed, the merchandise need not be delivered to a bonded carrier for transportation, and an entry for transportation (Customs Form 7512) and a rewarehouse entry will not be required.

(g) *Procedure at destination.* * * *

(5) * * *; or

(6) Deposited into the proprietor's bonded warehouse or duty free store warehouse without rewarehouse entry as required in § 144.41, if the merchandise qualifies for the exemption specified in § 144.34(c).

* * * * *

4. It is proposed to amend § 144.37 by revising paragraph (h)(2)(v), and by revising the fourth sentence and the sixth (and last) sentence of paragraph (h)(3), concluding text, to read as follows:

**§ 144.37 Withdrawal for exportation.**

* * * * *

(h) * * *

(2) * * *

(v) The full name and address of the purchaser. However, the port director may waive the address requirement for all merchandise except for alcoholic beverages in quantities in excess of 4 liters and cigarettes in quantities in excess of 3 cartons; and

* * * * *

(3) *Sales ticket register.* * * * The sales ticket register shall be included in the permit file folder with or in lieu of the blanket permit summary, as provided in § 19.6(d)(5) of this chapter. * * * In lieu of placing a copy of sales tickets in each permit file folder, the warehouse proprietor may keep all sales tickets in a readily retrievable manner in a separate file.

5. It is proposed to amend § 144.39 by revising its first sentence to read as follows:

**§ 144.39 Permit to transfer and withdraw merchandise.**

With the exception of merchandise transferred under the procedures of § 144.34(c), if all legal and regulatory requirements are met, the appropriate Customs officer shall approve the application to transfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the applicant. * * *

6. It is proposed to amend § 144.41 by revising paragraph (c) to read as follows:

**§ 144.41 Entry for rewarehouse.**

* * * * *

(c) *Combining Separate shipments.* (1) Separate shipments consigned to the same consignee and received under separate withdrawals for transportation may be combined into one rewarehouse entry if the warehouse withdrawals are from the same original warehouse entry.

(2) Shipments covered by multiple warehouse entries, and shipped from a

single warehouse under separate withdrawals for transportation, via a single conveyance, may be combined into one rewarehouse entry if consigned to the same consignee and deposited into a single warehouse. This procedure shall not be allowed for merchandise which is in any way restricted (for example, quota/visa). The combined rewarehouse entry shall have attached either copies of each warehouse entry package which is being combined into the single rewarehouse entry or a summary with pertinent information, that is, the date of importation, commodity description, size, HTSUS and entry numbers, for all entries withdrawn for consolidation as one rewarehouse entry. Any combining of separate withdrawals into one rewarehouse entry shall result in the rewarehouse entry being assigned the import date of the oldest entry being combined into the rewarehouse entry.

(3) Combining of separate shipments shall be prohibited in all other circumstances.

* * * * *

Michael H. Lane,

*Acting Commissioner of Customs.*

Approved: April 8, 1996.

John P. Simpson,

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 96–14125 Filed 6–5–96; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 19 CFR Parts 351, 353 and 355

### Antidumping Duties; Countervailing Duties

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Announcement of opportunity to file public comments on the public hearing of proposed antidumping and countervailing duty regulations.

**SUMMARY:** The Department of Commerce (the Department) is announcing the opportunity to file public comments on issues raised at the public hearing on the proposed antidumping and countervailing duty regulations. The deadline for filing comments is June 17, 1996. The public hearing will be held on June 7, 1996.

**DATES:** A public hearing will be held at 10:00 on June 7, 1996. The deadline for filing comments is June 17, 1996.

**ADDRESSES:** The public hearing will be held in the Auditorium of the Herbert C. Hoover Building at Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. Address written comments and requests to participate in the public hearing to Paul Joffe, Acting Assistant Secretary for Import Administration, Central Records Unit, Room B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. Comments on the proposed regulations should be addressed: Attention: Hearing Comments. Each person submitting a comment should include his or her name, address, and give reasons for any recommendation.

**FOR FURTHER INFORMATION CONTACT:** Penelope Naas at (202) 482–3534.

**SUPPLEMENTARY INFORMATION:** On February 27, 1996, the Department published proposed antidumping and countervailing duty regulations (61 FR 7308). We will hold a public hearing on June 7, 1996. We are allowing submission of written comments on issues raised at the hearing. As well, we are allowing submission of written comments on any issue raised in written comments previously submitted.

Proposed Regulations

The proposed regulations are available on the Internet at the following address:

HTTP://WWW.ITA.DOC.GOV/IMPORT—ADMIN/RECORDS/

In addition, the proposed regulations are available to the public on 3.5″ diskettes, with specific instructions for accessing compressed data, at cost, and paper copies available for reading and photocopying in Room B–099 of the Central Records Unit. Any questions concerning file formatting, document conversion, access on Internet, or other file requirements should be addressed to Andrew Lee Beller, Director of Central Records, (202) 482–1248.

Format and Number of Copies

To simplify the processing and distribution of the public comments pertaining to the Department's proposed regulations, parties are encouraged to submit documents in electronic form accompanied by an original and three paper copies. All documents filed in electronic form must be on DOS formatted 3.5″ diskettes, and must be prepared in either WordPerfect format or a format that the WordPerfect program can convert and import into WordPerfect. Please submit comments on a separate file on the diskette and labeled by the section number in the regulations. If possible, the Department would appreciate the documents being filed in either ASCII format or WordPerfect 5.1, and containing generic codes. The Department would also appreciate the use of descriptive file names.

Dated: June 3, 1996.

Paul Joffe,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–14308 Filed 6–5–96; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[IA–26–94]**

**RIN 1545–AU34**

### Qualified Small Business Stock

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to the 50-percent exclusion for gain from certain small business stock. The proposed regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) and provide guidance to the issuers and owners of the stock of certain small businesses. This document also provides a notice of public hearing on these proposed regulations.

**DATES:** Written comments and outlines of oral comments to be presented at the public hearing scheduled for October 3, 1996 must be received by September 4, 1996.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (IA–26–94), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (IA–26–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Catherine A. Prohofsky at (202) 622–4930; concerning submissions and the public hearing, Christina Vasquez at (202) 622–7180; (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to section 1202 of the Internal Revenue Code. Section 1202 was added by section 13113 of OBRA '93. Section 1202 allows a taxpayer (other than a corporation) to exclude 50 percent of certain gain from the sale of qualified small business stock held for more than 5 years.

Section 1202(c)(1) provides that only stock acquired after August 10, 1993, at its original issuance in exchange for money, property other than stock, or as compensation for services to the corporation (other than as an underwriter) qualifies for the exclusion (the original issue requirement). Section 1202(c)(3) provides two rules to prevent evasion of the original issue requirement. Under the first rule, the exclusion does not apply to stock acquired by the taxpayer if, at any time during the 4-year period beginning 2 years before the issuance of such stock, the corporation purchased (directly or indirectly) any of its stock from the taxpayer or a related person. Section 1202(c)(3)(A). Under the second rule, the exclusion does not apply to stock issued by a corporation if, during the 2-year period beginning 1 year before the issuance of such stock, the corporation made one or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of the 2-year period. Section 1202(c)(3)(B).

The IRS and Treasury are concerned that, in many cases, redemptions that have neither the purpose nor the effect of evading the original issue requirement may result in disqualification under these rules. Section 1202(k) authorizes Treasury to prescribe such regulations as may be appropriate to carry out the purposes of section 1202.

Explanation of Provisions

The proposed regulations permit a corporation to redeem de minimis amounts of stock without violating the anti-evasion rules. The proposed regulations also provide that certain redemptions that are incident to events affecting a shareholder and are unlikely to result in evasion of the original issue requirement are disregarded in determining whether redemptions exceed the de minimis amounts. In particular, redemptions upon termination of a shareholder's employment or the death, disability, or mental incompetency of a shareholder are disregarded. Finally, the regulations clarify that transfers of stock by a shareholder to an employee in connection with the performance of services are not treated as redemptions for purposes of the anti-evasion rules.

The regulations will apply to stock issued after the date they are published as final regulations. The regulations will also apply to stock issued on or before that date, but only with respect to the effect of redemptions occurring after that date.

Special Analyses

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

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and 8 copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

The IRS and Treasury invite comments on matters addressed in the proposed regulations and suggestions for any additional exceptions and clarifications that may be appropriate in the context of the purpose of section 1202(c)(3) and the regulatory authority granted in section 1202(k). The IRS and Treasury specifically invite comments from the small business community.

The IRS and Treasury are particularly interested in comments regarding the scope of the exception for redemptions incident to termination of employment. The IRS and Treasury are committed to extending the exception to independent contractors, but seek comments regarding how to determine when a termination of the independent contractor's services has occurred.

A public hearing has been scheduled for October 3, 1996, at 10 a.m. in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments and an outline of topics to be discussed and the time to be devoted to each topic (signed original and 8 copies) by September 4, 1996.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Catherine A. Prohofsky, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

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

Section 1.1202–2 is also issued under 26 U.S.C. 1202(k).

* * *

Par. 2. Sections 1.1202–0 and 1.1202–2 are added to read as follows:

### § 1.1202–0 Table of contents.

This section lists the major captions that appear in the regulations under § 1.1202–2.

*§ 1.1202–2 Qualified Small Business Stock; Effect of Redemptions.*

(a) Redemptions from taxpayer or related person.

(1) In general.

(2) De minimis amount.

(b) Significant redemptions.

(1) De minimis amount.

(2) Special rule.

(c) Transfers by shareholders in connection with the performance of services not treated as purchases.

(d) Exceptions for termination of services, death, or disability or mental incompetency.

(1) Termination of services.

(2) Death.

(3) Disability or mental incompetency.

(e) Effective date.

**§ 1.1202–2 Qualified small business stock; effect of redemptions.**

(a) *Redemptions from taxpayer or related person*—(1) *In general.* Stock acquired by a taxpayer is not qualified small business stock if, in one or more purchases during the 4-year period beginning on the date 2 years before the issuance of the stock, the issuing corporation purchases (directly or indirectly) more than a de minimis amount of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

(2) *De minimis amount.* For purposes of this paragraph (a), stock exceeds a de minimis amount only if the aggregate amount paid for the stock exceeds $10,000 and more than 2 percent of the stock held by the taxpayer and related persons is acquired. The following rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock held (directly or indirectly) by the taxpayer and related persons immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(b) *Significant redemptions*—(1) *In general.* Stock is not qualified small business stock if, in one or more purchases during the 2-year period beginning on the date 1 year before the issuance of the stock, the issuing corporation purchases more than a de minimis amount of its stock and the purchased stock has an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of the issuing corporation's stock as of the beginning of such 2-year period.

(2) *De minimis amount.* For purposes of this paragraph (b), stock exceeds a de minimis amount only if the aggregate amount paid for the stock exceeds $10,000 and more than 2 percent of all outstanding stock is purchased. The following rules apply for purposes of determining whether the 2-percent limit is exceeded. The percentage of the stock acquired in any single purchase is determined by dividing the stock's value (as of the time of purchase) by the value (as of the time of purchase) of all stock outstanding immediately before the purchase. The percentage of stock acquired in multiple purchases is the sum of the percentages determined for each separate purchase.

(c) *Transfers by shareholders in connection with the performance of services not treated as purchases.* A transfer of stock by a shareholder to an employee or independent contractor (or to a beneficiary of an employee or independent contractor) is not treated as a purchase of the stock by the issuing corporation for purposes of this section even if the stock is treated as having first been transferred to the corporation under § 1.83–6(d)(1) (relating to transfers by shareholders to employees or independent contractors).

(d) *Exceptions for termination of services, death, or disability or mental incompetency.* A stock purchase is disregarded for purposes of this section if—

(1) *Termination of services*—(i) *Employees and directors.* The stock was acquired by the seller in connection with the performance of services as an employee or director and the stock is purchased from the seller incident to the seller's retirement or other bona fide termination of such services;

(ii) *Independent contractors.* [Reserved];

(2) *Death.* The stock is purchased from the deceased shareholder's estate, beneficiary, heir, surviving joint tenant, or from a surviving spouse or a trust established by a decedent, the stock is purchased within 3 years and 9 months from the date of death, and the stock (or an option to acquire the stock) was acquired by the seller before or on account of the death of the decedent; or

(3) *Disability or mental incompetency.* The stock is purchased incident to the disability or mental incompetency of the selling shareholder.

(e) *Effective date.* This section applies to stock issued after the date these regulations are published as final regulations in the Federal Register. This section also applies to stock issued on or before the date these regulations are published as final regulations in the Federal Register, but only with respect to the effect of purchases by the issuing corporation that occur after that date.

Margaret Milner Richardson,

*Commissioner of Internal Revenue.*

[FR Doc. 96–14231 Filed 6–3–96; 11:29 am]

BILLING CODE 4830–01–U

**26 CFR Parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, and 521**

**[IL–62–90; IL–32–93; IL–52–86; IL–52–94]**

**RIN 1545–AO27; 1545–AR90; 1545–AL99; 1545–AT00**

## General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties; Correction

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

**ACTION:** Correction to notice of public hearing on proposed rulemaking.

**SUMMARY:** This document contains corrections to the notice of a public hearing (IL–52–86) which was published in the Federal Register on Wednesday, May 8, 1996 (61 FR 20767), regarding proposed regulations relating, in part, to information reporting and backup withholding.

**FOR FURTHER INFORMATION CONTACT:** Philip Garlett, (202) 622–3880 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Background

The notice of public hearing that is subject to these corrections will be held on Wednesday, July 24, 1996, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, July 3, 1996.

Need for Correction

As published, the notice of public hearing (IL–52–86) contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of hearing (IL–52–86), which was the subject of FR Doc. 96–11409, is corrected as follows:

1. On page 20767, column 1, in the heading, the language ''26 CFR Parts 1, 32 and 35a'' is corrected to read ''26 CFR Parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, and 521''.

2. On page 20767, column 1, in the heading, the language ''[IL–52–86]'' is corrected to read ''[IL–62–90; IL–32–93; IL–52–86; IL–52–94]''.

3. On page 20767, column 1, in the heading, the language ''RIN 1545–AL99'' is corrected to read ''RIN 1545–AO27; 1545–AR90; 1545–AL99; 1545–AT00''.

4. On page 20767, column 1, in the heading, the language ''Income Taxes; Information and Backup Withholding; Hearing'' is corrected to read ''General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Part 35a and of Certain Regulations Under Income Tax Treaties; Hearing''.

5. On page 20767, column 1, in the preamble, the **SUMMARY** is corrected to read as follows:

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to the withholding of income tax on certain U.S. source income paid to foreign persons (including the related tax deposit and reporting requirements, and the related collection, refunds, and credits of withheld tax), information reporting and backup withholding, and the removal of certain temporary employment tax regulations and certain regulations under income tax treaties.

6. On page 20767, column 2, in the preamble, the **SUPPLEMENTARY INFORMATION** is corrected to read as follows:

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed amendments to the Income Tax Regulations, Employment Tax Regulations, and Procedure and Administration Regulations under sections 163(f), 165(j), 871(h), 881(c), 1441, 1442, 1461, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050N, 6109, 6114, 6402 and 6413. The proposed regulations appeared in the Federal Register on Monday, April 22, 1996 (61 FR 17614).

Cynthia E. Grigsby,

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 96–14232 Filed 6–5–96; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1915

**[Docket No. S–051]**

**RIN 1218–AB51**

## Safety Standards Fire Protection in Shipyard Employment

**AGENCY:** Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

**ACTION:** Notice of Intent to Form Negotiated Rulemaking Advisory Committee to Develop a Proposal Rule on Fire Protection in Shipyard Employment.

**SUMMARY:** OSHA announces its intent to establish a Fire Protection in Shipyard Employment Negotiated Rulemaking Advisory Committee (the ''Committee''), under the Federal Advisory Committee Act (FACA) and the Negotiated Rulemaking Act (NRA), to negotiate issues associated with the development of a Notice of Proposed Rulemaking to regulate fire hazards in shipyard employment. The Committee will include representatives of the parties interested in, or affected by, the outcome of the proposed rule. OSHA also solicits interested parties to submit their nominations for membership or requests for representation, on the Committee.

**DATES:** OSHA must receive written comments and requests for membership or representation by July 8, 1996.

**ADDRESSES:** Written comments should state: OSHA Docket No. S–051 and should be sent, in quadruplicate, to the following address: OSHA Docket Office, Rm N–2625, 200 Constitution Ave. N.W., Washington, D.C. 20210; Telephone (202) 219–7894.

Requests or recommendations for membership or representation on the Committee should be sent to: OSHA, Office of Maritime Standards, Room N–3621, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Phone (202) 219–7234, fax (202) 219–7477.

**FOR FURTHER INFORMATION CONTACT:** Ann Cyr, Acting Director; OSHA, Office of Information and Consumer Affairs, Room N–3647, U.S. Department of Labor; 200 Constitution Avenue, N.W.; Washington, D.C., 20210; Telephone: (202) 219–8151.

**SUPPLEMENTARY INFORMATION:**

I. Background

Fire protection in shipyard employment has been regulated by OSHA's general industry standards for fire protection, 29 CFR 1910.155 through 1910.165, Subpart L, and section (5)(a)(1), the General Duty Clause of the OSH Act, which requires each employer to,

furnish to each of his employees employment and a place of employment which are free from recognized hazards causing or likely to cause death or serious physical harm.

The general industry standards primarily address landside shipyard operations. The general industry standards in Subpart L address: fire brigades; portable fire extinguishers; standpipe and hose systems; automatic sprinkler systems; fixed extinguishing systems; fire detection systems; and employee alarm systems.

Because no specific standards cover work performed on board vessels and vessel sections, OSHA has used the General Duty Clause of the Act to address fire safety hazards aboard vessels. When the General Duty Clause is used, the Agency must determine how it can be applied. In other words, OSHA must ascertain what the employer must do to protect his or her employees from the hazards of fire and how the Agency can make sure the employer is providing that protection. In these situations, OSHA typically relies upon standards promulgated by other branches of the Federal Government such as the Coast Guard, along with guidelines developed by professional associations such as the National Fire Protection Association, (NFPA), and the Marine Chemists Association, (MCA) that have, in effect, become industry practice, to set forth the hazards and feasible means of abatement. In an enforcement action, the Agency would cite the employer for a violation of section 5(a)(1) of the Act. To prove a violation of section 5(a)(1) OSHA must show, among other things that a serious hazard is recognized by the employer's industry or the employer and that there is a feasible and useful method for abating the hazard. Although OSHA's enforcement under the General Duty Clause has reduced the risk of fire on board vessels, some risk remains.

The Agency believes a standard promulgated under section 6(b) of the Act will more effectively reduce these risks. The OSH Act intends that OSHA issue occupational safety standards to make clear what is necessary to protect employees and to inform employers of their specific obligations. In addition, a standard is more protective of employees than an enforcement program based upon a general provision; consequently, greater reduction of risks are achieved. Third,

because a standard would be much more specific than current requirements, employers and employees are given more guidance in carrying out the goal of protecting workers. Finally, use of the General Duty Clause imposes a heavy litigation burden on OSHA. For all these reasons, OSHA has concluded workers on board vessels need the protection of an OSHA standard on fire protection.

Extending application of the current general industry standards to all shipyard employment would not be appropriate for the following reasons. First, most of the provisions in the general industry standards have been in effect since 1980. They need to be reviewed and revised to take into account technological advances that could affect fire protection in shipyard employment. Secondly, shipyard employment encompasses many tasks and work sites that are unique to the maritime industry. Employers, labor representatives and professional and trade associations have repeatedly asked OSHA to allow all shipyard employment to be covered by the same standards. They point out that the work situations found within shipyard employment have more in common with each other than with those in general industry. They assert that the hazards and methods of controlling the hazards are similar throughout the shipyard. Finally, they say that because the work on land and aboard the vessels is located within the same area and performed by the same workforce, fire protection services are provided by the same in-yard/plant or out-of-yard fire crews to all areas of shipyard employment. They believe that allowing these crews to follow the same standard will enable them to be more effective in their prevention and response activities. OSHA agrees and has preliminarily concluded that a single new standard addressing fire hazards for all shipyard employment, on land and on board vessels, will provide the best protection for employees.

In 1991, the Shipyard Employment Standards Advisory Committee (SESAC) began work on regulating the hazard of fire for all shipyard employment. SESAC was formed to provide OSHA with guidance in revising, consolidating and modernizing the varying sets of regulation that were being applied in the shipyard industry into what would ultimately become a vertical standard for all shipyard employment. The SESAC Subcommittee on Fire Protection, after reviewing pertinent federal regulations and guidelines issued by professional associations, drafted a shipyard employment fire protection standard. The draft was adopted by SESAC and given to OSHA for its consideration. SESAC's draft, which combines the materials they reviewed and includes comments from the workgroup participants, sets forth many of the components necessary for a comprehensive fire protection standard. However, because not all of its provisions are written in regulatory language and because the provisions do not address all of the issues that need to be considered in an OSHA rulemaking, the draft cannot be proposed as it is written. However, OSHA has concluded that the SESAC draft is an excellent starting point for development of a fire protection standard for shipyard employment. OSHA anticipates it will be a key resource for participants in the rulemaking.

The Shipyard workgroup of the Maritime Advisory Committee on Occupational Safety and Health (MACOSH) briefly discussed fire protection and negotiated rulemaking at their September 1995, meeting in New Orleans. Members urged OSHA to proceed with a fire protection standard; with some members suggesting the Shipyard workgroup take up fire protection issues if OSHA was unable to do a fire protection negotiated rulemaking.

OSHA has decided to use the negotiated rulemaking (Neg/Reg process to develop a proposed standard for fire protection covering all shipyard employment. The most important reason for using Neg/Reg is that the shipyard stakeholders from all sectors strongly support consensual rulemaking efforts like negotiated regulation. OSHA believes this process will be less adversarial than regular rulemaking and will result in a proposal that will effectively protect employees.

The negotiated rulemaking effort described in this Notice will be conducted in accordance with the Department of Labor's approved policy on negotiated rulemaking. For further detail about the Department's negotiated rulemaking policy, please consult the ''Notice of Policy of Use of Negotiated Rulemaking Procedures by Agencies of the Department of Labor'' published in the Federal Register on December 29, 1992 (57 FR 61925).

*A. The Concept of Negotiated Rulemaking*

Usually, OSHA develops a rulemaking proposal using staff and consultant resources. The concerns of affected parties are made known through various informal contacts, the circulation of a draft proposal to known affected parties for their informal comment, through advance notices of proposed rulemaking published in the Federal Register, or formal consultation with an advisory committee such as the Maritime Advisory Committee on Occupational Safety and Health (MACOSH). After the notice of proposed rulemaking is published for comment, affected parties, including the Agency, submit arguments and data supporting their positions. All communications from affected parties are directed to the Agency. In general, there is not much communication among parties representing different interests, except during cross examination conducted at a rulemaking hearing.

Many times, effective regulations have resulted from such a process. However, as Congress noted in the Negotiated Rulemaking Act (5 U.S.C. 581) current rulemaking procedures may ''discourage the affected parties from meeting and communicating with each other, and may cause parties with different interests to assume conflicting and antagonistic positions * * *'' (Sec. 2(2)). Congress also stated that ''adversarial rulemaking deprives the affected parties and the public of the benefits of face-to-face negotiations and cooperation in developing and reaching agreement on a rule. It also deprives them of the benefits of shared information, knowledge, expertise, and technical abilities possessed by the affected parties.'' (Sec. 2(3)).

Using negotiated rulemaking to develop the proposed rule is fundamentally different. Negotiated rulemaking is a process in which a proposed rule is developed by a committee composed of representatives of all those interests that will be significantly affected by the rule. Decisions are made by consensus, which generally require concurrence among the interests represented.

The process is started by the Agency's careful identification of all interests potentially affected by the rulemaking under consideration. To help in this identification process, the Agency publishes a notice in the Federal Register, such as this one, which identifies a preliminary list of interests and requests public comment on that list.

Following receipt of the comments, the Agency establishes an advisory committee representing these various interests to negotiate a consensus on the terms of a proposed rule. Representation on the committee may be direct, that is, each member represents a specific interest, or may be indirect, through coalitions of parties formed for this purpose. The Agency is a member of the

committee representing the Federal government's own set of interests.

The negotiated rulemaking (Neg/Reg) advisory committee is chaired by a trained mediator, who facilitates the negotiation process. The role of this mediator, also called a facilitator, is to apply proven consensus building techniques to the OSHA advisory committee setting. The many functions that he or she will perform are discussed below.

Once a Neg/Reg advisory committee reaches consensus on the provisions of a proposed rule, the Agency, consistent with its legal obligations, uses such consensus as the basis of its proposed rule, to be published in the Federal Register. This provides the required public notice and allows for a public comment period. Other participants and other interested parties retain their rights to comment, participate in an informal hearing (if requested) and judicial review. OSHA anticipates, however, that the preproposal consensus agreed upon by this Committee will effectively narrow the issues in the subsequent rulemaking to only those which truly remain in controversy.

*B. Selecting Subpart P as a Candidate for Negotiated Rulemaking*

The Negotiated Rulemaking Act allows the agency to establish a negotiated rulemaking committee if it is determined that the use of the negotiated rulemaking procedure is in the public interest. As noted above in the Background part of this document, OSHA has made such a determination.

OSHA bases this determination, not only on the appropriateness of the subject to negotiated rulemaking and the support of affected parties, but also on its own prior experience with the negotiated rulemaking process. Even before the NRA was enacted, OSHA conducted negotiated rulemaking for its complex health standard for Methylenedianiline (MDA). This committee met seven times over a 10-month period (24 meeting days) and successfully negotiated standards for both general industry and construction. The final standards were ultimately based on the recommended proposed standards, and no litigation followed the standards' promulgation. In addition, OSHA's Steel Erection Negotiated Rulemaking Advisory Committee is completing its work and is ready to propose a revised standard for steel erection in construction, 29 CFR part 1926, Subpart R.

Discussions held between OSHA staff and many interested parties lend further evidence that the elements necessary for a successful negotiated rulemaking on fire protection in shipyard employment exist. Moreover, the Agency believes that most of the selection criteria listed in the NRA (5 U.S.C. 563(a)) are met. There is a recognized need to promulgate fire protection requirements that would apply to all shipyard employment. Interests that will be affected by the new fire protection standard are known, as limited in number, and to a significant degree, are already organized in interest-based coalitions. Finally, parties representing significant interests have requested that OSHA begin negotiated rulemaking on subpart P. The need for a new standard is acknowledged by all known interests. The Agency believes that reaching consensus on work practices and specifications for fire protection in shipyard employment is highly promising. OSHA expects that all persons likely to be significantly affected by such a standard will negotiate in good faith.

*C. Agency Commitment*

In initiating this Neg/Reg process, OSHA is making a commitment on behalf of the Department of Labor that the Agency and all other participants within the Department will provide adequate resources to ensure timely and successful completion of the process. This commitment includes making the process a priority activity for all representatives, components, officials, and personnel of the Department who need to be involved the rulemaking, from the time of initiation until such time as a final rule is issued or the process is expressly terminated. Once the process has been initiated, all representatives, components, officials and personnel of the Department shall be expected to act in accordance with this commitment.

As provider of administrative support, OSHA will take steps to ensure that the negotiated rulemaking committee has the dedicated resources it requires to complete its work in a timely fashion. These include the provision or procurement of such support services as: properly equipped space adequate for public meetings and caucuses; logistical support and timely payment of participant travel and expenses where necessary, as provided for under the NRA: work processing, information dissemination, storage and other information handling services required by the committee; the service of a facilitator; and such additional statistical, economic, health, safety, legal, computing or other technical assistance as may be necessary.

OSHA, to the maximum extent possible consistent with the legal obligations of the Agency, will use the consensus of the Committee as the basis for the rule proposed by the Agency for public notice and comment. The Agency believes that by promulgating a standard for fire protection, it can limit or reduce the number of deaths and injuries to employees engaged in shipyard employment who are exposed to a significant risk of injury and death because of the lack of specific applicability of certain provisions in the general industry standards and because a large number of shipyard employees are not protected by any OSHA fire protection standards. The Agency, therefore, is committed to publishing a consensus proposal that is consistent with OSHA's legal mandates.

*D. Negotiating Consensus*

As discussed above, the negotiated rulemaking process is fundamentally different from the usual development process for OSHA proposed rules. Negotiation allows all the parties to discuss possible approaches to various issues rather than only asking them to respond to details in an OSHA proposal. The negotiation process involves a mutual education of the parties by each other on the practical concerns about the impact of such approaches. Each committee member participates in resolving the interests and concerns of other members, rather than leaving it up to OSHA to bridge different points of view.

A key principle of negotiated rulemaking is that agreement is by consensus of all the interests. Thus, no one interest or group of interests is able to control the process. The NRA defines consensus as the unanimous concurrence among interests represented on a negotiated rulemaking committee, unless the committee itself unanimously agrees to use a different definition. In addition, experience has demonstrated that using a trained mediator to facilitate this process will assist all potential parties, including OSHA, to identify their real interests in the rule and so be able to reevaluate previously stated positions on issues involved in this rulemaking effort.

*E. Some Key Issues for Negotiation*

OSHA expects key issues to be addressed as part of these negotiations will include:

1. Scope and Application

Should Subpart P apply to all shipyard employment? How will standard affect out-of-yard/plant

firefighters such as those employed by a municipal fire department?

2. Controls and Work Practices

What controls and work practices will provide adequate protection for employees? Should OSHA require hot work permits? Should OSHA require training for all fire fighters? Should OSHA incorporate U.S. Coast Guard regulations in this standard? Is there any difference in controls and work practices on landside vs. onboard vessels and vessel sections? Should OSHA require the employer to secure (deactivate) all fire fighting systems onboard vessels when they arrive in the yard?

3. Fire Brigades

Should OSHA require each shipyard to have an in-yard/plant fire brigade?

4. Written Fire Plans

Should OSHA require written fire plans for landside and onboard vessels? If so, what provisions need to be included in the plans? Should OSHA include a requirement for de-watering (removal of firefighting water from the vessel) of vessels when fighting a fire on board a vessel?

5. Technological Advances

What advances in fire technology have occurred since OSHA's general industry standards were promulgated? Which of these advances should be incorporated into the shipyard standard?

6. Costs of Fire Protection

What costs would be incurred by shipyards in meeting the various provisions of a new standard? Calculations should include costs of acquiring new equipment, instituting new engineering controls and work practices, and costs of training employees. Are there cost savings or other benefits that could be expected with the promulgation of identical rules for all of shipyard employment? If so, what would be the magnitude of savings?

7. Appendices

Should OSHA include an appendix or appendices and, if so, should it (they) be mandatory?

II. Proposed Negotiation Procedures

The following proposed procedures and guidelines may be augmented as a result of comments received in response to this notice or during the negotiation process.

*A. Committee Formation*

This negotiated rulemaking Committee will be formed and operated in full compliance with the requirements of the Federal Advisory Committee (FACA) in a manner consistent with the requirements of the Negotiated Rulemaking Act (NRA).

*B. Interests Involved*

The Agency intends to conduct negotiated rulemaking proceedings with particular attention to ensuring full and adequate representation of those interests that may be significantly affected by the proposed rule. Section 562 of the NRA defines the term ''interest'' as follows:

(5) ''interest'' means, with respect to an issue or matter multiple parties which have a similar point of view or which are likely to be affected in a similar manner.

The following interests have been tentatively identified as ''significantly affected'' by the matters that may be included in the proposed rule:

Shipyard owners;
Contractors;
Labor organizations representing employees who perform fire protection work;
Fire fighters, both in yard/plant and municipal;
Government entities, particularly the Navy and the Coast Guard;
Professional associations; and
Manufacturers and suppliers of fire protection equipment.

One purpose of this document is to determine whether a standard regulating fire hazards in shipyard employment would significantly affect interests that are not listed above. OSHA invites comment and suggestions on this list of ''significantly affected'' interests.

In this regard, the Department of Labor recognizes that the regulatory actions it takes under its programs may at times affect various segments of society in different ways, and that this may in some cases produce unique ''interests' in a proposed rule based on income, gender, or other factors. Particular attention will be given by the Department to ensure that any unique interests that have been identified in this regard, and that may be significantly affected by the proposed rule, are fully represented.

*C. Members*

The negotiating group should not exceed 25 members, and 15 would be preferable. The Agency believes that more than 25 members would make it difficult to conduct effective negotiations.

OSHA is aware that there are many more potential participants, whether they are listed here or not, than there are membership slots on the Committee. The Agency does not believe, nor does the NRA contemplate, that each potentially affected group must participate directly in the negotiations; nevertheless, each affected interest can be adequately represented. In order to have a successfully negotiation, it is important for interested parties to identify and form coalitions that adequately represent significantly affected interests. These coalitions, in order to provide adequate representation must agree to support, both financially and technically, a member to the Committee whom they will choose to represent their ''interest.''

It is very important to recognize that interested parties who are not selected to membership on the Committee can make valuable contributions to this negotiated rulemaking effort in any of several ways:

The person could request to be placed on the Committee mailing list, submitting written comments, as appropriate;

The person could attend the Committee meetings, which are open to the public, caucus with his or her interest's member on the Committee, or even address the Committee (usually allowed at the end of an issue's discussion or the end of the session, as time permits; or

The person could assist in the work of a workgroup that might be established by the Committee.

Informal workgroups are usually established by an advisory committee to assist the Committee in ''staffing'' various technical matters, e.g., researching or preparing summaries of the technical literature or comments on particular matters such as economic issues before the Committee so as to facilitate Committee deliberations. They might also assist in estimating costs and drafting regulatory text on issues associated with the analysis of the affordability and benefits addressed, and formulating drafts of the various provisions and their justification previously developed by the committee. Given their staffing function, workgroups usually consist of participants who have expertise or particular interest in the technical matter(s) being studied.

Becuase it recognizes the importance of this staffing work for the Committee, OSHA will provide appropriate technical expertise for such workgroups.

Requests for appointment to membership on the Committee are solicited. Members can be individuals

or organizations. If the effort is to be fruitful, participants should be able to fully and adequately represent the viewpoints of their respective interests. Those who wish to be appointed as members of the Committee should submit a request to OSHA, in accordance with the Public Participation part of this document.

The following list includes those who have been tentatively identified by OSHA as being either a potential member of the Committee, or a potential member of a coalition that would in turn nominate a candidate to represent one of the significantly affected interests listed above:

*Shipyard owners;*
*Contractors;*
*Labor organizations representing employees who perform fire protection work;*
*Fire fighters, both in yard/plant and municipal;*
*Government entities, particularly the Navy and the Coast Guard;*
*Professional associations; and*
*Manufacturers and suppliers of fire protection equipment.*

This list of potential parties is not presented as a complete or exclusive list from which committee members will be selected, nor does inclusion on the list of potential parties mean that a party on the list has agreed to participate as a member of the Committee or as a member of a coalition. The list merely indicates parties that OSHA has tentatively identified as representing significantly affected interests in the outcome of the subpart P negotiated rulemaking. This document gives notice of this process to other potential participants and affords them the opportunity to request representation in the negotiations. The procedure for requesting such representation is set out under the Public Participation part of this document, below. In addition, comments and suggestions on this tentative list are invited.

*D. Good Faith Negotiation*

Committee members should be willing to negotiate in good faith and have the authority to do so. The first step is to ensure that each member has good communications with his or her constituencies. An intra-interest network of communication should be established to bring information from the support organization to the member at the table, and to take information from the table back to the support organization. Second, each organization or coalition should, therefore, designate as its representative an official with credibility and authority to insure that needed information is provided and decisions are made in a timely fashion. Negotiated rulemaking efforts can require a very significant contribution of time by the appointed members that must be sustained for up to a year. Other qualities that can be very helpful are negotiating experience and skills, and sufficient technical knowledge to participate in substantive negotiations.

Certain concepts are central to negotiating in good faith. One is the willingness to bring all issues to the bargaining table in an attempt to reach a consensus, instead of keeping key issues in reserve. The second is a willingness to keep the issues at the table and not take them to other forums. Finally, good faith includes a willingness to move away from the type of positions usually taken in a more traditional rulemaking process, and instead explore openly with other parties all ideas that may emerge from the discussions of the Committee.

*E. Facilitator*

This individual will not be involved with the substantive development of the standard. Rather, the facilitator's role generally includes:

- Chairing the meetings of the committee in an impartial manner;
- Impartially assisting the members of the Committee in conducting discussions and negotiations;
- Performing the duties of the Designated Federal Official under FACA; and
- Acting as disclosure officer for Committee records under the Freedom of Information Act (FOIA).

*F. OSHA Representative*

The OSHA representative will be a full and active participant in the consensus building negotiations. The representative will meet regularly with various senior OSHA officials, briefing them on the negotiations and receiving their suggestions and advice, in order to effectively represent the Agency's views regarding the issues before the Committee. OSHA's representative will also ensure that the entire spectrum of governmental interests affected by the subpart P rulemaking, including the office of Management and Budget and other Departmental offices, is kept informed of the negotiations and encouraged to make their concerns known in a timely fashion. OSHA's representative will also communicate with MACOSH on a regular basis, informing it of the status and content of the negotiations.

In addition, the OSHA representative will present the negotiators with the accumulated record evidence gathered on issue-by-issue basis for their consideration. (The Committee may also consult OSHA's representative with regard to the Agency's regulatory needs, appropriate boundaries of consideration, or technical information. Such information could include the areas of technological feasibility and economic concerns, including direct and indirect costs of compliance). The OSHA representative, together with the facilitator, will also be responsible for coordinating the administrative and committee support functions to be performed by OSHA's support team.

*G. Committee Notice*

After evaluating the comments on this announcement and the requests for representation, OSHA will issue a notice that will announce the establishment of the Committee and its membership, unless after reviewing the comments, it is determined that such an action is inappropriate. The negotiation process will begin once the Committee membership roster is published in the Federal Register.

*H. Tentative Schedule*

Included in the notice establishing the Committee will be a proposed schedule of the meetings. The first meeting will focus largely on procedural matters, including the proposed ground rules. These will include agreement on dates, times, and locations of future meetings, and identification and determination of how best to address principal issues for resolution.

*I. Record of Meetings*

In accordance with FACA's requirements, the facilitator will keep minutes and a record of all Committee meetings. This record will be placed in the public docket No. S–051 for this rulemaking. Committee meetings will be announced in the Federal Register and will generally be open to the public.

*J. Agency Action*

As noted above, the Agency intends to use the Committee's consensus as the basis for the NPRM. OSHA expects to issue the proposed rule developed by the Committee, unless the consensus is inconsistent with OSHA's statutory authority or is not appropriately justified. In that event, the Agency will explain the reason for its decision.

*K. Committee Procedures*

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, appropriate detailed procedures for committee meetings will be established. Committee members will be presented

with proposed ground rules and agendas prior to the first meeting.

III. Public Participation

Since this will be a negotiated rulemaking, there are many opportunities for an individual who is interested in the outcome of the rule to participate. As a first step in response to this notice of intent to negotiate, OSHA recommends that potential participants study the two lists contained in this notice: the lists of significantly affected interests and the lists of potential participants. After analyzing for completeness or over or under-inclusiveness, parties should examine the lists for the purpose of coalition building. Potential parties should try to identify others, whether on the lists or not, who share a similar viewpoint and who be affected in a similar way by the rule. Communication with these parties of similar interest should follow, and the organization of coalitions to support the interest should begin. It is only after the formation of these coalitions and extensive intra-constituency discussion that decisions should be made as to which individuals should represent the interest and in which capacity. As indicated above, an interested party may participate in a variety of ways such as being a committee member, working within the coalition (promoting communication, providing expert support in a workgroup or otherwise, helping to develop internal ranges of acceptable alternatives, etc.), attending committee meetings in order to caucus with the interest's member of address the Committee at the appropriate times, or submitting written comments or materials.

Persons who will be significantly affected by the subpart P rulemaking, whether or not listed above in this document, may apply for or nominate another person for membership on the Committee to represent such interests. Such requests should be submitted, in quadruplicate, to OSHA Docket Office, Rm N–2625, 200 Constitution Ave. N.W., Washington, D.C., 20210; Telephone (202) 219–7894, no later than July 8, 1996. OSHA notes that the NRA addresses the concerns of potential members for whom the expenses of participation may not be affordable (See 5 U.S.C. 568 (c)). Each application or nomination shall include:

(1) The name of the applicant or nominee and a description of the interest such person shall represent;

(2) Evidence that the applicant or nominee is authorized to represent parties having the shared interest the person proposes to represent; and

(3) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration.

All other written comments, including comments on the appropriateness of using negotiated rulemaking to develop a proposed rule to revise the existing safety provisions in 29 CFR Part 1915 subpart P, should be directed to Docket No. S–051, and sent in quadruplicate to the following address: OSHA Docket Office, U.S. Department of Labor, Rm. N–2625, 200 Constitution Ave., N.W., Washington, D.C. 20210; Telephone (202) 219–7894.

IV. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, pursuant to section 3 of the Negotiated Rulemaking Act of 1990, 104 Stat. 4969, Title 5 U.S.C. 561 *et seq.*

Signed at Washington, D.C., this 30th day of May, 1996.

Joseph A. Dear,

*Assistant Secretary of Labor.*

[FR Doc. 96–14090 Filed 6–5 –96; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Part 218

**RIN 1010–AC01**

### Amendments To Regulations Governing Collection of Royalties, Rentals, Bonuses, and Other Monies Due the Federal Government

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule; notice of extension of public comment period.

**SUMMARY:** MMS hereby gives notice that it is extending the public comment period on a Notice of proposed rule, which was published in the Federal Register on April 19, 1996 (61 FR 17266). The proposed rule would amend the regulations that specify how payments are made for mineral lease royalties, rentals, and bonuses. In response to requests for additional time, MMS will extend the comment period from June 18, 1996, to July 19, 1996.

**DATES:** Comments must be submitted on or before July 19, 1996.

**ADDRESSES:** Written comments, suggestions or objections regarding this proposed amendment should be sent to the following addresses.

For comments sent via the U.S. Postal Service use: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165 MS 3101, Denver, Colorado 80225–0165.

For comments via courier or overnight delivery service use: Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, MS 3101 Building 85, Denver Federal Center, Room A–212, Denver, Colorado 80225–0165.

**FOR FURTHER INFORMATION CONTACT:** David S. Guzy, Chief, Rules and Procedures Staff, phone (303) 231–3432, FAX (303) 231–3194, e–Mail David Guzy@smtp.mms.gov.

Dated: May 31, 1996.

Robert E. Brown,

*Associate Director for Royalty Management.*

[FR Doc. 96–14218 Filed 6–5–96; 8:45 am]

BILLING CODE 4310–MR–M

## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Part 202

**[Docket No. RM 95–7A]**

### Registration of Claims to Copyright, Group Registration of Photographs

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of public hearing.

**SUMMARY:** The U.S. Copyright Office issues this notice to inform the public that the Office will hold a public hearing in the course of an ongoing rulemaking proceeding in which it is proposing changes in the manner in which copyright claimants may register photographs. This notice invites participation in a public hearing intended to elicit additional comments to assist the Office in its review of proposed registration procedures.

**DATES:** The public hearing will be held on Wednesday, June 26, 1996, beginning at 10:00 a.m. Anyone desiring to testify should contact the Office of the General Counsel, U.S. Copyright Office, Library of Congress, at (202) 707–8380 by Wednesday, June 19, 1996. Written comments are also invited from both those who wish to testify and those who wish only to file either initial or supplemental written comments. All written comments must be received on or before Monday, July 15, 1996.

**ADDRESSES:** Interested parties should submit written comments and requests to present oral testimony BY MAIL to Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, or BY HAND delivery to the Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM 407, First Street and Independence Avenue, S.E., Washington, D.C. The hearing will be held on June 26, 1996, in the Register's Conference Room, Room LM 407, located on the fourth floor of the Library of Congress, James Madison Memorial Building, First Street and Independence Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Facsimile: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:**

The Office's Current Rulemaking Proceeding

Recently the Copyright Office initiated a Notice of Proposed Rulemaking (NPRM) concerning group registration of photographs. Over the years photographers and photography businesses have told the Office that they were not able to take advantage of the benefits of registration because Office practices were too burdensome, in terms of both effort and finances.

On December 4, 1995, the Office published a NPRM with a request for comments in the Federal Register. 60 FR 62057 (Dec. 4, 1995). This NPRM sought public comment on proposed regulations that would permit a single registration for a group of unpublished and published related photos that met specified conditions. The proposed deposit would be a general written description of the subject matter of the photos, e.g., ''photos of 1996 blizzard in Washington, DC.''

In seeking public comment, the Office published nine questions to elicit comment and information about the potential effects of the proposed regulations. *See* 60 FR 62057. The comment period was originally scheduled to close January 18, 1996, with reply comments due by February 2, 1996; however, due to the inordinate number of government and business closures that occurred during December 1995 and January 1996, the Office extended these deadlines. Comments were requested by February 9, 1996, and reply comments by March 1, 1996. The Office is in the process of carefully reviewing all of these comments.

Subject Matter To Be Addressed at the Public Hearing

In the course of such review, certain additional issues and concerns have been brought to the Office's attention. Therefore, in order to supplement the information the Office has already received in response to the NPRM, the Office will hold a public hearing on June 26, 1996, to solicit additional comments on the proposed regulations regarding group registration of photographs. This hearing will provide an opportunity to obtain more information on the concerns expressed during the original comment period by allowing individuals and organizations who wish to comment to address further the issues set out in the NPRM, as well as:

(1) *Innocent infringement.* Is there a greater likelihood that those who innocently use photographs may be sued and may be found liable for copyright infringement if the proposed regulations are put into effect? Are existing provisions of the copyright law concerning innocent infringers adequate or should those provisions be modified? If so, in what way?

(2) *Frivolous law suits.* If the proposed regulations were put into effect, would they lead to an increase in the filing of frivolous law suits?

(3) *Industry guidelines.* Do the proposed regulations affect the development of industry guidelines? If so, how? Would they affect compliance with agreed upon guidelines? If so, how?

Filing of Written Comments

All of the comments filed in response to the NPRM 60 FR 62057 (Dec. 4, 1995), are already part of the record for this rulemaking. Anyone who wishes to file initial comments or supplemental comments addressing either the issues raised in this notice or those set out in the NPRM may do so. All written comments must be received in the Copyright Office at the address given above by close of business on Monday, July 15, 1996.

Dated: June 3, 1996.

Marybeth Peters,

*Register of Copyrights.*

[FR Doc. 96–14222 Filed 6–5–96; 8:45 am]

**BILLING CODE 1410–30–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 73

**[FRL–5513–5]**

**RIN 2060–AG41**

### Acid Rain Program; Elimination of Direct Sale and IPP Written Guarantee Program

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

**ACTION:** Proposed rule.

**SUMMARY:** Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (the Act), authorized the Environmental Protection Agency (EPA) to establish the Acid Rain Program to reduce the adverse health and ecological effects of acidic deposition. Title IV mandates that EPA hold yearly auctions and direct sales of allowances for a small portion of the total allowances allocated each year. EPA is also required to issue to Independent Power Producers (IPPs) guarantees to purchase allowances in the direct sale. The direct sale and IPP provisions were designed to help ensure that units, including new IPPs, have a public source of allowances beyond those already allocated initially. Because no allowances have been sold through the direct sale program since it began in 1993, EPA is proposing to revise its regulations in order to terminate the direct sales. The allowances available previously in the direct sale program will now be available in the annual allowance auctions. In addition, because the IPP written guarantee program is implemented through the direct sale program and no applications for such guarantees have been received, EPA is proposing to terminate the guarantee program.

Because the rule revision is not expected to receive any adverse comments, the revision is also being issued as a direct final rule in the Final Rules section of this Federal Register.

**DATES:** Comments on the regulations proposed by this action must be received on or before July 8, 1996.

**ADDRESSES:** *Comments.* All written comments must be identified with the appropriate docket number (Docket No. A–96–19) and must be submitted in duplicate to U.S. Environmental Protection Agency, EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M St. SW., Washington, DC 20460.

*Docket.* Docket No. A–96–19, containing information considered

during development of the promulgated standards and requirements in this proposal, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section at the above address. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Kenon Smith, U.S. Environmental Protection Agency, Acid Rain Division (6204J), 401 M Street SW., Washington, DC 20460, (202) 233–9164, or call the Acid Rain Hotline at (202) 233–9620.

**SUPPLEMENTARY INFORMATION:** If no significant, adverse comments are timely received, no further activity is contemplated in relation to this proposed rule and the direct final rule in the Final Rules section of this Federal Register will automatically go into effect on the date specified in that rule. If significant, adverse comments are timely received on any portion of the direct final rule, that portion will be withdrawn and all public comment received on that portion will be addressed in a subsequent final rule based on the relevant portions of this proposed rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, the detailed rationale, and the rule revision, see the information provided in the direct final rule in the Final Rules section of this Federal Register.

List of Subjects in 40 CFR Part 73

Environmental protection, Acid rain, Air pollution control, Electric Utilities, Reporting and record keeping requirements, and Sulfur dioxide.

Dated: May 24, 1996.

Carol M. Browner,

*Administrator.*

[FR Doc. 96–14113 Filed 6–5–96; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 6

**[Docket No. OST–96–1421 Notice 96–15]**

**RIN 2105–AB73**

### Implementation of Equal Access to Justice Act in Agency Proceedings

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department is proposing to update its regulation providing for the award of attorney fees and other expenses under the Equal Access to Justice Act to eligible individuals and entities who are parties to certain administrative proceedings before the Department and its various operating administrations. These revisions are necessitated by various statutory changes that have been made since the Department adopted its present rule in 1983. The Department is not, however, proposing any other substantive alterations to its regulation. All of the Department's proposed changes to its regulation either mirror the currently-applicable statutory requirements or are of a minor, non-technical nature. This action is a response to the President's Regulatory Reinvention Initiative and is designed to update the regulation to reflect currently applicable law.

**DATES:** Comments should be received by August 5, 1996. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** Comments should be sent to Docket Clerk, Docket No. OST–96–1421, Room PL–401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide an original and three copies of their comments. Comments can be inspected from 9 a.m. to 5 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter. Comments should be on 8 by 11 inch white paper using dark ink and should be without tabs and unbound.

**FOR FURTHER INFORMATION CONTACT:** Alexander J. Millard, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4102, Washington, DC 20590, telephone (202) 366–9285, or S. Reid Alsop, Office of the Chief Counsel, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street SW., Room 4230, Washington, DC 20590, telephone (202) 366–1371.

**SUPPLEMENTARY INFORMATION:** In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed that Federal agencies conduct a page-by-page review of all of their regulations and ''eliminate or revise those that are outdated or otherwise in need of reform.'' In response to that directive, the Department has undertaken a review of its regulations including its rule governing the award of attorney fees and other expenses in certain administrative proceedings under the Equal Access to Justice Act (EAJA) (Pub. L. 96–481, 94 Stat. 2325). The Department's regulation is codified at 49 CFR part 6.

In 1983, the Department of Transportation (DOT) published a final regulation implementing EAJA in the administrative adjudicatory context, 48 FR 1068 (January 10, 1983). EAJA, which took effect on October 1, 1981, provides for the award of attorney fees and other expenses to parties who prevail over the Federal Government in certain administrative and court proceedings under section 554 of the Administrative Procedure Act (APA). It requires that agencies conducting proceedings under section 554 establish uniform procedures for making awards.

DOT's final rule, 49 CFR part 6, therefore, established uniform procedures under the EAJA for any adversary adjudications conducted pursuant to section 554 by this Department or any of its operating administrations. As noted in the Department's regulation, currently three types of proceedings are specifically covered by the regulation; namely, Coast Guard license, certificate or document suspension and revocation proceedings, National Highway Traffic Safety Administration (NHTSA) fuel economy enforcement proceedings, and the Federal Highway Administration (FHWA) driver qualification and compliance order proceedings.

Since DOT adopted its final rule in 1983, Congress has amended EAJA on a number of occasions in several respects. After reviewing these statutory changes, DOT has determined that its regulation needs to be revised to ensure that it comports with the current statutory requirements. DOT accordingly is proposing to modify the following sections of its rule:

(a) § 6.1 Purpose of these rules.

The second sentence of this section presently provides:

> An eligible party may receive an award when it prevails over the Department of Transportation or any of its operating administrations unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust.

The Department is proposing to delete this sentence. These standards do not completely reflect the currently-applicable requirements given various statutory changes that have been made to 5 U.S.C. 504 since 1983. In place of this sentence, as discussed below, the Department is proposing to revise section 6.9. This section, as revised, would set forth, in some detail, the

statutory standards that now govern the granting of awards and expenses.

(b) § 6.3 When the Act applies.

This section currently provides:

The Act applies to any adversary adjudication pending before this agency at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981, if final agency action has not been taken before that date, and proceedings pending on September 30, 1984.

This limitation was included in the Department's final rule because the statute as it was originally enacted was only to be effective for the period October 1, 1981 to October 1, 1984, on which date it was to expire pursuant to a repealer under section 203(c) of Pub. L. 96–481. That repealer, however, was itself repealed pursuant to section 6 of Pub. L. 99–80. Additionally, as discussed below, new standards governing awards were enacted pursuant to Pub. L. 104–121 effective March 29, 1996. Consequently, the Department is proposing to delete the current version of § 6.3, and retitle and restate that section to read as follows:

**§ 6.3 Applicability.**

Section 6.9(a) applies to any adversary adjudication pending before the Department on or after October 1, 1981. In addition, applicants for awards must also meet the standards of § 6.9(b) for any adversary adjudication commenced on or after March 29, 1996.

(c) § 6.5 Proceedings covered.

This section identifies various proceedings that are, and are not, subject to the Department's regulation. Currently, three specific types of proceedings are specifically identified as being covered by the Department's regulation; namely, (a) U.S. Coast Guard suspension or revocation of licenses, certificates or document proceedings, (b) National Highway Traffic Safety Administration fuel economy enforcement proceedings, and (c) Federal Highway Administration driver qualification and compliance order proceedings. However, this list is not exclusive and additional Departmental proceedings that satisfy the criteria in this Part can also be covered.

The Department is proposing to add an several additional proceedings to this list. First, the Department is proposing to amend § 6.5 to make it clear that its regulation is intended to encompass its aviation economic enforcement proceedings conducted by its Office of Aviation Enforcement and Proceedings. The Department, hence, is proposing to add the following language to § 6.5:

and the Department's aviation economic enforcement proceedings conducted by its Office of Aviation Enforcement and Proceedings, 49 U.S.C. Subtitle VII, 14 CFR Chapter II.

The Department is taking this action to add these aviation enforcement proceedings in view of its decision, in a separate rulemaking, to terminate a nearly duplicative rule, 14 CFR part 373, that until now has covered these aviation enforcement proceedings. The Department inherited part 373 from the now-defunct Civil Aeronautics Board in 1985 as a result of the shut down of that agency, and the transfer of that agency's remaining functions to DOT pursuant to the Civil Aeronautics Board Sunset Act of 1984, Public Law 98–443, 98 Stat. 1703. The Department has determined, also as a part of the President's Regulatory Reinvention Initiative, that it makes no sense to retain a totally separate EAJA regulation for its aviation enforcement proceedings.

The Department is also updating the citations for the Coast Guard suspension and revocation proceedings referenced in section 6.5(a). In this regard, the Department is proposing to change the reference to ''46 U.S.C. 239'' to ''46 U.S.C. 7701 *et seq.*'' In addition, the Department is proposing to add citations for the three additional Coast Guard proceedings, specifically:

(a) 33 U.S.C. 1321(b)(6)(B)(ii), 33 CFR part 20 (to include class II civil penalties under the Clean Water Act); (b) 42 U.S.C. 9609(b) (to include class II penalty provisions under the Comprehensive Environmental Response, Compensation and Liability Act; and (c) 46 CFR part 401 (to cover suspension and revocation of Certificates of Registry proceedings for Great Lakes Pilots.)

The Department is further proposing to amend § 6.5(a) to take note of the fact that since 1983 Congress has expanded the list of proceedings that are subject to the rule. Specifically, the Department is proposing to add the following language to this section:

Also covered are any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607), any hearing conducted under Chapter 38 of title 31, and the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.*

The inclusion of these additional proceedings is necessitated by section 6 of Pub.L. 95–563, November 1, 1978, 92 Stat. 2385; Pub.L. 99–509, October 8, 1986, 100 Stat. 1948; and Pub.L. 103–141, November 16, 1993, 107 Stat. 1489.

(d) § 6.7 Eligibility of applications.

This section sets forth various minimum financial threshold standards, and other criteria, that applicants must satisfy in order to be eligible for an award. Various changes were made to these standards and criteria pursuant to Pub.L. 99–80, section 1(c)(1), August 5, 1985, 99 Stat. 183, 186. For example, some of the dollar limits have been increased. Accordingly the Department is proposing to amend this section as follows:

(a) Change the words ''5 U.S.C. 551(3)'' in the second sentence to ''5 U.S.C. 504(b)(1)(B).''

(b)(1) Change the words ''1 million'' to ''2 million.''

(b)(2) Change the words ''5 million'' to ''7 million.''

(b)(5) Change the words ''5 million'' to ''7 million.''

In addition, the Department is proposing to add a new § (b)(6), which would state:

(b)(6) For the purposes of section 6.9(b) eligible applicants include small entities as defined in 5 U.S.C. 601.

This change is necessitated by Pub.L. 104–121, March 29, 1996, 104 Stat. 847.

(e) § 6.9 Standards for awards.

Since the Department's adoption of its present EAJA regulation in 1983, Congress has also altered the standards for granting awards. Section 6.9 sets forth the standards that were applicable when DOT adopted its rule. These standards need to be brought up to date. The Department, therefore, is proposing to delete the current version of § 6.9 of its regulation in its entirety and to replace that section with a new § 6.9, which would read as follows:

(a) An eligible applicant may receive an award for fees and expenses incurred by that party in connection with a decision in favor of the applicant in a proceeding covered by this Part, unless the position of the Department over which the applicant has prevailed was substantially justified or special circumstances make the award sought unjust. The burden of proof that an award should not be made to an eligible applicant is on the Department where it has initiated the proceeding. No presumption arises that the Department's position was not substantially justified simply because the Department did not prevail. Whether or not the position of the Department was substantially justified shall be determined on the basis of the administrative record, as a whole, in the adversary adjudication for which fees and other expenses are sought. The ''position of the Department'' means, in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication may be based.

(b) In the context of a Departmental proceeding to enforce a party's compliance with a statutory or regulatory requirement, if the demand by the Department is substantially in excess of the amount awarded to the government pursuant to the decision of the adjudicative officer and is unreasonable when compared with such

decision, under the facts and circumstances of the case, the adjudicative officer shall award to an eligible applicant party the fees and expenses related to defending against the excessive demand, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance. As used in this section, ''demand'' means the express demand of the Department which led to the adversary adjudication, but does not include a recitation by the Department of the maximum statutory penalty (i) in the administrative complaint, or (ii) elsewhere when accompanied by an express demand for a lesser amount.

(c) The decision of the Department on the application for fees and other expenses shall be the final administrative decision under this section.

(d) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding.

These changes are necessitated by Pub.L. 99–80, August 5, 1985, 99 Stat. 183, 186; and Pub.L. 104–121, March 29, 1996, 104 Stat. 847.

(f) § 6.11 Allowable fees and expenses.

The Department is proposing to change the figure ''$75.00'' in section 6.11(b) to ''$125.00''. This is also being done in response to Pub.L. 104–121, March 29, 1996, 104 Stat. 847.

(g) § 6.25 Answer to application.

Finally, § 6.25(c) contains a minor typographical error. Specifically, the words ''an identify'' should read ''and identify''. The Department is proposing to correct this error.

Regulatory Analyses and Notices

This NPRM is considered to be a non-significant rulemaking under DOT's regulatory policies and procedures, 44 FR 11034. The NPRM was not subject to review by the Office of Information and Regulatory Affairs pursuant to Executive Order 12866.

The proposal would have minimal economic impact, and accordingly no regulatory evaluation has been prepared. Indeed, the changes that are being proposed here, for the most part, merely track various statutory changes that have been enacted since the Department's adoption of its original final rule in 1983.

The NPRM 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. I certify that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposal is merely updating the regulation to reflect current statutory requirements.

List of Subjects in 49 CFR Part 6

Administrative practice and proceeding, Transportation.

For the reasons set out in the preamble, 49 CFR part 5 is proposed to be amended as follows:

## PART 5—IMPLEMENTATION OF EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS.

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

Authority: 5 U.S.C. 504; 28 U.S.C. 2412.

2. Section 6.1 is amended by removing the second sentence.

3. Section 6.3 is revised to read as follows:

### § 6.3 Applicability.

Section 6.9(a) applies to any adversary adjudication pending before the Department on or after October 1, 1981. In addition, applicants for awards must also meet the standards of § 6.9(b) for any adversary adjudication commenced on or after March 29, 1996.

4. In § 6.5, paragraph (a) is revised to read as follows:

### § 6.5 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Department of Transportation. These are adjudications under 5 U.S.C. 554 in which the position of the Department is represented by an attorney or other representative who enters an appearance and participates in the proceeding. Coverage of the Act begins at designation of a proceeding or issuance of a charge sheet. Any proceeding in which the Department may prescribe or establish a lawful present or future rate is not covered by the Act. Proceedings to grant or renew licenses are also excluded, but proceedings to modify, suspend, or revoke licenses are covered if they are otherwise ''adversary adjudications.'' For the Department of Transportation, the types of proceedings covered include: Coast Guard suspension or revocation of licenses, certificates or documents under 46 U.S.C. 7701 *et seq.*; Coast Guard class II civil penalty proceedings under the Clean Water Act, 33 U.S.C. 1321(b)(6)(B)(ii), Coast Guard class II penalty proceedings under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9609(b); suspension and revocation of Certificates of Registry proceedings for Great Lakes Pilots pursuant to 46 CFR part 401; National Highway Traffic Safety Administration (NHTSA) fuel economy enforcement under 15 U.S.C. 2001 (49 CFR Part 511); Federal Highway Administration (FHWA) enforcement of motor carrier safety and hazardous materials regulations under 49 U.S.C. 521 and 5123 (49 CFR part 386); the Department's aviation economic enforcement proceedings conducted by its Office of Aviation Enforcement and Proceedings pursuant to 49 U.S.C. Subtitle VII, 14 CFR Chapter II. Also covered are any appeal of a decision made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before an agency board of contract appeals as provided in section 8 of that Act (41 U.S.C. 607), any hearing conducted under Chapter 38 of title 31, and the Religious Freedom Restoration Act of 1993, 42 U.S.C. 2000bb *et seq.*

* * * * *

5. In § 6.7, paragraph (a) is amended by replacing the citation ''5 U.S.C. 551(3)'' with the citation ''5 U.S.C. 504(b)(1)(B)''; paragraph (b)(1) is amended by replacing the words ''1 million'' with the words ''2 million''; paragraphs (b((2) and (b)(5) are amended by replacing the words ''5 million'' with the words ''7 million''; and paragraph (b)(6) is added to read as follows:

### § 6.7 Eligibility of applications.

* * * * *

(b) * * *

(6) For the purposes of section 6.9(b) eligible applicants include small entities as defined in 5 U.S.C. 601.

* * * * *

6. Section 6.9, is revised to read as follows:

### § 6.9 Standards for awards.

(a) An eligible applicant may receive an award for fees and expenses incurred by that party in connection with a decision in favor of the applicant in a proceeding covered by this part, unless the position of the Department over which the applicant has prevailed was substantially justified or special circumstances make the award sought unjust. The burden of proof that an award should not be made to an eligible applicant is on the Department where it has initiated the proceeding. No presumption arises that the Department's position was not substantially justified simply because the Department did not prevail. Whether or not the position of the Department was substantially justified shall be determined on the basis of the administrative record, as a whole, in the adversary adjudication for which fees and other expenses are sought. The ''position of the Department'' means, in

addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication may be based.

(b) In the context of a Departmental proceeding to enforce a party's compliance with a statutory or regulatory requirement, if the demand by the Department is substantially in excess of the amount awarded to the government pursuant to the decision of the adjudicative officer and is unreasonable when compared with such decision, under the facts and circumstances of the case, the adjudicative officer shall award to an eligible applicant party the fees and expenses related to defending against the excessive demand, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance. As used in this section, ''demand'' means the express demand of the Department which led to the adversary adjudication, but does not include a recitation by the Department of the maximum statutory penalty (1) in the administrative complaint, or (2) elsewhere when accompanied by an express demand for a lesser amount.

(c) The decision of the Department on the application for fees and other expenses shall be the final administrative decision under this section.

(d) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding.

**§ 6.11 [Amended]**

7. In § 6.11, paragraph (b) is amended by replacing the figure ''$75.00'' with the figure ''$125.00''.

**§ 6.25 [Amended]**

8. In § 6.25, paragraph (c) is amended by replacing the words ''an identify'' with the words ''and identify''.

Issued this 31st day of May, 1996 at Washington, D.C.

Federico Peña,

*Secretary of Transportation.*

[FR Doc. 96–14245 Filed 6–5–96; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Northern Goshawk in the Western United States

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and vacation of the June 25, 1992, finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the northern goshawk (*Accipiter gentilis*) in the Western United States under the Endangered Species Act, as amended. The Service has determined that the petition does not present substantial information that listing the northern goshawk in the Western United States may be warranted. The Service also vacates the previous June 25, 1992, finding for the same petitioned action.

**DATES:** The finding announced in this document was made on May 28, 1996.

**ADDRESSES:** Information, comments, or questions concerning this petition may be submitted to the Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Rd., Suite 103, Phoenix, Arizona 85021. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Sam Spiller, Supervisor (see **ADDRESSES** above) (telephone 602/640–2720).

**SUPPLEMENTARY INFORMATION:**

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and notice of the finding is to be published promptly in the Federal Register. If a finding is made that substantial information was presented, the Service also is required to promptly commence a review of the status of the species involved.

On September 26, 1991, a coalition of conservation organizations (Babbitt *et al.* 1991) submitted a letter to the Service, requesting to amend a petition under consideration by the Service to list a population of northern goshawk (*Accipiter gentilis*) as endangered in Utah, Colorado, New Mexico, and Arizona (Silver *et al.* 1991). The coalition requested expanding the geographic region under consideration to include the ''forested west.'' The petitioners subsequently refined their definition of the ''forested west'' to mean the forested United States, west of the 100th meridian. Because this letter requested consideration of a substantially different listing action than the previous petition, the Service informed the petitioners that their letter would be considered a separate petition.

On June 25, 1992, the Service published a 90-day finding that the petition had not presented substantial information to indicate that the petitioned action may be warranted. The petitioners subsequently filed a lawsuit to have the finding set aside as arbitrary and capricious under the Administrative Procedures Act. On February 22, 1996, U.S. District Judge Richard M. Bilby found the June 25, 1992 finding to be arbitrary and capricious and remanded the finding to the Service for a new 90-day determination and vacation of the previous finding. This notice serves to inform the public of the Service's new 90-day finding and vacates the Service's June 25, 1992 finding.

A species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act. A species that is likely to become an endangered species in the foreseeable future (as defined above) throughout all or a significant portion of its range may be declared a threatened species under the Act. The term ''species'' is defined by the Act to include ''* * * subspecies * * * and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature * * *'' (16 U.S.C. 1532 (15)).

In reviewing a listing petition, the Service must determine whether the petitioned action includes an entity that is listable under the Act, and, if so, whether the petition presented substantial information that the petitioned action may be warranted. In this case, the Service must consider whether northern goshawks west of the 100th meridian constitute a distinct population segment under 16 U.S.C. 1532 (15). In making this determination, the Service relies upon the National Marine Fisheries Service and Fish and Wildlife Service final Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the

Endangered Species Act (61 FR 4722; February 7, 1996).

The petition as submitted requests that the Service list a distinct population segment of northern goshawks that consists of portions of the ranges of three separate subspecies: *Accipiter gentilis atricapillus*, *A. g. laingi*, and *A. g. apache*. The range of each of the three subspecies extends beyond the area delineated in the petition. Only *A. g. atricapillus* and *A. g. laingi* are recognized by the American Ornithologists' Union (1957). However, *A. g. apache* has been recognized by some biologists and the Service (Brown and Amadon 1968, Hellmayer and Conover 1949, Hubbard 1992 as cited in Whaley and White 1994, Stresemann and Amadon 1979, U.S. Fish and Wildlife Service 1994).

Under the Services' February 7, 1996, final policy, the first step in determining whether the entity petitioned for listing qualifies as a distinct population segment is ''the discreteness of the population segment in relation to the remainder of the species to which it belongs.'' In defining the term ''population,'' the Services' February 7, 1996, final policy provides that in all cases when discussing a population, ''the organisms in a population are members of a single species or lesser taxon.'' Since a subspecies is a taxon, by definition a population segment may not include more than one subspecies. The Service's determination that a ''population'' cannot be composed of more than one recognized subspecies is consistent with the use of these terms in the scientific literature dealing with populations and subspecies (e.g., Mayr 1969).

This principle that a population may not include more than one subspecies is reflected in the wording of the first test for discreteness set forth in the Services' final policy of February 7, 1996. The final policy provides that a population segment is considered to be discrete if ''it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors.'' Because the principle concerns the underlying definition of the term ''population,'' it is also an inherent part of the second test for discreteness concerning international boundaries, which is set forth in the final policy. In either case, if the entity petitioned for listing does not qualify as a ''population,'' it does not meet the discreteness test under the final vertebrate population policy.

The Act provides that a single subspecies may be listed as endangered or threatened (16 U.S.C. 1532 (15)). In this case, the entity petitioned for listing includes organisms that are not members of a single taxon, but rather at least two, and possibly three, subspecies. For the reasons discussed above, the Service has determined that the petitioned action does not meet the definition of a distinct vertebrate population and therefore does not meet the discreteness test. Accordingly, no further evaluation was conducted concerning the conservation status of the species.

The processing of this petition finding follows the Service's final listing priority guidance published in the Federal Register on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events: (1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for prompt processing of draft rules and petition findings that were in the Service's Washington office (already approved by the field and regional offices) prior to the publication of the listing priority guidance on May 16, 1996. A draft of this petition finding was approved by the Service's Southwest Regional Director on May 8, 1996, and received by the Washington office on May 9, 1996.

In summary, the Service has reviewed its policies and guidance along with the petition and has determined that the petitioned entity is not listable under the Act. Therefore, the Service finds that the petition does not present substantial information that listing the northern goshawk in the United States west of the 100th meridian as a distinct population segment may be warranted. The Service also vacates its June 25, 1992, finding on the same petitioned action.

References Cited

American Ornithologists' Union. 1957. Check-list of North American birds, 5th edition. Port City Press, Baltimore, Maryland. 691 pp.

Babbitt, C., P. Galvin, S.M. Hitt, S.W. Hoffman, A. MacFarlane, K. Rait, C.I. Sandell, M. Sauber, T. Schulke, and G. Wardwell. 1991. Letter to the Department of the Interior, requesting to amend a petition to list the northern goshawk. Maricopa Audubon Society, Phoenix, Arizona. September 26, 1991. 5 pp.

Brown, L., and D. Amadon. 1968. Eagles, hawks and falcons of the world. Country Life Books, Feltham, Middlesex. 945 pp.

Hellmayer, C.E., and B. Conover. 1949. Catalogue of birds of the Americas and the adjacent islands. Field Museum of Natural History, Chicago. Pt. 1, No. 4.

Mayr, E. 1969. Principles of Systematic Zoology. McGraw-Hill, New York.

Silver, R.D., P. Galvin, S. Hirsch, S.M. Hitt, S.W. Hoffman, A. MacFarlane, C.I. Sandell, M. Sauber, T. Schulke, G. Wardwell, and S. Wotkyns. 1991. Letter to the Department of the Interior, petitioning to list the northern goshawk (Accipiter gentilis) in Utah, Colorado, New Mexico and Arizona, under the Endangered Species Act. Maricopa Audubon Society, Phoenix, Arizona. 61 pp.

Stresemann, E., and D. Amadon. 1979. Check-list of birds of the world. Museum of Comparative Zoology, Cambridge, MA. Vol. 1.

U.S. Fish and Wildlife Service. 1994. Ninety-day administrative finding for a petition to list the Queen Charlotte goshawk under provisions of the Endangered Species Act. Memorandum approved by Acting Director on August 19, 1994. 17 pp.

Whaley, W.H., and C.M. White. 1994. Trends in geographic variation of Coopers' hawk and northern goshawks in North America: a multivariate analysis. Proceedings of the Western Foundation of Vertebrate Zoology. Vol. 5, No. 3.

## Author

The primary author of this document is Dr. Steven Chambers, Fish and Wildlife Service Regional Office, P.O. Box 1306, Albuquerque, New Mexico 87003.

## Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 28, 1996.

John G. Rogers,

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 96–14048 Filed 6–5–96; 8:45 am]

BILLING CODE 4310–55–U

# Notices

Federal Register
Vol. 61, No. 110
Thursday, June 6, 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.

## AFRICAN DEVELOPMENT FOUNDATION

### Board of Directors Sunshine Act Meeting

**TIME:** 12:00 noon–2:00 p.m.
**PLACE:** ADF Headquarters.
**DATES:** Tuesday, June 11, 1996.
**STATUS:** Open.

Agenda

12:00 noon Lunch
12:30 p.m. Chairman's Report
1:00 p.m. President's Report
1:30 p.m. Other
2:00 p.m. Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Nate Fields,
*Vice President.*
[FR Doc. 96–14409 Filed 6–4–96; 2:13 pm]
**BILLING CODE 6116–01–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

May 31, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OIRM, Ag Box 7630, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- Agricultural Marketing Service

*Title:* Tobacco Report.

*Summary:* The Tobacco Statistics Act of 1929 provides for the collection and publication of tobacco statistics with regard to quantity of leaf tobacco in all forms in the U.S. and Puerto Rico owned by or in possession of dealers, manufacturers, and grower cooperative associations.

*Need and Use of the Information:* The purpose of the information collection is to ascertain the total supply of unmanufactured tobacco available and to calculate the amount consumed in manufactured tobacco products. The data is required for the calculation of production quotas for individual types of tobacco.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 101.

*Frequency of Responses:* Reporting: quarterly.

*Total Burden Hours:* 372.

- Farm Service Agency

*Title:* 7 CFR 735–742—Warehouse Regulations Under United States Warehouse Act.

*Summary:* The data is required for licensing of warehouses under the U.S. Warehouse Act.

*Need and Use of the Information:* The information is provided to those issuing licenses or approving contracts (1) to determine if warehouseman making applications meet required standards and (2) to determine that the licenses or contractor (operator) continues to meet those standards.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 5,250.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion, Annually.

*Total Burden Hours:* 156,850.

- Animal and Plant Health Inspection Service

*Title:* Animal Welfare, Part 3, Subpart B & C (Guinea Pigs, Hamsters, and Rabbits).

*Summary:* Title 9 CFR Subchapter A, Part 3 stipulates certain conditions that must be documented in order for dealers, exhibitors, research facilities, etc. to hold, sell and/or ship animals.

*Need and Use of the Information:* The information is necessary for APHIS to ensure that the animals are cared for in the prescribed manner that is required by the regulations.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 1470.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 260.

- Food and Consumer Service

*Title:* Employment and Training Program Report.

*Summary:* State agencies receive annual employment and training grants from the Department of Agriculture. The amount of this grant is based on the number of each State's food stamp recipients registered for work in relationship to the number of food stamp work registrants nationwide.

*Need and Use of the Information:* The collection of information is necessary to monitor State's Employment and Training Program performances. Each State agency must meet standards in order to receive a portion of the annual grants.

*Description of Respondents:* State, Local, or Tribal Government; Individuals or households.

*Number of Respondents:* 3,520,906.

*Frequency of Responses:* Reporting: Quarterly.

*Total Burden Hours:* 310,173.

Larry Roberson,
*Deputy Departmental Clearance Officer.*
[FR Doc. 96–14162 Filed 6–5–96; 8:45 am]
**BILLING CODE 3410–01–M**

## Forest Service

### Western Washington Cascades Province Interagency Executive Committee (PIEC) Advisory Committee; Meeting

**AGENCY:** Forest Service, USDA.
**ACTION:** Notice of meeting.

**SUMMARY:** The Western Washington Cascades PIEC Advisory Committee will meet on June 25, 1996 at the Mount Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, Washington. The meeting will begin at 9:00 a.m. and continue until about 4:30 p.m. Agenda items to be covered include: (1) continuation of discussion of the

possibilities, pros, cons, and probable ramifications (including legal and administrative requirements) of changing the original designations, under the Northwest Forest Plan, of the Skagit and Green River basins from ''non-key'' to ''key'' watersheds; (2) Access and Travel Management subcommittee report and discussion; (3) update on status of release of 318 timber sales under Section 2001 of P.L. 104–19 (Rescission Bill); (4) information briefing on Washington Department of Fish and Wildlife's Salmon Habitat Enhancement and Restoration (SHEAR) program; (5) other topics as appropriate; and, (6) open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Chris Hansen-Murray, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 206–744–3276.

Dated: May 31, 1996.

Dennis E. Bschor,

*Forest Supervisor.*

[FR Doc. 96–14219 Filed 6–5–96; 8:45 am]

**BILLING CODE 3410–11–M**

## Yakima Provincial Interagency Executive Committee (PIEC), Advisory Committee; Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Yakima PIEC Advisory Committee will meet on June 11, 1996 in rooms 204 & 205 at the Samuelson Union Building, Central Washington University, Ellensburg, Washington. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. This meeting will focus on continuing the discussion of managing dense dry forests under the Northwest Forest Plan. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, P.O. Box 811, Wenatchee, Washington 98807, 509–662–4335.

Dated: May 22, 1996.

Paul Hart,

*Designated Federal Official, Wenatchee National Forest.*

[FR Doc. 96–14207 Filed 6–5–96; 8:45 am]

**BILLING CODE 3410–11–M**

## Grain Inspection, Packers and Stockyards Administration

### Proposed Posting of Stockyard

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq*.).

AL–189—Graben Livestock Auction Sales, Tisgah, Alabama
FL–137—Hidden Creek Auction, Jacksonville, Florida
MO–280—Brookfield Sales Company, Brookfield, Missouri
NC–171—Foothills Livestock Auction, Inc., Cliffside, North Carolina

Pursuant to the authority under section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408–South Building, U.S. Department of Agriculture, Washington, D.C. 20250 by June 14, 1996. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, D.C., this 30th day of May 1996.

Daniel L. Van Ackeren,

*Director, Livestock Marketing Division, Packers and Stockyards Programs.*

[FR Doc. 96–14175 Filed 6–5–96; 8:45 am]

**BILLING CODE 3410–KD–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on Thursday, June 27, 1996, at the Radisson Hotel, 808 South 20th, Birmingham, Alabama 35205. The purpose of the meeting is to plan future programs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 28, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96–14211 Filed 6–5–96; 8:45 am]

**BILLING CODE 6335–01–P**

### Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Idaho Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Friday, June 28, 1996, at the Red Lion—Riverside, 2900 Chinden Boulevard, Boise, Idaho 83714. The purpose of the meeting is to review civil rights developments, including law enforcement issues, and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gladys Esquibel, 208–678–3838, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 28, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96–14212 Filed 6–5–96; 8:45 am]

**BILLING CODE 6335–01–P**

### Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on Wednesday, June 26, 1996, at the University of Tennessee-Memphis, Hyman Building, Room 101, 62 S. Dunlap, Memphis, Tennessee 38103. The purpose of the meeting is to discuss the status of the Commission and the SACs: the future release of the report, *Racial Tensions in Tennessee*; the current project on Title VI enforcement in Tennessee; and civil rights progress and problems. The Committee will reconvene at 10:00 a.m. and adjourn at 5:00 p.m. on Thursday, June 27, 1996, at the City Council Chambers, City Hall, 125 N. Main Street, Memphis, Tennessee 38103, for an invitational briefing session on Title VI enforcement in Tennessee, with emphasis on Memphis, to gather information for a future report on the topic.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 28, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96–14213 Filed 6–5–96; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce has submitted the following collection requirement to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13.

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Bluefin Tuna Dealer Reports.

*Agency Number:* NOAA 88–144.

*OMB Number:* 0648–0239.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 1199 hours.

*Number of Respondents:* 476.

*Avg Hours Per Response:* Varies depending on the requirement but ranges between 1 and 24 minutes.

*Needs and Uses:* The purpose of the collection of information is to comply with the United States' obligations under the Atlantic Tunas Convention Act. The Act requires the Secretary of Commerce to promulgate regulations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). As a member of ICCAT, the United States is required to take part in the collection of biological statistics for research purposes. The collection serves three purposes of ICCAT: (1) Provides stock assessment and research information, (2) monitors the catch so as not to exceed the country quota, and (3) verifies Atlantic and Pacific bluefin tuna export shipments in conjunction with the Bluefin Tuna Statistical Document program.

*Affected Public:* Business or other for-profit institutions.

*Frequency:* Daily, biweekly, on occasion.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* Adele Morris, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC's Acting Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Adele Morris, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 1996.

Linda Engelmeier,

*Acting Department Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 96–14146 Filed 6–5–96; 8:45 am]

**BILLING CODE 3510–22–P**

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Patent and Trademark Office (PTO).

*Title:* Rules for Patent Maintenance Fees.

*Agency Approval Number:* 0651–0016.

*Form Numbers:* PTO/SB/46, 46, 47, 65, and 66.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 22,640 hours.

*Number of Respondents:* 273,800.

*Avg. Hours Per Response:* .08 hours for PTO/SB/45/47 and 1 hour for PTO/SB/65/66.

*Needs and Uses:* The identification of the application serial and patent numbers, the maintenance fee amount and the surcharge amount will be used by the PTO to record the payment of maintenance fees on patents in order to keep the patents in force. The information will be used to prepare a receipt for the patentee and to determine whether or not a maintenance fee has been paid in response to any inquiry from the public. The optional information of the payment year and the small entity status are helpful to determine the amount of the maintenance fee due.

The use of PTO/SB/65/66 forms readily and conveniently indicates to the office that the required elements for the filing of petitions under 37 CFR 1.378 (b) or (c) have or have not been submitted. For example, the above forms include the verified statement and appropriate check boxes (list) for indicating that the required items have been attached to the petition form such as the maintenance fee, small entity status, reason for unintentional or unavoidable delay and surcharge. The top of the form indicates a space for the patent number, issue date, the application serial number and corresponding filing date. This identifying assists PTO in matching the fee with appropriate patent.

*Affected Public:* Individuals or households, business or other for-profit institutions, not-for-profit institutions, and Federal government.

*Frequency:* three (3) times, once every four years for payment of maintenance fees and on occasion for petitions to reinstate an expired patent.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*OMB Desk Officer:* Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to

Maya Bernstein, OMB Desk Officer, room 10236, New Executive Office Building, Washington DC 20503.

Dated: May 30, 1996.

Linda Engelmeier,

*Acting Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 96–14214 Filed 6–5–96; 8:45 am]

BILLING CODE 3510–16–P

## Foreign-Trade Zones Board

**[Docket 44–96]**

## Foreign-Trade Zone 202—Los Angeles, CA Application for Subzone California Steel Industries, Inc. (Steel Mill Products) Fontana, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, California, grantee of FTZ 202, requesting special-purpose subzone status for the steel mill products manufacturing facilities of California Steel Industries, Inc. (CSI), in Fontana, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 24, 1996.

CSI is a joint venture of Kawasaki Steel Holdings (USA), Inc., subsidiary of Kawasaki Steel, Ltd. (Japan), and Rio Doce, Ltd., subsidiary of Companhia Vale do Rio Doce (Brazil).

The CSI steel mill (370 acres) is located at 14000 San Bernadino Avenue, Fontana, California, some 65 miles west of the Los Angeles harbor area. The facilities (1000 employees) consist of a hot-roll mill, cold-roll mill, pickling line, galvanizing mill, and pipe mill. They are used to produce hot- and cold-rolled steel sheet, galvanized sheet and iron or steel pipe (HTS #7206, #7208–7210). The primary material inputs are semifinished steel slabs (HTS #7207.12.0050). Currently some 80 percent of the slabs are purchased from foreign sources, though the company is considering the production of slabs on site as a long-term goal. Foreign materials would be admitted in privileged foreign status (19 CFR 146.41). Some 4 percent of the finished steel mill products would be exported.

Zone procedures would exempt CSI from Customs duty payments on the foreign materials used in production for export (replacing duty drawback procedures). On domestic sales, the company would be able to defer Customs duties until finished products are shipped from the plant. The company is also seeking an exemption from Customs duties on scrap and waste that result from the production process (approx. 4–6%). The application indicates that the savings from zone procedures would help improve the international competitiveness in commodity-grade steel markets of a steel mill located in the western United States.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 5, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [75 days from the date of publication]).

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, 11000 Wilshire Blvd., Room 9200, Los Angeles, California 90024

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: May 29, 1996.

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 96–14157 Filed 6–5–96; 8:45 am]

BILLING CODE 3510–DS–P

**[Order No. 825; Subzone 124A]**

## Revision of Grant of Authority; TransAmerican Natural Gas Corporation (Oil Refinery) Destrehan, LA

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, the Foreign-Trade Zones (FTZ) Board (the Board) authorized subzone status at the oil refinery of TransAmerican Natural Gas Corporation, in Destrehan, Louisiana, in 1988, subject to conditions (Subzone 124A, Board Order 379, 53 FR 11539, 4/7/88);

Whereas, the South Louisiana Port Commission, grantee of FTZ 124, has requested, pursuant to § 400.32(b)(1)(i), a revision (filed 3/25/96, A(32b1)–3–96; FTZ Doc. 39–96, assigned 5/8/96) of the grant of authority for FTZ Subzone 124A which would make its scope of authority identical to that recently granted for FTZ Subzone 199A at the refinery complex of Amoco Oil Company, Texas City, Texas (Board Order 731, 60 FR 13118, 3/10/95); and,

Whereas, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurring in the findings and recommendations of the FTZ Staff and Executive Secretary, approves the request;

Now therefore, subject to the Act and the Board's regulations, including § 400.28, Board Order 379 is revised to replace the two conditions currently listed in the Order with the following conditions:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050 and #2710.00.2500 which are used in the production of:

—petrochemical feedstocks and refinery by-products (FTZ staff report, Appendix B);
—products for export; and,
—products eligible for entry under HTSUS # 9808.00.30 and 9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

Signed at Washington, DC, this 29th day of May 1996.

Paul L. Joffe,

*Acting, Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 96–14159 Filed 6–5–96; 8:45 am]

BILLING CODE 3510–DS–P

**[Docket 45–96]**

## Foreign-Trade Zone 70—Detroit, Michigan; Application for Subzone Status, Marathon Oil Company (Oil Refinery Complex), Wayne County, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign

Trade Zone, Inc., grantee of FTZ 70, requesting special-purpose subzone status for the oil refinery complex of Marathon Oil Company, located in Wayne County (Detroit area), Michigan. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 28, 1996.

The refinery complex (246 acres, 365 employees) consists of 4 sites and connecting pipelines in Wayne County (Detroit area), Michigan: *Site* 1 (183 acres)—main refinery complex (70,000 BPD) located at 1300 South Fort Street on the Detroit River, Detroit and Melvindale ; *Site* 2 (15 acres)—asphalt storage facility located at 301 South Fort Street on the Rouge River, 1 mile east of the refinery, Detroit; *Site* 3 (4 acres)—finished product storage facility, located on Fordson Island in the Rouge River, 2 miles northeast of the refinery, Dearborn; *Site* 4 (44 acres)—underground LPG storage cavern, located at 24400 Allen Road, 12 miles south of the refinery, Woodhaven.

The refinery complex is used to produce fuels and petrochemical feedstocks. Fuels produced include gasoline, jet fuel, naphthas, distillates, and residual fuels. Petrochemical feedstocks and refinery by-products include methane, ethane, butane, propane, propylene, sulfur, asphalt, carbon black oil and petroleum coke. About 48 percent of the crude oil (91 percent of inputs) and some feedstocks and motor fuel blendstocks used in producing fuel products are sourced abroad.

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) instead of the duty rates that would otherwise apply to the foreign-sourced inputs (e.g., crude oil). The duty rates on crude oil range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 5, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 20, 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, 1140 McNamara Building, 477 Michigan Ave., Detroit, Michigan 48226

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: May 29, 1996.

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 96–14158 Filed 6–5–96; 8:45 am]

BILLING CODE 3510–DS–P

**[Order No. 829]**

## Expansion of Foreign-Trade Zone 54, Clinton County, NY

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, an application from the Clinton County Area Development Corporation, grantee of Foreign-Trade Zone 54, for authority to expand its general-purpose zone at a site in Champlain (Clinton County), New York, was filed by the Board on August 8, 1995 (FTZ Docket 42–95, 60 FR 42834, 8/17/95); and,

Whereas, notice inviting public comment was given in Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now therefore, the Board hereby orders:

The application to expand FTZ 54 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 29th day of May 1996.

Paul L. Joffe,

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 96–14160 Filed 6–5–96; 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 the last day of June 1996, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

| | Period |
|---|---|
| *Antidumping Proceeding:* | |
| Belgium: Sugar, A–423–077 | 6/1/95–5/31/96 |
| Canada: Oil Country Tubular Goods, A–122–506 | 6/1/95–5/31/96 |

| | Period |
|---|---|
| Canada: Raspberries, A–122–401 | 6/1/95–5/31/96 |
| France: Calcium Aluminate Flux, A–427–812 | 6/1/95–5/31/96 |
| France: Large Power Transformers, A–427–030 | 6/1/95–5/31/96 |
| France: Sugar, A–427–078 | 6/1/95–5/31/96 |
| Germany: Industrial Belts, except Synchronous, & V belts, A–428–802 | 6/1/95–5/31/96 |
| Germany: Precipitated Barium Carbonate, A–428–061 | 6/1/95–5/31/96 |
| Germany: Rayon Yarn, A–428–810 | 6/1/95–5/31/96 |
| Germany: Sugar, A–428–082 | 6/1/95–5/31/96 |
| Hungary: Tapered Roller Bearings, A–437–601 | 6/1/95–5/31/96 |
| Italy: Large Power Transformers, A–475–031 | 6/1/95–5/31/96 |
| Italy: Synchronous and V–Belts, A–475–802 | 6/1/95–5/31/96 |
| Japan: Fishnetting, A–588–029 | 6/1/95–5/31/96 |
| Japan: Forklift Trucks, A–588–703 | 6/1/95–5/31/96 |
| Japan: Grain-Oriented Electrical Steel, A–588–831 | 6/1/95–5/31/96 |
| Japan: Industrial Belts, A–588–807 | 6/1/95–5/31/96 |
| Japan: Large Power Transformers, A–588–032 | 6/1/95–5/31/96 |
| Japan: Nitrile Rubber, A–588–706 | 6/1/95–5/31/96 |
| New Zealand: Kiwifruit, A–614–801 | 6/1/95–5/31/96 |
| Romania: Tapered Roller Bearings, A–485–602 | 6/1/95–5/31/96 |
| Russia: Ferrosilicon, A–821–804 | 6/1/95–5/31/96 |
| Singapore: V–Belts, A–559–803 | 6/1/95–5/31/96 |
| South Africa: Furfuryl Alcohol, A–791–802 | 12/16/94–5/31/96 |
| South Korea: PET Film, A–580–807 | 6/1/95–5/31/96 |
| Sweden: Stainless Steel Plate, A–401–603 | 6/1/95–5/31/96 |
| Taiwan: Carbon Steel Plate, A–583–080 | 6/1/95–5/31/96 |
| Taiwan: Oil Country Tubular Goods, A–583–505 | 6/1/95–5/31/96 |
| Taiwan: Stainless Steel Butt-Weld Pipe Fittings, A–583–816 | 6/1/95–5/31/96 |
| Taiwan: Washers, A–583–820 | 6/1/95–5/31/96 |
| The Netherlands: Aramid Fiber, A–421–805 | 6/1/95–5/31/96 |
| The People's Republic of China: Furfuryl Alcohol, A–570–835 | 12/16/94–5/31/96 |
| The People's Republic of China: Silicon Metal, A–570–806 | 6/1/95–5/31/96 |
| The People's Republic of China: Sparklers, A–570–804 | 6/1/95–5/31/96 |
| The People's Republic of China: Tapered Roller Bearings, A–570–601 | 6/1/95–5/31/96 |
| Venezuela: Ferrosilicon, A–307–807 | 6/1/95–5/31/96 |
| *Countervailing Duty Proceedings:* | |
| Italy: Grain-Oriented Electrical Steel, C–475–812 | 1/1/95–12/31/95 |

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, 14th Street & Constitution Avenue, N.W., 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 the last day of June 1996. If the Department does not receive, by the last day of June 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: May 30, 1996.

Joseph A. Spetrini,

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 96–14311 Filed 6–5–96; 8:45 am]

BILLING CODE 3510–DS–P–M

**[C–508–605]**

## Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Countervailing Duty Administrative Reviews.

**SUMMARY:** On March 4, 1996, the Department of Commerce (the Department) published in the Federal Register its preliminary results of two administrative reviews of the countervailing duty order on industrial phosphoric acid from Israel. The reviews cover the periods January 1, 1992 through December 31, 1992 and January 1, 1993 through December 31, 1993. We have completed these reviews and determine the net subsidy to be 3.84 *ad valorem* for all companies for the period January 1, 1992 through December 31, 1992, and 5.49 percent *ad valorem* for all companies for the period January 1, 1993 through December 31, 1993. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

**EFFECTIVE DATE:** June 6, 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 March 4, 1996, the Department published in the Federal Register (61 FR 8255) the preliminary results of two administrative reviews of the countervailing duty order on industrial phosphoric acid from Israel. The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

We invited interested parties to comment on the preliminary results. On April 2, 1996, case briefs were submitted by the Government of Israel (GOI) and Rotem Amfert Negev Ltd. (Rotem), a producer of the subject merchandise that exported industrial phosphoric acid to the United States during the 1992 and 1993 review periods (respondents), and FMC Corporation and Monsanto Company (petitioners). On April 9, 1996, rebuttal briefs were submitted by the respondents and petitioners.

The reviews cover the periods January 1, 1992 through December 31, 1992 and January 1, 1993 through December 31, 1993. Each review covers one manufacturer/exporter of the subject merchandise, Rotem, which accounts for all of the exports of subject merchandise from Israel to the United States during the review periods, and ten programs.

## Applicable Statute and Regulations

The Department is conducting these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994. However, references to the Department's *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*1989 Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *1989 Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the Uruguay Round Agreements Act. *See Advance Notice of Proposed Rulemaking and Request for Public Comments,* 60 FR 80 (January 3, 1995); *Antidumping Duties, Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7308 (February 27, 1996).

## Scope of Review

Imports covered by these reviews are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

## Calculation Methodology for Assessment and Cash Deposit Purposes

Because Rotem is the only manufacturer/exporter of the subject merchandise to the United States, Rotem's net subsidy rate is also the country-wide rate.

## Privatization

Previously, we have found that a private party purchasing all or part of a government-owned company can repay prior non-recurring subsidies on behalf of the company as part or all of the sales price. Accordingly, in the preliminary results, we calculated a ratio representing the amount of subsidies remaining with Rotem after each partial privatization in 1992 and 1993. To calculate the benefit provided to Rotem in 1992 and 1993, we multiplied the benefit calculated for Encouragement of Capital Investment Law grants (the only non-recurring allocable subsidies) for each period by the ratio representing the amount of subsidies remaining with Rotem after the partial privatization. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to reconsider our methodology from the preliminary results.

## Analysis of Programs

Based upon our analysis of the questionnaire response, verification, and written comments from the interested parties we determine the following:

### I. Programs Conferring Subsidies

#### *A. Encouragement of Capital Investments Law (ECIL) Grants*

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to reconsider our findings in the preliminary results. On this basis, the net subsidy for this program is 3.82 percent *ad valorem* for 1992 and 5.47 percent *ad valorem* for 1993.

#### *B. Long-term Industrial Development Loans*

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. We received no comments on our preliminary results and our findings remain unchanged in these final results. On this basis, the net subsidy for this program is 0.01 percent *ad valorem* for 1992 and less than 0.005 percent *ad valorem* for 1993.

#### *C. Exchange Rate Risk Insurance Scheme*

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise. Our analysis of the comments submitted by the interested parties, summarized below, has not led us to reconsider our findings in the preliminary results. On this basis, the net subsidy for this program is zero for 1992 and 0.02 percent ad valorem for 1993.

#### *D. Encouragement of Industrial Research and Development Grants (EIRD)*

In the preliminary results, we found that this program conferred countervailable benefits on the subject merchandise for the 1992 review period. We received no comments on our preliminary results and our findings remain unchanged in these final results.

On this basis, the net subsidy for this program is less than 0.005 percent *ad valorem* for 1992.

II. Program Not Conferring Subsidies

*Law for the Encouragement of the Business Sector (Absorption of Workers)*

In the preliminary results, we found that this program did not confer countervailable benefits on the subject merchandise. Since we received no comments on our preliminary results, our findings remain unchanged in these final results.

III. Programs Found Not To Be Used

We determine that Rotem did not apply for or receive benefits under the following programs during the 1992 and 1993 review periods:

A. Reduced Tax Rates under ECIL;
B. ECIL Section 24 Loans:
C. Preferential Accelerated Depreciation under ECIL;
D. Labor Training Grants; and
E. Dividends and Interest Tax Benefits under Section 46 of the ECIL.

Analysis of Comments

*Comment 1:* Petitioners argue that the Department was incorrect in treating a portion of the price paid by the public for shares in Israel Chemicals Ltd. (ICL), the parent company of Rotem Fertilizers, Ltd., as partial repayment of prior non-recurring subsidies. According to the petitioners, Rotem clearly received subsidies that are actionable under U.S. countervailing duty law, and nothing happened in the partial privatizations that in any way reduced or diminished those subsidies. Rotem was the same company after the partial privatization of ICL; the only change that occurred as a result of privatization was in the makeup of the shareholders of ICL.

To support their argument, petitioners point out that the Court of International Trade (CIT) recently ruled on privatization accomplished through the sale of stock. In *British Steel PLC* v. *United States*, 879 F.Supp. 1254, 1277 (1995) (*British Steel*), the CIT stated that ''* * * when a bona fide purchaser in an arm's length transaction buys all or some of the stock of a government-owned corporation, none of the subsidy is repaid by that purchase.'' Under the CIT's analysis in *British Steel*, state petitioners, there clearly should be no reduction in prior subsidies paid to Rotem as a result of the so-called partial privatization.

Petitioners continue that the Department's justification for treating a part of the price paid for government shares in a privatization as a repayment of prior subsidies is based in large part on the ''theory,'' elaborated upon in the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37262 (July 9, 1993) (*General Issues Appendix*), that the new private shareholders will operate the newly privatized company differently from the way in which the government operated the old ''subsidized'' company. Much of this rationale is, in petitioners' view, highly speculative. Whatever factors motivated private parties to invest in ICL, those parties have no ability to change or affect the management or business operations of ICL, since the GOI still owns 75 percent of the outstanding shares and maintains absolute authority over fundamental corporate decisions. In conclusion, the Department should make no adjustment for any so-called subsidy ''repayments.''

In rebuttal, the respondents state that the Department's repayment methodology was upheld in a recent decision by the Court of Appeals for the Federal Circuit (CAFC) in *Saarstahl* v. *United States*, Slip Op. 94–1457, –1475 (Fed. Cir., March 12, 1996). The CAFC observed that, ''in the absence of explicit mandates [from Congress], Commerce's approach must be accorded deference.'' Also, according to respondents, the petitioners'' reliance on *British Steel* to support their position is misplaced. To the extent that one judge on the CIT may disagree with the Department's repayment methodology, that disagreement is overridden by the CAFC's ruling in *Saarstahl*, which affirmed the Department's repayment methodology. As a result, according to respondents, the petitioners' arguments should be disregarded.

*Department's Position:* We disagree with petitioners. The Department's position on privatization was recently upheld by the CAFC in its *Saarstahl* decision, where the court affirmed the Department's position that privatization does not as a matter of law extinguish prior subsidies. We are also not deferring to the CIT's decision in *British Steel* because it does not represent a final and conclusive court decision and may yet be appealed. Moreover, neither the CAFC nor the CIT specifically addressed the issue of the Department's repayment methodology. Accordingly, we are following our privatization and repayment methodology outlined in the *General Issues Appendix*.

*Comment 2:* The respondents state that the Department calculated separate ''shares of subsidies remaining after privatization'' for 1992 and 1993 and then applied those separate calculations to each year's subsidies. Thus, for 1992, the Department multiplied the ECIL grants by 94.55 percent and for 1993, by 98.80 percent. Respondents believe that this method overstates the share of subsidies remaining after privatization for 1993. The percentages should be applied cumulatively, not separately. Accordingly, state respondents, the effect of privatization is cumulative. For 1993, therefore, the share of subsidies remaining should be 98.90 x 94.55, or 92.73 percent. Thus, the Department should use 92.73 percent to calculate the share of subsidies remaining.

*Department's Position:* In our calculations of the subsidies remaining after the 1993 privatization, we have taken into account the reduction of subsidies which occurred as the result of the 1992 privatization. We first multiplied each allocated non-recurring subsidy amount by 94.55 percent, the percentage of subsidies remaining after the 1992 privatization. These adjusted grant amounts were summed for the 1993 period, and multiplied by 98.80 percent, which is the share of subsidies remaining after the 1993 privatization. As a result, the Department properly accounted for both the 1992 and 1993 repayment of subsidies as a result of privatization.

*Comment 3:* The respondents state that the Department did not take into account the depreciation of the shekel in its calculation of the benefit from the ECIL grants. Since Rotem keeps its records in dollar terms (the grants are issued in shekels), the respondents argue that the calculation should take the erosion of the shekel into account. According to the respondents, the calculation should include the portion of principal allocated to a particular year plus dollar-linkage differences on that principal from the date the grant was received. Otherwise, the respondents conclude that the Department's methodology overstates the benefits from the grants. Finally, to avoid double-counting the portion of benefit derived from the dollar-linkage, which has already been accounted for according to the present formula, this methodology should apply only to grants from 1993 forward.

The petitioners contend that the respondents' argument ignores the Department's long-standing practice of not reevaluating its allocation of non-recurring subsidies over time based upon subsequent events. Depreciation (or, for that matter, appreciation) of the Israeli shekel is clearly one of the kinds of ''subsequent events in the marketplace'' that should not be taken into account in determining and allocating the net subsidy received by Rotem from non-recurring grants. Accordingly, petitioners state that

Rotem's so-called ''linkage'' argument must be rejected.

*Department's Position:* We disagree with respondents. Rotem received the ECIL grants in shekels and the Department appropriately allocated the grant amounts to the review periods according to our variable rate grant methodology, which accounted for the hyperinflation rates that existed in Israel when some of the grants were provided. *See Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from Israel,* 60 FR 10569 (February 27, 1995). The fact that Rotem records the grant values in their books in dollars is irrelevant. As we explained in the *General Issues Appendix* at 37,263, ''the countervailable subsidy (and the amount of the subsidy to be allocated over time) is fixed at the time the government provides the subsidy.'' We continued that ''the statute does not permit the amount of the subsidy, including the allocated subsidy stream, to be reevaluated based upon subsequent events in the marketplace.'' *Id.* As a result, we cannot alter our grant allocations based on the fluctuations in the value of the shekel against the U.S. dollar.

*Comment 4:* Respondents argue that the Department's calculation methodology ignores the fact that Rotem's fixed assets are reduced for tax purposes by the value of the grants. Thus, respondents argue, because the true value of the grants is eroded by a concomitant tax increase, the grant benefit should be reduced by 36 percent, the current tax rate.

Petitioners argue that the tax impact of the subsidy received by Rotem is irrelevant and that Rotem's argument to have the tax impact considered is flawed because it seeks to have the Department consider subsequent economic events. Petitioners state that the critical factor in countervailing duty law is not subsequent economic impact or continuing competitive benefit, but rather the receipt of a subsidy. Therefore, petitioners argue, the tax effect should not be considered.

*Department's Position:* We disagree with respondents. In calculating the amount of a countervailable benefit, the Department's long-standing practice is to ignore the secondary tax consequences of the benefit. *See* § 355.46(b) of the *1989 Proposed Regulations. See also, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium,* 58 FR 37273 (July 9, 1993), and, *Final Affirmative Countervailing Duty Determination; Fresh and Chilled Atlantic Salmon from Norway,* 56 FR 7678 (February 25, 1991). Thus, the tax effect of the grants received by Rotem is not pertinent to the Department's calculation of the benefit.

*Comment 5:* Respondents argue that the Department's rounding of the countervailing duty rates in the 1992 and 1993 reviews is either inconsistent or incorrect. Rotem's rate for 1992, 3.84 percent, is rounded to two decimal places. In contrast, Rotem's rate for 1993, 5.50 percent, is either rounded to only one decimal place, or incorrectly rounded to two decimal places from 5.494 percent. Therefore, respondents argue that the Department change either the 1992 rate to 3.8 percent, or the 1993 rate to 5.49 percent.

*Department's Position:* We agree with the respondents. We have now accurately rounded the rate for the 1993 review to be 5.49 percent.

*Comment 6:* Respondents argue that the benefit rate from the Exchange Rate Risk Insurance Scheme (EIS) should not be included in the cash deposit rate because the program was terminated in 1993. Respondents point to information submitted by the GOI in the questionnaire response demonstrating that the EIS was terminated in 1993.

Petitioners rebut that Rotem's receipt of residual EIS benefits will depend on such variables as the date of export shipment, the date of delivery, the date of payment, and the length of time necessary for EIS processing and payment. According to petitioners, in view of these uncertainties, which preclude the determination of a fixed date for the actual termination of EIS benefits to Rotem, the Department should continue to include EIS benefits in the cash deposit rate.

*Department's Position:* The Department's practice, as outlined in section 355.50(d)(1)(2) of the *1989 Proposed Regulations*, is not to adjust the cash deposit rate when it determines that residual benefits may continue to be bestowed under a terminated program. The Department noted in the 1991 review of IPA from Israel that the EIS was terminated in 1993. *See Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review,* 59 FR 5176 (February 3, 1994). In that review, we included the rate from the EIS in the cash deposit rate because residual benefits continued to be available. The Department has verified that the GOI will continue to honor outstanding claims as long as they are made within three years of the date of export. *See, Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from Israel,* 60 FR 10573 (February 27, 1995). Therefore, because residual benefits continue to be available under this program, we have not adjusted the cash deposit rate.

Final Results of Review

For the period January 1, 1992 through December 31, 1992, we determine the net subsidy to be 3.84 percent *ad valorem* for all firms. For the period January 1, 1993 through December 31, 1993, we determine the net subsidy to be 5.49 percent *ad valorem* for all firms.

The Department will instruct the U.S. Customs Service to assess the following countervailing duties:

| Manufacturer/exporter | Period | Rate |
|---|---|---|
| All companies ... | 1992 ..... | 3.84 |
| All companies ... | 1993 ..... | 5.49 |

The Department will also instruct the U.S. Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Act, of 5.49 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: May 23, 1996.

Paul L. Joffe,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–14155 Filed 6–5–96; 8:45 am]

BILLING CODE 3510–DS–P

**[C–508–605]**

## Industrial Phosphoric Acid From Israel; Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on industrial phosphoric acid from Israel. For information on the net subsidy for the reviewed company, as well for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** Norma Curtis 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 19, 1987, the Department published in the Federal Register (52 FR 31057) the countervailing duty order on industrial phosphoric acid from Israel. On August 1, 1995, the Department published a notice of ''Opportunity to Request an Administrative Review'' (60 FR 39150) of this countervailing duty order. We received timely requests for review, and we initiated the review, covering the period January 1, 1994 through December 31, 1994, on September 15, 1995 (60 FR 47930).

In accordance with § 355.22(a) of the Department's *Interim Regulations,* this review covers only the producer and/or exporter of the subject merchandise for which a review was specifically requested (*see Antidumping and Countervailing Duties: Interim Regulations; Request for Comments,* 60 FR 25130 (May 11, 1995) (*Interim Regulations*)). Accordingly, this review covers Rotem Amfert Negev Ltd. (Rotem). This review also covers nine programs.

As explained in the November 22, 1995 and January 11, 1996, *Memoranda from the Assistant Secretary for Import Administration for the Record Re: Deadlines Affected by the November/December–January Closure of the Import Administration,* which are on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce, all deadlines were extended to take into account the partial shutdowns of the Federal Government from November 15 through November 21, 1995, and December 15, 1995, through January 6, 1996. Therefore, the deadline for these preliminary results is no later than May 30, 1996, and the deadline for the final results of this review is no later than 120 days from the date on which these preliminary results are published in the Federal Register.

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. References to the *Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments,* 54 FR 23366 (May 31, 1989) (*1989 Proposed Regulations*), are provided solely for further explanation of the Department's countervailing duty practice. Although the Department has withdrawn the particular rulemaking proceeding pursuant to which the *1989 Proposed Regulations* were issued, the subject matter of these regulations is being considered in connection with an ongoing rulemaking proceeding which, among other things, is intended to conform the Department's regulations to the URAA. *See Advance Notice of Proposed Rulemaking and Request for Public Comments,* 60 FR 80 (January 3, 1995); *Antidumping Duties; Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments,* 61 FR 7308 (February 27, 1996).

### Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

### Privatization

Israeli Chemicals Ltd. (ICL), the parent company which holds one hundred percent of Rotem's shares, was partially privatized in 1992 and 1993. The percentages of ICL's shares privatized were twenty percent and five percent respectively. In the questionnaire responses, the Government of Israel and Rotem reported that ICL was also partially privatized in 1994. We have determined that the partial privatization of ICL represents a partial privatization of each of the companies in which ICL holds an ownership interest. *See Final Results of Countervailing Duty Administrative Reviews; Industrial Phosphoric Acid from Israel* published concurrently with this notice (*Final Results*).

In this review and prior reviews of the subject merchandise, the Department has found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations. Further, the Department has found that a private party purchasing all or part of a government-owned company can repay prior non-recurring subsidies on behalf of the company as part or all of the sales price (*see* the General Issues Appendix appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37262 (July 9, 1993) (*General Issues Appendix*)). Therefore, to the extent that a portion of the sales price paid for a privatized company can be reasonably attributed to prior subsidies, that portion of those subsidies are repaid. This methodology was applied in the 1992 and 1993 reviews. In the questionnaire response for 1994, respondents reported that the Government of Israel sold less than 0.5 percent of its shares in ICL. Because this percentage of shares privatized is so small, the percentage of subsidies potentially repaid through this privatization could have no measurable impact on Rotem's overall net subsidy rate. Therefore, we have not applied our repayment methodology which is described in the *General Issues Appendix.* (See May 23, 1996 memorandum to Paul L. Joffe regarding applicability of the Department's privatization methodology in the instant review, which is on file in the public file of the Central Records Unit, Room B–099 of the Department of Commerce.)

Analysis of Programs

*I. Programs Previously Determined to Confer Subsidies*

(A) Encouragement of Capital Investments Law (ECIL) Grants

The ECIL grants program was established to attract capital to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, capital grants, accelerated depreciation, reduced tax rates, and certain loans, the applicant must obtain approved enterprise status. Approved enterprise status is granted by the Investment Center of the Israeli Ministry of Industry and Trade. Investment grants are given for the amount representing a percentage of the cost of the approved investment. The amount of the grant benefits received by approved enterprises depends on the geographic location of the eligible enterprise. For purposes of the ECIL program, Israel is divided into three zones—Development Zone A, Development Zone B, and the Central Zone—each with a different funding level.

Since 1978, only investment projects outside the Central Zone have been eligible to receive grants. The Central Zone comprises the geographic center of Israel, including its largest and most developed population centers. In *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid from Israel,* 52 FR 25447 (July 7, 1987) (*IPA Investigation*), the Department found the ECIL grants program to be *de jure* specific and thus countervailable because the grants are limited to enterprises located in specific regions. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of this determination.

Rotem is located in Development Zone A, and received ECIL investment, drawback, and capital grants in disbursements over a period of years for several projects. In this review we have followed the methodology developed in *IPA Investigation* to determine the benefits from the ECIL grants. However, consistent with the *Final Results,* we are utilizing a calculation methodology that conforms with the use of variable rather than fixed interest rates in the years these grants were disbursed. This methodology reflects the actual long-term options open to Israeli firms, and also ensures that the net present value of the amount countervailed in the year of receipt does not exceed the face value of the grant. In accordance with *General Issues Appendix,* we allocated these grants over ten years (the average useful life of renewable physical assets in the chemical manufacturing industry, as determined under the U.S. Internal Revenue Service Asset Depreciation Range System).

Section 355.49(b)(2) of the Department's *1989 Proposed Regulations* requires the use of a discount rate based on the cost of fixed-rate long-term debt for the firm under review or generally in the country under review. However, Rotem had no fixed-rate long-term debt during the years in which it received ECIL grants. Moreover, in *Final Results,* the Department determined that no long-term loans with fixed interest rates (or other long-term debt) were available in Israel during that period; the only long-term loans (or other long-term debt) available to companies in Israel were provided at variable interest rates. Consistent with *Final Results,* as the discount rate we have used the rate of return on CPI-indexed commercial bonds (as published in the Bank of Israel Annual Reports, plus the CPI).

To calculate the benefit, we summed the benefits from these projects for 1994. We then divided the results by Rotem's sales of IPA during the review period. On this basis, we preliminarily determine the net subsidy from this program to be 6.53 percent *ad valorem* for 1994.

(B) Long-term Industrial Development Loans

Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the Government of Israel (GOI). During the original investigation, we verified that these loans were project-specific. They were disbursed through the Industrial Development Bank of Israel (IDBI) and other industrial development banks which no longer exist.

The long-term industrial development loans were provided to a diverse number of industries, including agricultural, chemical, mining, machine, and others. However, the interest rates on loans vary depending on the Development Zone in which the borrower is located. The interest rates on loans to borrowers in Development Zone A are lowest, while those on loans to borrowers in the Central Zone are highest. Therefore, loans to companies in Zone A are provided on preferential terms relative to loans received by companies in the heavily populated and developed Central Zone. In *IPA Investigation,* the Department found long-term industrial development loans to be regional subsidies and countervailable to the extent that they are provided at interest rates which are lower than those applied on loans provided to companies located in the Central Zone. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of this determination. Rotem had loans outstanding under this program during the review period. The loans carry the Zone A interest rates because of Rotem's location. Therefore, we determine that Rotem received countervailable benefits under this program because the interest rates paid by Rotem are lower than those which would apply in the Central Zone.

As was determined in the *Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from Israel,* 60 FR 10569 (February 27, 1995), under the terms of this program, the interest rates on these loans have two components—a fixed real interest rate and a variable interest rate, the latter of which is based on either the CPI or the dollar/shekel exchange rate. All of Rotem's loans were linked to the dollar/shekel exchange rate. Because the dollar-shekel exchange rate varies from year-to-year, we were unable to apply the Department's methodology described in the *1989 Proposed Regulations* because we cannot calculate *a priori* the payments due over the life of these loans, and hence cannot calculate the ''grant equivalent'' of the loans. Therefore, in accordance with § 355.49(d)(1) of the *1989 Proposed Regulations,* we have compared the interest that would have been paid by a company in the Central Zone, as a benchmark, to the amount actually paid by Rotem during the review period. We then calculated the interest savings during the period of review. We summed the benefits and divided the total by Rotem's sales of IPA during the review period. On this basis, we preliminarily determine the net subsidy from this program to be 0.002 percent *ad valorem* for 1994.

(C) Encouragement of Industrial Research and Development Grants (EIRD)

Rotem received several grants under this program during the review period. In *IPA Investigation,* we determined that these grants are countervailable. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of this determination. We followed the methodology developed in *IPA Investigation* in determining the benefits from the EIRD funding.

During the 1994 review period, Rotem received three EIRD grants. The EIRD grants issued to Rotem on February 1, 1994 and April 7, 1994 benefited a research project concerning green acid, which is used as an input in the production of IPA as well as other products. The EIRD grant issued to Rotem on August 1, 1994 benefited a research project concerning phosphate, which can be used to produce IPA as well as other products. We view these grants as ''non-recurring'' grants based on the analysis set forth in the ''Allocation'' section of the *General Issues Appendix* (58 FR 37226) because these benefits are exceptional, and Rotem cannot expect to receive benefits on an ongoing basis from review period to review period. Since the total value of the grants received in 1994 was less than 0.50 percent of all Rotem's sales, we divided the total amount of the 1994 grants by Rotem's total sales of all products. On this basis, we preliminarily determine the benefit from this program to be 0.06 percent *ad valorem*.

*II. Programs Preliminarily Determined To Be Not Used*

We examined the following programs and preliminarily determine that the producer and/or exporter of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

A. Exchange Rate Risk Insurance Scheme;
B. Reduced Tax Rates under ECIL;
C. ECIL Section 24 loans;
D. Labor Training Grants;
E. Dividends and Interest Tax Benefits under Section 46 of the ECIL; and
F. ECIL Preferential Accelerated Depreciation.

Preliminary Results of Review

In accordance with § 355.22(c)(4)(ii) of the Department's *Interim Regulations*, we have calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1994 through December 31, 1994, we preliminarily determine the net subsidy for Rotem to be 6.59 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess the following countervailing duties:

| Net Subsidies—Producer/Exporter | Net Subsidy Rate % |
|---|---|
| Rotem Amfert Negev Ltd. ..... | 6.59 |

The Department also intends to instruct the U.S. Customs Service to collect cash deposits of estimated countervailing duties, at the rate indicated above, on the f.o.b. invoice price for all shipments of the subject merchandise from the reviewed company, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

The URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies. The procedures for countervailing duty cases are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Requests for administrative reviews must now specify the companies to be reviewed. *See* § 355.22(a) of the *Interim Regulations.* The requested review will normally cover only those companies specifically named. Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company v. United States,* 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States,* 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to all non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1994 through December 31, 1994, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38, are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: May 29, 1996.

Paul L. Joffe,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–14156 Filed 6–5–96; 8:45 am]

**BILLING CODE 3510–DS–P**

## Minority Business Development Agency

## Minority Business Development Centers; Florida

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice; Solicitation of Business Development Center Applications for Jacksonville, Orlando, Tampa, and West Palm Beach.

**SUMMARY:** In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Minority Business Development Centers (MBDC) listed in this document.

The purpose of the MBDC Program is to provide business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

In accordance with the Interim Final Policy published in the Federal Register on May 31, 1996, the cost-share requirement for the MBDCs listed in this notice has been increased to 40%. The Department of Commerce will fund up to 60% of the total cost of operating an MBDC on an annual basis. The MBDC operator is required to contribute at least 40% of the total project cost (the ''cost-share requirement''). Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof. In addition to the traditional sources of an MBDC's cost-share contribution, the 40% may be contributed by local, state and private sector organizations. It is anticipated that some organizations may apply jointly for an award to operate the center. For administrative purposes, one organization must be designated as the recipient organization.

**DATES:** The closing date for applications for each MBDC is listed below:

**ADDRESSES:** Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

**PRE-APPLICATION CONFERENCE:** A pre-application conference will be held on Friday, June 21, 1996, at 10:00 a.m., at the George C. Young Federal Building, 80 North Hughey Avenue, Room G12, Orlando, Florida 32801.

Please be advised that attendance at the pre-application conference on June 21, 1996, requires proper identification for entrance into the Federal building.

**SUPPLEMENTARY INFORMATION:** The following are MBDCs for which applications are solicited:

1. MBDC Application: Jacksonville
   Metropolitan Area Serviced: Jacksonville, Florida
   Award Number: 04–10–96006–01
   Closing Date for Applications: July 8, 1996

**FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT:** Robert Henderson, Regional Director, at (404) 730–3300 Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 30, 1997, is estimated at $281,875. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 40%, $112,750 in non-federal (cost-sharing) contributions for a total project cost of $281,875.

2. MBDC Application: Orlando
   Metropolitan Area Serviced: Orlando, Florida
   Award Number: 04–10–96007–01
   Closing Date for Applications: July 8, 1996

**FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT:** Robert Henderson, Regional Director, at (404) 730–3300 Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 30, 1997, is estimated at $281,875. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 40%, $112,750 in non-federal (cost-sharing) contributions for a total project cost of $281,875.

3. MBDC Application: Tampa
   Metropolitan area serviced: Tampa, Florida
   Award Number: 04–10–96008–01
   Closing Date for Applications: July 8, 1996

**FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT:** Robert Henderson, Regional Director, at (404) 730–3300 Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 30, 1997, is estimated at $314,778. The total Federal amount is $188,867 and is composed of $184,260 plus the Audit Fee amount of $4,607. The application must include a minimum cost share of 40%, $125,911 in non-federal (cost-sharing) contributions for a total project cost of $314,778.

4. MBDC Application: West Palm Beach
   Metropolitan Area Serviced: West Palm Beach, Florida
   Award Number: 04–10–96009–01
   Closing Date for Applications: July 8, 1996

**FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT:** Robert Henderson, Regional Director, at (404) 730–3300 Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 30, 1997, is estimated at $281,875. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 40%, $112,750 in non-federal (cost-sharing) contributions for a total project cost of $281,875.

Standard Paragraphs—The Following Information and Requirements Are Applicable to the Listed MBDCs: Jacksonville, Orlando, Tampa, and West Palm Beach

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). In accordance with Interim Final Policy published in the Federal Register on May 31, 1996, the scoring system will be revised to add ten (10) bonus points to the application of community-based organizations. Each qualifying application will receive the full ten points. Community-based applicant organizations are those organizations whose headquarters and/or principal place of business within the last five years have been located within the geographic service area designated in the solicitation for the award. Where an applicant organization has been in existence for fewer than five years or has been present in the geographic

service area for fewer than five years, the individual years of experience of the applicant organization's principals may be applied toward the requirement of five years of organization experience. The individual years of experience must have been acquired in the geographic service area which is the subject of the solicitation. An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 40% of the total project cost through non-federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

*Pre-Award Costs*—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

*Outstanding Account Receivable*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

*Name Check Policy*—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

*Award Termination*—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

*False Statements*—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

*Primary Applicant Certifications*—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

*Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

*Drug Free Workplace*—Grantees (as defined at 15 CFR Part 26, Section 26.605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

*Anti-Lobbying*—Persons (as defined at 15 CFR Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

*Anti-Lobbying Disclosures*—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

*Lower Tier Certifications*—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

*Buy American-made Equipment or Products*—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: June 3, 1996.

Donald L. Powers,

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 96–14302 Filed 6–5–96; 8:45 am]

**BILLING CODE 3510–21–P**

## Business Development Center Applications: Statewide New Mexico

**AGENCY:** Minority Business Development Agency.

**ACTION:** Notice

**SUMMARY:** In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications to operate its Statewide New Mexico Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the State of New Mexico. The award number of the MBDC will be 06–10–96006–01.

**DATES:** The closing date for applications is July 8, 1996. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before July 8, 1996. A pre-application conference will be held on June 13, 1996, at 10 a.m., at the Dallas Regional Office, 1100 Commerce Street, Room 7B23, Dallas, Texas 75242, (214) 767–8001.

**ADDRESSES:** U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, NW., Room 5073, Washington, DC 20230, (202) 482–3763.

**FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT:** Bobby Jefferson at (214) 767–8001.

**SUPPLEMENTARY INFORMATION:** Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from September 1, 1996 to September 30, 1997, is estimated at $333,125. The total Federal amount is $283,156 and is composed of $276,250 plus the Audit Fee amount of $6,906. The application must include a minimum cost share of 15%, $49,969 in non-federal (cost-sharing) contributions for a total project cost of $333,125. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

*Pre-Award Costs*—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

*Outstanding Account Receivable*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

*Name Check Policy*—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

*Award Termination*—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work

requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

*False Statements*—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

*Primary Applicant Certifications*—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

*Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

*Drug Free Workplace*—Grantees (as defined at 15 CFR Part 26, § 26.605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

*Anti-Lobbying*—Persons (as defined at 15 CFR Part 28, 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

*Anti-Lobbying Disclosures*—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

*Lower Tier Certifications*—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

*Buy American-made Equipment or Products*—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: June 3, 1996.

Donald L. Powers,

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 96–14301 Filed 6–5–96; 8:45 am]

BILLING CODE 3510–21–P

## Minority Business Development Centers; New York

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice; Solicitation of Business Development Center Applications for Bronx, Brooklyn, and Newark/Jersey city.

**SUMMARY:** In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Minority Business Development Centers (MBDC) listed in this document.

The purpose of the MBDC Program is to provide business development assistance to persons who are members of groups determined by MBDA to be socially or economically disadvantaged, and to business concerns owned and controlled by such individuals. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

In accordance with the Interim Final Policy published in the Federal Register on May 31, 1996, the cost-share requirement for the MBDCs listed in this notice has been increased to 40%. The Department of Commerce will fund up to 60% of the total cost of operating an MBDC on an annual basis. The MBDC operator is required to contribute at least 40% of the total project cost (the ''cost-share requirement''). Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof. In addition to the traditional sources of an MBDC's cost-share contribution, the 40% may be contributed by local, state and private sector organizations. It is anticipated that some organizations may apply jointly for an award to operate the center. For administrative purposes, one organization must be designated as the recipient organization.

**DATES:** The closing date for applications for each MBDC is July 8, 1996.

**ADDRESSES:** Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, MBDA Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230.

**PRE-APPLICATION CONFERENCE:** A pre-application conference will be held on Thursday, June 13, 1996, from 10:00 a.m. to 3:00 p.m., at 26 Federal Plaza, Room 1802, (Corner of Broadway and Duane Street), New York, New York. Any further information concerning this conference may be obtained by calling (212) 264–3262. Please be advised that attendance at the pre-application conference will require proper identification for entrance into the Federal building.

**SUPPLEMENTARY INFORMATION:** The following are MBDCs for which applications are solicited:

1. MBDC Application: Bronx
   Metropolitan Area Serviced: Bronx, New York
   Award Number: 02–10–96003–01

**FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT:** Heyward Davenport, Regional Director, at (212) 264–3262 Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 30, 1997, is estimated at $444,167. The total Federal amount is $266,500 and is composed of $260,000 plus the Audit Fee amount of $6,500. The application must include a minimum cost share of 40%, $177,667 in non-federal (cost-sharing) contributions for a total project cost of $444,167.

2. MBDC Application: Brooklyn
   Metropolitan Area Serviced: Brooklyn, New York
   Award Number: 02–10–96004–01

**FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT:** Heyward Davenport, Regional Director, at (212) 264–3262 Contingent upon the

availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 30, 1997, is estimated at $486,875. The total Federal amount is $292,125 and is composed of $285,000 plus the Audit Fee amount of $7,125. The application must include a minimum cost share of 40%, $194,750 in non-federal (cost-sharing) contributions for a total project cost of $486,875.

3. MBDC Application: Newark/Jersey City
Metropolitan Area Serviced: Newark/ Jersey City, New Jersey
Award Number: 02–10–96005–01

**FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT:** Heyward Davenport, Regional Director, at (212) 264–3262 Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 30, 1997, is estimated at $628,702. The total Federal amount is $377,221 and is composed of $368,020 plus the Audit Fee amount of $9,201. The application must include a minimum cost share of 40%, $251,481 in non-federal (cost-sharing) contributions for a total project cost of $628,702.

Standard Paragraphs—The following information and requirements are applicable to the listed MBDCs: Bronx, Brooklyn, and Newark/Jersey City.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). In accordance with Interim Final Policy published in the Federal Register on May 31, 1996, the scoring system will be revised to add ten (10) bonus points to the application of community-based organizations. Each qualifying application will receive the full ten points. Community-based applicant organizations are those organizations whose headquarters and/or principal place of business within the last five years have been located within the geographic service area designated in the solicitation for the award. Where an applicant organization has been in existence for fewer than five years or has been present in the geographic service area for fewer than five years, the individual years of experience of the applicant organization's principals may be applied toward the requirement of five years of organization experience. The individual years of experience must have been acquired in the geographic service area which is the subject of the solicitation. An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 40% of the total project cost through non-federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

*Pre-Award Costs*—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

*Outstanding Account Receivable*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

*Name Check Policy*—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

*Award Termination*—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/ cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory

performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

*False Statements*—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

*Primary Applicant Certifications*—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

*Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR Part 26, Section 26.105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

*Drug Free Workplace*—Grantees (as defined at 15 CFR Part 26, Section 26.605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

*Anti-Lobbying*—Persons (as defined at 15 CFR Part 28, Section 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

*Anti-Lobbying Disclosures*—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

*Lower Tier Certifications*—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

*Buy American-made Equipment or Products*—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: June 3, 1996.

Donald L. Powers,

*Federal Register* Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–14303 Filed 6–5–96; 8:45 am]

**BILLING CODE 3510–21–P**

## National Institute of Standards and Technology; Visiting Committee on Advanced Technology Meeting

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** On May 13, 1996, a Notice of Public Meeting was issued in the Federal Register, Vol. 61, No. 93, which due to exceptional circumstances as described under Special Provisions of 41 CFR 101–6.1015(b)(2), will now be partially closed. Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's Visiting Committee on Advanced Technology (NIST) will meet on Tuesday, June 11, 1996, from 8:30 a.m. to 5:00 p.m., and on Wednesday, June 12, 1996, from 8:30 a.m. to 9:30 a.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. On June 11, 1996, the agenda will include strategic planning for standards in trade; an update on NIST programs by NIST Director Prabhakar; presentations on Information Technology and Biotechnology; predictions about the future of the internet; impact of advancing technology on metrology needs; and a laboratory tour. The presentation on standards in trade strategic plan scheduled to begin at 8:30 a.m. and end at 9:45 a.m., on June 11, 1996, will be closed. On June 12, 1996, the agenda will include presentations on the ATP Focused Program, Tools for DNA Diagnostics and the Baldrige Pilot Programs in Education and Health Care.

**DATES:** The meeting will convene June 11, 1996, at 8:30 a.m., and will adjourn at 9:30 a.m. on June 12, 1996.

**ADDRESSES:** The meeting will be held in the Employees Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Chris E. Kuyatt, Visiting Committee Executive Director, NIST, Gaithersburg, Maryland 20899, telephone number (301) 975–6090.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 31, 1996, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of concerns of planning for standards in national and international trade, including proposed funding levels and administration of the plan may be closed in accordance with 5 U.S.C. 552b(c)(9)(B). The exceptional circumstances which require closure with less than 15 days notice of the presentation on standards in trade strategic plan are policy decisions which have required alteration of the plan.

Dated: June 3, 1996.

Robert E. Hebner,

*Acting Deputy Director.*

[FR Doc. 96–14253 Filed 6–5–96; 8:45 am]

**BILLING CODE 3510–13–M**

## National Oceanic and Atmospheric Administration

## Basic Requirements For All Marine Mammal Special Exception Permits To Take, Import and Export Marine Mammals

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and

respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 5, 1996.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Laurel Bryant, Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:**

I. Abstract

Respondents will be applicants for and holders of scientific research and enhancement permits, commercial and educational photography permits, public display permits for captures and first-time imports, and General Authorizations for Level-B scientific research projects. The Marine Mammal Protection Act (MMPA) and the Endangered Species Act prohibit the taking, import, and export of marine mammals with certain exceptions. Applicants wanting a permit or authorization to take, import, or export must provide certain information to be used as a basis for determining whether a permit or authorization should be issued. Permit holders and authorized researchers under the General Authorization are required to report periodically on activities conducted, species taken, and to update information as necessary on any marine mammals held captive for purposes of maintaining the marine mammal inventory as required under the 1994 Amendments to the MMPA.

II. Method of Collection

The collection of information will be in the form of applications, annual and final reports, and notifications to the Office Director regarding transports of marine mammals through submission of a Marine Mammal Transport Notification form, and updated information to the marine mammal inventory regarding births, deaths, location, and cause of death if determined, through submission of a Marine Mammal Data Sheet.

III. Data

*OMB Number:* 0648–0084.

*Type of Review:* Regular Submission.

*Affected Public:* The affected public will include Federal agencies and employees, Non-profit institutions, State or local governments; Businesses or other for-profits; and Small businesses or organizations. The majority of the affected public will be from the scientific research community, photographic journalists, and public display facilities seeking permission to capture from the wild or import a marine mammal into the U.S. which has not been previously held under a permit.

*Estimated Number of Respondents:* The universe of respondents is estimated at 738 annually. This estimate involves applications and requests that include: 172 permit applications, Letters of Intent, and requests for amendments and changes; approximately 206 annual and final reports; and an estimated 350 notifications of transport; marine mammal data sheets and notifications of rehabilitated stranded marine mammals.

*Estimated Time Per Response:*

Permit applications for scientific research (SR), enhancement (EN), public display (PD), Letters or Intent under the General Authorization (GA), and major amendments to permits are estimated at 29 hours each.

Applications for photography permits are estimated at 10 hours each.

Minor amendments and requests for changes under the GA are estimated at 3 hours each.

Annual reports for scientific research, enhancement or projects under the General Authorization are estimated at 12 hours each, and 2 hours for annual recordkeeping needs.

Public display annual reports are estimated at 9 hours each with 2 hours for annual recordkeeping.

Photography annual reports have been estimated at 3 hours each, and 2 hours for recordkeeping.

Notifications of Transports and submission of Marine Mammal Data Sheets have been estimated at one-half hour each.

Notification of release or other disposition of rehabilitated marine mammals is estimated at 1 hour per report and 2 hours for recordkeeping.

*Estimated Total Annual Burden Hours:* The total annual burden of hours is estimated at 6,925 hours per year.

*Estimated Total Annual Cost:* The total annual cost is estimated at $352 per year to cover the mailing of submissions.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 30, 1996.

Linda Engelmeier,

*Acting Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 96–14147 Filed 6–5–96; 8:45 a.m.]

**BILLING CODE 3510–22–P**

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**[I.D. 053096B]**

## Endangered Species; Permits

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

**ACTION:** Notice of receipt of application for an incidental take permit (P609).

**SUMMARY:** Notice is hereby given that the North Carolina Division of Marine Fisheries has applied in due form for a permit for the incidental take of listed sea turtles.

**DATES:** Written comments or requests for a public hearing on this application must be received on or before July 8, 1996.

**ADDRESSES:** The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

**SUPPLEMENTARY INFORMATION:** Application (P609) requests a five-year permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). The applicant requests authorization for the incidental take of sea turtles by shrimp trawling activities in North Carolina in a restricted area up to 1 nm offshore from Rich's Inlet (34°17.6′N) to Brown's Inlet (34°35.7′N). This permit would replace the NMFS 1992–1995 temporary rules which allowed shrimp trawlers to use shorter tow times in lieu of towing turtle excluder devices (TEDs), due to the heavy concentration of algae in this restricted area which clogs the TEDs and renders them inoperable. The exemption period would be from April 1 through November 30 from 1996–2000. Tow times, measured from the time the trawl doors enter the water until the time they are removed from the water, would be limited to 55 minutes between April 1 and October 30, and 75 minutes for the month of November. The applicants would consult with NMFS if the following lethal take occurred in any one year that was directly attributable to tow-time exemption tows: one Kemp's ridley, hawksbill, green, or leatherback turtle, or two loggerhead turtles. There are approximately 45 shrimp trawlers utilizing the restricted area. Tow times will be monitored from shore, and the applicants plan to have 5% observer coverage in the restricted area for at least the first year of the permit. In addition, the applicant has proclamation power over this fishery, and may impose further restrictions as appropriate.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: May 30, 1996.

Margaret Lorenz,

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 96–14166 Filed 6–5–96; 8:45 am]

**BILLING CODE 3510–22–F**

**[I.D. 051396I]**

## Endangered Species; Permits

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

**ACTION:** Notice of receipt of application for a scientific research permit (P611).

**SUMMARY:** Notice is hereby given that Drs. Frank A. Chapman and Wallis H. Clark from the University of Florida have applied in due form for a permit to take listed shortnose sturgeon for the purpose of scientific research.

**DATES:** Written comments or requests for a public hearing on this application must be received on or before July 8, 1996.

**ADDRESSES:** The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910–3226 (301–713–1401); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, St. Petersburg, FL 33702–2432 (813–893–3141).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

**SUPPLEMENTARY INFORMATION:** Application (P611) requests a permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). The applicant requests authorization to conduct research on 200 captive shortnose sturgeon: rearing, tagging, and taking tissue samples. The purpose of the research is to determine physical, chemical, and biological parameters necessary for optimal survival and growth of wild populations.

Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: May 30, 1996.

Margaret Lorenz,

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 96–14167 Filed 6–5–96; 8:45 am]

**BILLING CODE 3510–22–F**

**[I.D. 052996A]**

## Endangered Species; Permits

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

**ACTION:** Issuance of modification 1 to permit 972 (P503R) and modification 1 to permit 973 (P211I).

**SUMMARY:** Notice is hereby given that NMFS has issued modifications to two permits that authorize takes of an Endangered Species Act-listed species for the purpose of scientific research/enhancement, subject to certain conditions set forth therein, to the Idaho Department of Fish and Game at Boise, Idaho (IDFG) and the Oregon Department of Fish and Wildlife at Portland, Oregon (ODFW).

**ADDRESSES:** The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

**SUPPLEMENTARY INFORMATION:** The modifications to permits were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on April 1, 1996 (61 FR 14296) that an application had been filed by IDFG (P503R) for modification 1 to scientific research/enhancement permit 972. Modification 1 to permit 972 was issued to IDFG on May 24, 1996. Permit 972 authorizes IDFG takes of juvenile, ESA-listed, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with the implementation of a captive rearing program. In 1995, under the authority of permit 972, IDFG captured no more than 25 percent of the ESA-listed juvenile fish from three upper Salmon River populations that are part of the Snake River salmon

Evolutionarily Significant Unit: West Fork Yankee Fork of the Salmon River, upper East Fork Salmon River, and Lemhi River (60 FR 42147, August 15, 1995). The ESA-listed fish captured in 1995 are being reared in captivity until mature and will be outplanted as adults back into their natal streams to spawn.

For Modification 1, IDFG is authorized to transfer ESA-listed juveniles to the NMFS Manchester Marine Experimental Station at Manchester, WA. The NMFS staff at the laboratory, under the direction of Dr. Conrad Mahnken, is authorized to rear and maintain the ESA-listed fish as an agent of IDFG under permit 972. The objective of the transfer is to dilute the risk of an unanticipated catastrophic event, possibly causing a decimation of the gene pool at one hatchery location, by allocating ESA-listed juvenile fish to another hatchery location. The transfer of ESA-listed juvenile fish is valid in 1996 only. The authorization for NMFS's responsibility to rear and maintain the ESA-listed fish as an agent of IDFG under permit 972 is valid for the duration of the permit. Permit 972 expires on September 30, 1998.

Notice was published on March 22, 1996 (61 FR 11808) that an application had been filed by ODFW (P211I) for modification 1 to scientific research/enhancement permit 973. Modification 1 to permit 973 was issued to ODFW on May 24, 1996. Permit 973 authorizes ODFW takes of juvenile, ESA-listed, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with the implementation of a captive broodstock program. In 1995, ODFW captured no more than 25 percent of the ESA-listed juvenile fish from three salmon populations that are part of the Snake River salmon Evolutionarily Significant Unit: Catherine Creek, Lostine River, and the upper Grande Ronde River (60 FR 42147, August 15, 1995). The ESA-listed fish captured in 1995 are being reared in captivity until mature and will spawn in the hatcheries. The resulting offspring will be reared to the smolt stage and released back into the river of parent origin.

For Modification 1, ODFW is authorized to transfer ESA-listed juveniles to the NMFS Manchester Marine Experimental Station at Manchester, WA. The NMFS staff at the laboratory, under the direction of Dr. Conrad Mahnken, is authorized to rear and maintain the ESA-listed fish as an agent of ODFW under permit 973. The objective of the transfer is to dilute the risk of an unanticipated catastrophic event, possibly causing a decimation of the gene pool at one hatchery location, by allocating ESA-listed juvenile fish to another hatchery location. The transfer of ESA-listed juvenile fish is valid in 1996 only. The authorization for NMFS's responsibility to rear and maintain the ESA-listed fish as an agent of ODFW under permit 973 is valid for the duration of the permit. Permit 973 expires on September 30, 1998.

Issuance of the permit modifications, as required by the ESA, was based on a finding that such actions: (1) Were requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that is the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: May 29, 1996.

Margaret Lorenz,

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 96–14168 Filed 6–5–96; 8:45 am]

**BILLING CODE 3510–22–F**

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**[I.D. 053096C]**

## Endangered Species; Permits

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

**ACTION:** Issuance of modification 1 to permit 948 (P563A).

**SUMMARY:** Notice is hereby given that NMFS has issued a modification to a permit that authorizes takes of Endangered Species Act-listed species for the purpose of scientific research/monitoring, subject to certain conditions set forth therein, to the Northern Wasco County People's Utility District at The Dalles, OR (NWCPUD).

**ADDRESSES:** The application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR8, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

**SUPPLEMENTARY INFORMATION:** The modification to a permit was issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on March 5, 1996 (61 FR 8568) that an application had been filed by NWCPUD (P563A) for modification 1 to scientific research/monitoring permit 948. Modification 1 to permit 948 was issued on May 10, 1996. Permit 948 authorizes

takes of juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*); juvenile, threatened, naturally-produced and artificially-propagated, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*); and juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with an annual monitoring study designed to assess run-of-the-river juvenile anadromous fish condition after passage through the screened turbine intake channel at The Dalles Dam, located on the Columbia River. Continued observation of individual fish condition likely to be affected by passage through the screened intake channel during the smolt migration provides specific information on possible unsuitable passage conditions below the water surface which are not directly observable.

For Modification 1, NWCPUD is authorized an increase in their annual take of juvenile, threatened, artificially-propagated, Snake River spring/summer chinook salmon and juvenile, threatened, Snake River fall chinook salmon as a result of NMFS's 1996 juvenile outmigration estimates. A corresponding increase in the number of indirect mortalities of these ESA-listed species is also authorized. Modification 1 is valid for the duration of the permit. Permit 948 expires on September 30, 1999.

Issuance of the modification, as required by the ESA, was based on a finding that such action: (1) Was requested in good faith, (2) will not operate to the disadvantage of the ESA-listed species that are the subject of the permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: May 30, 1996.

Margaret Lorenz,

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 96–14169 Filed 6–5–96; 8:45 am]

**BILLING CODE 3510–22–F**

## Patent and Trademark Office

### Agency Information Collection Activities; Proposed Collection

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC 35).

*Agency:* Patent and Trademark Office (PTO).

*Title:* Post Allowance and Refiling.

*Agency Approval Number:* 0651–0033.

*Form Numbers:* PTO/SB13, 14, 44, 50, 51, 52, 53, 54, 55, 56, 57, and PTO–85B.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 63,400 hours.

*Number of Respondents:* 165,900 submissions.

*Avg. Hours Per Response:* Varies for each form from .2 to 5 hours.

*Needs and uses:* This collection of information is required to administer the patent laws pursuant to Title 35 of the U.S. Code concerning the issuance of patents and related actions. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules. The information is collected when an application for a patent is allowed by PTO or if the grantee or others request reexamination or wishes to correct information contained in the patent.

*Affected Public:* Individuals or Households, Businesses or other for-profit institutions, Farms, State, Local or Tribal Government, Federal Government and Not-for-profit institutions.

*Frequency:* When an application for patent is allowed or at discretion of the individual.

*Respondent's Obligation:* Required to obtain Benefit.

*OMB Desk Officer:* Maya A. Bernstein, (202) 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Written comments and recommendation for the proposed information collection should be sent to Maya Bernstein, OMB Desk Officer, room 10236, New Executive Office Building, Washington, DC 20503.

Dated: May 30, 1996.

Linda Engelmeier,

*Acting Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 96–14215 Filed 6–5–96; 8:45 am]

BILLING CODE 3510–16–P

## DEPARTMENT OF DEFENSE

## Office of the Secretary

### Defense Science Board Task Force on Information Warfare Defense; Notice of Advisory Committee Meeting

**SUMMARY:** The Defense Science Board Task Force on Information Warfare Defense will meet in closed session on June 18–19, July 30–31, and August 29–30, 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 focus on protection of information interests of national importance through establishment and maintenance of a credible information warfare defensive capability in several areas, including deterrence. This study will be used to assist in analysis of information warfare procedures, processes, and mechanisms, and illuminate future options in defensive information warfare technology and policy.

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, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. § 552b(c)(1)(1994), and that accordingly these meetings will be closed to the public.

Dated: May 31, 1996.

Patricia L. Toppings,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 96–14133 Filed 6–5–96; 8:45 am]

BILLING CODE 5000–04–M

## Department of the Army

### Cargo Liability of Motor Carriers

**AGENCY:** Military Traffic Management Command (MTMC).

**ACTION:** Request for Carrier Industry Comments.

**SUMMARY:** This notice supplements the notice published on March 14, 1996 (FR, Vol. 61, No. 51, page number 10566). The effective date of July 1, 1996 is postponed to allow consideration of comments on the proposed motor carrier liability for shipments of non-Guaranteed Traffic (GT) Freight All Kinds (FAK) shipments, described in the MTMC Freight Traffic Rules Publication No. 1A, Items 112, 113, 115, and 116.

**DATES:** Comments concerning the proposed motor carrier liability for shipments of non-GTFAK must reach Headquarters, Military Traffic Management Command, ATTN: MTOP–T–SR, 629 NASSIF Building, 5611 Columbia Pike, Falls Church, VA 22041–5050, by August 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Julian Jolkovsky, MTOP–T–SR, (703) 681–3440, or Mr. James Murphy, MTOP–T–S, (703) 681–3443.

**SUPPLEMENTARY INFORMATION:** The proposed liability, described on 61 FR 10566, is the same liability already in effect for GT shipments, in MTMC Guaranteed Traffic Rules Publication No. 50, Item 350.

Gregory D. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 96–14270 Filed 6–5–96; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Navy

### Notice of Extension of the Public Comment Period for the Department of the Navy Draft Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel

**SUMMARY:** The Department of the Navy (Navy) gave notice of the availability of the Draft Environmental Impact Statement (EIS) for a Container System for the Management of Naval Spent Nuclear Fuel in the May 14, 1996 Federal Register (61 FR 24293). The formal comment period commenced on May 17, 1996 (61 FR 24933) and was scheduled to close on July 3, 1996. The Navy has now determined that the public comment period will be extended to July 18, 1996.

The draft EIS was prepared in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA); Council on Environmental Quality regulations implementing NEPA, 40 CFR Parts 1500–1508; and the Chief of Naval Operations Environmental and Natural Resources Program Manual, OPNAV Instruction 5090.1B. As identified in the May 14,

1996 Federal Register notice, the Navy will conduct public hearings and receive comments on the draft EIS which addresses the need, alternatives, and environmental impacts of manufacturing containers; loading containers; handling, and storage of naval spent nuclear fuel at the Idaho National Engineering Laboratory (INEL); transportation of naval spent nuclear fuel loaded containers to a notional repository or centralized interim storage site; and the storage, handling, and transportation of certain radioactive waste associated with naval spent nuclear fuel management. The Department of Energy is a cooperating agency for this draft EIS. The draft EIS is available to the public in reading rooms and designated information locations, as identified in the May 14, 1996 Federal Register notice.

**DATES:** The Navy invites interested agencies, organizations, and the general public to provide comments on the draft EIS. The original 45 day formal comment period commenced on May 17, 1996 and was scheduled to close on July 3, 1996. The Navy is now providing a 60 day public comment period and all comments on the draft EIS are due by July 18, 1996. Oral comments will be accepted at the public hearings to be held at the Times and locations listed in the May 14, 1996 Federal Register notice. The final EIS is scheduled to be available no later than November 30, 1996.

**FOR FURTHER INFORMATION CONTACT:** Comments should be sent to: Mr. William Knoll of the Naval Nuclear Propulsion Program of the Department of the Navy, Code NAVSEA 08U, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160, Telephone: 703–602–8229.

Dated: May 31, 1996.

M.A. Waters,

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 96–14305 Filed 6–5–96; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### Research Priorities Plan; Invitation for Public Comment and Notice of Availability of the Proposed Research Priorities Plan: ''Building on What We've Learned: Developing Priorities for Education Research''

**SUMMARY:** The Assistant Secretary for Educational Research and Improvement is developing a research priorities plan which shall recommend priorities for the investment of the resources of the Office of Educational Research and Improvement over the next five-, ten-, and fifteen-year periods. The development of this plan is required by the Office of Educational Research and Improvement's authorizing legislation, the ''Educational Research, Development, Dissemination, and Improvement Act of 1994.'' In accordance with 20 U.S.C. 6011(f)(2)(B), the Assistant Secretary has issued a proposed research priorities plan and seeks public comment on the content of the proposed plan.

**DATES:** All comments concerning this proposed plan must be received on or before August 5, 1996.

**ADDRESSES:** All comments concerning this proposed plan should be addressed to Judith I. Anderson, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Room 510, Washington, DC 20208–5573. Comments may also be sent through Internet to (Judith__Anderson@ed.gov).

**TO RECEIVE A COPY OF THIS PROPOSED PLAN AND FOR FURTHER INFORMATION CONTACT:** Tammra Gill. Telephone (202) 219–1556. Internet electronic mail address (research__plan@inet.ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

Background

On March 31, 1994, President Clinton signed Public Law 103–227, which includes Title IX—the ''Educational Research, Development, Dissemination, and Improvement Act of 1994'' (the ''Act'') (20 U.S.C. 6001 et seq.). The Act restructured the Office of Educational Research and Improvement (OERI) and endowed it with a broad mandate to conduct an array of research, development, dissemination, and improvement activities aimed at strengthening the education of all students. The Act established the following five national research institutes within OERI:

(1) The National Institute on Student Achievement, Curriculum, and Assessment;

(2) The National Institute on the Education of At-Risk Students;

(3) The National Institute on Educational Governance, Finance, Policymaking, and Management;

(4) The National Institute on Early Childhood Development and Education; and

(5) The National Institute on Postsecondary Education, Libraries, and Lifelong Learning.

The Act authorized the Assistant Secretary to conduct research, development, demonstration, and evaluation activities to carry out the purposes for which these Institutes were established.

The Act also required the establishment of a National Educational Research Policy and Priorities Board (the ''Board'') to work collaboratively with the Assistant Secretary to identify priorities to guide the work of OERI.

Statutory Requirements

The legislation directed the Assistant Secretary to work collaboratively with the Board to develop a research priorities plan that will recommend priorities for the investment of resources over the next five-, ten-, and fifteen-year periods, including as priorities those areas of inquiry in which further research, development and dissemination—

(a) is necessary to attain the National Education Goals;

(b) promises to yield the greatest practical benefits to teachers and other educators in terms of improving education; and

(c) will not be undertaken in sufficient scope or intensity by the other Federal and non-Federal entities engaged in Education research and development.

Invitation To Comment

Interested persons are invited to submit comments including suggestions on how to strengthen this document. The Department is especially interested in hearing what commenters believe to be the most important and promising educational research opportunities for the next five, ten and fifteen years.

All comments submitted in response to this proposed plan will be available for public inspection, during and after the comment period, in Room 510, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Dated: May 30, 1996.

(Catalog of Federal Domestic Assistance Number does not apply)

Sharon P. Robinson,

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 96–14164 Filed 6–5–96; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Information Collection Submitted for Review and Request for Comments (FERC–520)

May 31, 1996.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

**SUMMARY:** In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is submitting a collection of information listed in this notice to OMB for review under the provisions of the Act.

**DATES:** Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

**ADDRESSES:** Copies of the collection of information can be obtained from the written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426. Comments should also be addressed to: Desk Officer, Federal Energy Regulatory Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmillerferc.fed.us.

**SUPPLEMENTARY INFORMATION:**

*Abstract:* The information collected under the requirements of FERC–520 ''Application for Authority to Hold Interlocking Directorate Position'' (OMB No. 1902–0083) is used by the Commission to implement the statutory provisions of Section 305(b) of the Federal Power Act (FPA), 16 U.S.C. Section 305(b) makes the holding of certain interlocking corporate positions unlawful unless the Commission has authorized the interlocks to be held, and requires of the applicant a showing ''in form and manner prescribed by the Commission, that neither public nor private interests will be adversely affected thereby.'' The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 45.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 25 | 1 | 51.8 | 1,296 |

*Estimated cost burden to respondents:* 1,296 hours/2,087 hours per year × $102,000 per year=$63,341.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–14249 Filed 6–5–96; 8:45 am]

**BILLING CODE 6717–01–M**

### Environmental Management Site-Specific Advisory Board, Pantex Plant

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant.

**DATE AND TIME:** Wednesday, June 26, 1996: 8:30 a.m.–12:30 p.m.

**ADDRESSES:** Amarillo Association of Realtors, 5601 Enterprise Circle, Amarillo, Texas.

**FOR FURTHER INFORMATION CONTACT:** Tom Williams, Program Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

**SUPPLEMENTARY INFORMATION:** Purpose of the Committee: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

8:30 a.m. Welcome—Agenda Review—Approval of Minutes
8:40 a.m. Co-Chairs' Comments
9:00 a.m. Task Force Reports
—Public Participation/Public Information
—Environmental Restoration
9:30 a.m. Updates
—Occurrence Reports—DOE
10:00 a.m. Break
10:15 a.m. Discussion, Sitewide Environmental Impact Statement Recommendation
11:30 a.m. Subcommittee Reports
—Budget and Finance
—Community Outreach
—Policy and Personnel
—Program and Training
—Nominations
12:30 p.m. Adjourn

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Tom Williams' office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying

at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10:00 p.m., Monday through Thursday; 7:45 a.m. to 5:00 p.m. on Friday; 8:30 a.m. to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 a.m. to 7:00 p.m. on Monday; 9:00 a.m. to 5:00 p.m., Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Tom Williams at the address or telephone number listed above.

Issued at Washington, DC on June 3, 1996.

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 96–14277 Filed 6–5–96; 8:45 am]

**BILLING CODE 6450–01–P**

## Bonneville Power Administration

### Watershed Management Program Early Action Projects

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Floodplain statement of findings.

**SUMMARY:** This notice announces BPA's proposal to fund watershed rehabilitation projects to improve salmon habitat in floodplains located throughout the Columbia River Basin in the states of Washington, Oregon, and Idaho. In accordance with 10 CFR Part 1022, BPA has prepared this Floodplain Statement of Findings for the Watershed Management Program Early Action Projects. A Notice of Floodplain and Wetlands Involvement was published in the Federal Register on May 14, 1996 (Vol. 61, No. 94, pp. 24297–24298), and a floodplain and wetlands assessment was prepared by BPA describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. The assessment was prepared in conjunction with the Categorical Exclusion for this project.

**FOR FURTHER INFORMATION CONTACT:** Nancy Weintraub—ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5373, fax number 503–230–5699.

**SUPPLEMENTARY INFORMATION:** Potential floodplain effects would include placing new structures or materials in streams that could be dislodged in a flood; and disturbing existing streambanks and channels, which would make them more susceptible to erosion and failure during flooding until stabilized and revegetated.

The proposed actions would have long-term, net positive effects on the floodplains affected. It is necessary for many of the proposed actions to be located in floodplains because they are actions that would stabilize and rehabilitate streams and streambanks. Alternatives to the proposed actions are no action, or revisions in the proposed actions that would reduce potential net negative impacts to floodplains. The proposed actions would be required to conform to applicable Federal, State or local floodplain protection standards. The following steps will be taken to avoid or minimize potential harm to or within the affected floodplain: (1) the structures will either be engineered to withstand flooding, or would be natural materials designed to move downstream with the floods to create habitat for fish; and (2) channel restoration, revegetation, and erosion control and stabilization actions would be designed to lessen the impacts of future flooding on lives and property.

BPA will endeavor to allow 15 days of public review after publication of this statement of findings before implementing the proposed action.

Issued in Portland, Oregon, on May 30, 1996.

Thomas C. McKinney,

*NEPA Compliance Officer.*

[FR Doc. 96–14276 Filed 6–5–96; 8:45 am]

**BILLING CODE 6450–01–P**

## Federal Energy Regulatory Commission

**[Docket No. ER96–1915–000]**

### Connecticut Light and Power Company; Notice of Issuance of Order

May 31, 1996.

Connecticut Light and Power Company (CL&P) filed a proposed limited-term rate schedule for authorization to purchase power from customer-sellers, and for certain waivers and authorizations. In particular, CL&P requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the customer-sellers. On May 31, 1996, the Commission issued an Expedited Order Accepting Limited-Term Rate Schedule for Filing and Granting Waivers and Authorizations (Order), in the above-docketed proceeding.

The Commission's May 31, 1996 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) No later than June 14, 1996, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CL&P's customer-sellers should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, CL&P's customer-sellers are hereby authorized to issue securities and to assume obligations or liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicant, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CL&P's customer-sellers' issuances of securities or assumptions of liabilities.

* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 14, 1996.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–14247 Filed 6–5–96; 8:45 am]

**BILLING CODE 6717–01–M**

**[Docket No. ER96–1915–000]**

### Connecticut Light and Power Company; Notice of Filing

May 31, 1996.

Take notice that on May 24, 1996, Connecticut Light and Power Company (CL&P) filed a proposed limited-term rate schedule under which CL&P would purchase capacity and associated energy from certain customer-owned generation during a specified three and one-half

month period this summer. CL&P's filing is in response to a potential emergency situation due to the shutdown of certain generating plants in Connecticut. CL&P believes that the proposed rate schedule will permit it to utilize available generating capacity to address an urgent need for generating capacity to meet its customers' power needs and to help avoid service curtailments during peak load periods this summer.

The capacity provided by potential sellers under this rate schedule would be available to CL&P at its request for up to ten continuous hours per request during the three and one-half month period from June 1, 1996 through September 15, 1996. CL&P would purchase up to an aggregate of 100 megawatts of electric capacity and associated energy from certain independent power producers. Potential sellers under the rate schedule are industrial and commercial customers that may have, or may locate, electric generating equipment on site. The proposed rate schedule would not be available to utilities or to qualifying facilities under the Public Utility Regulatory Policies Act of 1978 that regularly sell their capacity and energy to CL&P or to another Connecticut utility. Sellers would sign agreements to sell such capacity and associated energy during the specified period.

By expedited order issued this date, the Commission accepted CL&P's proposed limited-term rate schedule for filing, to become effective June 1, 1996, but subject to possible prospective revision after Commission review of comments, if any, filed in response to this notice.

Any person desiring to be heard or to protest CL&P's filing should file comments, 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 June 14, 1996. Protests will be considered by the Commission, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of CL&P's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–14248 Filed 6–5–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP96–200–002]**

## NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1996.

Take notice that on May 28, 1996, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to be effective April 1, 1996:

Substitute First Revised Sheet No. 7
Second Revised Sheet No. 167
First Revised Sheet No. 167A
Second Revised Sheet No. 169A
Second Revised Sheet No. 226
First Revised Sheet No. 227
First Revised Sheet No. 302
Second Revised Sheet No. 334A
Second Revised Sheet 334D

and to be effective May 1, 1996:

*Fourth Revised Volume No. 1,*
Second Revised Sheet No. 7

NGT states that these revised tariff sheets are filed to comply with the Commission's order dated April 25, 1996, in Docket No. RP96–200. NGT is filing these tariff sheets related to specific negotiated rates and updating its tariff for the most recent negotiated rate transactions.

Any person desiring to protest the proposed tariff sheets should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rule of Practice and Procedure (18 CFR 385.211). All such protest 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–14198 Filed 6–5–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP96–243–001]**

## Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 31, 1996.

Take notice that on May 29, 1996, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be effective June 1, 1996:

Substitute Ninth Revised Sheet No. 52

Northern states that this filing is being made to correct the GSR Surcharge component applicable to TI volumes for the months of April–October on Sheet No. 52.

Northern states that copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–14195 Filed 6–5–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP89–224–017]**

## Southern Natural Gas Company; Notice of Refund Report

May 31, 1996.

Take notice that on May 28, 1996, Southern Natural Gas Company (Southern) tendered for filing a Refund Report made pursuant to the Commission's Order dated April 11, 1996 in the above dockets.

Southern states that the refund report summarizes the GSR refunds made to its consenting customers on February 29, 1996 and April 19, 1996 and the transportation credit refunds made to its consenting customers on April 26, 1996. Southern states that the GSR refunds were made on February 29, 1996, to consenting customers who made the election to receive their refunds before the issuance of the Commission's rehearing order on April 11, 1996. Southern states that all other GSR refunds were made on April 19, 1996.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be

filed on or before June 7, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–14193 Filed 6–5–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP89–224–018]**

## Southern Natural Gas Company; Notice of Refund Report

May 31, 1996.

Take notice that on May 28, 1996 Southern Natural Gas Company (Southern) tendered for filing a Refund Report made pursuant to the Commission's Order dated April 11, 1996 in the above dockets.

Southern states that the refund report consists of specific Appendices describing in detail the calculation of each contesting customer's refund during the period from January 1, 1991 through December 31, 1995, with interest through May 11, 1996, the date on which Southern states that it issued checks to contesting customers.

Southern states that it is furnishing the contesting parties to the proceeding with a copy of the refund report.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 7, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–14194 Filed 6–5–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket Nos. RP96–211–000, RP95–197–010 and RP95–197–011]**

## Transcontinental Gas Pipe Line Corporation; Notice of Technical Conference

May 31, 1996.

In the Commission's order issued on May 29, 1996, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Tuesday, June 11, 1996, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–14196 Filed 6–5–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. EG96–70–000, et al.]**

## Hermiston Generating Company, L.P., et al; Electric Rate and Corporate Regulation Filings

May 30, 1996.

Take notice that the following filings have been made with the Commission:

1. Hermiston Generating Company, L.P.

[Docket No. EG96–70–000]

On May 16, 1996, Hermiston Generating Company, L.P. (''Hermiston''), a Delaware limited partnership with its principal place of business at 7500 Old Georgetown Road, Bethesda, Maryland 20814–6161, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Hermiston will have a 50% undivided ownership interest in a multi-unit natural gas-fired combined cycle generating plant with automatic generation control and related transmission and interconnection equipment with a bus bar rating of approximately 474 MW. All of the facility's electric power net of station load attributable to Hermiston's ownership interest will be purchased at wholesale by PacifiCorp, an electric utility.

*Comment date:* June 20, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Entergy Power Development Corporation

[Docket No. EG96–72–000]

On May 22, 1996, Entergy Power Development Corporation, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that will be engaged indirectly through one or more affiliates in operating an eligible facility being developed in the Sindh Province of Pakistan near the town of Daharki. The Facility will consist initially of one 235 MW combined-cycle gas-fired plant. In a second phase, the capacity of the Facility may be increased to as much as 470 MW. The Facility will include such interconnection components as are necessary to interconnect the Facility with the utility grid.

*Comment date:* June 20, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Entergy Power Operations Pakistan LDC

[Docket No. EG96–73–000]

On May 22, 1996, Entergy Power Operations Pakistan LDC, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by Section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that will be engaged directly and exclusively in operating an eligible facility being developed in the Sindh Province of Pakistan near the town of Daharki. The Facility will consist initially of one 235 MW combined-cycle gas-fired plant. In a second phase, the capacity of the Facility may be increased to as much as 470 MW. The Facility will include such interconnection components as are necessary to interconnect the Facility with the utility grid.

*Comment date:* June 20, 1996, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration

of comments to those that concern the adequacy or accuracy of the application.

4. Enron Power Marketing, Inc., American Power Exchange, Inc., National Power Exchange, Phibro Inc., Stalwart Power Company, Dupont Power Marketing Inc., International Utility Consultants Inc.

[Docket Nos. ER94–24–008, ER94–1578–006, ER94–1593–006, ER95–430–005, ER95–1334–002, ER95–1441–004, ER96–594–001]

Take notice that the following informational filings have been made with the Commission and are on file and available for inspection and copying in the Commission's Public Reference Room:

On May 14, 1996, Enron Power Marketing, Inc. filed certain information as required by the Commission's December 2, 1993, order in Docket No. ER94–24–000.

On May 20, 1996, American Power Exchange, Inc. filed certain information as required by the Commission's October 19, 1994, order in Docket No. ER94–1578–000.

On May 14, 1996, National Power Exchange filed certain information as required by the Commission's October 7, 1994, order in Docket No. ER94–1593–000.

On April 26, 1996, Phibro Inc. filed certain information as required by the Commission's March 14, 1995, order in Docket No. ER95–430–000.

On May 28, 1996, Stalwart Power Company filed certain information as required by the Commission's August 18, 1995, order in Docket No. ER95–1334–000.

On April 30, 1996, Dupont Power Marketing Inc. filed certain information as required by the Commission's August 30, 1995, order in Docket No. ER95–1441–000.

On May 28, 1996, International Utility Consultants Inc. filed certain information as required by the Commission's February 9, 1995, order in Docket No. ER96–594–000.

5. Southern Company Services, Inc.

[Docket No. ER96–780–001]

Take notice that on May 15, 1996, Southern Company Services, Inc. submitted for filing copies of their revised Code of Conduct pursuant to the Commission's order issued April 30, 1996 in this docket.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Utilities Company

[Docket No. ER96–899–001]

Take notice that on May 21, 1996, Citizens Utilities Company tendered for filing an amended refund report in the above-referenced docket.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

7. Cook Inlet Energy Supply, L.P.

[Docket No. ER96–1410–000]

Take notice that on May 17, 1996, Cook Inlet Energy Supply, L.P. tendered for filing an amendment in the above-referenced docket.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company

[Docket No. ER96–1463–000]

Take notice that on May 22, 1996, Louisville Gas and Electric Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ER96–1468–000]

Take notice that on May 24, 1996, Western Resources, Inc. tendered for filing an amendment in the above-referenced docket.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

10. MidAmerican Energy Company

[Docket No. ER96–1501–000]

Take notice that on May 17, 1996, MidAmerican Energy Company tendered for filing an amendment in the above-referenced docket.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Electric Power Co., Inc.

[Docket No. ER96–1714–000]

Take notice that on May 17, 1996, Maine Electric Power Company, Inc. tendered for filing an amendment in the above-referenced docket.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

12. GDK Corporation

[Docket No. ER96–1735–000]

Take notice that on May 21, 1996, GDK Corporation filed an amendment to their filing in Docket No. ER96–1735–000.

*Comment date:* June 20, 1996, in accordance with Standard Paragraph E at the end of this notice.

13. Powerline Controls Inc.

[Docket No. ER96–1754–000]

Take notice that on May 23, 1996, Powerline Controls Inc. tendered for filing an amendment in the above-referenced docket.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

14. Washington Water Power Company

[Docket No. ER96–1863–000]

Take notice that on May 17, 1996, Washington Water Power Company, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with TransAlta Enterprises Corporation. A signed service agreement with Duke/Louis Dreyfus LLC previously approved as an unsigned service agreement is also included.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas and Electric Company

[Docket No. ER96–1864–000]

Take notice that on May 17, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a purchase and sales agreement between LG&E and Wisconsin Electric Power Company under Rate PSS—Power Sales Service.

A copy of the filing has been mailed to the Kentucky Public Service Commission.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company

[Docket No. ER96–1865–000]

Take notice that on May 17, 1996, Louisville Gas and Electric Company (LG&E), tendered for filing a purchase and sales agreement between LG&E and the City of Tallahassee, Florida under Rate PSS—Power Sales Service.

A copy of the filing has been mailed to the Kentucky Public Service Commission.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Power Company

[Docket No. ER96–1866–000]

Take notice that on May 17, 1996, Duke Power Company (Duke), tendered for filing Schedule MR Transaction Sheets under Service Agreement No. 4 of Duke's FERC Electric Tariff, Original Volume No. 3.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER96–1868–000]

Take notice that on May 17, 1996, Northeast Utilities Service Company (NUSCO) on behalf of Public Service Company of New Hampshire (PSNH), tendered for filing with the Federal Energy Regulatory Commission a rate schedule in connection with a two-year program initiated by the New Hampshire Public Utilities Commission (NHPUC), known as the New Hampshire Retail Competition Pilot Program (Pilot Program). The rate schedule would be applicable to transmission service for the Pilot Program transactions of retail customers of PSNH wholesale requirements customers.

NUSCO requests an effective date for the rate schedule of May 28, 1996, or such other later date that is consistent with Section 11 of a Joint Recommendation between PSNH and the Staff of the NHPUC. NUSCO requests that the Commission waive the 60-day notice requirement in Section 205 of the Federal Power Act as necessary to permit this rate schedule to be placed into effect on such date.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Company

[Docket No. ER96–1869–000]

Take notice that on May 20, 1996, New England Power Company (NEP) filed a Service Agreement with Freedom Energy Company, LLC under NEP's FERC Electric Tariff, Original Volume No. 5.

*Comment date:* June 13, 1996, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Company Services, Inc.

[Docket No. ER96–1870–000]

Take notice that on May 20, 1996, Southern Company Services, Inc., solely as administrative agent for Alabama Power Company, tendered for filing a Transmission Service Delivery Point Agreement dated March 15, 1996, reflecting the addition of a delivery point to Tallapoosa River Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designated FERC Rate Schedule No. 147). the parties request an effective date of July 20, 1994, for the addition of the delivery point to Tallapoosa River Electric Cooperative.

*Comment date:* June 13, 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. 96–14197 Filed 6–5–96; 8:45 am]

**BILLING CODE 6717–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA 96–751]**

### Pioneer's Preference Requests

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission's Office of Engineering and Technology has announced a filing deadline for submission of amendments to pending pioneer's preference requests. This announcement follows approval by the Office of Management and Budget of a new information collection pertaining to the pioneer's preference program. The intended effect of this action is to bring pending pioneer's preference requests into compliance with new rules adopted in 1995.

**DATES:** Amendments are due by June 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Rodney Small, (202) 418–2452, Office of Engineering and Technology, Federal Communications Commission, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:**

May 14, 1996.

Filing Deadline Announced for Submission of Amendments to Pending Pioneer's Preference Requests

In the *Memorandum Opinion and Order* (*Order*) in ET Docket No. 93–266, FCC 95–493, 61 FR 4916 (February 9, 1996), the Commission stated that, subsequent to approval by the Office of Management and Budget (OMB) of a new information collection pertaining to the pioneer's preference program, the Chief, Office of Engineering and Technology would announce a date for the submission of amendments to pending pioneer's preference requests that have not reached the Tentative Decision Stage, and publish that date in the Federal Register; *see* para. 14 of *Order.* OMB has approved this new information collection and has assigned it OMB control number 3060–0446. Accordingly, this Public Notice establishes the filing deadline as June 21, 1996.

By that date, a party that has a pending pioneer's preference request in a proceeding that has not reached the Tentative Decision Stage and that has not previously filed an amended request pertaining to the new requirements adopted in the *Second Report and Order* and *Third Report and Order* in Docket 93–266 (*see*, respectively, FCC 95–80, 60 FR 13396 (March 13, 1995); and FCC 95–218, 60 FR 32116 (June 20, 1995)) must submit an amended request. Specifically, such a party must submit a statement that a new allocation of spectrum is necessary for its innovation to be implemented. Further, if the party relied on experimental results to demonstrate the technical feasibility of its innovation, it must submit a summary of those experimental results. Additionally, for parties filing pioneer's preference requests after September 1, 1994, such parties must submit a showing demonstrating that the Commission's public rulemaking process would inhibit the party from capturing the economic rewards of its innovation unless it is granted a pioneer's preference license; *i.e.*, the party must show that it may lose its intellectual property protection because of the Commission's public process; that the damage to its intellectual property would likely be more significant than in other contexts, such as the patent process; and that the guarantee of a license would be a significant factor in its ability to capture the rewards from its innovation.

Failure by any party with a pending pioneer's preference request in a

proceeding that has not reached the Tentative Decision Stage to amend its request by June 21, 1996, will result in the dismissal of the request by the Chief, Office of Engineering and Technology.

For additional information, contact Rodney Small, (202) 418–2452; email rsmall@fcc.gov.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96–14139 Filed 6–5–96; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

**DATE AND TIME:** Tuesday, June 11, 1996 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

**DATE AND TIME:** Thursday, June 13, 1996 at 10:00 a.m.

**PLACE:** 999 E Street, N.W., Washington, D.C. (Ninth Floor.)

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes
Advisory Opinion 1996–18: Vincent J. Bollon on behalf of the International Association of Fire Fighters
Advisory Opinion 1996–20: The Honorable Frank D. Lucas
Advisory Opinion 1996–21: E. Clark Richardson on behalf of the Business Council of Alabama
Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

*Administrative Assistant.*

[FR Doc. 96–14461 Filed 6–4–96; 3:00 pm]

**BILLING CODE 6715–01–M**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1112–DR]**

### Illinois; Amendment to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Illinois, (FEMA–1112–DR), dated May 6, 1996, and related determinations.

**EFFECTIVE DATE:** May 23, 1996.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Illinois, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 6, 1996:

Crawford, Cumberland, Effingham, Jasper, Perry, Richland and Saline Counties for Public Assistance and Hazard Mitigation.
Lawrence County for Public Assistance and Hazard Mitigation (already designated for Individual Assistance.)
Wabash County for Individual Assistance, Public Assistance and Hazard Mitigation.
Gallatin County for Individual Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 96–14298 Filed 6–5–96; 8:45 am]

**BILLING CODE 6718–02–P**

**[FEMA–1114–DR]**

### Maine; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1114–DR), dated May 20, 1996, and related determinations.

**EFFECTIVE DATE:** May 20, 1996.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 20, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Maine, resulting from severe storms, mudslides, inland and coastal flooding on April 16–17, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas. Individual Assistance may be provided at a later date, if requested and warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Alma Armstrong of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster:

Androscoggin, Cumberland, Knox, Oxford, and York Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

*Director.*

[FR Doc. 96–14299 Filed 6–5–96; 8:45 am]

**BILLING CODE 6718–02–P**

**[FEMA–1115–DR]**

### West Virginia; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major

disaster for the State of West Virginia (FEMA–1115–DR), dated May 23, 1996, and related determinations.

**EFFECTIVE DATE:** May 23, 1996.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 23, 1996, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from flooding and heavy winds on May 15–21, 1996, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert J. Gunter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

The counties of Barbour, Boone, Harrison, Lincoln, Logan, McDowell, Mercer, Mingo, Pendleton, Pocahontas, Raleigh, Randolph, Tucker, Upshur, Wayne, Wetzel, and Wyoming for Individual Assistance and Hazard Mitigation Assistance.

The counties Barbour, Boone, Lincoln, Logan, McDowell, Mercer, Mingo, Pendleton, Pocahontas, Raleigh, Randolph, Tucker, Upshur, Wetzel, and Wyoming for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

*Director.*

[FR Doc. 96–14300 Filed 6–5–96; 8:45 am]

**BILLING CODE 6718–02–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.

Southern Winds International, 37920 Bright Common, Fremont, CA 94536, Officers: Bruce J. Joiner, President, Michelle L. Gilbert, Secretary.

Dated: May 31, 1996.

Joseph C. Polking,

*Secretary.*

[FR Doc. 96–14130 Filed 6–5–96; 8:45 am]

**BILLING CODE 6730–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Child Support Enforcement Program: State Plan Approval and Grant Procedures, State Plan Requirements, Standards for Program Operations, Federal Financial Participation, Optional Cooperative Agreements for Medical Support Enforcement, and Computerized Support Enforcement Systems.

*OMB No.:* 0970–0017.

*Description:* The Office of Child Support Enforcement is requesting public comments for the information collection requirements included in a Notice of Proposed Rulemaking issued January 29, 1996 in the Federal Register (61 FR 2774). As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 (d)), The Department of Health and Human Services is submitting a copy of the revised State plan preprint page to the Office of Management and Budget (OMB) for its review.

The State plan preprint and amendments serve as a contract with OCSE in outlining the activities the States will perform as required by law in order for States to receive federal funds to meet the costs of these activities. We are asking for approval of the revised State plan preprint page for Periodic Reporting to Consumer Reporting Agencies to reflect new Federal requirements. Procedures to Improve Program Effectiveness, is amended by adding a new section 7, Periodic Reporting to Consumer Reporting Agencies, which requires the State to have procedures, (1) to periodically report information regarding the amount of overdue support owed by an absent parent to consumer reporting agencies when such amount exceeds $1,000 and is at least two months in arrears in accordance with section 666(a)(7) of the Act; and (2) for making absent parent information available to Consumer Reporting Agencies in accordance with Sec.302.70(d). The information collected on the State plan pages is necessary to enable OCSE to monitor compliance with the requirements in Title IV–D of the Social Security Act and implementing regulations.

*Respondents:* State governments

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| OCSE–100, Year 1 | 54 | 1 | 0.717 | 38.7 |
| OCSE–100, Year 2 | ..... | ..... | ..... | ..... |
| OCSE–100, Year 3 | ..... | ..... | ..... | ..... |

*Estimated Total Annual Burden Hours:* 38.7.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, Larry Guerrero.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: May 31, 1996.

Larry Guerrero,

*Director, Office of Information Services.*

[FR Doc. 96–14127 Filed 6–5–96; 8:45 am]

**BILLING CODE 4184–01–M**

## Centers for Disease Control and Prevention

**[Announcement 646]**

## National Institute for Occupational Safety and Health; Community Partners for Healthy Farming

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for cooperative agreements for the Community Partners for Healthy Farming (CPHF), a program with a dual purpose: to conduct community-based and action-oriented health and safety surveillance and to pilot and evaluate interventions that can reduce or prevent work related injuries and illnesses in farm workers and their families.

The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

### Authority

This program is authorized under Section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)).

### Smoke-Free Workplace

The CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse 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.

### Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations, governments and their agencies. Eligible applicants include domestic nonprofit organizations, official public health agencies of States, universities, colleges, research institutions, and other public and private organizations or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses. CDC/NIOSH encourages the formation of partnerships between public health, research organizations and community based groups serving agricultural populations.

Note: Organizations described in Section 501(c)(4) of the Internal Revenue Code of 1986 which engage in lobbying activities are not eligible for the receipt of Federal grants or cooperative agreements.

### Availability of Funds

Approximately $1,600,000 is available in FY 1996 to fund approximately 9–16 awards. It is expected that for the seven to twelve sentinel event surveillance projects the average award will be approximately $95,000, ranging from $55,000 to $105,000. It is anticipated that for the three to six intervention research projects the average award will be approximately $130,000, ranging from approximately $45,000 to $175,000. It is further expected that the awards will be effective on or about September 30, 1996 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

CDC/NIOSH does not intend to fund more than one surveillance application per State, and intervention funding decisions may be made to assure an appropriate geographic distribution of awardees.

Continuation awards within the project period will be made based on satisfactory progress and the availability of funds.

### Recipient Financial Participation

CDC strongly encourages in-kind and other financial support by non-Federal agencies such as community and State organizations as well as private businesses (e.g., machinery and farm implement dealers). Such support will promote the continuation of efforts to prevent illness and injury in agriculture after the cessation of funding under this announcement.

### Purpose

*Surveillance*

The purpose of the surveillance component of this announcement is to conduct on-going, action-oriented surveillance of agriculture-related disease, injury, and hazards in agricultural communities. This component continues surveillance efforts begun in 1990 under the Occupational Health Nurses in Agricultural Communities (OHNAC) program. The OHNAC program conducted community-based surveillance and intervention efforts and during a five-year period placed approximately 32 nurses in communities in ten States. These nurses conducted surveillance for illness and injury sentinel health events in their communities, developed strong partnerships with agricultural and health-care communities, and have focused public health attention on problems affecting farmers, farm workers, and farm families. Each State conducted case-based surveillance with varying methodologies as to case definition, geographic regions targeted, intensity of active vs. passive surveillance, and reporting sources (Connon et al., 1993). While generally successful, some surveillance efforts were limited by factors including the lack of reporting laws in some States, reliance on self-reporting of incidents by workers themselves, and lack of consistent case definitions between States. There was more efficient use of staff time for both surveillance and interventions when nurses focused work in a geographic region that kept travel time to a minimum but permitted expansion of both surveillance and interventions to larger geographic regions for investigation of specific occurrences or dissemination of findings.

Surveillance-driven prevention efforts in OHNAC have included the dissemination of surveillance findings

and recommendations for intervention including publications in trade periodicals; peer reviewed journals, an issue of a nursing journal dedicated to agricultural health (AAOHN, 1993); CDC's *Morbidity and Mortality Weekly Report;* and targeted mailings of NIOSH Updates and Alerts. Some of these sentinel events have included scalpings of women from inadequately protected rotating shafts; fatalities and injuries related to grain bins, manure pits, forage wagons, and augers; nicotine poisoning from dermal absorption during tobacco harvesting; cumulative trauma related to hand harvesting; eye injuries; tetanus; stress; carbon monoxide (CO) poisoning related to the use of small engines; and children on farms. Because of OHNAC and other NIOSH surveillance, The U.S. Environmental Protection Agency (EPA), Consumer Product Safety Commission (CPSC), Occupational Safety and Health Administration (OSHA) and NIOSH are collaborating on prevention of CO poisoning related to the use of small engines. Some of these findings (i.e., scalpings, CO poisoning, and nicotine poisoning), by virtue of their not being among commonly reported or researched occurrences in agriculture, may not have been detected by other than such community-based surveillance.

*Intervention*

The prevention intervention component contributes to the prevention of occupationally related disease and injury in the agriculture industry through community-based demonstration or intervention projects aimed at piloting and evaluating regulatory, behavioral, education, control or other preventive interventions. It is intended that this be accomplished by linking those with research expertise to agricultural community groups or populations in order that prevention interventions are piloted and evaluated within the agricultural working population. The focus for agricultural workplace safety and health intervention efforts can include specific engineering control technologies, information dissemination and health communication practices, worker/management participatory safety and health programs, and family and community safety and health training. Although many intervention strategies have been applied to various work settings, knowledge about what works best is limited. Employers, owner-operators, agricultural workers, public decision makers, cooperative extension services agents, and others need this information to make informed decisions about which prevention strategies work well and support the use of limited resources. Research is needed to pilot and evaluate prevention intervention efforts which, if successful, will be adoptable on a wider scale in a region or throughout the nation. This work should be done in cooperation with agricultural workers and employers to assure consideration of the economic and organizational factors that determine if interventions will be adopted. Cultural, educational, gender, geographical and other related attributes of targeted populations will influence how safety and health messages are designed, distributed and received. Farm workers (including migrant, seasonal, minority, and permanent employees as well as women and children of the agricultural community) and agricultural organizations should join efforts to identify appropriate techniques for information dissemination and develop outcome measurements which can be utilized to determine the effectiveness of various dissemination efforts.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities):

*A. Recipient Activities*

Surveillance

1. Select community-based staff with appropriate expertise who have the skills to communicate effectively with both individuals and groups in those communities, and preferably, with occupational and public health expertise. While in the OHNAC project, nurses, supplemented by partners in State health departments, Cooperative Extension, Agricultural Centers, the community, etc. effectively assumed this responsibility, NIOSH realizes that individuals with various backgrounds and training may also be appropriate.

2. Identify a suitable location, as appropriate, for the physical assignment of community-based staff, most likely in a local or county health department or community health center, an agricultural extension service office, hospital or other location that serves the needs of that agricultural community, and where access to agricultural, migrant and seasonal workers, their families, and extension agents would be facilitated.

3. Collaborate with other on-going occupational and agricultural health and safety activities in the State or region. These could include the following CDC/NIOSH-supported programs: the Farm Family Health and Hazard Surveillance (FFHHS) project; Agricultural Health Promotion Systems (AHPS); regional Centers for Agricultural Disease and Injury Research, Education and Prevention, the Sentinel Event Notification System for Occupational Risks (SENSOR) and the Fatality Assessment, Control and Epidemiology (FACE) program. In the OHNAC program, members of the Cooperative Extension Service, at both the State and local level, were invaluable partners in successful efforts.

4. Develop and adhere to a timetable for planning and implementing this project.

5. Provide training and orientation of staff to occupational safety and health principles and concepts in surveillance and reporting; in securing expertise and assistance to community-based staff and local health officials; in securing appropriate technical support (engineering/industrial hygiene expertise and data analysis) ranging from site investigations to supplying handout literature; and in the final evaluation of proposed activities.

6. Ensure that community-based staff have personal computers and modems with the capability to link with CDC/NIOSH, the State or Territorial Health Department for reporting cases, requesting technical assistance, and other needs. This will permit timely responses from health personnel and timely requests for site investigations when appropriate. Each award recipient will participate in an electronic forum (currently via CDC/WONDER) for communication among and between CDC/NIOSH, other award recipients, and community-based staff.

7. Develop, implement and maintain a community-based system of reporting agricultural job-related diseases and injuries in locales that are representative of agriculture in the State or are otherwise appropriate for selected condition(s) and would most benefit from such surveillance.

a. Incident reports should be sought systematically in accordance with the planned surveillance system and other appropriate sources. These may include, but are not limited to: emergency rooms, hospital admission and discharge summaries, physicians' offices and directly from agricultural workers (who may not seek professional health services for occupational health concerns).

b. Incident reports should range from brief summaries of relatively unimportant events to detailed descriptions of more notable events or

conditions. Current exposure information on machinery and equipment used by agricultural workers, including typical operating times and circumstances, may also be included.

c. Ensure, regardless of selected topics, that the proposed surveillance system maintains a strong capacity to recognize and respond to unforseen occurrences in the target communities.

8. Develop a plan for selecting events that, because of their public health importance (severity, number of workers potentially affected, potential preventability, likelihood of providing new information, need to increase awareness in health or agricultural communities, etc.) merit further investigation. These events could include fatalities, multiple occurrences or single occurrences affecting multiple individuals, occurrences of new or emerging problems, conditions that are of particular importance to agriculture.

a. Report such important events to CDC/NIOSH within one week of ascertainment by project staff. Such reporting is not expected for all events but is especially important for events that may require timely responses, involve CDC/NIOSH in its investigation, or potential need to expand investigation or public health response to other States. These reports are expected to be brief descriptions and may be transmitted electronically. (Examples from the OHNAC project include carbon monoxide poisoning related to small engines, green tobacco sickness, and suffocation in wells related to flooding.)

9. Develop a process of follow-back investigations of selected cases with agricultural workers and families. The purpose of such investigations is to ascertain preventable causes of illnesses and injuries leading to the development and dissemination of disease and injury prevention strategies. Depending on the importance of the problem, follow-back could range from a brief review of records and/or telephone contact to a detailed site investigation involving multiple disciplines. As indicated, applicants will collaborate with appropriate public health professionals, technical advisors (e.g., agricultural engineers), county extension agents, agricultural workers, agricultural worksite owners, CDC/NIOSH staff, other health department personnel in plan development and implementation.

a. Data could include descriptive information on prevention efforts that: (a) could have prevented injury or illness, (b) could have diminished injuries or illness, (c) were used that prevented further illness or injury in this (e.g., machine guard may have prevented amputation) or (d) have been initiated since the incident and are likely to diminish the risk for further incidents.

10. Provide sensitive, confidential attention to reported cases, including case confirmation and determination of appropriate follow-up.

11. Evaluate the scientific and operational aspects of the surveillance project, including aspects of completeness, public health impact and the generalizability of methods and findings to other settings.

12. Transmit data (case reports, etc.) in an electronic format to CDC/NIOSH in established timeframes (e.g., quarterly).

13. Disseminate, via appropriate media and partners, findings and recommendations to affected populations, public health authorities and the scientific community.

Intervention

1. Develop a scientific protocol for the specific intervention which encompasses the following elements:

a. Design and implementation of intervention(s) based on a collaborative effort between those with scientific expertise and those who form the community base; and

b. Identification of the target population and specific description of the procedures to recruit the target population into the study.

2. Develop and conduct an appropriate independent peer review of the scientific protocol.

3. Conduct the project and evaluation according to the protocol and assess results.

4. Disseminate the final results of the project to a wide audience including, but not limited to, peer-reviewed journal articles, presentations at professional conferences, and presentations to agricultural or other client groups.

*B. CDC/NIOSH Activities*

1. Secure the materials and services of other personnel necessary to assist and support the activities of the staff.

2. Provide technical assistance, through site visits and other communication, in all phases of the development, implementation and maintenance of these cooperative agreements including, but not limited to: (a) providing guidance on occupational conditions appropriate for reporting; (b) recommending reporting guidelines; developing case reporting formats; (c) participating in peer review panels; and (d) providing CDC/NIOSH publications, educational materials, and other documents, when appropriate and needed.

3. Foster and facilitate linkages between recipients and other groups, organizations and agencies involved in agricultural research and outreach.

4. Provide expertise and assistance to site staff and local partners, as needed and as resources permit, to assist in problem identification and resolution, and provide technical support.

5. Participate in the decisions to conduct field investigations and prevention efforts and respond to incident reports requiring field follow-up.

6. Provide technical assistance in the evaluation of the results of the surveillance and intervention activities.

7. Promote and facilitate scientific collaboration, as appropriate.

8. Assist in disseminating surveillance and intervention research results and relevant health and safety education and training information to appropriate Federal, State and local agencies, health care providers, the scientific community, agricultural workers and their families, management and union representatives and other CDC/NIOSH collaborators.

9. Collaborate in training and orienting staff to occupational safety and health principles and concepts in surveillance and reporting; in securing expertise and assistance to community-based staff and local health officials; in securing appropriate technical support (engineering/ industrial hygiene expertise and data analysis) ranging from site investigations to supplying handout literature; and in the final evaluation of proposed activities.

10. Cooperate in the development of case definitions that would allow aggregation of data among States.

Review Process

Upon receipt, applications will be reviewed by CDC staff for:

*1. Completeness and Responsiveness*

Incomplete applications and applications that are not responsive to the announcement will be returned to the applicant without further consideration.

*2. Triage*

Applications that are determined to be complete and responsive to the announcement may be subjected to a preliminary evaluation by reviewers to determine if the application is of sufficient technical and scientific merit to be competitive. The CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the

principal investigator/program director and the official signing for the applicant organization.

*3. Objective Review Process*

Those applications judged to be competitive will be further evaluated by the objective review process. The review will be an evaluation of the scientific and technical merit of the application based on the following criteria:

Surveillance

(To fund 7–12 awards at $55,000—$105,000 for up to 3 years)

1. Understanding of the Objectives of the Proposed Agreement (Total percentage for this section: 12%)

A. Provides a comprehensive statement of the target problem(s), scope, and purpose of the proposed project to demonstrate complete understanding of the intent and requirements. This understanding indicates a clear awareness of the cooperative agreement objectives. (4%)

B. Ability and willingness to incorporate surveillance for agricultural occupational health and safety concerns as an integral part of public health programs for identification, investigation, control and prevention of agriculture related health injury, illness, and hazard exposure. (4%)

C. In-kind support by community and State organizations as well as private businesses (e.g., machinery and farm implement dealers) will promote the building of the infrastructure for both surveillance and interventions that are likely to continue after the completion of Federal funding of this. (4%)

2. Soundness of Approach (Total percentage for this section: 66 %)

A. Documentation of a State reporting requirement that incorporates agriculturally related injuries and illnesses. Ease of data collection, follow-back case investigation, and the absence of barriers to contacting victims are important. (5%)

B. Documented experience conducting surveillance in agriculture. (4%)

C. Capability to access surveillance data on agricultural injuries, illnesses, and hazards. Regardless of the presence of reporting requirements, a clearly defined and preferably tested means of collecting data is described and documented. This will include easy access to data sources and health records of victims. Applicants must document the ability to conduct timely follow-back investigations of cases and gain access to work sites and agricultural workers to assess health and safety hazards or to investigate exposures that have resulted in injury or illness. (6%)

D. Selection of an efficient, cost-effective means of surveillance. Extent to which surveillance system makes efficient use of staff time. Ideally, routine activities would encompass a geographic area that does not require excessive travel time though with provisions for flexibility. Geographic area(s) is suitable for the selected surveillance activity. (6%)

E. Documented capacity for creative collaboration and coordination with local community and/or cooperating organizations and expertise for the purposes of implementing the proposed surveillance and follow-back investigations where indicated. (5%)

F. There is a collaborative effort involving the State or territorial public health agency of the State or its bona fide agent and other agricultural safety and health projects, e.g., those funded by CDC/NIOSH. (6%)

G. Valid basis for selection of condition(s); industry subgroups; and/or populations (children, seasonal workers) to focus upon in this project, i.e., documented or perceived risk to agricultural workers and their families in the area. Applicants are encouraged to select at least one illness-related topic (e.g., respiratory hazards, pesticides, prevention of noise-induced hearing loss). Efforts targeting specific industries (e.g., poultry, dairy, pork production) and special populations are also encouraged. Although the majority of effort is to be on the selected conditions, participants will be willing and able to conduct follow-back investigations on other agriculturally related sentinel events. (7%)

The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

H. Flexibility regarding target condition, geographic region, and population with documented ability to respond to important though relatively rare sentinel events. (5%)

I. Documented technical support or capability (e.g., industrial hygiene, safety engineering, agricultural engineering) for investigations of sentinel events and health and safety hazards. Such support shall be readily available for telephone consultation and on-site investigations. (6%)

J. A feasible schedule for initiating and accomplishing the activities of the cooperative agreement. (9%)

K. A feasible approach to evaluation of the surveillance system. (7%)

3. Personnel (Total percentage points for this section: 22%)

A. Appropriate designation and selection of staff for conducting community and/or State-wide surveillance activities. Staff will need (supported by documentation):

1. The expertise, education, and psychosocial skills in order to effectively interact with the agricultural community and health professionals alike. (4%)

2. Experience/education in epidemiology, public health, occupational health and safety, and agriculture. (5%)

3. To have support of the agricultural communities, health professionals, and others with whom they would interact. (4%)

4. The ability to access and understand medical records. (4%)

5. Documented capacity to conduct epidemiological studies and to coordinate activities involving State or Territorial Offices, members of the agricultural community, and health care providers. Staff must provide assurance of substantial time and resource commitment to the program. (5%)

B. Human Subjects (Not Scored).

Whether or not exempt from the Department of Health and Human Services (DHHS) regulations, are procedures adequate for protection of human subjects? Recommendations on the adequacy of protections include: (1) protections appear adequate, and there are no comments to make or concerns to raise, or (2) protections appear adequate, but there are comments regarding the protocol, or (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects; or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

C. Budget (Not Scored).

The budget will be evaluated to the extent that it is reasonable, clearly

justified, and consistent with the intended use of funds.

Intervention (To Fund 3–6 awards at $45,000—$175,000 for up to 3 years)

Applications will be reviewed and evaluated according to the following criteria:

1. The extent to which the applicant understands the purpose of the cooperative agreement and the relevance of the proposal to that purpose. (10%)

2. The extent to which the proposed goals and objectives are clearly stated, time-phased, and measurable. The extent to which they encompass both process and outcome features of the intervention. The extent to which specific research questions and/or hypotheses are described. (10%)

3. The extent to which the potential effectiveness of the intervention is theoretically justified and supported with epidemiologic, methodological, or behavior research. The extent to which the intervention is feasible and can be expected to produce the expected results in the target group. The extent to which the intervention, its implementation, the development of all necessary materials, and all necessary training are clearly described. The extent to which the desired outcomes are specified and definitions of measurable endpoints are provided. The extent to which the setting in which the intervention is to be implemented is clearly described and shown to be adequate for reaching the target group and achieving the desired objectives. (25%)

4. The extent to which the target group is described and access to the target group is demonstrated. The extent to which it is demonstrated that the participation of the target group will be sufficient to evaluate the intervention in an unbiased fashion.

The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented. (15%)

5. The extent to which an evaluation plan has been developed to determine the success of the pilot intervention or demonstration project(s) and determine its utility as a public health prevention strategy with broader application in other communities. (15%)

6. The extent to which the management staff and their working partners are clearly described, appropriately assigned and have pertinent skills and experiences. The extent to which the applicant proposes to involve appropriate researchers and other personnel who reflect the racial/ethnic composition of the target population. The extent to which the applicant or a full working partner has the capacity and facilities to design, implement and evaluate the proposed intervention. (10%)

7. The extent to which the participants are clearly described and their qualifications for their component of the proposed work are explicitly stated. The extent to which the applicant provides proof of support (e.g. letters of support and/or memoranda of understanding) for proposed activities as well as commitment to participate from proposed partners. (15%)

8. Human Subjects (Not Scored).

Whether or not exempt from the DHHS regulations, are procedures adequate for protection of human subjects? Recommendations on the adequacy of protections include: (a) protections appear adequate, and there are no comments to make or concerns to raise, or (b) protections appear adequate, but there are comments regarding the protocol, or (c) protections appear inadequate and the Objective Review Group has concerns related to human subjects; or (d) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

9. Budget (Not Scored).

The extent to which the program budget is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. Indian tribes are strongly encouraged to request tribal government review of the proposed application. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs or tribal governments have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, no later than 60 days after the application deadline date. The granting agency does not guarantee to ''accommodate or explain'' State or tribal process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements. Under these requirements, all community-based nongovernmental applicants must prepare and submit the items identified below to the head of the appropriate State and/or local health agency(s) in the program area(s) that may be impacted by the proposed project no later than the receipt date of the Federal application. The appropriate State and/or local health agency is determined by the applicant. The following information must be provided:

A. A copy of the face page of the application (SF 424).

B. A summary of the project that should be titled ''Public Health System Statement'' (PHSIS), not to exceed one page, and include the following:

1. A description of the population to be served;

2. A summary of the services to be provided; and

3. A description of the coordination plans with the appropriate State and/or local health agencies.

If the State and/or local health official should desire a copy of the entire application, it may be obtained from the State SPOC or directly from the applicant.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

*Paperwork Reduction Act*

Projects funded through a cooperative agreement that involve collection of information from ten or more individuals will be subject to review under the Paperwork Reduction Act.

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulation, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines provided in the application kit.

*Women and Minority Inclusion Policy*

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority population are appropriately represented for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance on this policy is contained in the Federal Register, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Control Number 0937–0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before July 10, 1996.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must 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.)

2. Late Applications: Applications which do not meet the criteria in 1. (a) or 1. (b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 646. You will receive a complete program description and information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546, Internet: oxb3@opspgo1.em.cdc.gov, fax (404) 842–6513.

Programmatic technical assistance for surveillance may be obtained from Janet Ehlers, R.N., M.S.N., Occupational Health Nurse, National Institute for Occupational Safety and Health, Centers for Disease Prevention and Control (CDC), Division of Surveillance, Hazard Evaluations and Field Studies, 4676 Columbia Parkway, R–21, Cincinnati, OH 45226, telephone (513) 841–4205, fax (513) 841–4489, Internet: jje0@nioshe2.em.cdc.gov.

Programmatic technical assistance for intervention may be obtained from Teri Palermo, R.N., Public Health Advisor, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Division of Respiratory Disease Studies, Office of the Director, 1095 Willowdale Road, Mailstop 219, Morgantown, WV 26505–2888, telephone (304) 285–5836, fax (304) 285–5723, Internet: btp0@niords1.em.cdc.gov.

Please refer to Announcement 646 when requesting information and submitting an application.

There may be delays in mail delivery as well as difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics (July 19 - August 4). Therefore, CDC suggests the following to get more timely responses to any questions: use Internet/email, follow all instructions in this announcement, and leave messages on the contact person's voice mail.

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) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 30, 1996.

Diane D. Porter,

*Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–14172 Filed 6–5–96; 8:45 am]

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**[Announcement 649]**

## National Institute for Occupational Safety and Health; Prevention of Silicosis in Surface Miners

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for a cooperative agreement program for prevention of silicosis in surface miners. The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

Authority

This program is authorized under Section 22(e)(7) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 671(e)(7)) and Section 501(g) of the Federal Mine Safety and Health Act (30 U.S.C. 951(g)).

Smoke-Free Workplace

The CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse 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.

Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

Note: Organizations described in Section 501(c)(4) of the Internal Revenue Code of 1986 which engage in lobbying activities are not eligible for the receipt of Federal grants or cooperative agreements.

Availability of Funds

Approximately $85,000 is available in FY 1996 to fund one award. It is expected that the award will begin on or about September 30, 1996, and will be made for a 12-month budget period within a project period of up to three years. The funding estimate may vary and is subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of this project is to contribute to silicosis prevention efforts through:

1. Identification of high silicosis-risk populations in both the metal/nonmetal and coal surface mining communities;

2. Identification and assessment of effectiveness of interventions to limit or prevent silica exposure that have been implemented in the mines with high silicosis risk (e.g.worker training programs, changes in work practices, modifications of maintenance practices, engineering controls, etc.) ; and

3. Development of recommendations for modifications of existing interventions and/or innovative new interventions to prevent silica exposure, with a plan for evaluating intervention effectiveness.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities listed under B. (CDC/NIOSH Activities).

*A. Recipient Activities*

1. Conduct a study to identify high silicosis-risk populations of metal/nonmetal and surface miners; including small and large employers, contractors, unionized and nonunionized operations.

2. Evaluate current work practices and exposure conditions at targeted operations where silicosis risk is high. This evaluation should include an assessment of the effectiveness of current training efforts, maintenance programs, engineering controls and work practices.

3. Recommend new or modified training efforts, maintenance programs, engineering controls or driller work practices which will reduce worker exposures to silica.

4. Evaluate the effectiveness of new interventions.

5. Publish results of the study.

*B. CDC/NIOSH Activities*

1. Provide scientific, epidemiologic, engineering, environmental, and clinical technical assistance (as needed) to the recipient for successful completion of this project.

2. Assist in the development of the overall plan or study design for this project.

3. Collaborate with the recipient on the methods for collection, tabulation, analysis, and publication of data related to the project.

4. In consultation with Mine Safety and Health Administration (MSHA) obtain and provide available, relevant information on MSHA sampling results, survey data, training videos, etc.

5. Assist in development of recommendations for interventions.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The qualifications and efficient use of current and proposed project personnel, with assurance of a major time commitment of the program director to the program. Technical qualifications of importance include, but are not limited to, experience in conducting investigations of the mining industry, knowledge of the technical aspects of drilling, and experience with worker education and training (to include evaluations of worker training program effectiveness). (35%)

2. The adequacy of the applicant's facilities and resources for purposes of evaluating surface mine driller training. Important qualifications include program/facility history of developing and implementing worker training programs. (10%)

3. The adequacy of the project plan or methodology. The proposed plan and methods should demonstrate a clear understanding and application of the goals and objectives for this program. Novel approaches and ideas that contribute to attainment of the program's goals and objectives are encouraged. Important components include the method of identification of high silicosis-risk surface mine drilling operations, identification of case study subjects, the plan for assessment of effectiveness of the intervention strategies being used and how closely the project's objectives fit the objectives for which applications were invited. (40%)

The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

4. Efficient use of resources and uniqueness of program. Evidence of collaboration with outside organizations (e.g., labor, universities, government agencies) using shared resources towards common goals and the demonstrated ability to solicit and receive financial resources from outside the organization. (15%)

5. Human Subjects (Not Scored)

Whether or not exempt from the Department of Health and Human Services (DHHS) regulations, are procedures adequate for protection of human subjects? Recommendations on

the adequacy of protections include: (1) Protections appear adequate, and there are no comments to make or concerns to raise, or (2) protections appear adequate, but there are comments regarding the protocol, or (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects; or (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable.

6. Budget and Justification. (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of the funds.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number for this program is 93.283.

Other Requirements

*Paperwork Reduction Act*

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

*Women and Minority Inclusion Policy*

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained the Federal Register, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before July 26, 1996.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must 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.)

2. Late Applications: Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 649. You will receive a complete program description and information on application procedures and application forms. If you have questions after reviewing the contents of the package, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546, Internet: oxb3@opspgo1.em.cdc.gov, fax (404) 842–6513.

Programmatic technical assistance may be obtained from Joseph Cocalis, National Institute for Occupational Safety and Health, Centers for Disease and Control Prevention (CDC), 1095 Willowdale Road, Mailstop H–120, Morgantown, WV 26505–2888, telephone (304) 285–5754, Internet: jgc6@niords1.em.cdc.gov, fax (304) 285–5820.

Please refer to Announcement 649 when requesting information and submitting an application.

There may be delays in mail delivery as well as difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics (July 19—August 4). Therefore, CDC suggests the following to get more timely responses to any questions: use Internet/email, follow all instructions in this announcement, and leave messages on the contact person's voice mail.

Copies of the NIOSH Alert, Preventing Silicosis and Deaths in Rock Drillers, can be obtained by contacting the NIOSH Publications Dissemination Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8287.

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) referenced in the Introduction Section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 30, 1996.

Diane D. Porter,

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–14170 Filed 6–5–96; 8:45 am]

**BILLING CODE 4163–19–P**

**[Announcement 624]**

## National Institute for Occupational Safety and Health Work Organization Interventions To Prevent Work-Related Musculoskeletal Disorders in Office and Video Display Terminal Work

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for a cooperative agreement program to develop work organization interventions to prevent musculoskeletal disorders in office and video display terminal (VDT) workers.

The CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

### Authority

This program is authorized under Sections 20(a) and 22(e)(7) of the Occupational Safety and Health Act [29 U.S.C. 669(a) and 671(e)(7)].

### Smoke-Free Workplace

The CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the nonuse 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.

### Eligible Applicants

Applications may be submitted by public and private, non-profit and for-profit organizations and governments, and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority- and/or women-owned businesses are eligible to apply.

### Availability of Funds

Approximately $140,000 is available in FY 1996 to fund one award. It is expected that the award will begin on or about September 30, 1996, and will be made for a 12-month budget period within a project period of one year. The funding estimate is subject to change.

Applications should be focused on the research priorities described in the section ''FUNDING PRIORITIES'' that includes new research priorities developed in a process which resulted in defining a National Occupational Research Agenda. Proposals in these areas will compete for the available funds as noted in the previous paragraph.

### Purpose

The purpose of this cooperative agreement is to utilize the special resources of the extramural research community to conduct studies. The funded project will focus on worksite primary prevention efforts, replicating and extending the CDC/NIOSH interventions described in the BACKGROUND Section of the Program Announcement. This could include: (a) replication/validation of CDC/NIOSH findings on work-rest schedules and task rotation, (b) extension of these interventions to other types of VDT and office tasks, and (c) examination of other types of work organization interventions.

Prior studies have indicated that some types of VDT jobs may pose higher risk for stress and work-related musculoskeletal disorders (WRMD), particularly jobs involving highly repetitive and narrow tasks (e.g., data entry or teleoperator tasks). Such jobs are of particular interest for this project. Project results, in combination with NIOSH findings, will provide the basis for recommendations regarding effective work organization strategies for reducing WRMDs, and improving performance in repetitive VDT work. Project results will also improve our understanding of mechanisms mediating between work organization variables and musculoskeletal disorders in VDT work.

### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities) and CDC/NIOSH will be responsible for activities under B. (CDC/NIOSH Activities):

*A. Recipient Activities*

1. Evaluate the effectiveness of work organization interventions in reducing WRMDs and in improving productivity among VDT workers. Both physical and psychological symptoms will be evaluated.

2. Develop a study protocol that reviews the pertinent literature on VDT-related musculoskeletal disorders and work organization, describes the study methodology, the data to be collected, and the proposed analysis of the data. Present the protocol to a panel of peer reviewers and revise the protocol as required for final approval.

3. Prepare necessary documentation for reviews and/or clearances required by CDC/NIOSH. (Depending on what is proposed, it may be necessary to obtain NIOSH peer review, Human Subjects Review Board, or OMB approvals on some protocols.)

4. Perform data collection and management. Data is to include measures of worker symptomatology and performance and can additionally include records data on factors such as absenteeism, health care utilization, etc. Symptomatology can include musculoskeletal discomfort, upper extremity musculoskeletal disorders, and indicators of negative mental health (e.g., depression, anxiety, tension). Performance indicators can include measures such as keystrokes/hour, forms/hour, and errors.

5. Prepare a final report summarizing the study methodology, results obtained, and conclusions reached. Develop recommendations regarding effective work organization interventions to reduce stress, fatigue, and WRMDs among VDT workers.

6. Report study results to the scientific community via presentations at professional conferences and articles in peer-reviewed journals.

*B. CDC/NIOSH Activities*

1. Provide scientific, epidemiologic, work organization, ergonomic, and medical collaboration for the successful completion of this project.

2. Identify reviews and/or clearances that must be fulfilled by the recipient, and identify and convene a Peer Review Panel to review draft study protocol.

3. Provide assistance in all stages of the study including study design, survey instrument design, collection, tabulation, and analysis of data, interpretation of the results and preparation of the written reports.

4. Provide electromyograph (EMG) or other instrumentation and data collection assistance in investigating physiological mechanisms in VDT WRMDs.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. Understanding of the Problem (25%)

Responsiveness to the objective of the cooperative agreement including: (a) applicant's understanding of the general objectives of the proposed cooperative agreement, and (b) evidence of ability to understand the problem and to conceive/design effective interventions.

2. Program Personnel (30%)

(a) Applicant's technical experience (e.g., in the areas of work organization, WRMDs and office and VDT ergonomics), (b) the qualifications (e.g., in the areas of industrial engineering, psychology and occupational safety and health) and time allocation of the professional staff to be assigned to this project, and, (c) the applicant's ability to describe the approach to be used in carrying out the responsibilities of the applicant.

3. Study Design (20%)

Steps proposed in planning and implementing this project and the respective responsibilities of the applicant for carrying out those steps. Also, the adequacy of the applicant's evidence of access to study populations. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(b) The proposed justification when representation is limited or absent.

(c) A statement as to whether the design of the study is adequate to measure differences when warranted.

(d) A statement as to whether the plans for recruitment and outreach forstudy participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

4. Project Planning (15%)

The applicant's schedule proposed for accomplishing the activities to be carried out in this project and for evaluating the accomplishments.

5. Facilities and Resources (10%)

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

6. Human Subjects

Whether or not exempt from the DHHS regulations, are procedures adequate for the protection of human subjects? Recommendations on the adequacy of protections include: (1) Protections appear adequate, and there are no comments to make or concerns to raise, (2) protections appear adequate, but there are comments regarding the protocol, (3) protections appear inadequate and the Objective Review Group has concerns related to human subjects, or, (4) disapproval of the application is recommended because the research risks are sufficiently serious and protection against the risks are inadequate as to make the entire application unacceptable. (NOT SCORED)

7. Budget Justification

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds. (NOT SCORED)

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for this project is 93.283.

Other Requirements

*Paperwork Reduction Act*

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

In addition to other applicable committees, Indian Health Service (IHS) institutional review committees also must review the project if any component of IHS will be involved or will support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

*Women, Racial and Ethnic Minorities*

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian, Alaskan Native, Asian, Pacific Islander, Black and Hispanic. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity and/or sex of subjects. Further guidance to this policy is contained in the Federal Register, Vol. 60, No. 179, pages 47947–47951, and dated Friday, September 15, 1995.

Funding Priorities

The NIOSH program priorities, listed below, were developed by NIOSH and its partners in the public and private sectors to provide a framework to guide occupational safety and health research in the next decade—not only for NIOSH but also for the entire occupational safety and health community. Approximately 500 organizations and individuals outside NIOSH provided input into the development of the National Occupational Research Agenda (NORA). This attempt to guide and coordinate research nationally is responsive to a broadly perceived need to address systematically those topics that are most pressing and most likely to yield gains to the worker and the nation. Fiscal constraints on occupational safety and health research are increasing, making even more compelling the need for a coordinated and focused research agenda. NIOSH intends to support projects that facilitate progress in understanding and preventing adverse effects among workers. The conditions or examples listed under each category are selected examples, not comprehensive definitions of the category. Investigators may also apply in other areas related to occupational safety and health, but the

rationale for the significance of the research to the field of occupational safety and health must be presented in the grant application.

The Agenda identifies 21 research priorities. These priorities reflect a remarkable degree of concurrence among a large number of stakeholders. The NORA priority research areas are grouped into three categories: Disease and Injury, Work Environment and Workforce, and Research Tools and Approaches. The NORA document is available through the NIOSH Home Page; http://www.cdc.gov/niosh/nora.html.

NORA Priority Research Areas

Disease and Injury
- Allergic and Irritant Dermatitis
- Asthma and Chronic Obstructive Pulmonary Disease
- Fertility and Pregnancy Abnormalities
- Hearing Loss
- Infectious Diseases
- Low Back Disorders
- Musculoskeletal Disorders of the Upper Extremities
- Traumatic Injuries

Work Environment and Workforce
- Emerging Technologies
- Indoor Environment
- Mixed Exposures
- Organization of Work
- Special Populations at Risk

Research Tools and Approaches
- Cancer Research Methods
- Control Technology and Personal Protective Equipment
- Exposure Assessment Methods
- Health Services Research
- Intervention Effectiveness Research
- Risk Assessment Methods
- Social and Economic Consequences of Workplace Illness and Injury
- Surveillance Research Methods

Application Submission and Deadline

*1. Preapplication Letter of Intent*

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Branch, CDC, at the address provided in this section. It should be postmarked no later than June 15, 1996. The letter should identify the announcement number, name of principal investigator, and *specify* the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently and will ensure that each applicant receives timely and relevant information prior to application submission.

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before July 17, 1996.

1. Deadline: Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applicants: Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicants.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement 624. You will receive a complete program description and information on application procedures and application forms. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6546; fax: (404) 842–6513; Internet: oxb3@opspgo1.em.cdc.gov.

Programmatic technical assistance may be obtained from Naomi G. Swanson, Ph.D., Chief, Motivation and Stress Research Section, Applied Psychology and Ergonomics Branch, Division of Biomedical and Behavioral Science, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), Mailstop C–24, 4676 Columbia Parkway, Cincinnati, OH 45226–1998, telephone (513) 533–8165; fax: (513) 533–8596; Internet: nws3@niobbs1.em.cdc.gov.

Please refer to Announcement 624 when requesting information and submitting an application.

There may be delays in mail delivery as well as difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics (July 19–August 4). Therefore, CDC suggests the following to get more timely responses to any questions: use Internet/email, follow all instructions in this announcement, and leave messages on the contact person's voice mail.

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) referenced in the Introduction section through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 30, 1996.

Diane D. Porter,

*Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–14171 Filed 6–5–96; 8:45 am]

BILLING CODE 4163–19–P

## Food and Drug Administration

### Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the following changes to its Orphan Products Development (OPD) grant program for fiscal year (FY) 1997. The previous announcement of this program, which was published in the Federal Register of August 15, 1994, is superseded by this announcement. In the future, a new announcement will be published annually. This and future announcements will provide the programmatic requirements and criteria, as well as the two dates for receipt of applications, the estimated amount of funds available, and the estimated number of awards to be made in each FY.

**DATES:** Application receipt dates are: October 15, 1996, and March 15, 1997. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday.

**ADDRESSES:** Application forms are available from, and completed applications should be submitted to: Robert L. Robins, Grants Management Officer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, Park Bldg., 5600 Fishers Lane, rm. 3–40, Rockville, MD 20857, 301–443–6170. (Applications hand-carried or commercially delivered should be addressed to the Park Bldg., 12420 Parklawn Dr., rm. 3–40, Rockville, MD 20857. Do not send applications to the Division of Research Grants, National Institutes of Health (NIH).)

**FOR FURTHER INFORMATION CONTACT:**

Regarding the administrative and financial management aspects of this notice: Robert L. Robins (address above).

Regarding the programmatic aspects of this notice: Patricia R. Robuck, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, rm. 8–73, Rockville, MD 20857, 301–827–3666.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the anticipated availability of funds for FY 1997 for awarding grants to support clinical trials on the safety and effectiveness of products for a rare disease or condition (i.e., one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Contingent on availability of FY 1997 funds, it is anticipated that $12 million will be available, of which $8.5 million will be for noncompeting continuation awards. This will leave $3.5 million for funding approximately 20 new applications. Any phase clinical trial is eligible for up to $100,000 in direct costs per annum plus applicable indirect costs for up to 3 years. Phase 2 and 3 clinical trials are eligible for up to $200,000 in direct costs per annum plus applicable indirect costs for up to 3 years.

FDA will support the clinical studies covered by this notice under section 301 of the Public Health Service Act (the PHS act) (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance, No. 93.103.

The Public Health Service (PHS) strongly encourages all grant recipients to provide a smoke-free work place and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

PHS 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, DC 20402–9325, 202–783–3238.

PHS policy is that applicants for PHS clinical research grants are required to include minorities and women in study populations so that research findings can be of benefit to all persons at risk of the disease, disorder, or condition under study; special emphasis must be placed on the need for inclusion of minorities and women in studies of diseases, disorders, and conditions which disproportionately affect them. This policy is intended to apply to males and females of all ages. If women or minorities are excluded or inadequately represented in clinical research, particularly in proposed population-based studies, a clear compelling rationale must be provided.

## I. Program Research Goals

OPD was established to identify and facilitate the availability of orphan products. In the OPD grant program, orphan products are defined as drugs, biologics, medical devices, and foods for medical purposes, which are indicated for a rare disease or condition (i.e., one with a prevalence, not incidence, of fewer than 200,000 people in the United States). Diagnostic tests and vaccines will qualify only if the U.S. population of intended use is lower than 200,000.

One way to make orphan products available is to support clinical research to determine whether the products are safe and effective. All funded studies are subject to the requirements of the Federal Food, Drug, and Cosmetic Act (the act) and regulations issued thereunder. The grants are funded under the legislative authority of section 301 of the PHS Act (42 U.S.C. 241).

The goal of FDA's OPD grant program is to encourage clinical development of products for use in rare diseases or conditions where no current therapy exists or where current therapy would be improved. FDA provides grants to conduct clinical studies intended to provide data acceptable to the agency which will either result in or substantially contribute to approval of these products. Applicants should keep this goal in mind and must include an explanation in the ''Background and Significance'' section of the application of how their proposed study will either facilitate product approval or provide essential data needed for product development. Information regarding meetings and/or discussions with FDA reviewing division staff about the product to be studied should also be provided as an appendix to the application. This information is extremely important for the review process.

Except for medical foods that do not require premarket approval, FDA will only consider awarding grants to support clinical studies for determining whether the products are safe and effective for premarket approval under the act (21 U.S.C. 301 *et seq.*) or under section 351 of the PHS Act (42 U.S.C. 262). All studies of new drug and biological products must be conducted under FDA's investigational new drug (IND) procedures and studies of medical devices must be conducted under the investigational device exemption (IDE) procedures. Studies of approved products to evaluate new orphan indications are also acceptable; however, these are also required to be conducted under an IND or IDE to support a change in official labeling. (See section V.B. of this document (Program Review Criteria) for critical requirements concerning IND/IDE status of products to be studied under these grants.)

Studies submitted for the larger grants ($200,000) must be continuing in phase 2 or phase 3 of investigation. Phase 2 trials include controlled clinical studies conducted to evaluate the effectiveness of the product for a particular indication in patients with the disease or condition and to determine the common or short-term side effects and risks associated with it. Phase 3 trials gather additional information about effectiveness and safety that is necessary to evaluate the overall risk-benefit relationship of the product and to provide an adequate basis for physician labeling. Studies submitted for the smaller grants ($100,000) may be phase 1, 2, or 3 trials.

Applications must propose a clinical trial of one therapy for one indication. The applicant must provide supporting evidence that a sufficient quantity of the product to be investigated is available to the applicant in the form needed for the clinical trial. The applicant must also provide supporting evidence that the patient population has been surveyed and that there is reasonable assurance that the necessary number of eligible patients is available for the study.

Funds may be requested in the budget for travel to FDA to meet with reviewing division staff about product development progress.

II. Human Subject Protection and Informed Consent

*A. Research Involving Human Subjects*

Applicants should carefully review the section on human subjects in the application kit. ''Section C. Specific Instructions—Forms, Item 4, Human Subjects,'' on pages 7 and 8 of the application kit should be carefully reviewed for the certification of Institutional Review Board (IRB) approval requirements. Documentation of IRB approval for every participating center is required to be on file with the Grants Management Officer, FDA. The goal should be to include enough information on the protection of human subjects in a sufficiently clear fashion so reviewers will have adequate material to make a complete review.

*B. Informed Consent*

Consent and/or assent forms, and any additional information to be given to a subject, should accompany the grant application. Information that is given to the subject or the subject's representative must be in language that the subject or his or her representative can understand. No informed consent, whether oral or written, may include any language through which the subject or the subject's representative is made to waive any of the subject's legal rights, or by which the subject or representative releases or appears to release the investigator, the sponsor, or the institution or its agent from liability.

If a study involves both adults and children, separate consent forms should be provided for the adults and the parents or guardians of the children.

*C. Elements of Informed Consent*

The elements of informed consent are stated in the regulations at 45 CFR 46.116 and 21 CFR 50.25 as follows:

1. Basic Elements of Informed Consent

In seeking informed consent, the following information shall be provided to each subject.

(a) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental.

(b) A description of any reasonably foreseeable risks or discomforts to the subject.

(c) A description of any benefits to the subject or to others which may reasonably be expected from the research.

(d) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject.

(e) A statement that describes the extent, if any, to which confidentiality of records identifying the subject will be maintained, and that notes the possibility that FDA may inspect the records.

(f) For research involving more than minimal risk, an explanation as to whether any compensation and any medical treatments are available if injury occurs and, if so, what they consist of or where further information may be obtained.

(g) An explanation of whom to contact for answers to pertinent questions about the research and research subject's rights, and whom to contact in the event of research-related injury to the subject.

(h) A statement that participation is voluntary, that refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and that the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

2. Additional Elements of Informed Consent

When appropriate, one or more of the following elements of information shall also be provided to each subject.

(a) A statement that the particular treatment or procedure may involve risks to the subject (or the embryo or fetus, if the subject is or may become pregnant), which are currently unforeseeable.

(b) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent.

(c) Any costs to the subject that may result from participation in the research.

(d) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject.

(e) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject.

(f) The approximate number of subjects involved in the study.

The informed consent requirements are not intended to preempt any applicable Federal, State, or local laws which require additional information to be disclosed for informed consent to be legally effective.

Nothing in the notice is intended to limit the authority of a physician to provide emergency medical care to the extent that a physician is permitted to do so under applicable Federal, State, or local law.

III. Reporting Requirements

An annual Financial Status Report (SF–269) is required. The original and two copies of this report must be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file the Financial Status Report (SF–269) in a timely fashion will be grounds for suspension or termination of the grant.

For continuing grants, an annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report.

Additionally, all continuing grants must comply with all regulatory requirements necessary to maintain active status of their IND/IDE. This includes, but is not limited to, submission of an annual report to the appropriate regulatory review division within FDA. Failure to meet regulatory requirements will be grounds for suspension or termination of the grant.

Program monitoring of grantees will be conducted on an ongoing basis and written reports will be prepared by the project officer. The monitoring may be in the form of telephone conversations between the project officer/grants management specialist and the principal investigator. Periodic site visits with appropriate officials of the grantee organization may also be conducted. The results of these reports will be recorded in the official grant file and may be available to the grantee upon request consistent with FDA disclosure regulations.

A final program progress report, Financial Status Report (SF–269), and Invention Statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

IV. Mechanism of Support

*A. Award Instrument*

Support will be in the form of a grant. All awards will be subject to all policies and requirements that govern the research grant programs of PHS, including the provisions of 42 CFR part 52 and 45 CFR parts 74 and 92. The regulations issued under Executive Order 12372 do not apply to this program.

All grant awards are subject to applicable requirements for clinical investigations imposed by sections 505, 507, 512, and 515 of the act (21 U.S.C. 355, 357, 360b, and 360e), section 351

of the PHS act (42 U.S.C. 262), and regulations promulgated under any of these sections.

*B. Eligibility*

These grants are available to any public or private nonprofit entity (including State and local units of government) and any for-profit entity. For-profit entities must commit to excluding fees or profit in their request for support.

*C. Length of Support*

The length of the study will depend upon the nature of the study. For those studies with an expected duration of more than 1 year, a second or third year of noncompetitive continuation of support will depend on: (1) Performance during the preceding year; (2) the availability of Federal funds; and (3) compliance with regulatory requirements of the IND/IDE.

*D. Funding Plan*

The number of studies funded will depend on the quality of the applications received and the availability of Federal funds to support the projects. Before an award will be made, OPD will verify the active status of the IND/IDE for the proposed study. If the IND/IDE for the proposed study is not active, no award will be made. Further, documentation of IRB approvals for all performance sites must be on file with the Grants Management Officer, FDA (address above), before an award can be made.

V. Review Procedure and Criteria

*A. Review Method*

All applications submitted in response to this request for applications (RFA) will first be reviewed by grants management and program staff for responsiveness to this RFA. If applications are found to be nonresponsive, they will be returned to the applicant without further consideration.

Responsive applications will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Responsive applications will also be subject to a second level of review by a National Advisory Council for concurrence with the recommendations made by the first-level reviewers, and funding decisions will be made by the Commissioner of Food and Drugs.

*B. Program Review Criteria*

Applications will be evaluated by program and grants management staff for responsiveness. Applications considered nonresponsive will be returned to the applicant, unreviewed. Applicants are strongly encouraged to contact FDA to resolve any questions regarding criteria prior to the submission of their application. All questions of a technical or scientific nature must be directed to the OPD program staff and all questions of an administrative or financial nature must be directed to the grants management staff. (See ''For Further Information Contact'' section of this document.) Responsiveness will be based on the following criteria:

1. The application must propose a clinical trial intended to provide safety and/or efficacy data of one therapy for one orphan indication. Additionally, there must be an explanation in the ''Background and Significance'' section of how the proposed study will either facilitate product approval or provide essential data needed for product development.

2. The prevalence, not incidence, of the population to be served by the product must be fewer than 200,000 individuals in the United States. The applicant should include, in the ''Background and Significance'' section, a detailed explanation supplemented by authoritative references in support of the prevalence figure. If the product has been designated by FDA as an orphan product for the proposed indication, a statement of that fact will suffice. Diagnostic tests and vaccines will qualify only if the population of intended use is fewer than 200,000 individuals in the United States.

3. The number assigned to the IND/IDE for the proposed study should appear on the face page of the application with the title of the project. Only medical foods that do not require premarket approval are exempt from this requirement. The IND/IDE must be in active status and in compliance with all regulatory requirements of FDA at the time of submission of the application. In order to meet this requirement, the original IND/IDE application, pertinent amendments, and the protocol for the proposed study must have been submitted to FDA a minimum of 30 days prior to the due date of the grant application. Studies of already approved products, evaluating new orphan indications, must also have an active IND. Exempt IND's must have their status changed to active to be eligible for this program. If the sponsor of the IND/IDE is other than the principal investigator listed on the application, a letter from the sponsor verifying access to the IND/IDE is required, and both the identity of the application's principal investigator and the study protocol must have been submitted to the IND/IDE.

4. The requested budget should be within the limits (either $100,000 in direct costs for up to 3 years for any phase study, or $200,000 in direct costs for up to 3 years for phase 2 or 3 studies) as stated in this RFA.

5. Consent and/or assent forms, and any additional information to be given to a subject, should be included in the grant application.

6. All applicants should follow guidelines specified in the PHS 398 Grant Application kit.

*C. Scientific/Technical Review Criteria*

The ad hoc expert panel will provide the first level of review. The application will be judged on the following scientific and technical merit criteria:

1. The soundness of the rationale for the proposed study;

2. The quality and appropriateness of the study design to include the rationale for the statistical procedures;

3. The statistical justification for the number of patients chosen for the trial, based on the proposed outcome measures and the appropriateness of the statistical procedures to be used in analysis of the results;

4. The adequacy of the evidence that the proposed number of eligible subjects can be recruited in the requested timeframe;

5. The qualifications of the investigator and support staff, and the resources available to them;

6. The evidence that a sufficient quantity of the product is available to the applicant in the form needed for the investigation. A current letter from the supplier as an appendix will be acceptable;

7. The adequacy of the justification for the request for financial support;

8. The adequacy of plans for complying with regulations for protection of human subjects; and

9. The ability of the applicant to complete the proposed study within its budget and within time limitations stated in this RFA.

The priority score will be based on the scientific/technical review criteria in section V.C. of this document. In addition, the reviewers may advise the program staff concerning the appropriateness of the proposal to the goals of the OPD Grant Program described in section I. (Program Research Goals) of this document.

*D. Award Criteria*

Resources for this program are limited. Therefore, should two or more applications be received and approved by FDA which propose duplicative or

very similar studies, FDA will support only the study with the best score.

VI. Submission Requirements

The original and five copies of the completed Grant Application Form PHS 398 (Rev. 5/95) or the original and two copies of the PHS 5161 (Rev. 7/92) for State and local governments, with copies of the appendices for each of the copies, should be delivered to Robert L. Robins (address above). State and local governments may choose to use the PHS 398 application form in place of the PHS 5161. Application receipt dates are October 15, 1996, and March 15, 1997. If the receipt date falls on a weekend, it will be extended to Monday; if the date falls on a holiday, it will be extended to the following workday. No supplemental or addendum material will be accepted after the receipt date. Evidence of final IRB approval will be accepted for the file after the receipt date.

The outside of the mailing package and item 2 of the application face page should be labeled, ''Response to RFA FDA OP–97–1''

If an application for the same study was submitted in response to the previous RFA, a submission in response to this RFA will be considered a request to withdraw the previous application. Applications originally submitted for the October closing date will also be administratively withdrawn, if resubmitted the following March. Resubmissions are treated as new applications; therefore, the applicant may wish to include previous summary statements from past reviews.

VII. Method of Application

*A. Submission Instructions*

Applications will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before the established receipt dates.

Applications will be considered received on time if sent or mailed on or before the receipt dates as evidenced by a legible U.S. Postal Service dated postmark or a legible date receipt from a commercial carrier, unless they arrive too late for orderly processing. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications not received on time will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office.)

*B. Format for Application*

Submission of the application must be on Grant Application Form PHS 398 (Rev. 5/95). All ''General Instructions'' and ''Specific Instructions'' in the application kit should be followed with the exception of the receipt dates and the mailing label address. Do not send applications to the Division of Research Grants, NIH. Applications from State and local governments may be submitted on Form PHS 5161 (Rev. 7/92) or Form PHS 398 (Rev. 5/95).

The face page of the application should reflect RFA–FDA–OP–97–1. The title of the proposed study should include the name of the product and the disease/disorder to be studied along with the IND/IDE number.

Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (21 CFR 20.61).

Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the PHS to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

*C. Legend*

Unless disclosure is required by the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application which have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

Dated: May 29, 1996.

William K. Hubbard,

*Associate Commissioner for Policy Coordination.*

[FR Doc. 96–14234 Filed 6–5–96; 8:45 am]

**BILLING CODE 4160–01–F**

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**[Docket No. 96N–0162]**

## Review of the Calcium and Related Nutrient Needs of the U.S. Population; Announcement of Open Meetings and Request for Data

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the National Academy of Sciences (NAS), Institute of Medicine (IOM), and Food and Nutrition Board (FNB) will begin a review of data on calcium intakes in the U.S. population and data on calcium metabolism in humans throughout their lives. This review will also include the metabolism of related nutrients (such as vitamin D, magnesium, phosphorus, and fluoride) and of nonnutrient components of foods (such as phytosterols and fiber) as they relate to bioavailability of calcium. Reviews will also be conducted to determine upper safe levels of intake that will diminish the potential risk of adverse effects. This review by NAS/IOM/FNB was requested by the Government, and it is intended to provide FDA and the National Institutes of Health (NIH), and the National Heart, Lung, and Blood Institute (NHLBI) with an up-to-date review of the needs of the American public for calcium and related nutrients. To assist in the preparation of its scientific report, NAS/IOM/FNB is inviting the submission of scientific data and information on this topic. In addition, FDA is announcing that NAS/IOM/FNB will provide an opportunity for oral presentations at two open meetings on the review of calcium and related nutrient needs of the U.S. population.

**DATES:** The first meeting will be held on July 9 and 10, 1996, 8:30 a.m. to 5:30 p.m. Submit an abstract with references to the FNB by June 17, 1996, to be considered for a 3-minute presentation to the panel. The second meeting will be held on July 15 and 16, 1996, 8:30 a.m to 5:30 p.m. Submit an abstract with references to the FNB by June 24, 1996, to be considered for a 3-minute presentation to the panel.

**ADDRESSES:** The meetings will be held at the National Academy of Sciences Bldg., Auditorium, 2101 Constitution Ave. NW., Washington, DC 20418. Submit written requests to make oral presentations of scientific data, information, and views at the open meetings to Sandra A. Schlicker, Food and Nutrition Board, Institute of Medicine, National Academy of Sciences Bldg., 2101 Constitution Ave. NW., rm. 3046, Washington, DC 20418, 202–334–1383, and to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of the scientific data, information, and views should be submitted to each office.

**FOR FURTHER INFORMATION CONTACT:** James T. Tanner, Center for Food Safety

and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., rm. 2804, Washington, DC 20204, 202–205–4168.

**SUPPLEMENTARY INFORMATION:** FDA has a contract with NHLBI to provide partial support of the NAS project entitled ''Calcium and Related Nutrients: Needs of Americans.'' Recent research and data have suggested that calcium intakes may be inadequate to meet the needs of many population groups in the United States, particularly with regard to the calcium intake during adolescence and young adulthood. However, controversy exists regarding what the optimal intake should be for calcium and related nutrients (such as vitamin D, magnesium, phosphorus, and fluoride) in order to prevent deficiency states (such as osteomalacia and rickets) while at the same time reducing the risk of degenerative diseases (such as osteoporosis) and also taking into account the potential effects of chronic ingestion of lower levels of intake during some life stages.

In response to recent suggestions that calcium requirements of healthy Americans are greater than previous estimates, the NAS/IOM is undertaking a study to review both the scientific literature on calcium metabolism in humans throughout their lives and also available data on calcium intakes by the U.S. population. The analysis also will include a review of the requirements for the related nutrients, vitamin D, magnesium, phosphorus, and fluoride. The impact of these nutrients and of other nonnutrient components of foods (such as phytosterols, fiber) on bioavailability of calcium will also be evaluated.

The study also will review existing data and will develop estimates of dietary intake levels that are compatible with good nutrition throughout the life cycle, which may result in decreasing risk of chronic disease. In addition, reviews will be conducted to determine upper safe levels of intake that will diminish the potential risk of adverse effects.

On July 9 and 10, 1996, a meeting to solicit scientific opinion on the functional indicators of calcium, phosphorus, magnesium, fluoride, and vitamin D status for each stage of the life span will be held. This meeting will be held by the panel on calcium and related nutrients, a subunit of the standing committee on the Scientific Evaluation of Dietary Reference Intakes, a committee of the FNB of the IOM. Speakers have been invited to present their views on appropriate measures to ensure adequate intake of these nutrients. In addition, interested individuals and organizations may present their perspectives regarding the determination of dietary reference intakes during the open forum session of the meeting. In order to be considered for a 3-minute presentation to the panel, an abstract with references must be submitted to the FNB by June 24, 1996. Interested parties should contact Sandra A. Schlicker (address above) for further information.

On July 15 and 16, 1996, a meeting to solicit scientific opinion on criteria to evaluate risk assessment data in developing a model for establishing maximum levels of nutrient intake compatible with low risk of adverse effects will be held. This meeting will be held by the Subcommittee on Upper Reference Levels of Nutrients, a subunit of the Standing Committee on the Scientific Evaluation of Dietary Reference Intakes, a committee of the FNB of the IOM. Speakers have been invited to present their views on appropriate measures of adequacy for these nutrients. In addition, interested individuals and organizations may present their perspectives regarding the determination of dietary reference intakes during the open forum session of the meeting. In order to be considered for a 3-minute presentation to the panel, an abstract with references must be submitted to the FNB by June 17, 1996. Interested parties should contact Sandra A. Schlicker (address above) for further information. This study will provide guidance useful in the development of recommendations for requirements and upper safe limits of the topic nutrients.

Dated: May 29, 1996.

William K. Hubbard,

*Associate Commissioner for Policy Coordination.*

[FR Doc. 96–14137 Filed 6–5–96; 8:45 am]

**BILLING CODE 4160–01–F**

## Health Care Financing Administration

**[2728, R–142]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* End Stage Renal Disease Medical Evidence Report Medicare Entitlement and/or Patient Registration; *Form No.:* HCFA–2728; *Use:* This form captures the necessary medical information required to determine Medicare eligibility of an end stage renal disease claimant. It also captures the specific medical data required for research and policy decisions on this population as required by law. *Frequency:* Annually; *Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 60,000; *Total Annual Hours Requested:* 25,000.

2. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Information Collection Requirements Contained in BPD–393, Examination and Treatment for Emergency Medical Conditions and Women in Labor; *Form No.:* HCFA–R–142; *Use:* BPD–393 contains information collection requirements for hospitals that would seek to prevent them from inappropriately transferring individuals with emergency medical conditions, as mandated by Congress. HCFA will use this information to help assure compliance with this mandate. This information is not contained elsewhere in regulations. *Frequency:* On occasion; *Affected Public:* Individuals or households, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government; *Number of Respondents:* 7,000; *Total Annual Responses:* 7,000; *Total Annual Hours Requested:* 8,818,577.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to

the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 29, 1996.

Kathleen B. Larson,

*Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.*

[FR Doc. 96–14208 Filed 6–5–96; 8:45 am]

**BILLING CODE 4120–03–P**

## Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

National Health Service Corps (NHSC) Professional Training and Information Questionnaire (PTIQ)—The mission of the National Health Service Corps (NHSC) is to provide health professionals to those communities and populations located in federally designated health professional shortage areas (HPSAs) of greatest need. Through the NHSC Scholarship Program, health professions students receive scholarship support in return for a commitment to serve in a HPSA for a specified period of time. The NHSC will utilize the Professional Training and Information Questionnaire (PTIQ) to collect information from NHSC scholarship recipients on individual interests, family concerns, and assignment preferences which will be used in matching scholars to HPSAs with the greatest need for providers.

BURDEN ESTIMATES ARE AS FOLLOWS

| Type of respondent | Number of respondents | Responses per respondent | Hours per response | Total burden hours |
|---|---|---|---|---|
| Physicians | 200 | 1 | 0.50 | 100 |
| Nurse Practitioners, Physician Assistants, and Certified Nurse Midwives | 100 | 1 | 0.50 | 50 |

Estimated Total Annual Burden: 150 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 31, 1996.

J. Henry Montes,

*Associate Administrator for Policy Coordination.*

[FR Doc. 96–14136 Filed 6–5–96; 8:45 am]

**BILLING CODE 4160–15–U**

## Public Health Service

### National Toxicology Program; Fiscal Year 1995 Annual Plan

The National Toxicology Program (NTP) announces the availability of the NTP Annual Plan for Fiscal Year 1995, solicits comments on it, and urges all interested persons to propose chemicals for possible toxicological evaluation.

The seventeenth edition consists of two parts, First, the NTP Annual Plan for Fiscal Year 1995 describes FY 1995 NTP plans in research, applied studies, methods development and validation efforts, as well as resources and FY 1994 program accomplishments. Second, the Review of Current DHHS, DOE, and EPA Research related to Toxicology lists chemicals being studied by the various DHHS agencies, the Department of Energy, and the Environmental Protection Agency, and describes toxicology research and toxicology methods currently being developed by these agencies.

Background

The National Toxicology Program (NTP) was established within the Public Health Service of the Department of Health and Human Services (DHHS) in November 1978. The continuing broad goals of the NTP are to coordinate and strengthen DHHS basic and applied toxicology research and methods development and validation, and to provide toxicological information for use by health research and regulatory agencies and others in protecting the public health. Overall objectives are to:

- Broaden the spectrum of toxicological information obtained on selected chemicals;
- Develop and validate more sensitive and more specific test methods;
- Develop improved stategies for generating scientific data that strengthen the scientific foundation for risk assessments; and
- Communicate Program plans and results to government agencies, the medical and scientific communities, and the public.

The NTP coordinates selected toxicology activities of the National Institute of Environmental Health Sciences, National Institutes of Health; the National Center for Toxicological Research, Food and Drug Administration; and the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention. The Director of the NTP is also the Director of the National Institute of Environmental Health Sciences.

Primary program oversight is provided by the NTP Executive Committee, which links DHHS health research institutes and centers with Federal health regulatory agencies to ensure that the basic and applied toxicology research and development activities are responsive to regulatory and public health needs. Agencies represented on the Executive Committee are:

- Agency for Toxic Substances and Disease Registry
- Consumer Product Safety Commission
- Environmental Protection Agency
- Food and Drug Administration
- National Cancer Institute
- National Institute for Occupational Safety and Health

- National Institute of Environmental Health Sciences
- National Institutes of Health
- Occupational Safety and Health Administration

The NTP Board of Scientific Counselors provides scientific oversight, advising the NTP Director and the NTP Executive Committee on scientific content and evaluating the scientific merit and overall quality of NTP science. The members (listed in the 1995 Annual Plan) are appointed by the Secretary, DHHS.

Scientific activities are divided into several major program areas: carcinogenesis; genetic toxicology; mechanism-based toxicology; alternative methods; and toxicology. The latter area covers activities in immunologic, neurobehavioral, and respiratory toxicologies, as well as reproductive and developmental toxicology. There are special projects on studying toxicities of AIDS therapeutics and toxicity of Superfund chemicals. Program and project leaders, along with addresses and telephone numbers, are identified in the 1995 Annual Plan.

The chemical nomination and selection process is integral to the effective long-term operation of the NTP with respect to toxicological studies of chemicals using modern techniques and to the development and validation of new assay methods. Thus, the NTP welcomes nominations of chemicals for study from everyone. At a minimum, the nominator should give the name of the chemical or substance, the rationale for the nomination, and recommend the type study(s) to be considered. In addition, it is desirable, but not essential, to supplement each nomination with the following information, if known:

I. Chemical and physical properties.
II. Production, use, occurrence, and analysis data.
III. Toxicology information.
IV. Chemical disposition and structure-activity relationships.
V. Planned or ongoing or recently completed toxicological and environmental studies.

To receive the NTP Annual Plan for Fiscal Year 1995, and the FY 1995 Review of Current DHHS, DOE, and EPA Research Related to Toxicology, please write or telephone the NTP Central Data Management, P.O. Box 12233, MD E1–02, Research Triangle Park, N.C. 27709, (telephone 919/541–3419).

Comments on the FY 1995 NTP Annual Plan are requested and welcome. These should be addressed to Dr. Larry Hart, National Toxicology Program, P.O. Box 12233, Research Triangle Park, N.C. 27709, (telephone 919/541–3971).

Dated: May 21, 1996.

Kenneth Olden,

*Director, National Toxicology Program.*

[FR Doc. 96–14150 Filed 6–5–96; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–3917–N–90]**

### Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due: August 5, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Barbara Hunter, Telephone number (202) 708–4162 (this is not a toll-free number) for copies of the proposed forms and other available documents.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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 agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Revised method for calculating Section 236 Excess Income.

*OMB Control Number:* 2502–0086.

*Description of the need for the information and proposed use:* The Department's Fiscal year 1996 Budget amended Section 236(g) of the National Housing Act to require that Excess Income (rent collected in excess of Basic Rent) be computed on a unit-by-unit basis. The Department is implementing this requirement effective with rent collections for the month of June, 1996. The change in the way Excess Income is computed will result in increased cash remittances to HUD beginning with Excess Income that is required to be remitted by July 10, 1996, for the June 1996 rent collections.

*Agency form numbers:* HUD 93104.

*Members of affected public:* All Section 236 project mortgagors.

An estimation of the total numbers of hours needed to prepare the information collection is 22,642, the number of respondents is 3,126, frequency of response is 1, and the hours of response is 7,243.

*Status of the proposed information collection:* Reinstatement, without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 31, 1996.

Nicolas P. Retsinas,

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 96–14190 Filed 6–5–96; 8:45 am]

BILLING CODE 4210–27–M

**[Docket No. FR–3917–N–89]**

### Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Notice of Proposed Information Collection for Public Comment

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is

soliciting public comments on the subject proposal.

**DATES:** *Comments due:* August 5, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Barbara Hunter, Telephone number (202) 708–4162 (this is not a toll-free number) for copies of the proposed forms and other available documents.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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 agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* NOFA for the Federally Assisted Low-Income Housing Drug Elimination Grant—(FR–3235).

*OMB Control Number:* 2502–0476.

*Description of the need for the information and proposed use:* This information collection is required in connection with HUD's proposed issuance of a Notice of Funding Availability (NOFA) that will announce the availability of $10,000,000 in grant funds authorized under Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et seq.), as amended by Section 581 of the National Affordable Housing Act of 1990 (NAHA) approved November 28, 1990, Public Law 101–625. The requirements of the Notice of Funding Availability will provide guidance for applicants that will implement the funding while the rulemaking is pending. Agency form numbers: SF–424, 424A, LLL, HUD–50070 and 2880.

*Members of affected public:* Project Owners.

An estimation of the total numbers of hours needed to prepare the information collection is 40,000, the number of respondents is 1,000, frequency of response is 1, and the hours of response is 40.

*Status of the proposed information collection:* Reinstatement without change.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 30, 1996.

Nicolas P. Retsinas,

*A/S Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 96–14191 Filed 6–5–96; 8:45 am]

**BILLING CODE 4210–27–M**

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**[Docket No. FR–3917–N–91]**

## Office of Administration; Submission for OMB Review: Comment Request

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: July 8, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 29, 1996.

David S. Cristy,

*Acting Director, Information Resources, Management Policy and Management Division.*

Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Request for Release of Documents/Automated Clearing House (ACH) Debit Authorization.

*Office:* Government National Mortgage Association.

*OMB Approval Number:* 2503–0017.

*Description of the Need for the Information and its Proposed Use:* The documents provide for the release of mortgage documents held by the pool custodian, and show evidence that the issuers have established a central account with a designated custodian in connection with the issuance of mortgage-backed securities.

*Form Number:* HUD–11708, 11709, 11709–A, 11715, and 11720.

*Respondents:* Business or Other For-Profit and the Federal Government.

*Frequency of Submission:* On Occasion, Annually, and Recordkeeping.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Information Collection | 900 | | 200 | | .017 | | 4,621 |

*Total Estimated Burden Hours:* 4,621.

*Status:* Reinstatement, with changes.

*Contact:* Sonya K. Suarez, HUD, (202) 708–2884 X782; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: May 29, 1996.

[FR Doc. 96–14187 Filed 6–5–96; 8:45 am]

**BILLING CODE 4210–01–M**

**[Docket No. FR–3917–N–92]**

## Office of Administration; Submission for OMB Review; Comment Request

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: July 8, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days form the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 29, 1996.

David S. Cristy,

*Acting Director, Information Resources Management Policy and Management Division.*

Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Commitment to Guarantee Mortgage-Backed Securities.

*Office:* Government National Mortgage Association.

*OMB Approval Number:* 2503–0001.

*Description of the Need for the Information and its Proposed Use:* The form will be used by applicants to apply for GNMA commitment authority to guarantee mortgage-backed securities and to request the assignment of a pool number.

*Form Number:* HUD–11704.

*Respondents:* Business or Other For-Profit and the Federal Government.

*Frequency of Submission:* Quarterly and Recordkeeping.

*Reporting Burden*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| HUD–11704 | 650 | | 4 | | .25 | | 650 |

*Total Estimated Burden Hours:* 650.

*Status:* Reinstatement, without changes.

*Contact:* Sonya K. Suarez, HUD, (202) 708–2884 x782; Joseph F. Lackey, Jr., OMB. (202) 395–7316.

Dated: May 29, 1996.

[FR Doc. 96–14189 Filed 6–5–96; 8:45 am]

**BILLING CODE 4210–01–M**

**[Docket No. FR–4046–N–002]**

## Office of Public and Indian Housing; Notice of Submission of Proposed Information Collection to OMB

**AGENCY:** Office of Public and Indian Housing—HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting pubic comments on the subject proposal.

**DATES:** The due date for comments is: June 10, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within four (4) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** This Notice informs the pubic that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with

respect to a proposed ''Application Kit for the Drug Elimination Technical Assistance Program.'' HUD seeks to implement this initiative as soon as possible.

Under the Drug Elimination Technical Assistance Program, HUD will provide technical assistance to a successful application through a consultant hired by HUD. Applications will be accepted from housing authorities (HAs), qualified resident counsels (RCs) and resident management corporations (RMCs).

HUD intends that the short-term technical assistance will aid these entities in assessing their drug problems in the public housing community; in implementing appropriate anti-drug-related practices and programs; and in improving overall agency management, operations and programming so that these entities can more effectively respond to drug problems in their targeted public housing developments.

The Department has submitted the proposal for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Department has requested emergency clearance of the collection of information, as described below, with approval being sought by June 3, 1996:

(1) Title of the information collection proposal: Application Kit—Drug Elimination Technical Assistance.

(2) Summary of the collection of information: Each respondent requesting Drug Elimination Technical Assistance will be required to submit current information, as listed below:

1. An explanation of what type of drug-related crime problem they are experiencing, what type of assistance they are requesting to address the problem, and how the requested assistance will fit into their existing drug elimination strategy, or assist them in developing a strategy.

2. Signatures of the HA Executive Director and a resident leader.

3. Form HUD–2880.

Each respondent requesting to provide consulting services through this program will be required to submit the following:

4. Completed Consultant Resource Inventory Questionnaire.

5. Resume.

6. Documentation of daily rate.

(3) Description of the need for the information and its proposed use:

To appropriately determine which applicants should be provided technical assistance, certain information is required. The criteria include: what type of drug-related crime problem they are experiencing, what type of assistance they are requesting to address the problem, and how the requested assistance will fit into their existing drug elimination strategy, or assist them in developing a strategy.

To determine which consultants will be appropriate for specific requests, and to justify their reimbursement by the Department, certain information is required. This includes the Consultant Resource Inventory Questionnaire, resume, and documentation of daily rate.

The estimated number of respondents is 400. The proposed frequency of the response to the collection of information is one-time. If an applicant for technical assistance wishes more than one opportunity for technical assistance they must complete a separate application each time. Consultants providing TA must submit information only once.

(5) Estimate of the total reporting and record keeping burden that will result from the collection of information:

*Reporting Burden:*

*Number of respondents:* 400.

*Total burden hours* (@ 82 hour per response):

*Total Estimated Burden Hours:* 32,800.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 29, 1996.

David S. Cristy,

*Director, IRM Policy and Management Division.*

[FR Doc. 96–14189 Filed 6–5–96; 8:45 am]

BILLING CODE 4210–33–M

## DEPARTMENT OF THE INTERIOR

### Office of the Assistant Secretary—Water and Science

### Notice of Intent To Negotiate an Agreement Between the Central Utah Water Conservancy District and Department of the Interior for Implementation of the Salt Lake County Artificial Ground Water Recharge/Conjunctive Management System of the Central Utah Project, Utah

**AGENCY:** Office of the Assistant Secretary-Water and Science, Department of the Interior.

**ACTION:** Notice of intent to negotiate an agreement between the Central Utah Water Conservancy District (CUWCD) and the Department of the Interior (DOI) for implementation of the Salt Lake County Artificial Ground water Recharge/Conjunctive Management System (System) of the Central Utah Project, Utah.

**SUMMARY:** Public Law 102–575, Section 202(a)(2) authorizes ''$10,000,000 for a feasibility study and development, with public involvement, by the Utah Division of Water Resources of systems to allow ground water recharge, management, and the conjunctive use of surface water resources with ground water resources in Salt Lake, Utah, Davis, Wasatch, and Weber Counties, Utah.'' The Salt Lake County Water Conservancy District and Utah Division of Water Resources have submitted a proposal to construct a System to allow ground water recharge, management, and the conjunctive use of surface water resources with ground water resources in Salt Lake County. Pursuant to the Compliance and Cost Share Agreements between DOI and CUWCD, dated August 11, 1993, an agreement between DOI and CUWCD is required to allow Section 202(a)(2) funds to be expended for the proposed System. A negotiated agreement between DOI and CUWCD will meet this requirement.

**DATES:** Dates for public negotiation sessions will be announced in local newspapers.

**FOR FURTHER INFORMATION:** Additional information on matters related to this Federal Register notice can be obtained at the address and telephone number set forth below: Mr. Reed Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, Telephone: (801) 379–1237, Internet: rmurray@uc.usbr.gov

Dated: May 31, 1996.

Ronald Johnston,

*CUP Program Director, Department of the Interior.*

[FR Doc. 96–14217 Filed 6–5–96; 8:45 am]

BILLING CODE 4310–RK–P

### Bureau of Land Management

**[CA–920–06–1330–00]**

### Klamath and Modoc National Forests, CA; Environmental Impact Statement

**AGENCY:** U.S. Department of Interior, Bureau of Land Management, Alturas Resource Area.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement for a Plan of Utilization for a proposed geothermal power plant, ancillary facilities, and transmission line on the Klamath and Modoc National Forests in Siskiyou and Modoc Counties, California.

**SUMMARY:** Notice is given that the Bureau of Land Management (BLM), U.S. Department of Agriculture, Forest Service (USFS), U.S. Department of Energy, Bonneville Power Administration (BPA), and Siskiyou County Air Pollution Control District (APCD) will jointly prepare an Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for a proposed a 49.9 megawatt (MW) (gross) geothermal electric power plant with associated facilities and operations, and a 24-mile 230-kilovolt (kV) transmission line. This proposed action (known as the Fourmile Hill Geothermal Development Project) would be located on the Klamath and Modoc National Forests in northeastern California. BPA will participate in the EIS/EIR process as a cooperating agency to analyze potential effects.

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA), and 42 U.S.C. 4321 et seq., the BLM, USFS, BPA, and Siskiyou County APCD will be directing a third-party contractor in the preparation of the EIS/ EIR on the impacts of the proposed action. Comments are being requested to help identify significant issues or concerns related to the proposed action, determine the scope of issues, identify and refine alternatives to the proposed action.

**DATES:** Federal, state, and local agencies and the public are invited to participate in the scoping process for the EIS/EIR. Scoping meetings to encourage and facilitate public participation will be held in Yreka (June 25, 1996), Klamath Falls (June 26), and Alturas (June 27). Times and locations of the scoping meetings will be announced in the local news media.

**ADDRESS FOR COMMENTS:** In addition to the public scoping meetings, the BLM is inviting written comments and suggestions on the proposed action and the scope of the analysis. Written comments or requests to be added to the project mailing list should be submitted by July 8, 1996. Written comments should be addressed to Mr. Randall Sharp, USFS/BLM, Fourmile Hill Geothermal Development Project EIS/ EIR Coordinator, 800 W. 12th Street, Alturas, CA 96101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy Sharp (916) 233–5811.

**SUPPLEMENTARY INFORMATION:** Calpine Corporation submitted a Plan of Utilization (POU) to the BLM for constructing, operating, and maintaining a 49.9 MW (gross), dual flash geothermal power plant, with associated geothermal production and injection wells, well pads, roads, interconnected geothermal fluid pipelines, and an accompanying 24-mile 230 kV transmission line. This project, known as the Fourmile Hill Geothermal Development Project, would be located at the Glass Mountain Known Geothermal Resource Area (KGRA) on the Klamath and Modoc National Forests.

The proposed geothermal power plant, well pads, and fluid pipelines would be located within Federal geothermal leases CA21924, CA21925, and CA21926, all within the Glass Mountain KGRA. Leases CA21924 and CA21926 are located on the Klamath National Forest, while lease CA21925 is located on the Modoc National Forest. The proposed power plant site would be located in Section 28 within a six-section area known as the Fourmile Hill project area, located in Sections 21, 22, 23, 28, 29, and 30, Township 44 North, Range 3 East, MDB&M, Siskiyou County, California. The planned period of commercial operation for the proposed action is 45 years.

The proposed action would involve production of geothermal fluids (hot water and steam) from an underground reservoir. These fluids would be produced from 9 to 11 two-phase production wells located at five proposed production well pad sites (well pads 88–28, 84–28, 56–28, 26–28, and 18–28). The fluids would be transported via surface pipelines to the proposed dual flash geothermal power plant, where the steam would be directed to two steam turbine-driven generators. Spent brine and condensate would be pumped through surface pipelines to the three proposed injection well pads (well pads 87–29, 13–28, and 67–21) for injection to the subsurface geothermal reservoir. There would be one injection well located at each injection well pad.

Each of the production and injection well pads would occupy approximately 2.5 acres, for a total well pad area of about 20 acres. The power plant site would occupy approximately 3.0 acres. There would be a total of 4.25 miles of surface pipelines (1.5 miles of production lines, and 2.75 miles of injection lines), and about 2.5 miles of new roads associated with the power plant and well pads.

The proposed action would also include development of a transmission line that would extend from the proposed geothermal power plant in an easterly direction for approximately 24 miles to a proposed intertie station along the BPA Malin-Warner transmission line. The Malin-Warner line is a 230-kV system that parallels Highway 139. The proposed transmission line would be constructed using H-frame wood poles with steel structures used at certain locations. The transmission line would be located primarily on the Modoc National Forest, with only a small portion of the line near the power plant site being located on the Klamath National Forest. Right-of-way width would be approximately 125 feet along the constructed length of the transmission line. Construction of access roads for installation of structures and maintenance would be required along portions of the right-of-way.

Alternatives thus far identified for evaluation in the EIS/EIR are: (1) the proposed action, (2) the no action (the consequences of not developing the project), and (3) alternate transmission line route alternatives. The principal issues identified thus far for consideration in the EIS/EIR include potential effects to listed wildlife species, Tribal concerns, potential recreation conflicts, and potential visual impacts. The EIS/EIR will also address other issues such as geology, geothermal resources, hydrology, cultural resources, vegetation, air quality, noise, land use, plans and policies, transportation, human health and safety, socioeconomics, cumulative impacts, as well as any issues raised during the scoping process.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision for the proposed action are invited to participate in the scoping process. Input and comments received during this process will be considered during preparation of the EIS/EIR.

Dated: May 29, 1996.

Rich Burns,

*Alturas Resource Area Manager.*

[FR Doc. 96–14216 Filed 6–5–96; 8:45 am]

**BILLING CODE 4310–40–P**

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**[CO–050–1020–00]**

## Front Range Resource Advisory Council (Colorado) Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on June 18, 1996 in Canon City, Colorado.

The meeting is scheduled to begin at 9 a.m. at BLM's Canon City District Office, 3170 East Main Street, Canon

City, Colorado. The agenda will include: review of Rangeland Standard and Guidelines, a discussion of BLM issues in the District and setting priorities for future meetings. All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

**DATES:** The meeting is scheduled for Tuesday, June 18 from 9 a.m. to 4 p.m.

**ADDRESSES:** Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City, Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

**FOR FURTHER INFORMATION CONTACT:** Ken Smith at (719) 269–8553.

**SUPPLEMENTARY INFORMATION:** Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Kenneth Smith,

*Acting District Manager.*

[FR Doc. 96–14271 Filed 6–5–96; 8:45 am]

**BILLING CODE 4310–JB–P**

**[AZ–010–2740; A–29118]**

## Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to the Mohave County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). Mohave County proposes to use the lands for a county road department maintenance facility and solid waste collection site.

Gila and Salt River Meridian

T. 41N., R. 15 W.,
Sec. 33, south ½ of lot 4, north ½ of lot 5.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Arizona Strip District, Shivwits Resource Area, 345 East Riverside Drive, St. George, UT 84790.

Upon publication of this notice in the Federal Register, the lands will be segregated from all forms of appropriation under the public land laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the Federal Register, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Arizona Strip District Office, 390 North 3050 East, St. George, UT 84770.

**SUPPLEMENTARY INFORMATION:** This classification terminates Classification AZ–010–4212–11; AZA–24627, published in the Federal Register, Vol. 55, No. 207, Thursday, October 5, 1990, as far as it relates to the above described lands.

Roger G. Taylor,

*District Manager.*

[FR Doc. 96–14210 Filed 6–5–96; 8:45 am]

**BILLING CODE 4310–32–M**

## Fish and Wildlife Service

## Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–815605

*Applicant:* Michael Brown, The Woodlands, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–815489

*Applicant:* Marshall Field VI, Salt Point, NY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygarcus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–815297

*Applicant:* Jay Wagner, Columbus, OH.

The applicant requests a permit to import captive born Jamaican boas (*Epicrates subflavus*) from the Granby Zoo, Canada, for the purpose of enhancement of the survival of the species through captive propagation.

PRT–815192

*Applicant:* Kentucky Down Under/Kentucky Caverns, Horse Cave, KY.

The applicant request a permit to import captive born Brush-tailed rat kangaroo (*Bettongia penicillata*) from Metro Toronto Zoo, Ontario, Canada for the purpose of enhancement of the survival of the species through captive propagation.

PRT–815193

*Applicant:* Robert Sutton, Northfield, OH.

The applicant request a permit to import captive born Fiji banded iguana (*Brachylophus fasciatus*) from Manfred Reisinger, Ergolding, Germany, for the purpose of enhancement of the survival of the species through captive propagation and research.

PRT–815482

*Applicant:* Randy Miller, Acton, CA.

The applicant requests a permit to export and reimport captive-born tigers (*Panthera tigris*), leopards (*Panthera pardus*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–810755

*Applicant: Patricia Zerbini, Williston, FL.*

The applicant requests a permit to reexport and reimport captive born Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notificatation covers activities conducted by the applicant over a three year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the*

*requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 31, 1996.

Caroline Anderson,

*Acting Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 96–14151 Filed 6–5–96; 8:45 am]

**BILLING CODE 4310–55–P**

## Letters of Authorization To Take Marine Mammals

**ACTION:** Notice of issuance of letters of authorization to take marine mammals incidental to oil and gas industry activities.

**SUMMARY:** In accordance with Section 101(a)(5) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27(f)(3)), notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

| Company | Activity | Date issued |
|---|---|---|
| BP Exploration (Alaska) Inc., Northstar Unit. | Exploration .... | May 15, 1995. |

**FOR FURTHER INFORMATION CONTACT:**

John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 271–3810.

**SUPPLEMENTARY INFORMATION:** Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities'' (58 FR 60402; November 16, 1993).

Dated: May 24, 1996.

Robyn Thorson,

*Acting Regional Director.*

[FR Doc. 96–14206 Filed 6–5–96; 8:45 am]

**BILLING CODE 4310–55–M**

## National Park Service

## Draft General Management Plan, Manhattan Sites, New York; Notice of Availability and Public Comment Period

Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announced the release of the Draft Manhattan Sites General Management Plan/ Environmental Impact Statement, New York in the Federal Register on April 8, 1996.

The Draft General Management Plan/ Environmental Impact Statement was to be on public review from April 15, 1996 to June 14, 1996. Please be advised that the review period has been extended to July 1, 1996.

The National Park Service will continue to conduct public meeting(s) during the extended period and will advertise the meeting(s) in local media outlets. The purpose of these meetings is to discuss the draft plan and its environmental impact statement. Verbal and written comments on the plan/EIS will be accepted until July 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Joseph T. Avery, Manhattan Sites, 26 Wall Street, New York, NY 10005 Telephone (212) 825–6990.

Dated: May 31, 1996.

Joseph T. Avery,

*Superintendent.*

[FR Doc. 96–14233 Filed 6–5–96; 8:45 am]

**BILLING CODE 4310–70–M**

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

## Agency for International Development

## Notice of Public Information Collections Submitted to OMB for Review

**SUMMARY:** U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503. Copies of submission may be obtained by calling (202) 736–4743.

**SUPPLEMENTARY INFORMATION:**

*OMB Number:* 0412–0004.
*Form Number:* USAID 11.
*Title:* Application for Approval of Commodity Eligibility.

*Summary:* USAID provides loans and grants to some developing countries in the form of Commodity Import Programs (CIPS). These funds are made available to host countries to be allocated to the public and private sectors for purchasing various commodities from the U.S., or in some cases, from other developing countries. In accordance with Section 604(f) of the Foreign Assistance Act of 1961, as amended, USAID may finance only those commodities which are determined eligible and suitable in accordance with various statutory requirements and agency policies. Using the Application for Approval of Commodity Eligibility (Form USAID 11), the supplier certifies to USAID information about the commodities being supplied, as required in section 604(f), so that AID may determine eligibility.

*Description of Respondents:* Business or other for profit.

*Number of respondents:* 365 (twice a year).

*Average hours per response:* half hour (½ hour).

*Total Annual Responses:* 730.

Dated: May 28, 1996.

Genease E. Pettigrew,

*Chief, Information Support Services Division, Office of Administrative Services, Bureau of Management.*

[FR Doc. 96–14128 Filed 6–5–96; 8:45 am]

**BILLING CODE 6116–01–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–387]**

## Certain Self-Powered Fiber Optic Modems; Notice of Change of Commission Investigative Attorney

Notice is hereby given that, as of this date, Steven A. Glazer, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-captioned investigation instead of John M. Whealan, Esq.

Dated: May 30, 1996.

Lynn I. Levine,

*Director, Office of Unfair Import Investigations.*

[FR Doc. 96–14135 Filed 6–5–96; 8:45 am]

**BILLING CODE 7020–02–P**

**[Investigation No. 731–TA–747 (Preliminary)**

## Fresh Tomatoes From Mexico; Import Investigation

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Mexico of fresh chilled tomatoes, provided for in subheadings 0702.00.20, 0702.00.40, 0702.00.60, and 9906.07.01 through 9906.07.09 of the Harmonized Tariff Schedule of the United States,[3] that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 1, 1996, a petition was filed by counsel on behalf of the Florida Tomato Growers Exchange, Orlando, FL, Florida Fruit and Vegetable Association, Orlando, FL, Florida Farm Bureau Federation, Gainesville, FL, South Carolina Tomato Association, Inc., Charleston, SC, Gadsden County Tomato Growers Association, Inc., Quincy, FL, Accomack County Farm Bureau, Accomack, VA, Florida Tomato Exchange, Orlando, FL, Bob Crawford, Commissioner of Agriculture, Florida Department of Agriculture and Consumer Services, Tallahassee, FL, and the Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers, with the Commission and Commerce. The petition alleges that an industry in the United States is materially injured or threatened with material injury by reason of less than fair value imports of fresh tomatoes from Mexico. Accordingly, effective April 1, 1996, the Commission instituted antidumping Investigation No. 731–TA–747 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of April 10, 1996 (61 FR 15968). The conference was held in Washington, DC, on April 22, 1996, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 16, 1996. The views of the Commission are contained in USITC Publication 2967 (May 1996), entitled Fresh Tomatoes from Mexico: Investigation No. 731–TA–747 (Preliminary).

By order of the Commission.

Issued: May 28, 1996.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 96–14134 Filed 6–5–96; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Nuzum not participating.

[3] For purposes of this investigation, fresh or chilled tomatoes are all fresh or chilled tomatoes (fresh tomatoes) except those which are grown for processing. Processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Further, such excluded imports of fresh tomatoes for processing are accompanied by an ''Importer's Exempt Commodity Form'' (FV–6) pursuant to 5 CFR 980.501(a)(2) and 980.212(1). Fresh tomatoes that are imported for cutting up, not further processed (e.g., tomatoes used in the preparation of fresh salsa or salad bars), and not accompanied by an FV–6 form are covered by the scope of the investigation.

## DEPARTMENT OF JUSTICE

### Antitrust Division

## United States v. Association of Family Practice Residency Directors; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and a Competitive Impact Statement have been filed with the United States District Court for the Western District of Missouri in *United States* v. *Association of Family Practice Residency Directors*, Civil No. 96–575–CV–W–2 (W.D. Mo., filed May 28, 1996).

The Complaint alleges that the defendant entered into an agreement with the purpose and effect of restraining competition, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, by limiting competition among family practice residency programs to employ family practice residents. The proposed Final Judgment enjoins the continuance or recurrence of this practice.

Public comment on the proposed Final Judgment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the Federal Register and filed with the Court. Comments should be directed to Gail Kursh, Chief; Health Care Task Force; United States Department of Justice, Antitrust Division, 325 Seventh Street, NW., Room 400; Washington, DC 20530 (telephone: 202/307–5799).

Rebecca P. Dick,

*Deputy Director of Operations.*

United States District Court for the Western District of Missouri Western Division

United States of America, Plaintiff, v. Association of Family Practice Residency Director, Defendant. Civil Action No.: 96–575–CV–W–2, Judge Gaitan.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the Western District of Missouri;

2. The parties consent that a Final Judgment in the form hereto attached may be filled and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the defendant and by filing that notice with the Court; and

3. The defendant agrees to be bound by the provisions of the proposed Final Judgment pending its approval by the Court. If the plaintiff withdraws its consent, of if the proposed Final Judgment is not entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

For Plaintiff United States of America:
Anne K. Bingaman,
*Assistant Attorney General.*
Joel I. Klein,
*Deputy Assistant Attorney General.*
Rebecca P. Dick,
*Deputy Director, Office of Operations.*
Gail Kursh,
*Chief, Health Care Task Force.*
Mark J. Botti,
*Attorney.*
William E. Berlin,
*Attorney, U.S. Department of Justice, Antitrust Division, Health Care Task Force, Room 450, Liberty Place Bldg., 325 Seventh Street, NW., Washington, DC 20530, (202) 307–0827.*
Alleen S. VanBebber,
*Deputy United States Attorney, Missouri Bar No. 41460, 1201 Walnut St., Suite 2300, Kansas City, Missouri 64106, (816) 426–3130.*
For Defendant Association of Family Practice Residency Directors:
James R. Hobbs,
*Wyrsch, Atwell, Mirakian, Lee & Hobbs, P.C., 1300 Mercantile Tower, 1101 Walnut, Kansas City, Missouri 64106–2122, (816) 221–0080.*

Final Judgment

Plaintiff, the United States of America, having filed its Complaint on May 28, 1996, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this final Judgment constituting any evidence against or an admission by any party regarding any issue of fact or law;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby ordered, adjudged, and decreed:

I

*Jurisdiction*

This Court has jurisdiction over the subject matter and each of the parties to this action. The Complaint states claims upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

*Definitions*

As used in this Final Judgment:

(A) ''AFPRD'' means the Association of Family Practice Residency Directors, each of its successors, divisions, parents, subsidiaries, and affiliates, each other person directly or indirectly, wholly or in part, owned or controlled by it, and each partnership or joint venture to which any of them is a party, and all of their directors, officers, and employees;

(B) ''Contracting with'' means to negotiate, offer, accept, execute, or enter into an employment contract or agreement;

(C) ''Current family practice residents'' means persons already enrolled in, committed to or employed by a family practice or other residency;

(D) ''Inducements'' means salary, bonuses (signing, retention or other), loan forgiveness of repayment, housing allowance or subsidy, transportation allowance or subsidy, moonlighting payment, permissible moonlighting when on-call, additional payment for required on-call activity, moving expenses, travel expenses, reimbursement for any expense in an amount which exceeds the actual receipted expense and any other employment benefit or incentive;

(E) ''The Match'' means the annual placement process conducted by the National Resident matching Program through which medical students and hospital residency programs select and are matched with their preferences;

(F) ''Person'' means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity; and

(G) ''Prespective family practice residents'' means medical students or other candidates for residency in a family practice program.

III

*Applicability*

This Final Judgment applies to AFPRD and to all other persons who receive actual notice of this Final Judgment by personal service or otherwise and then act or participate in active concert with defendant.

IV

*Prohibited Conduct*

Defendant is enjoined from:

(A) Directly or indirectly prohibiting or restraining any person offering a family practice residency program from:

(1) Competing to attract, obtain or retain the services of current or prospective family practice residents by offering or providing any or differing amounts, types, or combinations of inducements, including inducements offered or provided to current or prospective family practice residents in the same residency year;

(2) Offering or providing confidential or non-written terms and conditions of inducements to current or prospective family practice residents;

(3) Directly or indirectly soliciting, recruiting or contracting with current family practice residents of other residency programs; and

(4) Considering applications submitted by current family practice residents and contracting with those residents without the knowledge or approval of the program director of any other residency program;
(hereinafter ''practices identified in Section IV(A)'').

(B) Directly or indirectly adopting, disseminating, publishing, or seeking adherence to any code of ethics, rule, bylaw, resolution, policy, guideline, standard, manual, or policy statement that has the purpose or effect of prohibiting or restraining AFPRD members from engaging in any of the practices identified in Section IV(A) above, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to any policy of the AFPRD.

V

*Compliance Program*

Defendant is ordered to:

(A) Within sixty (60) days of the date of entry of this Final Judgment, amend its code of ethics, rules, bylaws, resolutions, policies, guidelines, standards, manuals, or policy statements, and specifically those provisions or parts of provisions located at Sections 2(B), 2(C), 2(E)(1), 2(E)(2), and 2(E)(3) of the ''AFPRD Guidelines on the Ethical Recruitment of Family Practice Residents,'' to comply with Section IV above, and provide a copy of the final amended guidelines to plaintiff;

(B) Send a copy of this Final Judgment, along with a written statement that there are no longer any AFPRD ethical guidelines or rules that state or imply that any of the practice identified in Section IV(A) above are, in themselves, unethical, unprofessional, or contrary to any policy of the AFPRD, regardless of anything defendant may have said about these practices in the past, to each current AFPRD member, within sixty (60) days from the date of entry of this Final Judgment, and thereafter sending annually such written statement to each current AFPRD member for a period of five (5) years after the date of entry of this Final Judgment;

(C) Send a copy of this Final Judgment to each new AFPRD member no later than ten (10) days after membership in the AFPRD is granted, and thereafter annually until five (5) years after the date of entry of this Final Judgment;

(D) Distribute within sixty (60) days from the entry of this Final Judgment, a

copy of the Final Judgment and Competitive Impact Statement to all directors and officers of defendant;

(E) Distribute in a timely manner a copy of the final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph V(D);

(F) Brief annually in writing or orally those persons designated in Paragraphs V (D) and (E) on the meaning and requirements of this Final Judgment and the antitrust laws, including penalties for violation thereof;

(G) Obtain from those persons designated in Paragraphs V (D) and (E) annual written certifications that they (1) have read, understand, and agree to abide by this Final Judgment, (2) understand that their noncompliance with this Final Judgment may result in conviction for criminal contempt of court and imprisonment and/or fine, and (3) have reported violations, if any, of this Final Judgment of which they are aware to counsel for defendant; and

(H) Maintain for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding this Final Judgment have been received.

VI

*Certifications*

(A) Within 75 days after entry of this Final Judgment, defendant shall certify to plaintiff that it has complied with the provisions of Sections V (A)–(B) above, and that it has made the distribution of the Final Judgment and Competitive Impact Statement as required by Section V(D); and

(B) For 10 years after the entry of this Final Judgment, on or before its anniversary date, defendant shall certify annually to plaintiff whether it has complied with the provisions of Sections V applicable to it.

VII

*Plaintiff's Access*

For the sole purpose of determining or securing compliance with this Final Judgment, and subject to any recognized privilege, authorized representatives of the United States Department of Justice, upon written request of the Assistant Attorney General in charge of the Antitrust Division, shall on reasonable notice be permitted:

(A) Access during regular business hours of defendant to inspect and copy all records and documents in the possession or under the control of defendant relating to any matters contained in this Final Judgment;

(B) To interview officers, directors, employees, and agents of defendant, who may have counsel present, concerning such matters; and

(C) To obtain written reports from defendant, under oath if requested, relating to any matters contained in this Final Judgment.

VIII

*Jurisdiction Retained*

This Court retains jurisdiction to enable any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX

*Expiration of Final Judgment*

This Final Judgment shall expire ten (10) years from the date of entry.

X

*Public Interest Determination*

Entry of this Final Judgment is in the public interest.

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United States District Judge

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) (''APPA''), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

*Nature and Purpose of the Proceeding*

On May 28, 1996, the United States filed a civil antitrust complaint alleging that defendant, the Association of Family Practice Residency Directors (''AFPRD''), and others entered into an agreement that restrained competition among family practice residency programs to employ family practice residents, and constituted a *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint seeks injunctive relief to enjoin continuance or recurrence of this violation.

The United States filed with the Complaint a proposed Final Judgment intended to resolve this matter. The Court's entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for any further proceedings that may be required to interpret, enforce, or modify the Judgment, or to punish violations of any of its provisions.

Plaintiff and the defendant have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA, unless prior to entry the plaintiff withdraws its consent. The proposed Final Judgment provides that it entry does not constitute any evidence against, or admission by, any party concerning any issue of fact or law.

The present proceeding is designed to ensure full compliance with the public notice and other requirements of the APPA. In the Stipulation to the proposed Final Judgment, the defendant has agreed to be bound by the provisions of the proposed Final Judgment pending its entry by the Court.

II

*Practices Giving Rise to the Alleged Violations*

The AFPRD is a national professional association, located in Kansas City, Missouri, that was established in 1989 to represent the directors of hospital residency programs in the speciality of family practice medicine. Currently, the AFPRD has approximately 427 member directors, who represent approximately 95% of all family practice residency programs nationwide.

In the late 1980s, competition increased among family practice residency programs for senior medical students, as well as for residents already employed by other family practice residencies, to fill vacancies for first- and second-year positions in those programs. Family practice residency programs increasingly began actively and directly to solicit the transfer of first year residents employed by other family practice residency programs. The solicitations sometimes took place without the knowledge of the other programs.

During the same period, family practice residency programs also increasingly began to offer economic inducements to attract both senior medical students and current family practice residents. These inducements were sometimes offered to medical students before the annual placement process, known as the ''Match,'' conducted by the National Resident Matching Program, in which a computer program matches the preferences of senior medical students and hospital residency programs.

Beginning in approximately 1990, the AFPRD began to receive an increasing number of complaints from its member program directors about competition

form other family practice residency programs for both senior medical students and current residents. For the purpose of eliminating the growing competition among family practice residency programs to attract senior medical students and current family practice residents to their programs, in 1992 the ARPRD promulgated ''Guidelines of the Ethnical Recruitment of Family Practice Residents'' (the ''Guidelines'').

The Guidelines embody an agreement among the member family practice residency program directors to limit that competition by: (a) Not directly soliciting family practice residents from other residencies; (b) not offering contracts to applicants who are current residents in other family practice programs without the knowledge of the other program director; (c) making each incentive and other employment benefit offered by any applicant available to all applicants; and (d) not providing any inducements before the Match.

After being distributed to and approved by the AFPRD membership, the Guidelines were distributed to and endorsed by other organizations concerned with family medicine or resident recruiting, and since that time have been provided to members and proxies at the AFPRD's annual business session, as well as to any individual upon request. In order to ensure compliance, the AFPRD responds to every complaint regarding a possible violation of the Guidelines by contacting both the complainant and the alleged violator to investigate the complaint, and where a violation has occurred, by informing the program director that his or her actions have violated the Guidelines.

Since the AFPRD disseminated the Guidelines, competition among family practice residency programs to attract senior medical students and current family practice residents to those programs has been significantly reduced, and the terms and conditions of their employment have been less attractive than they could have obtained in a free and competitive market.

Based on the facts described above, the Complaint alleges the AFPRD and others engaged in a contract, combination, or conspiracy that was *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1, by:

(a) Promulgating and agreeing to the Guidelines governing resident recruiting by family practice residency programs:

(b) Through those Guidelines, prohibiting the use of certain recruiting practices such as directly soliciting current residents in other programs, offering a contract to a resident in another program without providing notice to that program's director, and regulating or restricting the payment of certain economic inducements; and

(c) Disseminating and ensuring compliance with the Guidelines.

III

*Explanation of the Proposed Final Judgment*

The proposal Final Judgment is intended to prevent the AFPRD and its member program directors from restraining competition in the future among family practice residency programs seeking to attract senior medical students and current family practice residents for their programs for the upcoming year.

A. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to the defendant and to all other persons who receive actual notice of the proposed Final Judgment by personal service or otherwise and then act or participate in active concert with the defendant.

B. Prohibitions and Obligations

Sections IV and V of the proposed Final Judgment contain the substantive provisions of the Judgment.

Section IV describes specific prohibited conduct. Section IV(A)(1) enjoins the defendant from directly or indirectly barring any family practice residency program from competing to attract, obtain, or retain the services of current or prospective family practice residency programs from offering or providing any inducements to attract current or prospective family practice residents in the same residency year.[1]

Section IV(A)(2) enjoins the AFPRD from directly or indirectly prohibiting any family practice residency program from offering confidential or spoken inducements in order to attract current or prospective family practice residents.

Section IV(A)(3) enjoins the defendant from prohibiting any family practice residency program from directly or indirectly soliciting, recruiting, or contracting with current family practice residents of other residency programs. Section IV(A)(4) enjoins the defendant from prohibiting any person from considering applications submitted by current family practice residents or contracting with those residents without the knowledge or approval of the program director of any other residency program.[2]

Similarly, Section IV(B) enjoins the AFPRD from establishing any guideline, code of ethics, or other standard that prohibits or restrains AFPRD members from engaging in any of the program director of any other residency program.[2]

Similarly, Section IV(B) enjoins the AFPRD from establishing any guideline, code of ethics, or other standard that prohibits or restrains AFPRD members from engaging in any of the practices identified in Section IV(A) of the Final Judgment, as described above, or that states or implies that any of these practices are, in themselves, unethical, unprofessional, or contrary to any policy of the AFPRD.

Section V of the proposed Final Judgment contains additional provisions requiring the defendant to take certain affirmative actions to publicize the terms of this proposed Final Judgment and to maintain an antitrust compliance program. Section V(A) requires the AFPRD to, within sixty (60) days of the date of entry of the Final Judgment, amend the Guidelines, and specifically those provisions or parts of provisions located at Sections 2(B), 2(C) 2(E)(1), 2(E)(2), and 2(E)(3) of the Guidelines, to comply with Section IV above, and provide a copy of the final amended Guidelines to the plaintiff.

Section V(B) requires the AFPRD to distribute a copy of the Final Judgment, along with a written statement that there are no longer any AFPRD ethical guidelines or rules that suggest that any of the practices identified in Section IV(A), as described above, are in themselves, unethical, unprofessional, or contrary to any policy of the AFPRD, regardless of anything defendant may have said about these practices in the past. The AFPRD is to send this statement and the Final Judgment to each current AFPRD member within sixty (60) days from the date of entry of this Final Judgment, and thereafter annually for a period of five (5) years.

Section V(C) requires the defendant to send a copy of this Final Judgment to

[1] ''Current family practice residents'' is defined in Section II a ''persons already enrolled in, committed to, or employed by a family practice or other residency,'' and ''Prospective family practice residents'' is defined in that Section as ''medical students or other candidates for residency in a family practice program.'' ''Inducements'' is defined in Section II as ''salary, bonuses (signing, retention, or other), loan forgiveness or repayment, housing allowance or subsidy, transportation allowance or subsidy, moonlighting payment, permissible moonlighting when on-call, additional payment for required on-call activity, moving expenses, travel expenses, reimbursement for any expense in an amount which exceeds the actual receipted expense, and any other employment benefit or incentive.''

[2] ''Contracting with,'' as defined in Section II of the Final Judgment, means ''to negotiate, offer, accept, execute, or enter into an employment contract or agreement.''

each new AFPRD member no later than ten (10) days after it is admitted to membership, and thereafter annually until five (5) years after the date of entry of the Final Judgment. Section V(D) requires the AFPRD to distribute within sixty (60) days from the entry of the Final Judgment, a copy of the Final Judgment and this Competitive Impact Statement to all directors and officers of defendant, and Section V(E) requires defendant to distribute in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any successor directors and officers in the future.

Under Section V(F), the defendant must brief annually in writing or orally its directors and officers or their successors on the meaning and requirements of this final Judgment and the antitrust laws, including penalties for violating them, and under Section V(G), obtain from those persons annual written certifications that they (1) have read, understand, and agree to abide by this Final Judgment, (2) understand that their noncompliance with this final Judgment may result in conviction for criminal contempt of court and imprisonment and/or fine, and (3) have reported all violations of this Final Judgment of which they are aware to counsel for defendant. Section V(H) requires defendant to maintain for inspection by plaintiff a record of recipients to whom the Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications regarding the Final Judgment have been received.

Section VI of the proposed Final Judgment requires the defendant to certify its compliance with specified obligations of Section V(A) and (B). Section VII sets forth procedures by which plaintiff may obtain access to information needed to determine or secure defendant's compliance with the proposed Final Judgment. Finally, Section IX provides that the Judgment will expire ten (10) years after the date of its entry.

C. *Effect of the Proposed Final Judgment on Competition*

The relief in the proposed Final Judgment is designed to remedy the violation alleged in the Complaint and prevent its recurrence. The Complaint alleges that the AFPRD violated Section 1 of the Sherman Act by agreeing upon and establishing guidelines to govern resident recruiting that restrained competition among family practice residency programs to employ family practice residents.

The proposed Final Judgment eliminates the restraint on competition among family practice residency programs by enjoining the AFPRD from prohibiting its members from engaging in these competitive recruiting practices, and from adopting any guidelines, code of ethics, or other rules which prohibit these practices or which state or imply that they are unethical. The proposed Final Judgment also requires the AFPRD to withdraw the provisions from its current Guidelines that prohibit these resident recruiting practices and to notify its members that it has done so.

The proposed Final Judgment contains provisions adequate to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged conspiracy. The proposed Final Judgment's injunctions will restore the benefits of free and open competition to the market for the services of family practice residents.

IV

*Alternative to the Proposed Final Judgment*

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. In the view of the Department of Justice, such a trial would involve substantial costs to the United States and defendant and is not warranted because the proposed Final Judgment provides all of the relief necessary to remedy the violation of the Sherman Act alleged in the Complaint.

V

*Remedies Available To Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and a reasonable attorney's fee. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent lawsuit that may be brought against the defendant in this matter.

VI

*Procedures Available for Modification of the Proposed Final Judgment*

As provided by Sections 2 (b) and (d) of the APPA, 15 U.S.C. 16(b) and (d), any person believing that the proposed Final judgment should be modified may submit written comments to Gail Kursh, Chief; Health Care Task Force; United States Department of Justice; Antitrust Division; 325 Seventh Street, NW; Room 400; Washington, DC 20530, within the 60-day period provided by the Act. All comments received, and the Government's responses to them, will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation, to withdraw its consent to the proposed Final Judgment at any time before its entry, if the Department should determine that some modification of the Final Judgment is necessary to protect the public interest. Moreover, Section VIII of the proposed Final Judgment provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the proposed Final Judgment.

VII

*Determinative Documents*

No materials and documents of the type described in Section 2(b) of the APPA, 15 U.S.C. 16(b), were considered in formulating the proposed Final Judgment. Consequently, none are filed herewith.

Respectfully submitted,

Mark J. Botti,

*Attorney.*

William E. Berlin,

*Attorneys, Antitrust Division, U.S. Dept. of Justice, 325 Seventh Street, N.W., Room 450, Washington, D.C. 20530, (202) 307–0827.*

Alleen S. Venbebber,

*Deputy U.S. Attorney, Missouri Bar No. 41460, 1201 Walnut St., Suite 2300, Kansas City, Missouri 64106, (816) 426–3130.*

[FR Doc. 96–14075 Filed 6–5–96; 8:45 am]

BILLING CODE 4410–01–M

## Drug Enforcement Administration

### Jerry Neil Rand, M.D.; Denial of Registration

On September 5, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jerry Neil Rand, M.D., (Respondent) of San Diego, California, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration, under 21 U.S.C. 823(f), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged, in relevant part, that in

January of 1995, an investigation by DEA revealed that on numerous occasions the Respondent used prescription blanks presigned by other physicians to treat his patients, falsified patient charts in which he had prescribed controlled substances, and stored controlled substances surrendered by his patients in his desk drawer.

The Order was mailed in the U.S. Mail, one copy to the Respondent and one copy to his attorney, and a signed receipt dated September 15, 1995, was returned from the Respondent, and a second receipt dated September 11, 1995, was returned from the Respondent's attorney to DEA. However, neither the Respondent nor anyone purporting to represent him has replied to the Order to Show Cause. More than thirty days have passed since the Order was served upon the Respondent. Therefore, pursuant to 21 CFR 1301.54(d), the Deputy Administrator finds that the Respondent has waived his opportunity for a hearing on the issues raised by the Order to Show Cause, and, after considering the investigative file, enters his final order in this matter without a hearing pursuant to 21 CFR 1301.54(e) and 1301.57.

The Deputy Administrator finds that by order dated February 4, 1994, the Acting Administrator of DEA had previously denied the Respondent's application for registration after finding that the Respondent had engaged in conduct inconsistent with the public interest. Jerry Neil Rand, M.D., 59 FR 6302 (1994). Specifically, by a jointly-stipulated decision and order of the Medical Board of California, dated September 25, 1989, the Respondent substantially admitted that he had been diagnosed as drug dependent; that as a result of his usage of controlled substances or dangerous drugs, he had ''become a danger to himself, other persons or the public, or has impaired his ability to practice his profession safely''; that he had treated a patient while intoxicated; that he had failed to adequately supervise physician assistants by signing blank prescription forms; and that between 1985 and 1986 he had provided incompetent and grossly negligent medical care to five patients. As a result of the Medical Board's decision, the Respondent's medical license was revoked, but the revocation was stayed, and his license was placed on probation for five years. Conditions of probation included requirements that the Respondent (1) enter into a drug rehabilitation program, (2) abstain from the personal use or possession of controlled substances unless such substances were lawfully prescribed to him for a bona fide illness by another practitioner, and (3) obey all Federal, State, and local laws. Finally, the DEA's final order noted that:

> Judge Bittner further found that as a result of his personal abuse of controlled substances, the Respondent abrogated his professional responsibilities as a physician and his responsibilities as a DEA registrant; that he was hospitalized three times for substance abuse; voluntarily surrendered his previous DEA registration; and had his State medical license placed on probation for a period of five years. The administrative law judge concluded that there is a lawful basis for denying the Respondent's application.

Id. at 6303. The Acting Administrator substantially concurred with Judge Bittner's findings of fact and conclusions of law, but disagreed with her finding that the Respondent was unlikely to abuse controlled substances or the privileges of a registrant in the future. The Acting Administrator concluded that the Respondent's rehabilitative efforts at that time were not sufficiently complete to ensure that he would not succumb to the pressures of abusing controlled substances, and he denied the Respondent's application. Ibid. The Respondent appealed the Acting Administrator's final decision to the Ninth Circuit Court of Appeals.

While the appeal was still pending, the Respondent again applied for a DEA Certificate of Registration. In response to his application, the local DEA office conducted an inquiry, and a Diversion Investigator served a Notice of Inspection upon a local pharmacy. This inspection and subsequent investigation revealed that from January of 1994 through January of 1995, the Respondent had prescribed Schedule III and Schedule IV controlled substances by using presigned prescription forms belonging to a Dr. S. When interviewed, Dr. S. admitted that he did not see patients at the Respondent's clinic. He stated that he did go there occasionally to review medical charts of the Respondent's patients, noting that these patients had received prescriptions for controlled substances reflecting Dr. S's DEA number. Dr. S. also admitted that he had prescription pads printed up with his name, his DEA Certificate of Registration Number, and the Respondent's clinic's address. He then presigned these prescriptions for the Respondent's use. He also stated that the Respondent would use his DEA registration number for call-in prescriptions as well, but that he believed the Respondent called him every time he used his registration number and told him what he was prescribing. However, Dr. S. admitted that he did not examine or otherwise meet or interact with the Respondent's patients receiving controlled substances in this matter. Further, prescriptions retrieved from two local pharmacies, dated between January 10, 1994, and January 4, 1995, revealed that the Respondent prescribed 570 dosage units of Schedule III controlled substances and 220 dosage units of Schedule IV controlled substances using Dr. S's registration number.

DEA investigators also received information from a former employee of the Respondent's, who stated that some of the Respondent's patients had surrendered controlled substances to the Respondent as part of their treatment, and that the Respondent had stored those substances in his desk drawer. Further, the former employee stated that he/she witnessed the Respondent and his brother alter patients' charts so that both the Respondent's and Dr. S's initials appeared in the chart. Specifically, the employee observed the Respondent and his brother (1) copy Dr. S's initials, (2) cut and paste the copied initials into the charts for patients who had been prescribed controlled substances, (3) recopy the affected pages, and (4) reinsert the copied pages into the chart to replace the original chart page.

When DEA investigators contacted the Respondent's brother, he confirmed that he worked with the Respondent. He also stated that he was aware of the Respondent's use of Dr. S's presigned prescription pads.

The investigative file also contained documentation showing that the Respondent's medical license had been cleared of all restrictions as of September 25, 1994. Further, letters from colleagues demonstrated that the Respondent has continued to successfully recover from his drug addiction problem, and that he has successfully returned to the practice of medicine, with an emphasis on treating patients with addictive disorders and problems. One colleague wrote on June 6, 1995, that, while working in a psychiatric hospital, the Respondent followed all regulations and standards that apply to his privileges, and that he did not prescribe or order controlled substances at that institution, ''as this is currently a restriction upon his practice of medicine.'' He also wrote that he has ''the utmost respect for Dr. Rand as a caring, extremely knowledgeable and competent physician, as well as an individual successfully recovering from the disease of addiction himself.''

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for registration if he

determines that such registration would be inconsistent with the public interest. In determining the public interest, Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

In this case, factors one, two, four, and five are relevant in determining whether the Respondent's registration would be inconsistent with the public interest. As to factor one, ''recommendation of the appropriate State licensing board,'' the file does not contain a response from the Medical Board relevant to the Respondent's latest conduct. The file does reflect that the Medical Board reinstated the Respondent's medical license without restrictions on September 25, 1994.

However, the Deputy Administrator also finds it significant that the recent DEA investigation revealed that the Respondent actually violated the terms of the Medical Board's order in 1994. Specifically, the Respondent had agreed to obey all Federal and State laws, and he had agreed not to possess controlled substances unless such substances were prescribed for his personal use by another practitioner. Yet as early as January of 1994, the Respondent prescribed controlled substances to patients by using another physician's DEA registration number, in violation of the Controlled Substances Act. Further, the Respondent took possession of controlled substances from his patients and stored them in his desk, all in violation of the terms of his probation, which did not end until September of 1994.

As to factor two, the Respondent's ''experience in dispensing * * * controlled substances,'' and factor four, the Respondent's ''[c]ompliance with applicable State, Federal, or local laws relating to controlled substances,'' the Deputy Administrator finds it significant that in 1994 and 1995, the Respondent engaged in conduct in violation of the Controlled Substances Act. Specifically, 21 U.S.C. 843 (a)(2) provides that ''[i]t shall be unlawful for any person knowingly or intentionally— * * * (2) to use in the course of * * * distribution, or dispensing of a controlled substance * * * a registration number which is * * * issued to another person.'' Here, the Respondent used the registration number of another person, Dr. S., to prescribe controlled substances to patients who were not seen or treated by Dr. S., in violation of the Controlled Substances Act. See also 21 CFR 1306.03 (''A prescription for a controlled substance may be issued only by an individual practitioner who is * * * either registered or exempted from registration * * *''). Further, when he stored controlled substances in his desk, the Respondent violated DEA regulatory provisions governing the permissible methods of storing controlled substances in order to prevent the unlawful diversion of such drugs. See 21 CFR 1301.75, Physical Security Controls for Practitioners. Thus, this unregistered Respondent's total disregard for the statutory and regulatory provisions governing the handling of controlled substances indicates that he cannot be entrusted with a DEA registration. See generally, Jude R. Hayes, M.D., 59 FR 41785 (1994).

As to factor five, ''[s]uch other conduct which may threaten the public health or safety,'' the Deputy Administrator finds it significant that the Respondent falsified patient records by adding the initials of Dr. S. to the patients' charts, when Dr. S. had neither seen nor treated the patients. Such falsification of records to conceal the Respondent's unlawful prescribing practices also serves as a basis for the Deputy Administrator's conclusion that the public interest is best served by denying the Respondent's application for a DEA Certificate of Registration.

The Deputy Administrator acknowledges that the record contains letters from the Respondent's colleagues, noting his continued sobriety and adherence to his substance abuse treatment program. Such behavior is commendable. However, the Respondent's recent acts of falsifying patients' records and prescribing controlled substances without a DEA Certificate of Registration indicate that the public interest is still better served by denying the Respondent's application for registration at this time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 C.F.R. 0.100(b) and 0.104, hereby orders that the application of Jerry Neil Rand, M.D., be, and it hereby is, denied. This order is effective July 8, 1996.

Dated: May 31, 1996.

Stephen H. Greene,

*Deputy Administrator.*

[FR Doc. 96–14131 Filed 6–5–96; 8:45 am]

BILLING CODE 4410–09–M

## Federal Bureau of Investigation

### DNA Advisory Board Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the DNA Advisory Board (DAB) will meet on June 20 and 21, 1996, from 9:00 am until 5:00 pm on June 20, 1996, and from 8:00 am until 1:30 pm on June 21, 1996. The meeting will be held at the Financial Center Marriott Hotel, 85 West Street, New York, NY 10006. All attendees will be admitted only after displaying personal identification which bears a photograph of the attendee.

The DAB's scope of authority is: To develop, and if appropriate, periodically revise, recommended standards for quality assurance to the Director of the FBI, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA; To recommend standards to the Director of the FBI which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analysis used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency of occurrence of DNA profiles calculated from pertinent population database(s); To recommend standards for acceptance of DNA profiles in the FBI's Combined DNA Index System (CODIS) which take account of relevant privacy, law enforcement and technical issues; and, To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The topics to be discussed at this meeting include: a presentation by the American Society of Crime Laboratory Directors' Laboratory Accreditation Board; review and discussion of the National Research Council's Second Report on DNA; Forensic DNA Testing

Standards; and a presentation on training and other requirements for a ''DNA Technical Manager'' in a forensic laboratory.

The meeting is open to the public on a first-come, first seated basis. Anyone wishing to address the DAB must notify the Designated Federal Employee (DFE) in writing at least twenty-four hours before the DAB meets. The notification must include the requestor's name, organizational affiliation, a short statement describing the topic to be addressed, and the amount of time requested. Oral statements to the DAB will be limited to five minutes and limited to subject matter directly related to the DAB's agenda, unless otherwise permitted by the Chairman.

Any member of the public may file a written statement for the record concerning the DAB and its work before or after the meeting. Written statements for the record will be furnished to each DAB member for their consideration and will be included in the official minutes of a DAB meeting. Written statements must be type-written on 8½″×11″ xerographic weight paper, one side only, and bound only by a paper clip (not stapled). All pages must be numbered. Statements should include the Name, Organizational Affiliation, Address, and Telephone number of the author(s). Written statements for the record will be included in minutes of the meeting immediately following the receipt of the written statement, unless the statement is received within three weeks of the meeting. Under this circumstance, the written statement will be included with the minutes of the following meeting. Written statements for the record should be submitted to the DFE.

Inquiries may be addressed to the DFE, Dr. Randall S. Murch, Chief, Scientific Analysis Section, Laboratory Division, 935 Pennsylvania Avenue, Northwest, Washington, D.C. 20535, (202) 324–4416, FAX (202) 324–1462.

Dated: May 30, 1996.

Randall S. Murch,

*Chief, Scientific Analysis Section, Federal Bureau of Investigation.*

[FR Doc. 96–14304 Filed 6–5–96; 8:45 am]

**BILLING CODE 4410–02–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W31,870, etc.]**

### American Olean Tile Company, Incorporated; Lansdale, PA, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued an Amended Certification of Eligibility to Apply for Worker Adjustment Assistance on March 18, 1996, applicable to all workers of American Olean Tile Company, Incorporated, located in Lansdale, Pennsylvania and operating at various locations in numerous States. The amendment was published in the Federal Register on March 26, 1996 (61 FR 13219).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The worker certification for the subject firm includes production and service center workers at various locations in the United States. Workers separated from employment at the American Olean, Lansdale, Pennsylvania location prior to the February 15, 1996, impact date are covered under TA–W–29,362. Information received from the State shows that worker separations at the additional cited U.S. locations would not be covered under the existing February 15, 1996, impact date. Accordingly, the Department is amending the worker certification to change the impact date for all of the American Olean Tile Company, Incorporated locations in the United States, except Lansdale, Pennsylvania.

The amended notice applicable to TA–W–31,870 is hereby issued as follows:

All workers of American Olean Tile Company, Incorporated, Lansdale, Pennsylvania (TA–W–31,870), who became totally or partially separated from employment on or after February 15, 1996; and all workers of American Olean Tile Company, Incorporated at the various locations cited below, who became totally or partially separated from employment on or after January 24, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974:

TA–W–31,870A Alabama
TA–W–31,870B Arizona
TA–W–31,870C California
TA–W–31,870D Connecticut
TA–W–31,870E Florida
TA–W–31,870F Georgia
TA–W–31,870G Illinois
TA–W–31,870H Indiana
TA–W–31,870I Kentucky
TA–W–31,870J Louisiana
TA–W–31,870K Maryland
TA–W–31,870L Massachusetts
TA–W–31,870M Minnesota
TA–W–31,870N Missouri
TA–W–31,870O Nevada
TA–W–31,870P New Jersey
TA–W–31,870Q New York
TA–W–31,870R Ohio
TA–W–31,870S Oklahoma
TA–W–31,870T Pennsylvania (except Lansdale)
TA–W–31,870U Tennessee
TA–W–31,870V Texas
TA–W–31,870W Utah
TA–W–31,870X Virginia
TA–W–31,870Y Washington
TA–W–31,870Z Wisconsin.

Signed at Washington, D.C. this 9th day of May 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14284 Filed 6–5–96; 8:45 am]

**BILLING CODE 4510–30–M**

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**[TA–W–32,312]**

### Cambridge Industries, Inc. Heavy Truck Division, Ionia, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 8, 1996, in response to a worker petition which was filed April 9, 1996 on behalf of workers at Cambridge Industries, Inc., Heavy Truck Division, Ionia, Michigan (TA–W–32,312).

The Department inadvertently instituted the petition as a Trade Adjustment Assistance petition, when in fact, it was a NAFTA–TAA petition. Consequently, further TAA investigation in this case would service no purpose, and the TAA investigation has been terminated. The NAFTA–TAA number assigned the case is NAFTA–00982.

Signed at Washington, DC, this 16th day of May 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14285 Filed 6–5–96; 8:45 am]

**BILLING CODE 4510–30–M**

**[TA–W–31, 780; TA–W–31, 781]**

## Cray Research, Incorporated, Eagan, MN; Cray Research, Incorporated (CRI) Chippewa Falls, WI; Notice of Negative Determination Regarding Application for Reconsideration

By an application dated March 22, 1996, one of the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on February 26, 1996 and published in the Federal Register on March 19, 1996 (61 FR 11223).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The investigation files show that workers of Cray Research, Incorporated, Eagan, Minnesota and Cray Research, Incorporated (CRI) customer service in Chippewa Falls, Minnesota produced supercomputer systems and provided sales, administrative and support services.

The petitioner claims that aggressive pricing from Japanese competitors, contributed to worker separations at the subject firm locations in Eagan and Chippewa Falls. The petitioner explains that foreign competitors ''dumped'' a supercomputer at a Texas university. There were at least two other failed attempts to dump similar systems at other U.S. universities. It was only the intervention of the Commerce Department coupled with severe price cuts by CRI that averted these attempts. However, the documentation submitted by the petition shows that these events occurred prior to the time period relevant to the investigation.

The Department's denial was based on the fact that the ''contributed importantly'' test of the Group Eligibility Requirements of Trade Act was not met. The Department was not able to obtain imports statistics on supercomputers because there are no provisions for that commodity in the Harmonized Tariff Schedule of the United States. To determine import impact for workers of Cray Research, the Department relied on a survey of the subject firm's customers. The Department's survey revealed that none of the respondents purchased imports of supercomputer systems in the relevant time period of the investigation, which for the full years 1993 through 1995.

*Conclusion*

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of May, 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14286 Filed 6–5–96; 8:45 am]

**BILLING CODE 4510–30–M**

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**[TA–W–32,233]**

## Dataproducts Corporation, Norcross, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 15, 1996, applicable to all workers of Dataproducts Corporation located in Norcross, Georgia. 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. The Department is amending the certification for workers of the subject firm to change the impact date. New findings show that workers of the subject firm in Norcross, engaged in the production of computer ribbons, are covered under an existing certification, TA–W–29,840, which does not expire until August 8, 1996.

The amended notice applicable to TA–W–32,233 is hereby issued as follows:

All workers of Dataproducts Corporation, Norcross, Georgia engaged in employment related to the production of computer ribbon products who became totally or partially separated from employment on or after August 8, 1996, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of May 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14291 Filed 6–5–96; 8:45 am]

**BILLING CODE 4510–30–M**

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## 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 May, 1996.

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–32,063; Grumman Olson, Mayfield, PA*

*TA–W–32,253; Pioneer Manufacturing, Inc., Salisbury, NC*

*TA–W–32,175; Berkley Medical Resources, Inc., Michael Berkowitz Co., Inc., Uniontown, PA*

*TA–W–32,223; Freedom Textile Chemical Co., Conshohocken, PA*

*TA–W–32,182; Bend Wood Products, Inc., Bend, OR*

*TA–W–32,082, TA–W–32,083; ECC International, Sandersville, GA Savannah, GA*

*TA–W–31,983; Whisper Woods (a Division of Jessup Door Co), Redmond, OR*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reason specified.

*TA–W–32,290; Keystone PowderedMetal Co., St. Marys, PA*
*TA–W–32,303; Shaw Industries, Inc., Trenton, SC*
*TA–W–32,040; Hughes Training, Inc., Binghamton, NY*
*TA–W–32,105; Milliken & Co., Barnwell, SC*

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–32,071; Syracuse Lithographing Co., Syracuse, NY*
*TA–W–32,038; Allied Signal, Inc., Automotive Aftermarket, Rumford, RI*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–32,252, A & B; Penn Virginia Oil and Gas Corp., Located in the States of TN, WV and KY*

The investigation revealed that criterion (2) and criterion (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 an production.

Affirmative Determinations for Worker Adjustment Assistance

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.

*TA–W–32,265; Whirlpool Corp., Evansville, IN: April 10, 1995.*
*TA–W–32,239; American Apparel, Inc., Knoxville, TN: April 5, 1995.*
*TA–W–32,084; Richilene Industries, New York, NY: February 20, 1995.*
*TA–W–32,277; Motor Wheel Corp., Mendota, IL: April 16, 1995.*
*TA–W–32,062; Forstmann & Co., Inc., Dublin, GA: March 6, 1995.*
*TA–W–32,048; Chicago Miniature Lamp, Inc., Pauls Valley, OK: February 21, 1995.*
*TA–W–32,163; Barber Rose, Inc., Eynon, PA: March 22, 1995.*
*TA–W–32,279; Pants Plus, New York, NY: April 17, 1995.*
*TA–W–32,081; Dallco Industries, Inc., Mount Union, PA: March 12, 1995.*
*TA–W–32,274; Lucent Technologies, Formerly AT&T, Montgomery, IL: April 17, 1995.*
*TA–W–32,179, A & B; Dallco Industries, Inc., Hountontown, PA, Headquarters & Production Facility, York, PA and Adams County, PA: March 12, 1995.*
*TA–W–32,240; Connie Rose Manufacturing, Inc., Philadelphia, PA: April 8, 1995.*
*TA–W–32,107, A, B, C; Basin Exploration, Inc., Denver Co, & Also Located in The States of CO, TX & WY: March 15, 1995.*
*TA–W–32,052; Vulcan Corp., Clarksville, TN: March 4, 1995.*
*TA–W–32,238; Vishay-Sprague, Inc., Sanford, ME: April 3, 1995.*
*TA–W–32,183; Thomas & Betts Corp., Electrical Dept., Montgomeryville, PA: March 18, 1995.*
*TA–W–32,227; Ralph Lauren Womenswear, Inc., Bidermann Industries Corp., New York, NY: March 27, 1995.*
*TA–W–32,323; The Sero Co., Inc., Sewing Operations, Cordele, GA: May 7, 1995.*
*TA–W–32,299; New Trend Sportswear Selinsgrove, PA: April 23, 1995.*
*TA–W–32,257; Salem Screen South, Inc., Florence, AL: March 15, 1995.*
*TA–W–32,212; Kellogg USA, Inc., San Leandro Plant, San Leandro, CA: April 1, 1995.*
*TA–W–32,056; Herald Handbags, New York, NY: February 28, 1995.*
*TA–W–32,046; Skyline Sportswear/ Donn Kenny Apparel, Floyd, VA: February 11, 1995.*
*TA–W–32,012; IPM Products Corp., Hybritex Automotive Controls, El Paso, TX: February 19, 1995.*

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 May, 1996.

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 on 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–00933; Shopware, Div. of Cambridge Resource Group, Aberdeen, WA*
*NAFTA–TAA–00938; Berkley Medical Resources, Inc., Michael Berkowitz Co., Inc., Uniontown, PA*
*NAFTA–TAA–00947; Salem Screen South, Inc., Florence, AL*
*NAFTA–TAA–00990; Mainline Industrial Distributors (formerly Flood Industries, Inc), Iron Mountain, MI*
*NAFTA–TAA–00966; Connie Rose Manufacturing, Inc., Philadelphia, PA*
*NAFTA–TAA–00899; A, B, C; Dallco Industries, Inc., Hustontown, PA, Mount Union, PA, Headquarters & Production Facility, York, PA Production Facility, Adams County, PA*
*NAFTA–TAA–00930; Bend Wood Products, Inc., Bend, OR*
*NAFTA–TAA–00985; Georgia Girl Manufacturing, Smithville, TN*
*NAFTA–TAA–00945; Freedom Textiles Chemicals Co., Conshohocken, PA*
*NAFTA–TAA–00923; Weyerhaeuser Co., Western Lumber, Kamiah, ID*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*None*

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–00989; United Technologies Automotive, Wiring Systems Div., El Paso, TX: April 19, 1995.*

*NAFTA–TAA–00959; Newell Home Hardware Co., Dorfile Storage & Shelving Systems, Los Angeles, CA: April 1, 1995.*

*NAFTA–TAA–00983; Ratelco Electronics, Inc., A C&D Charter Power Systems Co., Seattle, WA: April 16, 1995.*

*NAFTA–TAA–00976; A and C Enterprises, Inc., Carthage, TN: April 4, 1995.*

*NAFTA–TAA–00973; Siecor Corp., Otay Mesa, CA: March 14, 1995.*

*NAFTA–TAA–00971; Ronnie Manufacturing Co., Inc., New Bedford, MA: April 11, 1995.*

*NAFTA–TAA–00975; American Apparel Corp., Knoxville, TN: April 5, 1995.*

*NAFTA–TAA–01004; Telex Communications, Inc., LeSueur, MN: April 30, 1995.*

*NAFTA–TAA–01000; American Olean Tile Co., Lansdale, PA: April 23, 1995.*

*NAFTA–TAA–01011; Allied Signal, Inc., Automotive Safety Restraint Systems, Greenville, AL: April 30, 1995.*

*NAFTA–TAA–00977; Whirlpool Corp., Evansville, IN: April 10, 1995.*

I hereby certify that the aforementioned determinations were issued during the month of May 1996. 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: May 28, 1996.

Russell Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14281 Filed 6–5–96; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–31,368, 369 & 369A]**

## Roxanne of New Jersey, Neptune, NJ; Art San Corporation, Neptune, NJ; Milady Brassiere and Corset 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 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Reopening on March 26, 1996, applicable to all workers of Roxanne of New Jersey and Art San Corporation, both located in Neptune, New Jersey. The notice was published in the Federal Register on April 3, 1996 (61 FR 14823).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred at the parent company, Milady Brassiere and Corset Company located in New York, New York. The workers at Milady were engaged in employment related to the production of swimwear at Roxanne of New Jersey and the Art San Corporation. Based on these new findings, the Department is amending the certification to cover workers of Milady Brassiere and Corset Company, New York, New York.

The intent of the Department's certification is to include all workers of Roxanne and Art San who were adversely affected by increased imports.

The amended notice applicable to TA–W–31,368 is hereby issued as follows:

All workers of Roxanne of New Jersey (TA–W–31,368), and Art San Corporation (TA–W–31,369), Neptune, New Jersey, and Milady Brassiere and Corset Company (TA–W–31,369A), New York, New York, who became totally or partially separated from employment on or after August 17, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 28th day of May 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14278 Filed 6–5–96; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–30,896, etc.]**

## Phillips Petroleum Company Exploration and Production Group (dba Exploration Division and North American Production Division) (Including General Counsel); Bartlesville, Oklahoma and All Other Locations in Oklahoma and All Locations in the Following States: Kansas, Arkansas, Texas, Louisiana, New Mexico, California, Alabama, Alaska; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 3, 1995, applicable to all workers of Phillips Petroleum Company, Exploration and Production Group, dba Exploration Division and North American Production Division, Bartlesville, Oklahoma, all other Oklahoma locations, and other locations in various States. The notice was published in the Federal Register on May 17, 1995 (60 FR 26459).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. General Counsel employees of the subject firm were not explicitly cited in the certification. However, new findings show that General Counsel employees of the subject firm did support the exploration and production of crude oil and natural gas.

The intent of the Department's certification is to include all workers of Phillips Petroleum adversely affected by imports of crude oil and natural gas. Accordingly, the Department is amending the worker certification to specifically provide coverage to General Counsel employees of the subject firm.

The amended notice applicable to TA–W–30,896 is hereby issued as follows:

All workers of Phillips Petroleum Company, Exploration and Production Group, dba Exploration Division and North American Production Division, Including General Counsel, Bartlesville, Oklahoma (TA–W–30,896), all other locations in Oklahoma (TA–W–30,896A), and all locations in the following States: Kansas (TA–W–30,896B), Arkansas (TA–W–30,896C), Texas (TA–W–30,896D), Louisiana (TA–W–30,896E), New Mexico (TA–W–30,896F), California (TA–W–30,896G), Alabama (TA–W–30,896H), and Alaska (TA–W–30,896I) who became totally or partially separated from employment on or after March 23, 1994, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 23rd day of May 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14287 Filed 6–5–96; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–32,129]**

## Phillips Petroleum Company, General Counsel, Bellaire, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 1, 1996 in response to a worker petition which was filed February 7, 1996, on behalf of workers at Phillips Petroleum Company, General

Counsel, Bellaire, Texas (TA–W–32,129).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–30,896D). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 23rd day of May 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14280 Filed 6–5–96; 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 shown below, not later than June 17, 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 June 17, 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, DC, 20210.

Signed at Washington, D.C. this 13th day of May, 1996.

Russell Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

APPENDIX

[Petitions Instituted on 05/13/96]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 32,316 | Pittsburgh Corning Corp. (AFGW) | Port Allegany, PA | 05/02/96 | Glass Block (Pressed Glass Ware). |
| 32,317 | Ampolex (USA), Inc. (Co) | Denver, CO | 04/29/96 | Exploration of Crude Oil and Natural Gas. |
| 32,318 | Jaunty Textile (Wkrs) | Scranton, PA | 05/01/96 | Acetate Rayon and Polyester Fabrics. |
| 32,319 | Paragon Trade Brands, Inc. (Wkrs) | Oneonta, NY | 05/03/96 | Disposable Diapers. |
| 32,320 | Fort Smith Furniture (IUE) | Fort Smith, AR | 04/29/96 | Furniture for Commercial Business. |
| 32,321 | Equitable Resources Ener. (Co) | Billings, MT | 04/30/96 | Oil and Gas. |
| 32,322 | Footwear By Julius (UNITE) | Bronx, NY | 04/29/96 | Ladies' Shoes. |
| 32,323 | The Sero Company, Inc. (Co.) | Cordele, GA | 05/07/96 | Men's Sport Shirts. |
| 32,324 | Lockheed Martin Corp. (IAM&AW) | Meridian, MS | 04/25/96 | Subassemblies for The Hercules Aircraft. |
| 32,325 | ERA Coat (UNITE) | Paterson, NJ | 04/26/96 | Women's Coats. |
| 32,326 | VDO Vazak Corporation (Co.) | Winchester, VA | 04/30/96 | Automotive and Marine Instrumentation. |
| 32,327 | VIP/Vanguard Industries (Co.) | Brighton, MI | 04/27/96 | Warehouse and Distribution—Hand Tools. |
| 32,328 | Thomas and Betts (IUC) | Strongsville, OH | 05/02/96 | Zinc Dye-cast Fittings. |
| 32,329 | Atochem (OCAW) | Buffalo, NY | 03/22/96 | Flour Enrichments, Organic Peroxide. |
| 32,330 | Kinney Shoe Corp. (Wkrs) | Carlisle, PA | 04/30/96 | Shoes. |
| 32,331 | Kenting Apollo Drilling (Wkrs) | Mills, WY | 04/30/96 | Oil and Gas Drilling. |
| 32,332 | Greenfield Research, Inc. (Co.) | Greenfield, OH | 05/06/96 | Automotive Seat Covers. |

[FR Doc. 96–14289 Filed 6–5–96; 8:45 am]

**BILLING CODE 4510–30–M**

**[TA–W–32,137, TA–W–32,138]**

## Spartan Mills Corporation, Corporate Offices, Spartanburg, SC and Spartan Mills Corporation, Cleveland Mills Plant, Lawndale, NC

Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 1, 1996, in response to a worker petition which was filed on behalf of workers at Spartan Mills Corporation, Corporate Offices, Spartanburg, South Carolina, and Cleveland Mills Plant, Lawndale, North Carolina.

The petitioner has requested that the petitions be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigations have been terminated.

Signed in Washington, DC this 24th day of May, 1996.

Russell Kile,

*Acting Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14282 Filed 6–5–96; 8:45 am]

**BILLING CODE 4810–30–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 shown below, not later than June 17, 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 June 17, 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, DC, 20210.

Signed at Washington, D.C. this 20th day of May, 1996.

Russell Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

APPENDIX

[Petitions Instituted on 05/20/96]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 32,333 ..... | Toombs County Mfg (Co.) ..... | Lyons, GA ..... | 05/03/96 | Ladies' Sleepwear. |
| 32,334 ..... | Ashland Exploration, Inc (Wkrs) ..... | Brentonon, WV ..... | 04/29/96 | Expl. & Prod. Crude Oil, Natural Gas. |
| 32,335 ..... | Allergan (Co.) ..... | Phoenix, AZ ..... | 04/29/96 | Disinfection Solution for Contact Lens. |
| 32,336 ..... | Horvath Knitting Mill (Wkrs) ..... | Coopersburg, PA ..... | 04/30/96 | Children's Outerwear. |
| 32,337 ..... | Reeves Brothers, Inc. (Wkrs) ..... | Woodruff, SC ..... | 04/26/96 | Yarn. |
| 32,338 ..... | HIghland Artificial Lift (Wkrs) ..... | Enid, OK ..... | 04/17/96 | Pumps. |
| 32,339 ..... | Highland Artificial Lift (Wkrs) ..... | Oklahoma City, OK ..... | 04/17/96 | Pumps. |
| 32,340 ..... | Highland Artificial Lift (Wkrs) ..... | Garden City, KS ..... | 04/17/96 | Pumps. |
| 32,341 ..... | Schenley Sportwear (Wkrs) ..... | Brooklyn, NY ..... | 05/03/96 | Ladies' Skirts and Pants. |
| 32,342 ..... | B.A.S.F. Corporation (UAW) ..... | Detroit, MI ..... | 04/30/96 | Paint & Primer Products. |
| 32,343 ..... | Qsawatomie, Inc. (Co.) ..... | Dickinson, ND ..... | 04/06/96 | Provide Oilfield Services. |
| 32,344 ..... | Stone Apparel (Wkrs) ..... | Lavonia, GA ..... | 05/08/96 | Men's Boxer Shorts. |
| 32,345 ..... | Harvard Sport (Wkrs) ..... | Compton, CA ..... | 05/10/96 | Ping Pong Table. |
| 32,346 ..... | Addison and Leyen, Inc. (Wkrs) ..... | Williston, ND ..... | 05/09/96 | Oil Services. |
| 32,347 ..... | Fasco Consumer Products (Wkrs) ..... | Fayetteville, NC ..... | 05/07/96 | Ceiling Fans. |
| 32,348 ..... | General Motors Corp. (UAW) ..... | Tarrytown, NY ..... | 05/02/96 | Van Assembly. |
| 32,349 ..... | Border Apparel (Wkrs) ..... | El Paso, TX ..... | 05/02/96 | Blue Jeans. |
| 32,350 ..... | Clear Pine Moulding (Wkrs) ..... | Prineville, OR ..... | 03/29/96 | Wood Moldings. |
| 32,351 ..... | Thomas and Betts Corp (Co.) ..... | Punta Gorda, FL ..... | 05/01/96 | Electronic Components—Terminal Blocks. |
| 32,352 ..... | Allied Signal Inc. (Co.) ..... | Greenville, AL ..... | 04/22/96 | Seatbelt & Airbag Parts. |
| 32,353 ..... | Johnson Control, Inc. (Co.) ..... | Milwaukee, WI ..... | 05/07/96 | Actuator Assembly. |
| 32,354 ..... | United Technologies (Wkrs) ..... | St. Matthews, SC ..... | 05/07/96 | Auto Electrical Switches. |
| 32,355 ..... | AUX (Wkrs) ..... | Myrtle Beach, SC ..... | 05/07/96 | Ceramic Capacitors. |
| 32,356 ..... | Unisys Corporation (Wkrs) ..... | Roseville, MN ..... | 04/29/96 | Printed Circuits. |
| 32,357 ..... | GRD Steel (USWA) ..... | Monongahela, PA ..... | 04/30/96 | Steel Billets. |
| 32,358 ..... | Gould Shawmut (Comp) ..... | Marble Falls, TX ..... | 05/14/96 | Fuseholders, Power Distribution Blocks. |

[FR Doc. 96–14288 Filed 6–5–96; 8:45 am]

BILLING CODE 4510–30–M

**[TA–W–32,327]**

## VIP/Vanguard Industrial Products, Incorporated, Brighton, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 13, 1996 in response to a worker petition which was filed on behalf of workers at VIP/Vanguard Industrial Products, Incorporated, Brighton, Michigan.

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 24th day of May 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14292 Filed 6–5–96; 8:45 am]

BILLING CODE 4510–30–M

**[NAFTA–00891]**

## Cole Haan, Cole Haan Manufacturing Division, Lewiston, ME and NAFTA–00891A Livermore Falls Location Livermore, ME; 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 March 25, 1996, applicable to workers of Cole Haan, Cole Haan Manufacturing Division, Lewiston, Maine. The notice was published in the Federal Register on April 25, 1996 (61 FR 18418)

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that workers separations have occurred at the subject firms' Livermore, Maine location. The workers are engaged in the production of moccasins for Cole Haan manufacturing facilities and provided clerical, management and office functions in support of the production of moccasins.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of moccasins. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to NAFTA—00891 is hereby issued as follows:

All workers of Cole Haan, Cole Haan Manufacturing Division, Lewiston, Maine

NAFTA—00891, and Cole Haan, Livermore Falls Location, Livermore, Maine NAFTA—00891A engaged in employment related to the production of moccasins and provided clerical, management and office functions in support of the production of moccasins who became totally or partially separated from employment on or after March 11, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of May 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14283 Filed 6–5–96; 8:45 am]

**BILLING CODE 4510–30–M**

**[NAFTA–00944]**

### Dataproducts Corporation; Norcross, GA; 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 May 15, 1996, applicable to workers of Dataproducts Corporation, Norcross, Georgia. The Notice will soon be published in the Federal Register.

The Department reviewed the certification for workers of the subject firm. New findings show that the Department inadvertently issued the certification to all workers instead of workers producing computer ribbon products, the subject of the petition. The company reports that the workers are separately identifiable. Accordingly, the Department is amending the certification to limit coverage only to the workers at the Norcross plant producing computer ribbon products.

The amended notice applicable to NAFTA—00944 is hereby issued as follows:

All workers of Dataproducts Corporation, Norcross, Georgia, engaged in the production of computer ribbon products who became totally or partially separated from employment on or after April 1, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of May 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14290 Filed 6–5–96; 8:45 am]

**BILLING CODE 4510–30–M**

**[NAFTA–00999]**

### Zena Enterprises, New York, NY; Notice of Termination of Investigation

Pursuant to Section 250(b)(1) of the Trade Act of 1974, as amended, an investigation was initiated for workers of the subject firm. The Department inadvertently issued a certification on May 8, 1996, irrespective of the fact that the workers were covered under an existing certification. The notice will soon be published in the Federal Register. This notice corrects the above noted inadvertent action.

On April 23, 1996, under petition NAFTA–00721, the Department amended the certification for all workers of R.D. Simpson, Incorporated (Including D & E Laundry) in Carterville, Georgia, to include an affiliate of the subject firm, Zena Enterprises, New York, New York (NAFTA–00721A). The notice was published in the Federal Register on May 8, 1996 (61 FR 20837).

Therefore, since the subject workers were previously certified, further investigation in NAFTA–00999 would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 21st day of May 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96–14279 Filed 6–5–96; 8:45 am]

**BILLING CODE 4510–30–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:** June 18, 1996 from 9:00 a.m.–12:00 Noon.

**ADDRESSES:** Marriott at Metro Center, Salon A, 775—Twelfth Street (at E Street), N.W., Washington, D.C. 20005. The Twelfth 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, Congress and the nation on the progress of the nation and states 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: presentation of a new Goals Panel report, Profile of 1994–95 State Assessments and Reported Results; discussion of the redesign of the National Assessment of Educational Progress (NAEP); presentation of two state assessment systems.

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: May 30, 1996.

Ken Nelson,

*Executive Director, National Education Goals Panel.*

[FR Doc. 96–14252 Filed 6–5–96; 8:45 am]

**BILLING CODE 4010–01–M**

## NATIONAL SCIENCE FOUNDATION

### Proposed Collection; Comment Request; Title of Proposed Collection, ''Fellowship Applications and Award Forms''

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Science Foundation (NSF) will publish periodic summaries of proposed projects. To request more information of the propose project or to obtain a copy of the data collection plans and instruments, call Herman Fleming, NSF Clearance Officer at (703) 306–1243

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 on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed project.* Section 10 of the National Science Foundation Act, as

amended, states that ''The Foundation is authorized to award, within the limits of funds made available * * * scholarships and graduate fellowships for scientific study or scientific work in the mathematical physical, medical, biological, engineering, social, and other sciences at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time.''

The Foundation Fellowship Programs are designed to meet the following objectives:

- To assure that some of the Nation's most talented students in the sciences obtain the education necessary to become creative and productive scientific researchers.
- To train or upgrade advanced scientific personnel to enhance their abilities as teachers and researchers.
- To promote graduate education in the sciences, mathematics, and engineering at institutions that have traditionally served ethnic minorities.
- To encourage pursuit of advanced science degrees by students who are members of ethnic groups traditionally under-represented in the Nation's advanced science personnel pool.

The Foundations has the following fellowship award programs:

NSF Graduate Research Fellowships
  Graduate Fellowships
  Minority Gradate Fellowships
  Women in Engineering and Computer and Information Science
Earth Sciences Postdoctoral Research Fellowships
Postdoctoral Research Fellowships in Chemistry
Mathematical Sciences Postdoctoral Research Fellowships
NSF-NATO Postdoctoral Fellowships and Supporting Engineering
Minority Postdoctoral Research Fellowships and Supporting Activities
Postdoctoral Research Fellowships in Biosciences Related to the Environment
Postdoctoral Research Fellowships in Molecular Evolution
Ridge Inter-Disciplinary Global Experiments
Advanced Study Institute Travel Awards
International Opportunities for Scientists and Engineers
  Japan Research Fellows
  North American Research fellows
  International Research fellows
Ethics and Values Fellowship Awards

These are annual award programs with application deadlines varying according to the fellowship program. Public burden may also vary according to program, however it is estimated that each submission is averaged to be 12 hours per respondent.

Send comments to Herman Fleming, Clearance Office, National Science Foundation, 4201 Wilson Boulevard, Suite 485, Arlington, VA 22230. Written comments should be received by August 1, 1996

Dated: May 31, 1996.

Herman G. Fleming,

*NSF Clearance Officer.*

[FR Doc. 96–14143 Filed 6–5–96; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 040–9027]**

### Consideration of an Amendment Request for Decommissioning the Cabot Corporation Facility in Revere, Pennsylvania and Opportunity for a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Consideration of a License Amendment for the Cabot Corporation Site in Revere, Pennsylvania, and Opportunity for a Hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to Source Materials License No. SMC–1562 issued to Cabot Corporation (the licensee) for the decommissioning of its facility in Revere, Pennsylvania. The licensee requested the amendment in a letter dated April 25, 1996, to incorporate the site decommissioning plan submitted with the request.

The waste from the Revere facility consists of silica slag containing natural uranium and thorium resulting from the past production of niobium metal. There are approximately 23,210 cubic meters of material, about 5 percent of which is radioactive slag. The radioactive slag is mixed in with soil, rubble, and other slag that is not radioactive. The licensee proposes to consolidate material from several areas onsite into one onsite location. The licensee has submitted a risk analysis that purports to demonstrate that the potential radiation dose to the critical population group will be acceptably low.

The NRC will require the licensee to remediate the Revere facility to meet NRC's criteria, and, during the decommissioning activities, to maintain effluents and doses as low as is reasonably achievable.

Prior to the issuance of the proposed amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

The NRC hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, ''Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings,'' of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.2105(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this Federal Register notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In accordance with 10 CFR § 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Cabot Performance Materials, P.O. Box 1608, County Line Road, Boyertown, Pennsylvania, 19512–1608, Attention Mr. Anthony T. Campitelli; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, or by

mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the application for amendment request is available for inspection at the NRC's Public Document Room, 2120 L Street NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 31st day of May 1996.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

*Acting Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety, and Safeguards.*

[FR Doc. 96–14235 Filed 6–5–96; 8:45 am]

BILLING CODE 7590–01–P

**[Docket No.: 040–08724]**

## Finding of No Significant Impact Related To Amendment To Materials License SUB–1357, Chemetron Corporation, Inc.

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Finding of No Significant Impact associated with amendment to Materials License SUB–1357, Chemetron Corporation, Inc., Cuyahoga Heights, Ohio, to authorize remediation of Harvard Avenue site.

The U.S. Nuclear Regulatory Commission is considering issuing an amendment of Materials License No. SUB–1357, held by Chemetron Corporation, Inc., to authorize the remediation of the Harvard Avenue site located on Harvard Avenue in Cuyahoga Heights, Ohio.

*Environmental Assessment Summary*

Background

By the letter of March 24, 1994, Chemetron Corporation, Inc., (Chemetron) requested that NRC amend its license to authorize it to perform the remediation of the Harvard Avenue and Bert Avenue sites in accordance with its remediation plan entitled, ''Site Remediation Plan, Chemetron Remediation Project, Harvard and Bert Avenue Sites, Chemetron Corporation, Inc., Newburgh Heights, Ohio,'' Revision 1, dated February 25, 1995. This remediation plan also included Chemetron's plans for remediating buildings, adjacent to the Harvard Avenue site, owned by the McGean-Rohco, Inc., that are contaminated with radioactive material. By letter of May 18, 1995, Chemetron requested NRC staff to expedite and separately review the remediation of the Harvard Avenue site so that remediation would not be delayed due to the required Ohio Environmental Protection Agency (OEPA) review of the solid waste issues at the Bert Avenue site, under the jurisdiction of OEPA.

Following the review of the portions of the Chemetron Final Remediation Plan for Harvard Avenue and Bert Avenue sites that addressed the McGean-Rohco building remediation, NRC staff published, in the Federal Register (FR), on August 5, 1994, a Finding of No Significant Impact (FONSI) and an environmental assessment for the McGean-Rohco complex remediation. On August 9, 1994, NRC staff issued Amendment 4 to the Chemetron license authorizing Chemetron to conduct the McGean-Rohco building remediation. On August 9, 1994, NRC staff also issued a Safety Evaluation Report for the proposed remediation of the McGean-Rohco complex.

Proposed Action

In this action, Chemetron is proposing to utilize onsite disposal, under 10 CFR 20.2002, at the Harvard Avenue facility, for wastes, from the remediation of the Harvard Avenue site, with concentrations up to the Option 2 limit in the NRC's Branch Technical Position on ''Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations'' (1981 BTP). If wastes, that exceed the Option 2 concentration limits in the 1981 BTP, are discovered at the Harvard Avenue site, these wastes would be shipped offsite, to a licensed low-level waste disposal site.

Need for Proposed Action

The purpose of the proposed action is to decommission the Harvard Avenue site, by removing depleted uranium contamination in soils and building rubble, so that the site can be released for unrestricted use. Remediating the site will allow Chemetron to release the site back to the site owner, McGean-Rohco, Inc., and to remove the site from Chemetron's NRC license.

Environmental Impacts of Proposed Action

The NRC staff reviewed the levels of contamination, the proposed remediation methods, and the radiological and environmental controls that will be used during the remediation. These controls include worker dosimetry, the As Low As Is Reasonably Achievable (ALARA) program, air monitoring, routine surveys, a bioassay program for workers, and routine monitoring of both airborne and liquid effluent releases to meet 10 CFR Part 20 radiation protection requirements. Worker and public doses will be limited so that exposures will not exceed 10 CFR Part 20 requirements.

Chemetron proposed to remediate the Harvard Avenue site in accordance with ''Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, and Special Nuclear Materials,'' dated August 1987. Chemetron also proposed to dispose of depleted uranium wastes onsite in accordance with the 1981 BTP. Based on uranium solubility testing of the Harvard Avenue wastes, the maximum depleted uranium concentration that is acceptable for disposal in the disposal cell is 7.4 Bq/gm (200 pCi/gm) total uranium.

The staff also analyzed the radiological impacts to the public from the disposal of depleted uranium contaminated soils and building rubble in the proposed onsite disposal cell. Radiological impacts to members of the public will result from inhalation and ingestion of releases of radioactivity in air and in water during the remediation operations and direct exposure to radiation from radioactive materials at the site during remediation operations. The public will also be exposed to radiation as a result of the onsite disposal. Decommissioning workers will receive doses primarily by inhalation and direct exposure during the remediation activities. In addition to impacts from routine operations, the potential radiological consequences of accidents were considered.

The licensee provided an estimate of the dose to the public from airborne effluents to be generated during the excavation activities associated with the decommissioning of Harvard Avenue site. The maximum public dose from airborne effluents is 0.02 mSv (2 mrem) for the Harvard Avenue site. The staff performed a more conservative, independent analysis of the potential for public exposure from airborne effluents. The staff estimated the dose to the nearest resident during excavation of soil at the Chemetron Harvard Avenue site to be approximately 0.09 mSv (9 mrem).

The licensee performed dose assessments for the Harvard Avenue disposal cell using the RESRAD computer code, Version 5.05. The RESRAD code calculates dose impacts assuming a resident-farmer scenario, where an individual would construct a residence, live there, grow food, and consume all drinking water from a conservatively located groundwater well. Radiation doses were calculated to be 0.132 mSv/yr (13.2 mrem/yr) at 1000 years and peak at 0.142 mSv/yr (14.2

mrem/yr) at 2150 years after construction of the disposal cell. These predicted doses are less than NRC's limit of 1 mSv/yr (100 mrem/yr) for radiation doses to the public in 10 CFR Part 20. These doses reflect the worst case scenario with the proposed cover over the disposal cell assumed to have been removed.

NRC staff verified Chemetron's RESRAD code analyses, using Version 5.05, and obtained the same results as Chemetron. NRC staff also ran the calculations using an individual groundwater consumption rate of 730 l/yr, as recommended in NRC Policy and Guidance Directive PG–8–08, ''Scenarios for Assessing Potential Doses Associated with Residual Radioactivity.'' Chemetron assumed a consumption rate of 510 l/yr, recommended in Argonne National Laboratory's ANL/EAIS–8, ''Data Collection Handbook to Support Modeling the Impacts of Radioactive Material in Soil.'' The peak dose, assuming a cover, was computed to be 0.26 mSv/yr (26 mrem/yr) at 2160 years after disposal. At 1000 years after disposal, the dose would be 0.22 mSv/yr (22 mrem/yr). The peak dose, assuming no cover, was computed to be 0.20 mSv/yr (20 mrem/yr) at 2150 years after disposal. At 1000 years after disposal, the dose would be 0.185 mSv/yr (18.5 mrem/yr). The above doses estimated for the public are substantially less than the 1 mSv/yr (100 mrem/yr) limit for exposures to the public in 10 CFR Part 20.

During the remediation of the contaminated materials, workers will receive doses from direct exposure and from the inhalation of dusts containing depleted uranium. From direct exposure, assuming the maximum measured background radiation levels at the Harvard Avenue site of 0.2 mSv/month (20 mrem/month) and a 2000 hr exposure, Chemetron computed the direct exposure dose to be 0.55 mSv (55 mrem). Chemetron computed the inhalation dose to be 0.03 mSv (3 mrem). NRC staff reviewed and agrees with these calculations. The above doses are substantially below the 10 CFR Part 20 limit of 0.05 Sv/yr (5 rem/yr) for routine occupational exposure.

Based on the above evaluations, radiation exposures of persons living or traveling near the site due to onsite operations will be well within limits contained in NRC regulations and will be small in comparison to natural background radiation. The licensee has a radiation protection program that will maintain radiation exposures and effluent releases within the limits of 10 CFR Part 20 and will maintain exposures as low as is reasonably achievable.

The NRC staff reviewed the licensee's estimated potential consequences of postulated accidents. The licensee evaluated two worst case accident scenarios—a truck tipping over releasing its contents and a truck fire causing radioactivity to be dispersed into the air. The scenarios assumed the maximum total uranium concentration of 507 Bq/gm (13,700 pCi/gm) total uranium found at the Bert Avenue site in Chemetron's site characterization. This concentration is substantially higher than the maximum total uranium concentration of 5.9 Bq/gm (160 pCi/gm) at the Harvard Avenue site. Receptors 10 meters away would receive a dose of 4.3E–4 mSv (4.3E–2 mrem) from the truck spill accident and 0.04 mSv (4 mrem) from the truck fire accident. These postulated accidents do not have the potential for onsite or offsite radiation doses that exceed the minimum Protective Action Guide level of 1 Rem, recommended in the U.S. Environmental Protection Agency's ''Manual of Protective Action Guides and Protective Actions for Nuclear Incidents,'' or above the 10 CFR Part 20 limit of 0.05 Sv (5 Rem/yr) for routine occupational exposure.

No wastes that exceed the Option 2 limits in the 1981 BTP are expected at the Harvard Avenue site. However, if wastes that exceed the Option 2 limits are discovered, the wastes will be shipped offsite to a licensed low-level waste disposal site. Wastes will be packaged and shipped in containers or covered railcars or trucks in accordance with NRC and Department of Transportation requirements. Wastes will be disposed of in accordance with the disposal site license conditions. Therefore, there are no expected impacts from the transportation or offsite disposal of radioactive materials.

The NRC staff also considered nonradiological impacts and concluded that all such impacts are negligible.

Chemetron has identified, at the Harvard Avenue site, no solid wastes and hazardous wastes, as defined under the Resource, Conservation, and Recovery Act (RCRA) that will need to be managed in accordance with the requirements of the OEPA. If such wastes are encountered, the wastes will be managed in accordance with OEPA requirements. Any impacts for handling RCRA solid and hazardous wastes, if identified, are expected to be small.

Based on the very low minority populations in Cuyahoga Heights, Ohio, and in Newburgh Heights, Ohio, which borders the Harvard Avenue site, and income statistics that show no significant low-income populations compared with those in Cuyahoga County and in the State of Ohio, there will be no significant impacts to minorities and low-income households from the proposed activities.

The proposed remediation of the Harvard Avenue site will enable Chemetron to release the site for unrestricted use. On the basis of the NRC staff's evaluation of Chemetron's proposed remediation approach for the Harvard Avenue site, and analysis of the environmental impacts of the proposed action, the staff concludes that the proposed remediation activities will not result in any significant environmental or radiological impact.

Alternatives to the Proposed Action

The staff evaluated the following alternatives to the proposed action: (1) leaving the depleted uranium in place; (2) delaying the remediation; (3) disposing of contamination at an existing licensed low-level radioactive disposal site; (4) applying volume reduction methods to the contaminated materials; and, (5) onsite disposal. Alternatives 1 and 2 would not allow the license to be terminated and would be unacceptable. There are no significant environmental impacts associated with Alternatives 3, 4, and 5. However, Alternatives 3 and 4 are substantially more expensive than Alternative 5, the licensees proposed option. Based on this evaluation, NRC staff concludes that there are no reasonably available alternatives to the licensee's proposed plan that are obviously superior.

Agencies and Persons Consulted, and Sources Used

This environmental assessment was prepared by staff of the U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Rockville, MD, and Region III, Lisle, IL.

During the review of Chemetron's Final Site Remediation Plan, NRC requested comments from the Mayor of Newburgh Heights, the Ohio Department of Health (ODH), the OEPA, and the Cuyahoga County Board of Health (CCBH). NRC received formal comments from ODH and CCBH, and informal comments from OEPA. The principle comments received from ODH and OEPA were that NRC should require post-closure controls and monitoring, for the radiologic components in the waste, after completion of the onsite disposal cells. These controls would be consistent with the post-closure controls required by OEPA for solid waste landfills. NRC staff indicated that under the conditions

of onsite disposal under the Option 2 limits of the 1981 BTP the Harvard Avenue site could be released for unrestricted use, and doses to hypothetical intruders, who might construct homes and consume groundwater and foodstuffs grown in the wastes, would be acceptable. The principle comments made by CCBH were to correct technical inconsistencies, in the Site Remediation Plan, related to the design of the proposed Bert Avenue disposal cell.

A draft of this environmental assessment was also transmitted to ODH, OEPA, CCBH, and the Mayor of Newburgh Heights, Ohio. The CCBH, OEPA, and the Mayor of Newburgh Heights had no comments on the draft EA. ODH concurred with the dose assessment modeling results, and indicated that the proposed action will be protective of public health. ODH also commented that they desired a mechanism for detecting disposal cell failure and deed restrictions that would limit any type of activity that might jeopardize disposal cell integrity. As indicated above, NRC staff consider that under the Option 2 disposal conditions, the Harvard Avenue site can be released for unrestricted use, without post-closure controls related to radioactive materials.

The NRC staff requested a review by the Ohio Historic Preservation Office (OHPO) of the Harvard Avenue property. The OHPO concluded that the project, if completed as proposed, would have no effect on properties listed on or eligible for the National Register of Historical Places.

No other sources of information were used beyond those which are referenced in the report.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes that the issuance of the license amendment will not have a significant impact on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

Opportunity for a Hearing

On April 11, 1994, the NRC published in the *FR* a notice of Consideration of Amendment to Chemetron Corporation License and Opportunity for Hearing (59 FR 17124) with respect to the matters covered in the amendment that is the subject of this notice. In response to that notice, Earth Day Coalition submitted a petition for hearing. On July 7, 1994, the Presiding Officer granted a three week period for Earth Day Coalition to supplement a deficient hearing request. The Coalition's petition failed to demonstrate that the NRC's standing requirements were met and that its concerns were germane to the subject matter of the proceeding. Because the Coalition did not file the supplemental information, on September 1, 1994, the Presiding Officer dismissed the proceeding. Accordingly, the agency has complied with its rules in 10 CFR Part 2, Subpart L, and no further offer of an opportunity for a hearing is made regarding the subject matter of this notice.

The environmental assessment and the documents related to this proposed action are available for public inspection and copying at the NRC's Public Document Room, 2120 L Street, N.W., Washington, DC 20555, and the NRC's Local Public Document Room at the Garfield Heights Branch Library, 5409 Turney Road, Garfield Heights, Ohio, (Docket No. 040–08724).

For additional information, contact Timothy C. Johnson, Section Leader, Materials Decommissioning Section, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, (310) 415–7299.

Dated at Rockville, Maryland, this 31st day of May 1996.

For the Nuclear Regulatory Commission

Robert A. Nelson,

*Acting Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 96–14236 Filed 6–5–96; 8:45 am]

BILLING CODE 7590–01–P

## Advisory Committee on Nuclear Waste; Renewal Notice

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC)

**ACTION:** Notice of renewal of the Advisory Committee on Nuclear Waste for a period of two years.

**SUPPLEMENTARY INFORMATION:** The Nuclear Regulatory Commission has determined that renewal of the Charter for the Advisory Committee on Nuclear Waste for the two year period commencing on May 30, 1996, is in the public interest in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act after consultation with the Committee Management Secretariat, General Services Administration.

The purpose of the Advisory Committee on Nuclear Waste is to provide advice to the U.S. Nuclear Regulatory Commission (NRC) on nuclear waste disposal facilities, as directed by the Commission. This includes 10 CFR Parts 60 and 61 and other applicable regulations and legislative mandates such as the Nuclear Waste Policy Act, the Low-Level Radioactive Waste Policy Act, and the Uranium Mill Tailings Radiation Control Act, as amended. The primary emphasis will be on disposal facilities. In performing its work, the Committee will examine and report on those areas of concern referred to it by the Commission or its designated representatives, and will undertake other studies and activities related to those issues as directed by the Commission. The Committee will interact with representatives of NRC, ACRS, other federal agencies, state and local agencies, Indian Tribes, private organizations, etc., as appropriate to fulfill its responsibilities.

For Further Information Please Contact: John T. Larkins, Executive Director of the Committee, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 415–7360.

Dated: May 30, 1996.

Andrew L. Bates,

*Federal Advisory Committee Management Officer.*

[FR Doc. 96–14237 Filed 6–5–96; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF GOVERNMENT ETHICS

## Extension and Revocation of Post-Employment Waiver

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Notice; extension and revocation of waiver.

**SUMMARY:** The Office of Government Ethics is giving notice of the extension, for up to an additional four months (until November 1, 1996 or the effective date of any corrective legislation, if earlier), of a short-term post-Government employment waiver of certain ''senior employee'' restrictions it granted earlier this year to position holders who, but for the pay raise authorized by Executive Order 12984 (or a pay raise tied thereto), would not receive a rate of basic pay equal to or greater than the rate of basic pay for level V of the Executive Schedule. This additional extension is provided to allow time for full consideration of legislation pending in this Congress which contains a new definition of ''senior employee'' complementary to this waiver. This shall also serve as

notice that the waiver is revoked as of the same date.

**EFFECTIVE DATE:** June 6, 1996.

**ADDRESSES:** Copies of the OGE Memorandum discussed in the Supplementary Information section below may be obtained, without charge, by contacting William E. Gressman, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. That document is also available on OGE's electronic bulletin board TEBBS (''The Ethics Bulletin Board Service''). Information regarding TEBBS may also be obtained from Mr. Gressman.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gressman at OGE, telephone: 202–208–8000, ext. 1110; FAX: 202–208–8037 (please note the new OGE telephone and FAX numbers).

**SUPPLEMENTARY INFORMATION:** On December 28, 1995, President Clinton signed Executive Order 12984, ''Adjustments of Certain Rates of Pay and Allowances.'' See 61 FR 237–246 (part III of the January 3, 1996 issue), as amended by E.O. 12990 of February 29, 1996 as to the uniformed services (see 61 FR 8467–8470 (March 5, 1996 issue)). Executive Order 12984 raised the rate of basic pay for Senior Executive Service (SES) level 4 to $109,400 per year, an amount greater than the rate of basic pay for level V of the Executive Schedule, at $108,200 per year. Since the Executive Schedule level V rate of basic pay (which has not been increased since January 1993) is the threshold level for ''senior employee'' status under 18 U.S.C. 207(c)(2)(A)(ii) of the post-Government employment conflict of interest statute, the pay raise would have subjected employees occupying positions at SES level 4, and other similarly situated positions, to the ''senior employee'' restrictions set forth in 18 U.S.C. 207 (c) and (f).

On January 4, 1996, pursuant to its authority under 18 U.S.C. 207(c)(2)(C), the Office of Government Ethics granted a temporary waiver effective for six months, until June 30, 1996, from the ''senior employee'' post-Government employment restrictions of 18 U.S.C. 207 (c) and (f) to a specified group of executive branch employees. The group of employees to which OGE granted the waiver last January was constituted of all executive branch employees whose rate of basic pay on December 28, 1995 was less than the rate of basic pay payable for level V of the Executive Schedule and who as a direct result of Executive Order 12984, or any other Executive order or statute the terms of which are tied to the pay raise effected through that Executive order, would have had their basic rate of pay increased to an amount equal to or greater than the rate of basic pay for level V of the Executive Schedule and whose position would then be described in 18 U.S.C. 207(c)(2)(A)(ii). See OGE's January 4, 1996 Memorandum (# DO–96–001) to heads of agencies, designated agency ethics officials and inspectors general. The Office of Government Ethics clarifies that the waiver also is (and has been) applicable to any otherwise covered position for which the rate of basic pay is (or was) administratively determined by an agency, provided that such determination is (or was) tied to the raise effected by E.O. 12984.

Thus OGE's waiver, in describing the persons covered by reference to Executive Order 12984 which dealt in part with the Senior Executive Service pay raise, directly and expressly covered those holding SES level 4 positions. In addition, the waiver also covered all other Federal executive branch personnel similarly situated in different personnel schedules and systems meeting the above-noted criteria for coverage under the waiver. The Office of Government Ethics is further clarifying that, during the period of this waiver from January 1, 1996 until its extended expiration and revocation no later than November 1, 1996, the waiver also covers all persons hired at, promoted into or otherwise entering an SES level 4 position (but not an SES level 5 or 6 position), or an equivalent level position in another executive branch schedule/system. Moreover, as to any such persons who leave a position covered by the waiver during its term of application, the post-employment waiver from senior employee status becomes permanent—they will not be subject to the restrictions at 18 U.S.C. 207 (c) and (f).

The Office of Government Ethics was not required by 5 CFR 2641.201(d) to publish its position waiver (exemption) determination in the Federal Register. Instead, the January 4, 1996 waiver determination was disseminated by memorandum and notice on OGE's electronic bulletin board to the executive branch departments and agencies. The Office of Government Ethics is required to publish any annual update to the compilation of exempted positions or categories of positions in appendix A to 5 CFR part 2641. Thus far, no update has been published in 1996. Moreover, OGE is also required to publish a 90-day advance notice of any revocation of a position waiver in the Federal Register. In accordance with that notice requirement, OGE earlier published a revocation notice at 61 FR 14326–14328 (April 1, 1996), indicating that the original six-month waiver would expire and was to be revoked effective July 1, 1996. The newly extended waiver revocation date announced in this notice supersedes the waiver revocation date set forth in the April Federal Register notice.

In granting the waiver last January, OGE indicated several reasons for its issuance. In addition to providing adequate notice to about-to-be newly affected ''senior employees'' as well as their agencies, one primary reason was to give OGE time to discuss with Congress any possible changes to 18 U.S.C. 207 that would take into consideration the effect of pay compression on the applicability of post-employment restrictions. One underlying concept of the post-employment restrictions is that the more severe restrictions should only apply to those serving in the most senior career and political positions. The Office of Government Ethics has seen no evidence that the goals of the post-employment restrictions have not been properly met since the new post-employment law took effect in 1991, during which time those at SES level 4, and those in equivalently compensated positions, have not been subject to ''senior employee''-level restrictions.

With regard to the legislative initiative, the bill in the House of Representatives to reauthorize the Office of Government Ethics (H.R. 3235) now contains a provision that would key ''senior employee'' status under section 207(c)(2)(A)(ii) to employment in a position for which the basic rate of pay (excluding any locality-based pay adjustment or comparable adjustment pursuant to interim authority of the President) is equal to or greater than the rate of basic pay payable for level 5 of the SES, rather than that for level V of the Executive Schedule. H.R. 3235 was recently reported out of the House Committee on the Judiciary.

Thus, in OGE's view, there is sufficient progress on the above-noted proposed amendment to section 207 for OGE to extend the January 4, 1996 waiver for up to four more months, beyond the previously scheduled expiration date of July 1, 1996, until November 1, 1996 at the latest to allow for the possible passage, signature and effectiveness of this corrective provision and thereby avoid a gap in waiver coverage in the interim. If the statutory amendment were to take effect before November 1, 1996, the terms of the new law would then govern and this waiver would lapse by operation of law. If not, under 5 CFR 2641.201(d)(4), OGE hereby gives notice that the above-

referenced post-employment waiver, granted in its January 4, 1996 Memorandum and as extended in this document, will expire and is revoked effective on November 1, 1996. The Office of Government Ethics will keep agencies informed of further progress on the legislative initiative.

Even if the post-employment law is not amended, executive branch departments and agencies can still over the next several months consider and prepare, if appropriate, requests for the long-term exemption of individual positions or categories of positions to be submitted to OGE for consideration pursuant to 5 CFR 2641.201(d)(3) of OGE's post-Government employment regulations. Under the statute and OGE's implementing regulations, the OGE Director may determine that a waiver (exemption) is warranted with respect to a qualified position or a category of positions if he finds that the imposition of the restrictions with respect thereto would create an undue hardship to the department or agency concerned in obtaining qualified personnel to fill the position(s) and that granting the exemption would not create the potential for use of undue influence or unfair advantage based on past Government service. See 18 U.S.C. 207(c)(2)(C) and 5 CFR 2641.201(d)(5). In light of the pendency of a possible legislative amendment and because of this extension of the existing waiver, OGE requests that departments and agencies wait until late summer before filing any requests for exemption as to SES level 4 and similarly situated positions which are covered by the current OGE waiver and which they believe should be permanently exempted based on the statutory and regulatory criteria.

Approved: May 22, 1996.

Stephen D. Potts,

*Director, Office of Government Ethics.*

[FR Doc. 96–14199 Filed 6–5–96; 8:45 am]

**BILLING CODE 6345–01–U**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request For Reclearance of Information Collection SF 2802, SF 2802B, and RI 36–7

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management will submit to the Office of Management and Budget a request for reclearance of the following information collections. SF 2802, Application for Refund of Retirement Deductions (CSRS), SF 2802B, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions, and RI 36–7, Marital Information Required of Refund Applicants. OPM must have the SF 2802 completely filled out and signed before paying a refund of retirement contributions. SF 2802B must also be completed if there are spouse(s) or former spouse(s) who must be notified of the employee's intent to take a refund. RI 36–7 is needed when the SF 2802 is incomplete as to the applicant's marital status.

Approximately 35,000 SF 2802 forms are completed annually. Each form takes approximately 45 minutes to complete. The annual estimated burden is 26,250 hours. Approximately 31,500 SF 2802B forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 7,875 hours. Approximately 21,050 RI 36–7 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 3,508 hours. The combined total annual burden is 37,633 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

**DATES:** Comments on this proposal should be received by July 8, 1996.

**ADDRESSES:** Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street NW., Room 3349, Washington, DC 20415–0001

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503

**FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT:** Mary Beth Smith-Toomey, Management Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Lorraine A. Green,

*Deputy Director.*

[FR Doc. 96–14250 Filed 6–5–96; 8:45 am]

**BILLING CODE 6325–01–M**

## POSTAL RATE COMMISSION

**[Docket No. A96–17]**

### In the Matter of: Huntley, Nebraska 68951: (J. Donald Schluntz, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued June 3, 1996.

*Docket Number:* A96–17.

*Name of Affected Post Office:* Huntley, Nebraska 68951.

*Name(s) of Petitioner(s):* J. Donald Schluntz.

*Type of Determination:* Closing.

*Date of Filing of Appeal Papers:* May 28, 1996.

*Categories of Issues Apparently Raised:*

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404 (b)(5)). In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions, any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

*The Commission Orders*

(a) The Postal Service shall file the record in this appeal by June 12, 1996.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Margaret P. Crenshaw,

*Secretary.*

Appendix

May 28, 1996—Filing of Appeal letter
June 3, 1996—Commission Notice and Order of Filing of Appeal

June 21, 1996—Last day of filing of petitions to intervene [see 39 CFR 3001.111(b)]
July 2, 1996—Petitioner's Participant Statement or Initial Brief [see 39 CFR 3001.115(a) and (b)]
July 22, 1996—Postal Service's Answering Brief [see 39 CFR 3001.115(c)]
August 6, 1996—Petitioner's Reply Brief should Petitioner choose to file one [see 39 CFR 3001.115(d)]
August 13, 1996—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [see 39 CFR 3001.116]
September 26, 1996—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 96–14255 Filed 6–5–96; 8:45 am]
BILLING CODE 7710–FW–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:** Under the provisions of the Federal Advisory Committee Act, this notice is hereby given to announce an open meeting of the Presidential Advisory Committee on Gulf War Veterans' Illnesses.

**DATES:** July 8, 1996, 9:00 a.m.–5:00 p.m.; July 9, 1996, 8:30 a.m.–3:30 p.m.

**PLACE:** Ambassador West Hotel, 1300 North State Parkway, Chicago, IL 60610.

**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 committee reports to the President through the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs. The committee members have expertise relevant to the functions of the committee and are appointed by the President from non-Federal sectors.

Tentative Agenda

*Monday, July 8, 1996*

9:00 a.m.—Call to order and opening remarks
9:10 a.m.—Public comment
10:15 a.m.—Break
10:30 a.m.—Public comment (cont.)
11:30 a.m.—Briefing: Research funded through the Department of Defense's 1995 Broad Agency Announcement
12:30 p.m.—Lunch
1:30 p.m.—Briefing: Chemical and biological weapons
2:15 p.m.—Briefing: Persian Gulf Veterans Coordinating Board, Compensation Working Group
3:15 p.m.—Break
3:30 p.m.—Briefings: Outreach issues
5:00 p.m.—Meeting recessed

*Tuesday, July 9. 1996*

8:30 a.m.—Call to order
8:35 a.m.—Briefings: Chemical warfare agents
9:45 a.m.—Break
10:00 a.m.—Briefings: Risk factors
12:00 p.m.—Lunch
1:00 p.m.—Briefings: Risk factors (cont.)
2:30 p.m.—Committee and staff discussion: Next steps
3:30 p.m.—Meeting adjourned

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 Advisory Committee. Priority will be given to Gulf War veterans and their families. The Advisory Committee 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:** Miles W. Ewing, Presidential Advisory Committee on Gulf War Veterans' Illnesses, 1411 K Street, N.W., suite 1000, Washington, DC 20005, Telephone: (202) 761–0066, Fax: (202) 761–0310.

Dated: June 3, 1996.

C.A. Bock,

*Federal Register Liaison Officer, Presidential Advisory Committee on Gulf War Veterans' Illnesses.*

[FR Doc. 96–14267 Filed 6–5–96; 8:45 am]
BILLING CODE 3610–76–M

## RAILROAD RETIREMENT BOARD

### Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1996, shall be at the rate of 34 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1996, 33.4 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 66.6 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: May 29, 1996.

By Authority of the Board.

Beatrice Ezerski,

*Secretary to the Board.*

[FR Doc. 96–14209 Filed 6–5–96; 8:45 am]
BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 17a–4—SEC File No. 270–198—OMB Control No. 3235–0279
Rule 24—SEC File No. 270–129—OMB Control No. 3235–0126

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget request for approval of extension on the following rules:

Rule 17a–4 requires exchange members, brokers and dealers to preserve for prescribed periods of time certain records required to be made under Rule 17a–3. It is anticipated that approximately 8,300 broker-dealers are required to comply with Rule 17a–4 and each will spend 250.25 hours per year complying with the rule. The total annual burden is estimated to be 2,077,075 hours.

Rule 24 requires the filing with the Commission of certain information indicating that an authorized transaction has been carried out in accordance with the terms and conditions of the Commission order relating thereto. The rule imposes a burden of about 358 hours annually on approximately 253 respondents.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 30, 1996.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96–14176 Filed 6–5–96; 8:45 am]

**BILLING CODE 8010–01–M**

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**[Investment Company Act Rel. No. 21995; 812–9974]**

## American AAdvantage Funds, et al.; Notice of Application

May 30, 1996.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (''Act'').

**APPLICANTS:** Amrican AAdvantage Funds (the ''AAdvantage Trust''), American AAdvantage Mileage Funds (the ''Mileage Trust''), AMR Investment Services Trust (the ''AMR Trust,'' collectively with the AAdvantge Trust and the Mileage Trust, the ''Trusts''), and AMR Investment Services, Inc. (''Manager''), on behalf of themselves and all future investment companies or series funds of the Trusts that employ the ''multi-manager'' structure described in the application and are advised by the Manager or an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Manager.

**RELEVANT ACT SECTIONS:** Exemption requested under section 6(c) of the Act from the provisions of section 15(a) and rule 18f–2.

**SUMMARY OF APPLICATION:** Applicants seek a conditional order permitting the Manager, as investment adviser to the Trusts, to enter into sub-advisory contracts on behalf of one or more series funds of the Trusts without obtaining prior shareholder approval.

**FILING DATES:** The application was filed on January 29, 1996, and amended on May 6, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 24, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 4333 Amon Carter Boulevard, MD 5645, Forth Worth, Texas 76155.

**FOR FURTHER INFORMATION CONTACT:** Courtney S. Thornton, Senior Counsel, at (202) 942–0583, or David M. Goldenberg, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

### Applicants' Representations

1. The AAdvantage Trust, which currently has eight series funds (the ''AAdvantage Funds''), and the Mileage Trust, which currently has seven series funds (the ''Mileage Funds,'' collectively with the AAdvantage Funds, the ''Funds''), are Massachusetts business trusts registered under the Act as open-end management investment companies. Each Fund is a separate investment series of the AAdvantage Trust or the Mileage Trust and has distinct investment objectives and policies. Because applicants believe that returns can be enhanced by careful selection and blending of styles of several investment managers within a single asset class, three of the Funds have operated as ''multi-manager'' funds (the ''Multi-Manager Funds'') since their organization in 1987. Each of the Multi-Manager Funds has relied upon at least two sub-advisers with different investment styles (the ''Money Managers'') for the provision of investment advisory services.

2. The Funds implemented a ''master-feeder'' structure on November 1, 1995. Under this structure, each Fund (other than the American AAdvantage Short-Term Income Fund, which invests directly in investment securities) invests all of its investable assets in a corresponding series fund (''Portfolio'') of the AMR Trust, a New York common law trust that is registered under the Act as an open-end management investment company.[1] Each of the seven Portfolios has investment objectives identical to those of the corresponding Funds.

3. With the conversion of the majority of the Funds to a master-feeder structure, the three Portfolios in which the Multi-Manager Funds invest were structured as multi-manager investment vehicles employing tow or more Money Managers (the ''Multi-Manager Portfolios''). Each Money Manager provides investment advisory services for the Multi-Manager Portfolios and their corresponding Funds pursuant to a separate investment advisory agreement (the ''Money Manager Agreement'') with the Manager, who pays the fees of the Money Managers out of the investment advisory fees it receives from the Trusts. As long as a Fund invests all of its investable assets in a corresponding Multi-Manager Portfolio, however, a Money Manager will receive an advisory fee only on behalf of the Multi-Manager Portfolio and not on behalf of the corresponding Fund(s). The Manager currently serves as the sole investment adviser to the non-Multi-Manager Portfolios, to which the requested relief will not apply unless they elect to employ two or more Money Managers.

4. The Manager, a wholly-owned subsidiary of AMR Corporation, the parent corporation of American Airlines, Inc., is registered as an investment adviser under the Investment Advisers Act of 1940. The Manager provides the Trusts with administrative and asset management services, including the oversight of all investment advisory and portfolio management services for the Funds and the Portfolios pursuant to investment advisory contracts (the ''Management Agreements''). However, as a result of the master-feeder structure, all investment management for the Multi-

[1] Interests in the AMR Trust are offered to the Advantage Trust and the Mileage Trust pursuant to an exemption from registration under the private offering exemption contained in section 4(2) of the Securities Act of 1933.

Manager Funds takes place at the Portfolio level, rather than at the Fund level. As part of its responsibilities, the Manager recommends and supervisors the Money Managers, subject to the oversight and approval of the board of trustees (the ''Board'') of the applicable Trusts. To discharge its duties, the Manager from time to time recommends the replacement or addition of Money Managers and/or changes in the Money Manager Agreements.

5. At a recent shareholders meeting, shareholders of the Funds and the Portfolios approved the adoption of a policy that would permit the Manager to hire Money Managers and modify Money Manager Agreements solely with Board approval, without prior shareholder approval. Accordingly, applicants request an exemption from section 15(a) and rule 18f–2 to permit the Money Managers to act as investment advisers to one or more Portfolios or Funds pursuant to a written contract that has not been approved by the shareholders of the applicable Portfolios or Funds.[2]

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the investment company's outstanding voting securities. Rule 18f–2 provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants assert that by choosing the invest in a Fund that invests its assets in a Multi-Manager Portfolio, investors have indicated their reliance upon the Manager to select and monitor the Portfolio's sub-advisers. Applicants believe that unless the Multi-Manager Portfolios have the ability to act promptly upon the Manager's recommendations with respect to the Money Managers, investors' expectations are frustrated and the Funds and their shareholders could be seriously disadvantaged in certain circumstances.

3. Applicants contend that the structure of the Multi-Manager Portfolios is unlike that of a conventional mutual fund in that it divides responsibility for general management and investment advisory services between the Manager and the Money Managers. Applicants argue that because shareholders rely upon the Manager to manage the Portfolios' sub-advisers, the selection or change of a Money Manager is not an event that significantly alters the nature of shareholders' investment, nor does it implicate the policy concerns regarding shareholder approval. Applicants assert that investors will continue to exercise control over their relationship with the Manager, the party they have chosen to hold accountable for investment results and related services, by voting on matters relating to the Management Agreement.

4. Applicants believe that requiring shareholder approval of a new or amended Money Manager Agreement prior to its effective date is not necessary to effect the policies and purposes of the act, particularly as doing so will increase expenses and delay prompt implementation of action the Manager has determined is most beneficial to the shareholders of the Multi-Manager Portfolios and the corresponding Funds. Applicants also assert that even though shareholders will not vote on Money Manager changes, they will receive an information statement that includes all the information about a new Money Manager or Money Manager Agreement that would be included in a proxy statement. In addition, applicants state that all fees payable by the Manager to the Money Manager will be disclosed in the prospectus of the applicable Fund.

5. Finally, applicants argue that, unlike the normal fund/adviser relationship, the relationship between the Manager and a Money Manager is entirely arm's length. Applicants assert that the terms of the requested order will ensure that there can be no significant financial interest between the directors, officers, and trustees of the Trusts and the Manager and the Money Managers themselves (other than through a pooled investment vehicle that is not controlled by any such director, officer, or trustee).

6. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the policies and purposes fairly intended by the policies and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree that the requested exemption will be subject to the following conditions:

1. Before a Fund or a Portfolio may rely on the order requested in the application, the operation of the Fund or the Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities, as defined in the Act, of the Fund and the Portfolio or, in the case of a new Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

2. Any Fund relying on the requested relief will disclose in its prospectuses the existence, substance, and effect of any order granted pursuant to the application.

3. The Manager will provide management and administrative services to the Funds and the Portfolios, and, subject to the review and approval of their respective Boards, will: set the overall investment strategies of the Funds and the Portfolios; recommend Money Managers; allocate, and when appropriate, reallocate the assets of the Funds and the Portfolios among Money Managers; monitor and evaluate the investment performance of the Money Mangers, including their compliance with the investment objectives, policies, and restrictions of the Funds and the Portfolios; and manage short-term investments of the Funds and the Portfolios.

4. A majority of each Board will be persons each of whom is not an ''interested person'' of the Trust (as defined in section 2(a)(19) of the Act) (the ''Independent Trustees''), and the nomination of new or additional Independent Trustees will be placed within the discretion of the then existing Independent Trustees.

5. The Trusts will not enter into Money Manager Agreements with any Money Manager that is an ''affiliated person,'' as defined in section 2(a)(3) of the Act, of the Funds, the Portfolios, or the Manger other than by reason of serving as a Money Manager to one or more of the Funds or the Portfolios (an ''Affiliated Money Manager'') without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund and Portfolio.

6. When a change of Money Manager is proposed for a Fund or a Portfolio with an Affiliated Money Manager, the Board of the applicable Trust, including

[2] The requested relief would not apply to any of the Funds unless they decide to invest their assets directly and employ two or more Money Managers to provide investment advisory services as described in the application.

a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes of the Trust, that any such change of Money Manager is in the best interest of the Trust and its shareholders and does not involve a conflict of interest from which the Manager or Affiliated Money Manager derives an inappropriate advantage.

7. No director, trustee, or officer of a Trust or the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in a Money Manager except for ownership of interests in the Manager or any entity that controls, is controlled by, or under common control with the Manager, or ownership of less than 1% of the outstanding securities of any class of equity or debt securities of any publicly traded company that is either a Money Manager or controls, is controlled by, or is under common control with a Money Manager.

8. Within 90 days of the hiring of any new Money Manager or the implementation of any proposed material change in a Money Manager Agreement, the affected Fund and Portfolio will furnish their shareholders with all information about the new Money Manager or Money Manager Agreement that would be included in a proxy statement. Such information will include any change in such disclosure caused by the addition of a new Money Manager or any proposed material change in the Money Manager Agreement of a Fund or a Portfolio. The Fund and the Portfolio will meet this condition by providing shareholders, within 90 days of the hiring of a Money Manager or the implementation of any material change to the terms of a Money Manager Agreement, with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 (the ''Exchange Act''). The information statement also will meet the requirements of Item 22 of Schedule 14A under the Exchange Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96–14178 Filed 6–05–96; 8:45 am]

**BILLING CODE 8010–01–M**

**[Investment Company Act Release No. 21996; 811–5591]**

## The Dreyfus/Laurel Investment Series

May 30, 1996.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

**APPLICANT:** The Dreyfus/Laurel Investment Series.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant requests an order declaring that it has ceased to be an investment company.

**FILING DATES:** The application was filed on April 9, 1996 and amended on May 20, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 24, 1996 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 200 Park Avenue, New York, New York 10166.

**FOR FURTHER INFORMATION CONTACT:** Sarah A. Buescher, Staff Attorney, at (202) 942–0573, or David M. Goldenberg, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On May 31, 1988, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act, and a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on October 11, 1988, and the initial public offering of applicant's shares commenced on October 12, 1988. Applicant's board of trustees had authorized both Investor and Class R shares of the Fund, but only Investor shares of the Fund were issued.

2. On July 26, 1995, applicant's board of trustees approved the liquidation of the last remaining series of applicant (the ''Fund'') and the subsequent dissolution of applicant. Applicant's board approved the liquidation based on the less than expected growth and performance of the Fund. The board also approved the retention by applicant's transfer agent of one Investor share of the Fund following the Fund's liquidation so that the transfer agent could act as shareholder to approve applicant's dissolution.

3. On September 15, 1995, applicant made a liquidating distribution of $351,113 to shareholders of record at $11.86 per share. The distribution to shareholders was based on net asset value. On September 18, 1995, applicant's transfer agent, as the sole remaining shareholder of the Fund, approved the dissolution of applicant in accordance with applicant's trust agreement.

4. In connection with its liquidation, applicant is expected to incur approximately $7,500 of aggregate expenses, consisting primarily of legal expenses, all of which have been or will be paid by The Dreyfus Corporation, applicant's investment adviser. Applicant's portfolio securities were sold at market prices and no brokerage commissions were incurred.

5. As of the date of the application, applicant had no assets, no liabilities, and no shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged, nor proposes to engage, in any business activities other than those necessary for the winding-up of its affairs.

6. Applicant intends to file a notice of termination with the appropriate Massachusetts authorities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96–14181 Filed 6–5–96; 8:45 am]

**BILLING CODE 8010–01–M**

**[Release No. 34–37252; File No. SR–Amex–96–18]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to the Listing and Trading of a Narrow-Based Domestic Index Warrants

May 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 20, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Amex. 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, under Section 106 of the Amex *Company Guide*, index warrants based on a portfolio of equity securities (''Index''), and equal-dollar weighted narrow-based index developed by an issuer comprised of actively traded equity securities which are traded on the Amex, New York Stock Exchange (''NYSE''), or through the facilities of the National Association of Securities Dealers Automated Quotation 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, 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 Amex 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 Amex 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

Under Section 106 (Currency and Index Warrants) of the Amex *Company Guide*, the Exchange may approve for listing index warrants based on foreign and domestic market indices. While the Exchange currently lists and trades warrants on a number of foreign market indices and broad-based domestic market indices, it now proposes to list and trade a warrant on a narrow-based domestic market index. The listing and trading of warrants on the A portfolio of value equity securities will comply in all respects to Exchange Rules 1100 through 1110 for the trading of stock index and currency warrants.

Warrant issues on the Index will conform to the listing guidelines under Section 106, which provide, among other things, that (1) the issuer shall have tangible net worth in excess of $250,000,000 and otherwise substantially exceed size and earnings requirements in Section 101(A) of the *Company Guide* or meet the alternate guideline in paragraph (a); (2) the term of the warrants shall be for a period ranging from one to three years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a ''put'' would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a ''call'' would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If ''out-of-the-money'' at the time of expiration, the warrants would expire worthless. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The Index

The Amex is proposing to list index warrants based on a popular portfolio of ten large actively traded equity securities. The portfolio will be designed as an equal dollar weighted index. Each of the component securities in the Index will have a market value of at least $75 Million and trading volume in each of the last six months of not less than 1,000,000 shares. At least 90% of the securities in the Index will meet the current criteria for standardized option trading. If the Index includes foreign securities or American Depositary Receipts on foreign securities that are traded in countries with which the Exchange does not have comprehensive surveillance agreements with the appropriate regulatory authorities, such components will not represent more than 20% of the Index. All of the component securities in the Index will be listed on the Amex, the New York Stock Exchange or trade through the facilities of NASDAQ.

The Index will be set with a benchmark value of 100 on the date the warrant is priced for initial offering to the public. Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminate every 15 second over the Consolidated Tape Association's Network B.

The Exchange will monitor the components in the portfolio on a monthly basis and will advise the Commission whenever (1) less than 75% of the components are eligible for standardized option trading, (2) the number of components in the index decreases to less than nine, (3) the three highest weighted components represent more than 60% of the weight of the Index or (4) the trading volume of any of the components falls below 500,000 shares for each of the last six months.

The Index will be monitored daily for certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event which may require a multiplier adjustment to maintain continuity of the Index's value. In the event of a merger, consolidation, dissolution or liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, components in the Index may be deleted or replaced. Shares of a component security may be replaced (or supplemented) with other securities under certain other circumstances, such as the conversion of a component

security into another class of security or the spin-off of a subsidiary. If the security remains in the Index, the multiplier may be adjusted to maintain the continuity of the Index's value. In the event that a security in the Index is removed due to a corporate consolidation and the holders of such security receive cash, the cash value of such security will be included in the index and will accrue interest at LIBOR to term.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying 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 Amex. All submissions should refer to SR-Amex-96–18 and should be submitted by June 27, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96–14179 Filed 6–5–96; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–37251; International Series Release No. 987; File No. SR–CBOE–96–32]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Change the Method for Determining the Exercise Settlement Value of Options on the Mexican Indice de Precios y Cotizaciones

May 29, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The CBOE has requested accelerated approval for the proposal. This order approves the CBOE's proposal on an accelerated basis and solicits comments from interested persons.

I. Self-Regulatory Organizations's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to allow for an alternative method of determining the settlement value of options on the Mexican Indice de Precios y Cotizaciones (''IPC'' or ''Index'').[3]

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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend Exchange Rule 24.9 to provide the Mexican Stock Exchange (''Bolsa'') with the discretion to utilize either the closing prices of the component securities or a weighted average of the prices for each of the component securities in determining the exercise settlement value of IPC options. Currently, the settlement value of the IPC is determined based upon the closing prices of the component stocks on the regular Friday trading sessions in Mexico.[4]

If the Bolsa elects to use the weighted average methodology, the IPC's settlement value will be determined by reference to transactions in the component securities during a period of time at the end of the trading day immediately preceding expiration, or in the cases described below on the Thursday before expiration. The Exchange notes, however, that if a stock fails to open for trading or if a stock fails to trade during the time period when its value is determined, the stock's last available price will be used in the calculation of the IPC. In addition, when expirations are moved in accordance with Exchange holidays, such as when the CBOE is closed on the Friday before expiration, the last trading day for expiring IPC Index options will be the regular Thursday trading session in Mexico even if the Mexican markets are open on Friday. Similarly, if the

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4

[3] The IPC is a broad-based, capitalization-weighted index comprised of 35 of the largest and most liquid stocks (issued by 28 issuers) on the Mexican Stock Exchange (''Bolsa'').

[4] *See* Securities Exchange Act Release No. 37189 (May 9, 1996). 61 FR 24982 (May 17, 1996) (order approving the listing and trading of options on the IPC).

Mexican markets are closed on the Friday before expiration and the CBOE is open for trading, the last trading day for expiring IPC Index options on the CBOE will be Thursday.

The Exchange notes that if the Bolsa decides to use a weighted average method to determine the settlement value of IPC options, the CBOE will issue a press release stating that such a determination has been made and listing which series will be affected by the new settlement methodology. The Exchange will also issue a regulatory circular to its members and member firms informing them of the specifics of the settlement methodology, as well as which series will be affected by the new settlement methodology.[5] In addition to distributing the regulatory bulletin on the floor of the Exchange, the Exchange will publish the regulatory circular in its regulatory bulletin.

According to the Exchange, the weighted average methodology is less likely to be manipulated because the settlement value is not determined by reference to only one transaction in each of the component securities, but rather is determined by the weighted average of a series of transactions in each of the component stocks over a period of time at the end of the trading day. Presently, the Bolsa has not made a final determination regarding which settlement methodology it will employ.

2. Statutory Basis

The CBOE believes that the proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it will allow the Exchange to trade IPC options without interruption if the Bolsa changes its settlement methodology. In this regard,the CBOE believes that the rule change furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE 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*

Comments were nether solicited nor received with respect to the proposed rule change.

III. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–32 and should be submitted by [insert date 21 days from date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirement of Section 6(b)(5) thereunder. Specifically, the Commission finds that the CBOE's proposal to change the method for determining the settlement value of IPC options does not present any new or novel regulatory issues as the Commission has previously approved settlement methodologies utilizing average weighted prices.[6] In addition, by issuing both a press release and a regulatory circular concerning the change in settlement methodology for IPC options, which will include information pertaining to which series will be affected by the new settlement methodology, investor confusion should be avoided. Lastly, the Commission believes that the weighted average settlement methodology may reduce the susceptibility of the Index to manipulation by diminishing the impact of a single trade on the settlement price.[7]

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. By accelerating the effectiveness of the CBOE's rule proposal, the Commission is ensuring that the Exchange will be able to list index options on the IPC without any interruption if the Bolsa decides to change the settlement methodology while continuing to ensure that investors are adequately informed of the changes in settlement methodology. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2)[8] of the Act, that the proposed rule change (File No. SR–CBOE–96–32) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

*Secretary.*

[FR Doc 96–14180 Filed 6–5–96; 8:45 am]

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[5] The Commission notes that such regulatory circular should, at a minimum, specify the exact time period during which the weighted average settlement value for expiring IPC options will be calculated.

[6] *See* Securities Exchange Act Release Nos. 32120 (April 9, 1993), 58 FR 19864 (April 16, 1993) (approval order for the Financial Times-Stock Exchange 100 Index); 37089 (April 9, 1996), 61 FR 16660 (April 16, 1996) (approval order for the Nasdaq-100 Index).

[7] The Commission notes that if the Bolsa determines to sue a weighted average settlement methodology, the weighted average will be commuted from transaction prices over a period of time at the end of the trading day. The Commission expects, however, that once the exact time period for calculating the settlement value for IPC options is established, the CBOE will make conforming changes to its rules in accordance with Section 19(b) of the Act.

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12).

**[Release No. 34–37255; File No. SR–CHX–95–25]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change, Including Amendment Nos. 1, 2, 3, and 4, Relating to the Establishment of a Minor Rule Violation Procedure and Reporting Plan

May 30, 1996.

I. Introduction

On October 11, 1995, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Sections 19(b)(1) and 19(d)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rules 19b–4 and 19d–1(c)(2) thereunder,[2] a proposed rule change to establish a minor rule violation procedure.[3] On December 8, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[4] The original filing, as amended by Amendment No. 1, was published for comment in Securities Exchange Act Release No. 36576 (December 12, 1995), 60 FR 65362 (December 19, 1995). On January 17, 1996 the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change, on March 5, 1996 the Exchange submitted Amendment No. 3 to the proposed rule change, and on April 17, 1996 the Exchange submitted Amendment No. 4 to the proposed rule change.[5] Amendment Nos. 2, 3, and 4 were published for comment in Securities Exchange Act Release No. 37140 (April 23, 1996), 61 FR 19107 (April 30, 1996). The Commission received two comment letters on the proposal.[6] This order approves the proposed rule change, including amendment Nos. 1, 2, 3, and 4, and the Exchange's proposed minor rule violation reporting plan.[7]

II. Description

The Exchange proposes to adopt, as Article XII, Rule 9 of the CHX rules,[8] a minor rule violation procedure (''Procedure'') that authorizes the Exchange, in lieu of commencing disciplinary proceeding, to impose a fine, not to exceed $2,500, on any member, member organization, associated person or registered or non-registered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature. The Committee on Floor Procedure will have the same authority for violations relating to decorum on the Exchange trading floor. The Procedure specifically states that the Committee on Floor Procedure and the Panel shall not, collectively, impose more than one fine pursuant to the Procedure relating to the same underlying violation and incident.

If the fine is to be imposed by the Exchange (as opposed to the Committee on Floor Procedure) the fine shall be imposed in accordance with the method set forth in paragraph (b) of the Procedure. Specifically, prior to imposing the fine, the staff of the Exchange shall present the facts supporting such violative conduct to a Minor Rule Violation Panel (''Panel''), which shall consist of three floor members (one member of the Committee on Floor Procedure, one member of the Committee's Rules Subcommittee, and one member not on the Committee or any of its subcommittees) appointed by the President of the Exchange. The Panel then is authorized either to impose the fine, reject the staff's recommendation, or recommend that the Exchange commence a formal disciplinary proceeding under Article XII of the CHX rules. In the event that the Panel recommends that the Exchange commence a formal disciplinary proceeding, the staff shall either issue a report to the President, in accordance with Article XII, Rule 1(a), recommending that formal changes be brought, or advise the Panel that the staff will not recommend that the Exchange commence a formal disciplinary proceeding. If the staff decides not to recommend the commencement of a formal disciplinary proceeding, the Panel is required to impose a fine in accordance with the provisions of the Procedure.

If a fine is to be imposed under the Procedure, the Exchange will serve a written statement on the person against whom a fine is imposed setting forth the rule violated, the act or omission constituting the violation, the fine imposed and the date of imposition, the date the fine must be paid and the date by which such determination must be contested, such date to be not less than 15 days after the date of service of the written statement.

If the person against whom a fine is imposed pursuant to the Procedure chooses not to contest the matter and pays the fine, he or she waives his or her right to a disciplinary proceeding under Article XII of the Exchange's rules and any right to review or appeal (to the extent such right would otherwise exist under current Exchange rules). Alternatively, any person may chose to

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[1] 15 U.S.C. 78s(b)(1) and (d)(1).

[2] 17 CFR 240.19b–4 and 240.19d–1(c)(2).

[3] The Exchange has submitted to the SEC concurrently with the proposed rule change a minor rule violation reporting plan in accordance with Rule 19d–1(c)(2) under the Act. *See* Letter from David Rusoff, Attorney, Foley & Lardner; to Glen Barrentine, SEC, dated October 6, 1995.

[4] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Glen Barrentine, SEC, dated December 8, 1995 (''Amendment No. 1'').

[5] *See* Letter from David T. Rusoff, Attorney, Foley & Lardner, to Jon Kroeper, Attorney, SEC, dated January 12, 1996 (''Amendment No. 2''); Letter from David T. Rusoff, Attorney, Foley & Lardner, to Glen Barrentine, SEC, dated March 3, 1996 (''Amendment No. 3''); and Letter from David T. Rusoff, Attorney, Foley & Lardner, to John Kroeper, Attorney, SEC, dated April 17, 1996 (''Amendment No. 4''). Amendment No. 2 added a number of clarifications to the proposal, amended the Recommended Fine Schedule, and revised the proposed minor rule violation reporting plan to provide a method for modifying the list of rule violations that constitute minor rule violations under the reporting plan. Amendment No. 3 revised the proposal by removing the President of the CHX from any role in the imposition or setting aside of fines under the proposal and further amended the Recommended Fine Schedule. Amendment No. 3 also revised the proposed rule change and reporting plan by removing seven rule violations from the list of rule violations that would be designated minor rule violations under the proposal and reporting plan and clarified the operation of four other rules on such list. Amendment No. 4 revised the proposal to provide for the imposition of a fine under the proposal in the event the Staff disagrees with the Minor Rule Violation Panel's recommendation that the Exchange commence a formal disciplinary proceeding, and amended language from Amendment No. 2 in light of changes to the proposal contained in Amendment No. 3.

[6] *See* Letter from C. Philip Curely, Attorney, Robinson Curely & Clayton, P.C., to Margaret H. McFarland, Deputy Secretary, SEC, dated January 5, 1996 (''Comment Letter No. 1''); Letter from C. Philip Curely, Attorney, Robinson Curley & Clayton, P.C., to Jonathan G. Katz, Secretary, SEC, dated March 7, 1996 (''Comment Letter No. 2''). *See infra* Section III, for a discussion of Comment Letter Nos. 1 and 2.

[7] In Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984), the SEC adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations (''SROs'') to submit for SEC approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments, any disciplinary action taken by a self-regulatory organization against any person for violation of a rule of the self-regulatory organization that has been designated as a minor rule violation pursuant to a plan filed with the SEC 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 $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies with respect to the matter.

The SEC has approved minor disciplinary rule plans by virtually every stock exchange and the National Association of Securities Dealers, Inc. *See, e.g.*, Securities Exchange Act Release No. 21918 (April 3, 1985), 50 FR 14068 (April 9, 1985) (File No. 4–260) (Amex); Securities Exchange Act Release No. 22415 (September 17, 1985), 50 FR 38600 (September 23, 1985) (File No. 4–284) (NYSE); Securities Exchange Act Release No. 22654 (November 21, 1985), 50 FR 48853 (November 27, 1985) (File No. 4–285) (PSE); Securities Exchange Act Release No. 32383 (May 28, 1993), 58 FR 31768 (June 4, 1993) (SR–NASD–93–06).

[8] The proposed rule change also renumbers existing CHX Article XII, Rule 9 to Article XII, Rule 10. *See* Amendment No. 1, *supra* note 4.

contest a fine by submitting a written answer, at which point the matter becomes a ''disciplinary proceeding'' subject to the applicable provisions of Article XII, including all disciplinary sanctions available thereunder (except for contests of a fine by the Committee on Floor Procedure, which will be subject to the provisions of Article XII, Rule 3).[9]

Under the Procedure, the Exchange will periodically prepare and announce to its members and member organizations a list of Exchange rules and policies as to which the Exchange may impose fines pursuant to the Procedure as well as the fines that may be imposed for their violation.[10] The Procedure, however, expressly states that the Exchange is not required to impose a fine under the Procedure with respect to any violation of any rule included on such list. In addition, whenever the Exchange determines that a rule violation is not minor in nature, it has the discretion to commence disciplinary proceedings under Article XII of the CHX rules.

The Exchange also proposes to adopt, pursuant to Section 19(d)(1) of the Act and Rule 19d–1(c)(2) thereunder, a minor rule violation reporting plan (''Plan''). Under its Plan, the Exchange designates certain specified rule violations as minor rule violations [11] and requests that it be relieved of the current reporting requirement of Rule 19d–1(c)(1) under the Act regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.[12] The Plan, however, would not cover any fine imposed pursuant to the Procedure that is contested. Such violations and fines would continue to be reported as they occur.

The Exchange has proposed a list of rule and policy violations that would be designated minor rule violations in both its Procedure and Plan: [13] (1) Acquisition of Membership by General or Limited Partner (Article II, Rule 1); (2) General Partners Bound by Rules of Exchange (Article II, Rule 4); (3) Notice of Death or Retirement of Partner (Article II, Rule 9); (4) Filing and Approval of Articles of Incorporation (Article III, Rule 4); (5) Authorization of Officers to Act (Article III, Rule 5); (6) Officers, Directors and Principal Stockholders (Article III, Rule 6); (7) Death or Retirement of Registrant Member (Article III, Rule 11); (8) Records of Orders Transmitted (Article IX, Rule 78); (9) Dealing in Stocks on Put, Call, Straddle or Option (Article IX, Rule 15); (10) Record of Margin Calls and Receipt of Margin (Article X, Rule 2); (11) Record of Orders (Article XX, Rule 24); (12) Written Reports of Transactions (Article XXX, Rule 5); (13) Record of Orders (Article XXX, Rule 11); [14] (14) Financial Operational Reports (Article XI, Rule 4); (15) Notification of Change in Bond Coverage (Article XI, Rule 6); (16) Filing Requirements on Change of Examining Authority (Article XI, Rule 7); (17) Submission of Evaluation of Co-Specialists Survey (Article VIII, Rule 11); (18) Failure to Issue Intermarket Trading System (''ITS'') Pre-Opening Notification (Article XX, Rule 39); (19) Failure to Comply with ITS Trade-Through, Locked Markets and Block Trade Rules (Article XX, Rule 40); (20) Failure to Comply with 50% Requirement (Article XXXIV, Rule 3); (21) Failure to Comply with Public Outcry Rule (Article XXXIV, Rule 10); (22) Violation of Class A Decorum Rules (Article XII, Rule 3, Interpretation and Policy .01); (23) Violation of Class B Decorum Rules (Article XII, Rule 3, Interpretation and Policy .01); (24) Failure to Clear the Post (Article XX, Rule 10); (25) Failure to Comply with Cabinet Securities Provision (Article XX, Rule 11); [15] (26) Failure to Comply with Minimum Fractional Changes (Article XX, Rule 22); (27) Failure to Comply with ''Stopped'' Order Rule (Article XX, Rule 28); (28) Improper Use of ''SOLD'' Designator (Article VIII, Rule 7); (29) Trading Ahead of Customer Orders (Article XXX, Rule 2); [16] and (30) Violation of Preference Solely on Competitive Basis Rule (Article XXX, Rule 3).[17]

## III. Comments

The Commission received two comment letters on the proposal from Robinson Curely & Clayton, P.C.[18] In response, the Exchange filed Amendment No. 3 to the proposal and a reply letter.[19] The following is a summary of the arguments raised in the comment letters, and the Exchange's response thereto.

First, in Comment Letter Nos. 1 and 2 the commenter argues that the proposal gives too much discretion to the Exchange's staff with regard to the disposition of alleged violations of CHX rules and does not provide any guidelines as to whether a formal disciplinary proceeding or the Procedure should be utilized in any particular situation. In this regard, the

[9] Any fine imposed under the Procedure that is contested may be publicly reported by the Exchange to the same extent that CHX disciplinary proceedings may be publicly reported. *See* CHX Rules, Article XII, Rule 9 (Pending Proceedings).

[10] The Exchange will file with the SEC, for its approval pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder, any proposed additions to, deletions from, or other modifications to either the list of rule violations set forth in Article XII, Rule 9 that are deemed to be minor rule violations or the related Recommended Fine Schedule.

As part of the proposed rule filing, the Exchange has submitted a Recommended Fine Schedule which contains recommended dollar amounts for the first, second, third and subsequent violations, as calculated on a twelve-month rolling basis, of a rule designated as a minor rule violation in the Procedure and Plan. With one exception, the recommended dollar amounts are as follows: First Violation—$100; Second Violation—$500; Third and Subsequent Violation—$1,000. For violations of Article XI, Rule 4 (Financial and Operational Reports) the recommended fines will be those currently set forth in Interpretation and Policy .02 to such rule (*i.e.*, 1–30 days late—$100; 31–60 days late—$200; 61–90 days late—$400).

[11] The Plan provides that the Exchange may make additions to, deletions from, or other modifications to the list of rule violations that constitute minor rule violations under the Plan. Rule 19d–1(c)(2) under the Act requires that the SEC approve by order, after appropriate notice of the terms of substance of the filing or a description of the subjects and issues involved and opportunity for interested persons to submit written comment, any amendment to an exchange's minor rule violation reporting plan submitted under such rule. In this regard, the Plan provides that every filing of a proposed rule change by the Exchange pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder that adds to, deletes from or otherwise modifies the list of rule violations contained in Article XII, Rule 9(h) of the CHX rules for which the Article XII, Rule 9 Procedure may be used will be deemed a request by the Exchange for SEC approval to modify the list of CHX rules that are designated minor rule violations for purposes of the Exchange's reporting plan pursuant to Rule 19d–1(c)(2) under the Act.

[12] The Exchange's quarterly report to the SEC will include: the CHX's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the fine imposed, the number of times the rule violation has occurred, and the date of disposition.

[13] In Amendment No. 3, the Exchange removed seven violations from the list of violations it proposed to add to its Procedure and Plan.

[14] The only violation of this rule that may be considered a minor rule violation is a failure of a specialist to properly time-stamp an order ticket entrusted to him or it.

[15] The provision of this rule that may be considered a minor rule violation is the provision that states that although oral bids and offers in securities in the cabinet are permitted, they cannot conflict with bids and offers resident in the cabinet. A violation of this provision would occur if a floor broker fails to ''clear the cabinet'' (*i.e.*, fails to satisfy bids or offers in the cabinet) before effecting an agency cross in a cabinet security at the same price or a price worse than the price of the bid or offer resident in the cabinet.

[16] The only portion of this rule that is considered a minor rule violation is the prohibition on a specialist trading for his or its own account ahead of customer orders on the specialist's book.

[17] The only violation of this rule that may be considered a minor rule violation is a specialist's failure to fill an incoming ITS commitment to the fullest extent possible based on orders in the specialist's book.

[18] *See* Comment Letter Nos. 1 and 2, *supra* note 6.

[19] *See* Amendment No. 3, *supra* note 5; Letter from George T. Simon, Attorney, Foley & Lardner, to Jonathan G. Katz, Secretary, SEC, dated March 4, 1996.

commenter argues that the staff could elect to initiate a formal disciplinary proceeding (with the potential for the imposition of a severe penalty and attendant publicity) if it was to its ''advantage'' to do so, or utilize the Procedure in order to spare a presumably favored offender such treatment. The Exchange contends that the discretion given to its staff under the Procedure is the same prosecutorial discretion currently given to the staff in deciding whether to bring disciplinary charges and approved by the Commission for use by other SROs in their minor rule violation procedures. Moreover, the CHX argues that because all fines imposed under the Procedure must be approved by the Panel, the Procedure gives less discretion to the CHX staff than that granted under the procedures utilized by other exchanges, which allow their staffs to unilaterally assess such fines.[20]

Second, in Comment Letter No. 1 the commenter argued that the Procedure, as originally proposed, also placed too much discretion in the hands of the CHX's President.[21] Furthermore, the commenter contended that the interaction of the President's role under the Exchange's existing formal disciplinary procedures and the Procedure, as originally proposed, would create an ''unsound result'' in a situation where the President disregarded the Panel's recommendation that the Exchange initiate a formal disciplinary action and imposed a fine under the Procedure. If the alleged violator contested the imposition of such a fine, the matter would become a formal disciplinary proceeding. Under Article XII, Rule 5(b) of the CHX rules, the President imposes the final judgment in each formal disciplinary proceeding.[22] The commenter claimed that in such situations the President would, in effect, sit as ''trial judge and appeals court.'' In response, the CHX stated that this concern was resolved by Amendment No. 3, which removed the President from any role in the Procedure; however, the Exchange also disputed the commenter's characterization of the President's role in the Procedure, as originally filed.

Third, in Comment Letter Nos. 1 and 2 the commenter contends that because any contest of a fine imposed under the Procedure converts the matter into a formal disciplinary proceeding with the potential for the imposition of more severe sanctions, the Procedure imposes a ''chilling effect'' on a member's ability to contest such a fine.[23] The CHX asserts in response that in approving the minor rule violation procedures of other exchanges, the Commission has determined that such procedures are consistent with the Act.

Finally, the commenter questioned the need for the adoption of a minor rule violation procedure by the Exchange, given the existence of the summary procedure for minor infractions of CHX rules found in Article XII, Rule 2.[24] The Exchange responded by submitting that the Article XII, Rule 2 summary procedure has not been designated for use in conjunction with a minor rule violation reporting plan. As a result, any summary action taken under Rule 2(a) is a ''final disciplinary action,'' which is subject to the immediate reporting requirements of Rule 19d–1 under the Act.

## IV. Discussion

After careful consideration of the Comment Letters and the Exchange's response thereto, the Commission has decided to approve the Exchange's Procedure and Plan. For the reasons discussed below, the Commission finds that the proposed rule change and minor rule violation reporting plan are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(1), (6), and (7), 6(d)(1) and 19(d) of the Act.[25]

### *A. Proposed Minor Rule Violation Procedure*

The proposal is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violation of the rules of the exchange. In this regard, the Commission believes that the proposal will provide a procedure whereby member organizations can be appropriately disciplined in those instances when a rule violation is technical and objective or minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. Furthermore, because the Procedure provides procedural rights to the person fined and permits a disciplined person to request a full disciplinary hearing on the matter, the proposal provides fair procedure for the disciplining of members and persons associated with members consistent with Sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternate means by which to deter violations of the CHX rules included in the Procedure, thus furthering the Section 6(b)(1) requirement that an exchange have the ability to enforce compliance by its members and persons associated with its members with the Act and the rules of the exchange. An exchange's ability to enforce effectively compliance by its members and member organizations with Commission and exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation procedure and reporting plan should not be interpreted to mean that it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation procedure and reporting plan not only can reduce reporting burdens of an SRO but also can make its disciplinary system more efficient in prosecuting violations of such rules.[26]

The Commission finds that of the 37 rules that the CHX has proposed to designate as minor rule violations in its Procedure and Plan, 28 already have been approved by the Commission for inclusion in the minor rule violation procedures and reporting plans of other exchanges.[27] As violations of these 28

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[20] *See, e.g.,* NYSE Rule 476A, Amex Rule 590, and BSE Chapter XVIII, Section 4.

[21] Under the Procedure, as originally proposed, if the Panel recommended that the Exchange commence a formal disciplinary proceeding in a matter brought before it, the staff would issue a report to the President pursuant to Article XII, Rule 1(a), either recommending that formal charges be brought or that the President impose a sanction in accordance with the Procedure. The President then would have had the discretion to: (i) direct the staff to prefer written charges, (ii) reject the recommendation to prefer written charges, or (iii) impose a fine under the Procedure. *See* Securities Exchange Act Release No. 36576 (December 12, 1995), 60 FR 65362 (December 19, 1995).

[22] Subject to review by the Judiciary Committee, Executive Committee and the Board of Governors. *See* CHX Rules, Article XII, Rule 6.

[23] In Comment Letter No. 2, the commenter suggested that a means to avoid such a ''chilling effect'' would be to allow the Exchange not to impose a more severe sanction in a disciplinary proceeding arising out of a contested minor rule violation than the fine originally imposed under the Procedure.

[24] Under CHX Rules, Article XII, Rule 2(a), if in the President's judgment it appears from the staff's report filed pursuant to Rule 1(a) that an alleged violator has committed a minor infraction of the CHX Constitution or rules, the President may summarily censure and/or impose a fine of up to $500 against such violator. The President's decision may be appealed to the Executive Committee of the Exchange, whose decision shall be final.

[25] 15 U.S.C. 78f (b)(1), (b)(6), and (b)(7); 78f(d)(1); and 78s(d).

[26] Relatedly, the SEC also believes that the CHX proposal to create a new Minor Rule Violation Panel to review specified minor rule violations should help to make its disciplinary system more efficient in prosecuting violations of these rules.

[27] *Compare* list of proposed minor rule violations in CHX Procedure and Plan (*see supra* text

rules are amenable to quick, objective determinations of compliance and are readily adjudicated, the Commission finds that they are appropriate for inclusion in the CHX's Procedure. The Commission also finds that, for the following reasons, the other nine rules proposed to be designated as minor rule violations are appropriate for inclusion in the CHX's Procedure.

Notification of Change in Bond Coverage (Article XI, Rule 6) requires members to file with the Exchange any changes in their fidelity bond coverage. Filing Requirements on Change of Examining Authority (Article XI, Rule 7) requires members to file with the Exchange upon their withdrawal from membership in another national securities exchange or registered securities association that is the member's designated examining authority. These rules are essentially administrative reporting requirements whose violation is both objectively determinable and readily adjudicated, making them suitable for inclusion in the Exchange's Procedure.

Failure to Comply with 50% Requirement (Article XXXIV, Rule 3) requires that 50% of a CHX market maker's quarterly share volume must be in issues to which he or she is assigned.[28] Failure to Comply with Minimum Fractional Changes (Article XX, Rule 22) requires that bids and offers in a security may not be made at a less variation than that set in the rule.[29] A minor rule violation of Written Reports of Transactions (Article XXX, Rule 5) would occur, for example, if a specialist failed to supply a report of a transaction that was not effected through the Exchange's MAX System.[30] As with the rules discussed in the previous paragraph, violations of these rules lend themselves to quick, objective determination and adjudication. Accordingly, these rules are appropriate for inclusion in the Exchange's Procedure.

The remaining four violations are concerned directly with the handling and execution of orders entered with Exchange members. A minor rule violation of Failure to Comply with Cabinet Securities Provision (Article XX, Rule 11) would occur if a member fails to satisfy bids or offers already resident in the cabinet before effecting an agency cross in a cabinet security at the same or worse price than that of a bid or offer in the cabinet.[31] The portion of Violation of Preference Solely on Competitive Basis Rule (Article XXX, Rule 3) subject to the Exchange's Procedure is a specialist's failure to fill an incoming ITS commitment to the fullest extent possible based on orders in the specialist's book.[32] Failure to Comply with Public Outcry Rule (Article XXXIV, Rule 10) and Failure to Clear the Post (Article XX, Rule 10) provide that market makers and floor brokers must audibly bid or offer their orders at the post before sending the order to another market or effecting an agency cross, as the cause may be.[33]

Although these four rules involve more substantive matters than the rules concerning reporting requirements, violations of these rules should not involve the complicated factual and interpretive issues that are present in matters that require the initiation of formal disciplinary proceedings. Moreover, the Exchange has represented to the Commission that member non-compliance with these four rules is readily determinable through the use of its surveillance mechanisms.[34] The Commission believes that aggressive enforcement of these rules under the Procedure should benefit investors by improving order interaction on the Exchange, while furthering member compliance with the Exchange's trading rules. Specifically, floor brokers and market makers more likely will be encouraged to clear the post or the cabinet before effecting agency crosses or off-the-Floor transactions, thus providing a greater opportunity for the execution of orders against those already resident either with the specialist or in the cabinet. Also, specialists will be provided with an additional incentive to fill incoming ITS commitments to their stated amount, leading to the more prompt execution of orders on the specialist's book.

Although a violation of these four rules and a number of the other rules contained in the Exchange's Procedure are designed to provide important investor safeguards,[35] a particular violation of such rules may or may not rise to the level which would justify a formal disciplinary proceeding. Therefore, the Commission believes that including such rules in the Procedure, in light of the Exchange's discretion to bring a formal disciplinary hearing for any violation of such rules, should enhance, rather than reduce, the Exchange's enforcement capabilities regarding these rules in cases where initiation of a formal disciplinary proceeding may be more costly and time consuming in view of the minor nature of the particular violation, if not the category of violation.

In conclusion, the Commission believes that the Procedure will provide a more effective means of deterrence for the rules the Exchange proposes to include in its Procedure than would the alternative of written letters of caution for lesser violations of such rules. Accordingly, the Commission notes that the CHX retains the discretion to bring a formal disciplinary proceeding for violations of any of the rules listed in the Procedure. The Commission expects the CHX to do so when appropriate for the particular violation(s) involved, as in the cases of an egregious violation or habitual offender.

### *B. Comments on the Minor Rule Violation Procedure*

For the reasons discussed below, the Commission believes that the Procedure, as amended, adequately addresses the concerns raised by the commenter. First, the Commission does not believe that the Procedure grants undue discretion to the staff of the Exchange in the disposition of alleged violations of CHX rules, nor that it provides inadequate guidelines as to the staff's exercise of such discretion. As the Exchange stated in its response to the Comment Letters, the addition of the

following footnote 13 for such list), *with* lists of minor rule violations contained in NYSE Rule 476, Amex Rule 590, and PSE Rule 10.13.

[28] The Commission notes that it already has approved for use in the Philadelphia Stock Exchange, Inc.'s minor rule violation and reporting plan an analogous rule that pertains to registered options traders (''ROTs''). *See* Securities Exchange Act Release No. 23491 (August 1, 1986), 51 FR 28469 (August 7, 1986) (File No. 4–289). Specifically, Phlx Option Floor procedure Advice B–3 requires, among other things, that at least 50% of each ROT's trading activity in each quarter must be in assigned options.

[29] *E.g.*, for every security priced above $1.00, no less than a ⅛ per $1.00 variation is permissible.

[30] Telephone conversation between David Rusoff, Attorney, Foley & Lardner; Daniel Liberti, Manager, Market Regulation, and Rick Ose, Market Regulation, CHX; and Glen Barrentine and Jon Kroeper, SEC, on February 28, 1996.

[31] *See supra* note 15.

[32] *See supra* note 17.

[33] *See* Amendment No. 3, *supra* note 5.

[34] The Exchange's floor staff can determine whether the cabinet securities provision has been violated through a comparison of executions in such securities with orders resident in the book. Violations of precedence to orders in the book can be determined through a comparison of ITS commitments, executions thereof on the Exchange, and subsequent specialist executions. Telephone conversation between David T. Rusoff, Attorney, Foley & Lardner, and Jon Kroeper, Attorney, SEC, dated May 24, 1996. Violations of the two provisions concerning clearing the post can be determined by discerning whether the floor broker or market maker's order ticket was stamped with the distinctive identifier of the time stamp machine at the specialist's post, or through a conversation with the specialist in question. For a more complete discussion of the determination of clearing the post violations, see Amendment No. 3, *supra* note 5.

[35] *E.g.*, Trading Ahead of Customer Orders (Article XXX, Rule 2) and Failure to Comply with ''Stopped'' Order Rule (Article XX, Rule 28).

Procedure gives its staff the same prosecutorial discretion as that approved by the Commission for use by other SROs in their minor rule violation procedures. In addition, the Procedure limits the staff's discretion by requiring that the Panel impose all fines against alleged violators. Moreover, as has been noted above, the Procedure is to be utilized in situations where a rule violation is technical and objective or minor in nature; the Commission expects that the Exchange will resolve more serious violations of such rules through the use of formal disciplinary proceeding. The Comment Letters make the related argument that the availability of the Procedure opens the possibility that the Exchange could abuse its discretion and utilize either the Procedure or full disciplinary proceedings depending upon the identity of the alleged violator. The Commission believes that this concern is alleviated by the Commission's ability to review the disciplinary actions taken by the Exchange through both the CHX's formal reporting under Rule 19d–1 and proposed quarterly reporting under the Plan, and as part of the Commission's regular oversight inspections of the Exchange.

Second, the Commission notes that the commenter's concern that the roles of the CHX's President, under the Exchange's existing disciplinary procedures and the Procedure, as originally filed, would create an unsound result has been rendered moot by the removal in Amendment No. 3 of any role on the part of the President in the imposition of fines under the Procedure.

Third, the commenter argues that because any contest of a fine imposed under the Procedure converts the matter into a formal disciplinary proceeding with the potential for the imposition of more severe sanctions, the Procedure imposes a chilling effect on a member's ability to contest such a fine. The Commission believes that the commenter's argument is misplaced. The availability of a minor rule violation procedure benefits not only an exchange, for the reasons noted above, but alleged violators of rules deemed minor rule violations as well. In having the ability to pay a fine assessed under a minor rule violation procedure instead of being subject to the initiation of formal disciplinary procedures as a matter of course, an alleged violator has the opportunity to avoid the expenditure of time and resources, as well as the attendant publicity, that a formal disciplinary proceeding may entail. An alleged violator receives these benefits while retaining his or her due process rights to contest the charges in a formal disciplinary proceeding.

As for the commenter's suggestion that the Exchange could prevent such a ''chilling effect'' by amending the proposed rule change to provide that no more severe sanction could be imposed in any formal disciplinary proceeding arising out of a contest of a minor rule violation fine than that originally imposed under the Procedure, the Commission believes that such a provision would limit unduly the Exchange's discretion to impose what it believed were appropriate sanctions as a result of the findings it made with regard to a matter in a formal disciplinary proceeding.[36]

Finally, the commenter questions the necessity for the Procedure given the existence of summary disciplinary procedures in Article XII, Rule 2(a) of the Exchange's rules. The Commission does not believe that an Exchange's ability to adopt a minor rule violation procedure and reporting plan should be limited by the existence of other summary procedures in an exchange's rules. Additionally, the Commission notes that the Article XII, Rule 2(a) procedure is incompatible with a minor rule violation reporting plan, as any proceeding under Rule 2(a) is considered a formal disciplinary proceeding under CHX rules, making any action taken under these procedures a ''final disciplinary action'' under Rule 19d–1, and therefore immediately reportable to the Commission.

*C. Minor Rule Violation Reporting Plan*

In adopting Rule 19d–1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[37] In promulgating paragraph (c)(2) of Rule 19d–1, the Commission attempted to reduce the reporting burdens of the SROs by permitting, where immediate reporting was unnecessary, periodic reporting of minor rule violations.[38] Any minor rule violation reporting plan adopted pursuant to Rule 19d–1(c)(2) is intended to be limited to rules which relate to areas that can be adjudicated quickly and objectively.

The Commission believes that the rules proposed to be deemed minor rule violations under the Exchange's Plan meet this criteria for the same reasons as noted above with regard to the rules proposed for inclusion in its Procedure.[39] Violations of these rules are amenable to quick and objective determinations of compliance. Efficient and equitable enforcement of violations of these CHX rules should not entail the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary actions. Therefore, it is reasonable for these rules to be included in such an abbreviated periodic reporting plan.[40] In addition, the Commission finds that the format proposed by the Exchange to make its quarterly report of violations to the Commission under the Plan is identical, in all material respects, to the minor rule violation reporting plans approved by the Commission for use by other exchanges, and thus in compliance with the requirements of Rule 19d–1(c)(2) under the Act.

V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act[41] and Rule 19d–1(c)(2) thereunder, that the proposed rule change (SR–CHX–95–25) and minor rule violation reporting plan of the Exchange is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[42]

Jonathan G. Katz,

*Secretary.*

[FR Doc. 96–14177 Filed 6–5 –96; 8:45 am]

BILLING CODE 8010–01–M

[36] Specifically, in the context of a formal disciplinary proceeding the Exchange has the ability to discipline its members and any persons associated with a member ''by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member or any other fitting sanction.'' *See* CHX Rules, Article XII, Rule 8(a). As the Panel may only impose monetary fines under the Procedure, the commenter's proposal could restrict the Exchange to imposing such fines in formal disciplinary proceedings arising out of appeals of minor rule violations, thus depriving the Exchange of the opportunity to impose what may be a more appropriate sanction in light of its findings in a formal hearing.

[37] *See* Securities Exchange Act Release No. 13726 (July 8, 1977), 42 FR 36411 (July 14, 1977).

[38] *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984).

[39] *See supra* Section IV.A.

[40] Although the CHX Board of Governors makes the initial determination of whether an Exchange rule violation is ''minor'' for purposes of inclusion in new Article XII, Rule 9 and the Plan, this determination is subject to SEC review pursuant to Sections 19 (b)(1) and (d)(1) of the Act and Rules 19b–4 and 19d–1(c)(2) thereunder. The SEC notes that Article XII, Rule 9 fines in excess of $2500 are not considered assessed pursuant to the Plan and, accordingly, must be reported on an immediate basis to the SEC under Section 19(d)(1) of the Act and Rule 19d–1 thereunder.

[41] 15 U.S.C. 78s(b)(2)

[42] 17 CFR 200.30–3(a)(12) and (a)(44).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2852; Amendment #3]**

### Illinois; Declaration of Disaster Loan Area

In accordance with a notice from the Federal Emergency Management Agency dated May 23, 1996, the above-numbered Declaration is hereby amended to include Gallatin and Wabash Counties in the State of Illinois as a disaster area due to damages caused by severe storms and flooding beginning on April 28, 1996 and continuing through May 17, 1996.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Hardin in Illinois and Union in Kentucky may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 5, 1996, and for loans for economic injury the deadline is February 6, 1997.

The economic injury number for the State of Kentucky is 891500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 30, 1996.

Bernard Kulik,

*Associate Administrator for Disaster Assistance.*

[FR Doc. 96–14173 Filed 6–5–96; 8:45 am]

**BILLING CODE 8025–01–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–96–27]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration, (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before June 26, 1996.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. __, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@mail.hq.faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 3, 1996.

Donald P. Byrne,

*Assistant Chief Counsel for Regulations.*

Petitions for Exemption

*Docket No.:* 28541
*Petitioner:* Mr. Isaac B. Weathers
*Sections of the FAR Affected:* 14 CFR 91.109 (a) and (b)(3)
*Description of Relief Sought:* To allow Mr. Weathers to conduct recurrent flight training in Beechcraft Bonanza, Baron, and Travel Air aircraft; and recurrent flight training in simulated instrument flight in Beechcraft Baron and Travel Air aircraft, when those aircraft are equipped with a functioning throwover wheel in place of functioning dual controls.

*Docket No.:* 28554
*Petitioner:* Phoenix Air Group, Inc.
*Sections of the FAR Affected:* 14 CFR 91.167(a)(2) and 135.223(a)(2)
*Description of Relief Sought:* To permit the Phoenix Air Group, Inc., (Phoenix) to operate its aircraft in instrument flight rules (IFR) conditions without carrying enough fuel to fly to an alternate airport by allowing Phoenix to use commissioned Department of Defense instrument approach procedures, provided certain minimum weather conditions are met, in lieu of standard instrument approach procedures prescribed in part 97.

Dispositions of Petitions

*Docket No.:* 28458
*Petitioner:* Gulfstream Aerospace Corporation
*Sections of the FAR Affected:* 14 CFR 25.571(e)(1)
*Description of Relief Sought/ Disposition:* To permit the Gulfstream Aerospace Corporation exemption from the 4-pound bird strike requirement of § 25.571(e)(1) from Vc at sea level to 8,000 feet, in favor of Vc at sea level or .85 Vc at 8,000 feet, whichever is greater, for the Gulfstream Model GV.
*Grant, May 13, 1996, Exemption No. 6436*

[FR Doc. 96–14266 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–13–M**

### Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chautauqua County/Jamestown Airport, Jamestown, NY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chautauqua County/Jamestown Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 190 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before July 8, 1996.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Room 446, Garden City, New York, 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Kenneth B. Brentley, Manager of Airports for the County of Chautauqua, New York, at the following address: County of Chautauqua, P.O. Box 51, Falconer, New York 14733.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Chautauqua, New York under § 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Room 446, Garden City, New York, 11530 (Tel 516–227–3803). The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application use the revenue from a PFC at Chautauqua County/Jamestown Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 19, 1996, the FAA determined that the application to use the revenue from a PFC submitted by the County of Chautauqua was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 17, 1996.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00

*Proposed charge effective date:* June 1, 1993

*Proposed charge expiration date:* February 1, 2000

*Total estimated PFC revenue:* $434,822

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following proposed AIP projects.

—Rebuilt entry road

—Overlay runway 7/25

—Remove obstructions

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air taxi/commercial operators filing form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Chautauqua County/Jamestown Airport.

Issued in Jamaica, New York on May 29, 1996.

Anthony P. Spera,

*Acting Manager, Airports Division, Eastern Region.*

[FR Doc. 96–14264 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–13–M**

## Surface Transportation Board [1]

**[STB Finance Docket No. 32962]**

### CSX Transportation, Inc.—Trackage Rights Exemption—Meridian and Bigbee Railroad Company

Meridian and Bigbee Railroad Company (MBRR) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), over approximately 51 miles of railroad beginning at the CSXT/MBRR connection at Myrtlewood, AL, to the CSXT/MBRR connection at Meridian, MS, including head and tail operating room at both connections. The trackage rights were to become effective on or after May 24, 1996.

This notice is filed under 49 CFR 1180.2(d)(7). 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) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32962, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423 and served on: Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc. 500 Water Street, J–150, Jacksonville, FL 32202.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: May 30, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96–14297 Filed 6–5–96; 8:45 am]

**BILLING CODE 4915–00–P**

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 11323–24.

**[STB Finance Docket No. 32956]**

### Fort Worth and Western Railroad Company, Inc.—Trackage Rights Exemption—St. Louis Southwestern Railway Company

The St. Louis Southwestern Railway Company (SSW) has agreed to assign its local and overhead trackage rights on a rail line owned by the Dallas Area Rapid Transit Property Acquisition Company (DARTPAC) to Fort Worth and Western Railroad Company, Inc. (FWWR), over approximately 28.77 miles of rail line in Texas between milepost 632.27 at North Fort Worth and milepost 603.5 at Carrollton. The trackage rights were to become effective on or after May 24, 1996.

This transaction will also permit FWWR to use the subject trackage to serve Hodge Yard, which it seeks to lease from SSW in a related pending proceeding, STB Finance Docket No. 32955, *Fort Worth and Western Railroad Company, Inc.—Lease and Operation Exemption—St. Louis Southwestern Railroad Company.* This notice is filed under 49 CFR 1180.2(d)(7). 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) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32956, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423 and served on: Kevin M. Sheys, Oppenheimer Wolff & Donnelly, 1020 Nineteenth Street, NW, Suite 400, Washington, DC 20036.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: May 29, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96–14294 Filed 6–5–96; 8:45 am]

**BILLING CODE 4915–00–P**

**[STB Finance Docket No. 32961]**

## Norfolk and Western Railway Company; Trackage Rights Exemption; Norfolk Southern Railway Company

Norfolk Southern Railway Company (NSR) will agree to grant overhead trackage rights to Norfolk and Western Railway Company (NW).[2] NSR will grant NW overhead trackage rights between milepost K–27.4 at North Winston, NC, and milepost K–0.0 at Pomona, NC, and between milepost 286.8 at Pomona, NC, and milepost 284.4 at Elm (Greensboro), NC, a total distance of approximately 29.8 miles.

The transaction was scheduled to be consummated on or after May 24, 1996.

The purpose of the trackage rights is to provide more efficient service with less internal terminal handling of traffic between those points.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7).[3] If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32961, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

Decided: May 30, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96–14296 Filed 6–5–96; 8:45 am]

**BILLING CODE 4915–00–P**

**[Docket No. AB–6 (Sub-No. 371X)]**

## Burlington Northern Railroad Company; Abandonment Exemption; Between Shickley and Blue Hill, in Clay, Fillmore, Nuckolls and Webster Counties, NE

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of exemption.

**SUMMARY:** The Board, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by Burlington Northern Railroad Company of its 42.13-mile rail line between BN milepost 44.50 near Shickley and BN milepost 86.63 near Blue Hill, in Clay, Fillmore, Nuckolls, and Webster Counties, NE, subject to standard labor protective conditions, a trail use condition, and a public use condition.

**DATES:** Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 6, 1996. Formal expressions of intent to file an offer[2] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 17, 1996; petitions to stay must be filed by June 21, 1996; requests for a public use condition must be filed by June 26, 1996; and petitions to reopen must be filed by July 1, 1996.

**ADDRESSES:** Send pleadings referring to Docket No. AB–6 (Sub-No. 371X) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Sarah J. Whitley, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

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

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1201 Constitution Avenue, N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: May 21, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

*Secretary.*

[FR Doc. 96–14295 Filed 6–5–96; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF THE TREASURY

## Submission to OMB for Review; Comment Request

May 30, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

*OMB Number:* 1545–1119.

*Form Number:* IRS Forms 8804, 8805, and 8813.

*Type of Review:* Extension.

*Title:* Annual Return for Partnership Withholding Tax (Section 1446) (8804); Foreign Partner's Information Statement of Section 1446 Withholding Tax (8805); and Partnership Withholding Tax Payment (Section 1446 (8813).

*Description:* Code section 1446 requires partnerships to pay a withholding tax if they have effectively connected taxable income tax is allocable to foreign partners. Forms 8804, 8805, and 8813 are used by withholding agents to provide IRS and affected partners with data to assure proper withholding, crediting to partners' accounts and compliance.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/Recordkeepers:* 5,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

[2] NW is a Class I railroad and a wholly owned subsidiary of NSR. NSR is a Class I railroad, which is controlled through stock ownership by Norfolk Southern Corporation, a holding company.

[3] In addition, this transaction is one that is within a corporate family and is exempt under 49 CFR 1180.2(d)(3) as well.

[1] 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 section 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.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

| | 8804 | 8805 | 8813 |
|---|---|---|---|
| Recordkeeping | 59 min | 59 min | 26 min. |
| Learning about the law or the form | 57 min | 54 min | 49 min. |
| Preparing the form | 31 min | 17 min | 16 min. |
| Copying, assembling, and sending the form to the IRS | 20 min | 17 min | 10 min. |

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 121,200 hours.

*OMB Number:* 1545–1173.

*Form Number:* IRS Form 8815.

*Type of Review:* Extension.

*Title:* Exclusion of Interest from Series EE U.S. Savings Bonds Issued After 1989.

*Description:* If an individual redeems series EE U.S. Savings Bonds issued after 1989 and pays qualified higher education expenses during the year, the interest on the bonds may be excludable from income Form 8815 is used by the individual to figure the amount of savings bond interest that is excludable.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 25,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | (Min.) |
|---|---|
| Recordkeeping | 53. |
| Learning about the law or the form | 13 |
| Preparing the form | 35 |
| Copying, assembling and sending the form to the IRS | 34 |

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 50,920 hours.

*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–14273 Filed 6–5–96; 8:45 am]

BILLING CODE 4830–01–P

## Submission to OMB for Review; Comment Request

May 30, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

*OMB Number:* 1545–0068.

*Form Number:* IRS Form 2441.

*Type of Review:* Extension.

*Title:* Child and Dependent Care Expenses.

*Description:* Internal Revenue Code (IRC) section 21 allows a credit to be claimed on Form 1040 (reduced by employer-provided day care excluded under section 129). Day care provider must be reported to the IRS for both the credit and exclusion. Form 2441 is used to verify that the credit and exclusion are properly figured, and that provider information is reported.

*Respondents:* Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 4,421,940.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—40 min.
Learning about the law or the form—25 min.
Preparing the form—58 min.
Copying, assembling, and sending the form to the IRS—28 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 11,010,631 hours.

*OMB Number:* 1545–1482.

*Form Number:* IRS Form 1078.

*Type of Review:* Revision.

*Title:* Certificate of Alien Claiming Residence in the United States.

*Description:* Form 1078 is used by an alien to claim residence in the United States for income tax purposes.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 10,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—20 min.
Learning about the law or the form—7 min.
Preparing the form—8 min.
Copying, assembling and sending the form to the IRS—14 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 50,920 hours.

*Clearance Officer:* Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

*OMB Reviewer:* Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–14274 Filed 6–5–96; 8:45 am]

BILLING CODE 4830–01–P

## Submission to OMB for Review; Comment Request

May 31, 1996.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

*OMB Number:* 1545–1395.

*Form Number:* IRS Form 8838.

*Type of Review:* Extension.

*Title:* Consent To Extend the Time to Assess Tax Under Section 367—Gain Recognition Agreement.

*Description:* Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

*Respondents:* Business or other for-profit, Individuals or households.

*Estimated Number of Respondents/ Recordkeepers:* 1,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—2 hr., 23 min.
Learning about the law or the form—2 hr., 21 min.
Preparing the form—3 hr., 26 min.
Copying, assembling, and sending the form to the IRS—16 min.
*Frequency of Response:* On occasion.
*Estimated Total Reporting/ Recordkeeping Burden:* 8,440 hours.
*Clearance Officer:* Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
*OMB Reviewer:* Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

*Departmental Reports Management Officer.*

[FR Doc. 96–14275 Filed 6–5–96; 8:45 am]

**BILLING CODE 4830–01–P**

## Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Renewal of Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service and solicitation of applications for committee membership.

**SUMMARY:** It is the public interest to renew the Advisory Committee for another two-year term. This notice also establishes criteria and procedures for the selection of members.

**FOR FURTHER INFORMATION CONTACT:** Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), (202) 622–0220.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. I (1962), and section 95603(c) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), the Under Secretary (Enforcement) announces the renewal of the following advisory committee:

*Title:* The Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

*Purpose:* The purpose of the Committee is to present advice and recommendations to the Secretary of the Treasury regarding commercial operations of the U.S. Customs Service and to submit a report to Congress containing a summary of its operations and its views and recommendations.

*Statement of Public Interest:* It is in the public interest to continue the existence of the Committee upon expiration, under the provisions of the Advisory Committee Act, of its current two-year term. The Committee provides a critical forum for distinguished representatives of diverse industry sectors to present their views on major issues involving commercial operations of the Customs Service. These views are offered directly to senior Treasury and Customs officials on a regular basis in a candid atmosphere. There exists no other single body that serves a comparable function.

**SUPPLEMENTARY INFORMATION:**

### Background

In the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), Congress repealed the statutory mandate for a Customs User Fee Advisory Committee and directed the Secretary of the Treasury to create a new Advisory Committee on Commercial Operations of the U.S. Customs Service. The original Committee consisted of 20 members drawn from industry sectors affected by Customs commercial operations. The Committee's charter was filed on October 17, 1988 and expired two years later. Charters were subsequently filed for second, third, and fourth two-year terms. The current charter will expire on October 15, 1996. The Treasury Department plans to file a new charter by that date renewing the Committee for a fifth two-year term.

### Objective, Scope and Description of the Committee

The Committee's objectives are to advise the Secretary of the Treasury on issues relating to the commercial operations of the Customs Service. It is expected that, during its third two-year term, the Committee will consider such issues as implementation of the Customs Modernization Act, the North American Free Trade Agreement, administration of staff and resources for commercial operations, broker qualification and licensing, informed compliance and compliance assessment, the account system, automated systems, the impact of the Customs reorganization, and enforcement priorities.

The Committee will be chaired by the Under Secretary of the Treasury for Enforcement. The Committee will function for a two-year period before renewal or abolishment and will meet approximately eight times (quarterly) during the period. An additional special meeting of the full Committee or a subcommittee thereof may be convened if necessary.

The meetings will generally be held in the Treasury Department, Washington, DC. However, typically one meeting per year, but generally not more than two, may be held outside of Washington at a Customs port. In recent years, meetings have been held in Louisville, Baltimore, New Orleans, Oakland, Chicago, El Paso, Buffalo, and Miami, among other locations. The meetings are open to public observers, including the press, unless special procedures have been followed to close a meeting. During the first four terms of the Committee, only a portion of one meeting was closed.

The members shall be selected by the Secretary of the Treasury from representatives of the trade or transportation community serviced by Customs, the general public, or others who are directly affected by Customs commercial operations. In addition, members shall represent major regions of the country, and not more than ten members may be affiliated with the same political party. No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on an advisory committee. Members shall not be paid compensation nor shall they be considered Federal Government employees for any purpose. No per diem, transportation, or other expenses are reimbursed for the cost of attending Committee meetings at any location.

Members who are serving on the Committee during its expiring two-year term are eligible to reapply for membership. A new application letter and updated resume are required. It is expected that approximately half of the current membership of the Committee will be replaced with new appointees.

Membership on the Committee is personal to the appointee. Under the Committee By-Laws, a member may not send an alternate to represent him at a Committee meeting. However, since Committee meetings are open to the public, another person from a member's organization may attend and observe the proceedings in a nonparticipating capacity. Regular attendance is essential; a member who is absent from two consecutive meetings or two meetings in a calendar year shall lose his seat on the Committee.

### Application for Advisory Committee Appointment

Any interested person wishing to serve on the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service must provide the following:

—Statement of interest and reasons for application;
—Complete professional biography or resume;

—Political affiliation, in order to ensure balanced representation. (Mandatory. If no party registration or allegiance, indicate ''independent'' or ''unaffiliated'').

In addition, applicants must state in their applications that they agree to submit to reappointment security and tax checks. There is no prescribed format for the application. Applicants may send a cover letter describing their interest and qualifications and enclosing a resume.

The application period for interested candidates will extend to July 19, 1996. Applications should be submitted in sufficient time to be received by the close of business on the closing date by Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, ATTN.: COAC 1996.

Dated: June 3, 1996.

John P. Simpson,

*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 96–14242 Filed 6–5 –96; 8:45 am]

**BILLING CODE 4810–25–M**

## Internal Revenue Service

## Privacy Act of 1974; Computer Matching Program

**AGENCY:** Internal Revenue Service, Treasury Department.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of an Internal Revenue Service (IRS) program of computer matches.

**EFFECTIVE DATE:** This notice will be effective July 8, 1996, unless comments dictate otherwise.

**ADDRESS:** Comments or inquiries may be mailed to: Chief Inspector, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Mary Jacqueline Greening, Internal Auditor, Quality Assurance and Oversight Section, Office of Planning and Management, Office of Assistant Chief Inspector (Internal Audit), Internal Revenue Service, (202) 622–5911.

**SUPPLEMENTARY INFORMATION:** IRS management is responsible for discouraging the perpetration of irregular or illegal acts and limiting any exposure if an integrity breach occurs. To accomplish its mission, the Inspection Service assists management in achieving this objective by enhancing its conventional audit and investigative activities with a program designed to deter and detect such acts and to search for indicators of fraud sufficient to warrant investigation.

The Inspection Service's Integrity Program includes Integrity Projects, Integrity Tests, and national or other projects, including joint Internal Audit/Internal Security activities, designed to detect indicators of fraud and which focus specifically on the deterrence and detection of integrity breaches.

Integrity Projects are reviews or probes of specific high risk areas or transactions by the Inspection Service to detect material fraud and to assess the extent of integrity breaches that may have occurred.

One IRS organizational strategy is to ensure public confidence in the integrity of the IRS by a dedication to the highest ethical standards. One of the ways that the Inspection Service supports this objective is to provide IRS management an assessment of the organization's ethical environment through the Inspection Service Integrity Program.

Computer matching is the most feasible method of performing comprehensive analysis of employee, taxpayer, and tax administration data because of the large number of employees (seasonally varying to over 110,000), the geographic dispersion (nationwide) of IRS offices and employees, and the tremendous volume of computerized data that is available for analysis.

This program of computer matches may be conducted in part or in its entirety by any or all of the Inspection Service's offices.

Name of Source Agency:

Internal Revenue Service.

Name of Recipient Agency:

Internal Revenue Service

Beginning and Completion Dates:

This program of computer matches is targeted to commence in June, 1996 unless comments dictate otherwise. The program of computer matches will conclude at the end of the eighteenth month after the beginning date (December, 1997).

Purpose:

The purpose of this program of computer matches is to detect and deter fraud, waste, and abuse in IRS programs and operations by identifying employees who are violating laws, rules, or regulations related to the performance of their duties.

Authority:

The Office of Chief Inspector was established and provided the authority to perform character and conduct investigations of IRS employees pursuant to 31 U.S.C. 321(b); sections 7801(a),7802, and 7803 of the Internal Revenue Code of 1986; 26 U.S.C. 7804 and Reorganization Plan Number 1 of 1952.

Commissioner's reorganization Order #Hdq–1 (July 29, 1952), IR-Mimeograph Number 236 (December 7, 1953), and the current provisions of the Internal Revenue Manual (IRM) give authority to conduct personnel investigations to the Chief Inspector.

Internal Revenue Manual 1161 charges the Chief Inspector with carrying out a program for assisting management to maintain the highest standards of honesty and integrity among its employees.

The United States General Accounting Office field work standards for both performance and financial audits require auditors to design an audit to provide reasonable assurance of detecting abuse of illegal acts that could significantly affect the financial statements, audit objectives, or audit results.

Categories of Individuals Covered:

Current and former employees of the IRS.

Categories of Records Covered:

1. Personnel and payroll actions and determinations on current and former employees of the IRS. (General Personnel and Payroll records (Treasury/IRS 36.003).)

2. Information on travel and moving expenses incurred by IRS employees in conjunction with official business. (Travel Expense Records (Treasury/IRS 32.001)).

Information other than that specifically on IRS employees will be used to determine the actions or the effect of actions of employees or to corroborate declarations or statements by employees.

3. Specific computer inquiries and entries to IRS information systems made by employees. (Integrated Data Retrieval System (IDRS) Security Files (Treasury/IRS 34.018).)

4. Information on the individuals who owe and the amounts owed to Federal or state agencies. (Debtor Master File (Treasury/IRS 24.070).)

5. Information regarding taxpayers, tax returns, and tax return information.

a. Individual Returns Files, Adjustments and Miscellaneous Documents Files (Treasury/IRS 22.034).

b. Wage and Information Returns Processing (IRP) File (Treasury/IRS 22.061).

c. Combined Account Number File (Treasury/IRS 24.013).

d. Individual Account Number File (Treasury/IRS 24.029).

e. Individual Master File (IMF) (Treasury/IRS 24.030).

f. Business Master File (BMF) (Treasury/IRS 24.046).

g. Taxpayer Delinquent Account (TDA) Files and subsystems (Treasury/IRS 26.019).

h. Taxpayer Delinquency Investigation (TDI) Files (Treasury/IRS 26.020).

i. Examination Administrative File (Treasury/IRS 42.001).

j. Audit Information Management System (AIMS) (Treasury/IRS 42.008).

k. Compliance Programs and Projects Files (Treasury/IRS 42.021).

l. Case Management and Time Reporting System (Treasury/IRS 46.002).

m. Controlled Accounts (Open and Closed)(Treasury/IRS 46.004).

Dated: May 26, 1996

Alex Rodriguez,

*Deputy Assistant Secretary (Administration).*

[FR Doc.14161 Filed 6–5–96: 8:45am]

**Billing Code: 4830–01–F**

## UNITED STATES ENRICHMENT CORPORATION

### Sunshine Act Meeting

**AGENCY:** United States Enrichment Corporation Board of Directors.

**TIME AND DATE:** 8:15 a.m., Tuesday, June 11, 1996.

**PLACE:** Lawrence Livermore National Laboratories, 7000 East Avenue, Livermore, California 94551.

**STATUS:** The meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

- Review of commercial and financial issues of the Corporation.

**CONTACT PERSON FOR MORE INFORMATION:** Barbara Arnold 301–564–3354.

Dated: June 4, 1996.

William H. Timbers, Jr.,

*President and Chief Executive Officer.*

[FR Doc. 96–14471 Filed 6–4–96; 3:35 pm]

**BILLING CODE 8720–01–M**

# Corrections

Federal Register
Vol. 61, No. 110
Thursday, June 6, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 94-59]**

### Robert M. Golden, M.D.; Revocation of Registration

*Correction*

In notice document 96–12231 beginning on page 24808 in the issue of Thursday, May 16, 1996, make the following corrections:

1. On page 24811, in the third column, in the first paragraph, in the 13th line, ''1306.04(4)'' should read ''1306.04(a)''.

2. On page 24812, in the third column, in the ninth line from the top ''*Konstantin v. DEA*, 1955'' should read ''*Konstantin v DEA*, 1995''.

**BILLING CODE 1505–01–D**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

**[Dept. Circ. 570, 1995 Rev., Supp. No. 12]**

### Surety Companies Acceptable on Federal Bonds; Capital Reinsurance Company

*Correction*

In notice document 96–11751 beginning on page 21537 in the issue of Friday, May 10, 1996 make the following correction:

In the third column, second paragraph of the document, first line *Capitol* should read *Capital.*

**BILLING CODE 1505–01–D**

Federal Register

Thursday
June 6, 1996

## Part II

# Department of the Treasury

**Customs Service**

**19 CFR Part 10, et al.**

**Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Final Rule**

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Parts 10, 12, 102 and 134**

**[T.D. 96–48]**

**RIN 1515–AB34**

## Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement

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

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule, with some modifications, interim amendments to the Customs Regulations which established the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement (NAFTA) as required by Annex 311 of the NAFTA. These final NAFTA Marking Rules apply only to all goods imported from Canada or Mexico other than textile and apparel products, and do not apply to trade with other countries.

**EFFECTIVE DATE:** August 5, 1996. These regulations shall apply to goods entered, or withdrawn from warehouse, for consumption on or after August 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Gethers, Office of Regulations and Rulings (202–482–6980).

**SUPPLEMENTARY INFORMATION:**

Background

On January 3, 1994 Customs published two documents in the Federal Register. One of these documents, T.D. 94–4 (59 FR 110), set forth as interim regulations, effective January 1, 1994, rules for determining the country of origin of goods for purposes of Annex 311 of the North American Free Trade Agreement (NAFTA). The other document (59 FR 141) proposed (1) to apply the same rules (set forth at 59 FR 110) to determine the country of origin of merchandise in all cases under the Customs and related laws and the navigation laws of the United States and (2) to amend various provisons within parts 4, 10, 12, 134 and 177 of the Customs Regulations (19 CFR parts 4, 10, 12, 134 and 177) to ensure that these rules would control wherever language requiring a country of origin determination appears in those other regulatory provisions; this notice of proposed rulemaking represented a refinement and replacement of an earlier proposal published in the Federal Register on September 25, 1991 (56 FR 48448). Both documents provided for a 90-day public comment period, subsequently extended to July 5, 1994, by notices published in the Federal Register on March 10, 1994 (59 FR 11225) and March 11, 1994 (59 FR 11547). On February 3, 1994, a notice was published in the Federal Register (59 FR 5082) setting forth corrections to the interim regulations contained in T.D. 94–4.

The rules set forth in T.D. 94–4 were made effective January 1, 1994, for trade with Canada and Mexico in order to fulfill the United States obligation under paragraph 1 of NAFTA Annex 311 which provides that the parties to the NAFTA shall establish, by January 1, 1994, rules (referred to as ''Marking Rules'') for determining whether a good is a good of a party (that is, whether the country of origin of a good is either the United States, Canada or Mexico) for purposes of the following NAFTA Annexes: (1) Annex 311 (Country of Origin Marking); (2) Annex 300–B (Textile and Apparel Goods); and (3) Annex 302.2 (Tariff Elimination). T.D. 94–4 set forth these interim ''Marking Rules'' as a new part 102 of the Customs Regulations (19 CFR Part 102), entitled ''Rules of Origin'', and also set forth consequential conforming interim amendments to existing sections within parts 12 and 134 of the Customs Regulations (19 CFR parts 12 and 134).

Interim part 102 consists of §§ 102.0–102.20 and, following § 102.0 (Scope), is divided into two subparts. Subpart A is entitled ''General'' and consists of § 102.1 (Definitions), and Subpart B is entitled ''Rules of Origin'' and consists of §§ 102.11 through 102.20. Section 102.11 sets forth the general rules for determining the country of origin of a good and consists of paragraphs (a) through (d) which are applied in a hierarchical and sequential manner. Thus, reference must be had first to paragraph (a) which provides that the country of origin of a good is: under subparagraph (1), the country in which the good is wholly obtained or produced; under subparagraph (2), the country in which the good is produced exclusively from domestic materials; or, under subparagraph (3), the country in which each foreign material incorporated in the good undergoes an applicable change in tariff classification set out in § 102.20 and/or satisfies any other applicable requirements contained in that section or elsewhere in part 102. If the country of origin cannot be determined under paragraph (a) because the good does not meet the terms of subparagraph (1), (2) or (3), then resort must be had to paragraph (b) and, if that fails, then to paragraph (c) and, if that fails, finally to paragraph (d). Sections 102.12–102.19 set forth additional rules that serve to interpret, clarify, limit or otherwise control the application of the general rules contained in § 102.11 as well as the specific rules contained in § 102.20. Section 102.20 contains the specific change in tariff classification rules and/or related requirements referred to in the country of origin rule set forth in § 102.11(a)(3); the rules in § 102.20 are set forth for each Harmonized Tariff Schedule of the United States (HTSUS) chapter, and the applicable rule is determined by the HTSUS tariff classification that is applicable to the finished good at the time the country of origin determination is being made.

In view of the fact that the January 3, 1994, notice of proposed rulemaking presented the same regulatory scheme as the rules contained in T.D. 94–4, each document referred to the other and stated that public comments submitted in response to either document would be considered in connection with the review of both documents. The notice of proposed rulemaking further indicated that the background section and interim Part 102 regulatory texts set forth in T.D. 94–4 were applicable to it. Thus, it was intended that the two documents be read together so that, following public notice and comment procedures, one final rule document could be derived from the interim and proposed rule documents, consistent with the overall goal of promulgating uniform rules of origin for Customs and related purposes.

Based on a review of the comments received in response to the interim and proposed rule documents published in the Federal Register on January 3, 1994, and as a result of independent review of the interim and proposed texts within Customs, it was determined that some clarification and further explanation of the intent behind the proposed uniform rule concept should be provided and that some changes should be made to the interim and proposed texts and that those changes should be the subject of public notice and comment procedures before proceeding to the final rule stage in this matter; the interim texts as published in T.D. 94–4 (and as subsequently corrected) would remain in effect pending completion of such final rule action. In addition, Customs determined that public comments should be solicited regarding the appropriate use of a delayed effective date for any final rule resulting from the interim and proposed rules and from any additional proposed changes to those interim and proposed rules.

Accordingly, on May 5, 1995, Customs published in the Federal Register (60 FR 22312) a document that (1) provided supplemental background information regarding the proposed uniform rule concept, (2) set forth proposals to amend the interim regulatory texts contained in T.D. 94–4 published at 59 FR 110 and corrected at 59 FR 5082, (3) republished (and thus replaced) all of the proposed regulatory amendments published at 59 FR 141 on January 3, 1994, with certain changes thereto, and (4) also invited public comments on the appropriate effective date for a final rule on this matter. The May 5, 1995, document stated that it was the intention of Customs to address in that document only those comments submitted in response to the January 3, 1994, notices that involved substantive changes to the interim or proposed texts requiring further public comment procedures; other such previously submitted comments would be addressed in an appropriate final rule or other document to be published at a later date. Comments would be accepted and considered in response to that document only in regard to (1) the proposed changes to the interim regulatory texts as discussed and set forth therein, (2) all other proposed regulatory amendments as discussed and set forth therein which represented a substantive change to the proposals published on January 3, 1994, and (3) the final rule delayed effective date issue. Therefore, comments which concerned other issues involved in the January 3, 1994, documents, or which did not otherwise relate to the new proposals set forth in the May 5, 1995, document, would not be accepted and considered by Customs. The May 5, 1995, document also stated that, for purposes of that document, the background sections of the January 3, 1994, interim and proposed rule documents were applicable except where otherwise required by a change set forth in that document. The May 5, 1995, document provided for a 45-day public comment period which was subsequently extended to July 19, 1995, by a notice published in the Federal Register on June 5, 1995 (60 FR 29520).

After publication of the May 5, 1995, notice of proposed rulemaking, additional issues came to the attention of Customs that warranted publication of further proposed changes to the interim regulatory texts published in T.D. 94–4, with opportunity for public comment thereon. Accordingly, on July 12, 1995, Customs published in the Federal Register (60 FR 35878) a notice of proposed rulemaking setting forth additional proposed changes to the tariff shift and other requirements of interim § 102.20. Final action on the additional proposals set forth in that document also would be reflected in the single final rule document intended, as stated in the May 5, 1995, document, to cover both the T.D. 94–4 interim regulations and the subsequently published proposed regulatory amendments. Since that July 12, 1995, document set forth proposals that were in addition to the proposed changes to the T.D. 94–4 interim regulations contained in the May 5, 1995, proposed rule document, the background section of that May 5, 1995, document was stated to be applicable for purposes of the July 12, 1995, document except where otherwise required by a change set forth in the latter document. Comments submitted in response to the July 12, 1995, document would be accepted and considered only to the extent that they address specific proposals set forth in that document; comments submitted in regard to matters raised in the May 5, 1995, proposed rule document that were not related to a specific proposal contained in the July 12, 1995, document would remain subject to the public comment period specified in the earlier document. The public comment period specified in the July 12, 1995, document closed on August 28, 1995, and a correction document involving the Background discussion in that document was published in the Federal Register on July 31, 1995 (60 FR 38982).

*Deferral of Decision to Extend Section 102 to All Trade*

Customs has decided that the proposal to extend Section 102 to all trade, as reflected in the May 5, 1995, notice of proposed rulemaking, should not be adopted as a final rule at this time but rather should remain under consideration for implementation at a later date. Accordingly, this final rule document concerns only the interim NAFTA Marking Rules (as amended by T.D. 95–69 discussed above) and related interim texts published on January 3, 1994, and those proposed regulatory amendments published on May 5 and July 12, 1995, that relate only to those interim texts, with certain changes thereto as discussed elsewhere in this document. Thus, this document does not include those May 5, 1995, proposed regulatory changes under the uniform rule concept involving part 10 (§§ 10.12, 10.14, 10.171, 10.176, 10.191 and 10.195), part 12 (§ 12.130), part 102 (§ 102.0), part 134 (§§ 134.1 and 134.35) and part 177 (§ 177.22). Consequently, those submitted public comments that addressed the proposed regulatory changes that would apply a uniform method of determining origin to all trade, including the delayed effective date issue, are not discussed in this document but rather will be dealt with, as appropriate, in a future Federal Register document once a final decision is taken on whether to apply a uniform method of determining origin to all trade.

*Rules of Origin for Textile and Apparel Products*

On September 5, 1995, Customs published in the Federal Register (60 FR 46188) T.D. 95–69 which set forth final amendments to the Customs Regulations to implement the provisions of section 334(b) of the Uruguay Round Agreements Act (''the Act''), Public Law 103–465, 108 Stat. 4809, regarding the country of origin of textile and apparel products. Those final regulations will apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, and, except for the purpose of identifying products of Israel and except as otherwise provided for by statute, will govern the determination of the country of origin of imported textile and apparel products for purposes of all laws enforced by Customs. The regulatory provisions in T.D. 95–69 that implement the basic origin principles of section 334(b) of the Act are contained in a new § 102.21 of the Customs Regulations (19 CFR 102.21), and, in order to reflect the broad applicability and precedence of the statutory origin principles as implemented by those § 102.21 rules, T.D. 95–69 also included consequential cross-reference amendments to §§ 12.130, 102.0 and 102.11 of the Customs Regulations (19 CFR 12.130, 102.0 and 102.11).

New § 102.21 was modeled on the approach taken in the interim Part 102 texts as published in T.D. 94–4 and thus incorporates a general statement of applicability (paragraph (a)), various definitions (paragraph (b)), general origin rules (paragraphs (c) and (d)), and specific tariff shift and/or other requirements (paragraph (e)) that apply under the second general rule. Of particular note for purposes of the present document is the definition of ''textile or apparel product'' in § 102.21(b)(5) which delineates the class of goods covered by the § 102.21 rules. That definition identifies those goods with reference to classification in the HTSUS and refers to Chapters 50 through 63 (that is, all of Section XI) of the HTSUS as well as to specific headings and 6-, 8- or 10-digit subheadings of the HTSUS that fall outside Section XI. Thus, if a good is classifiable in an HTSUS provision

listed in § 102.21(b)(5), precedence must be given to the § 102.21 rules over any other regulatory origin provision with regard to that good, including any origin rules contained elsewhere in part 102. The consequential amendments to §§ 12.130, 102.0 and 102.11 mentioned above were intended to reflect this precedence principle.

In view of the precedence that must be given to the § 102.21 origin rules which were adopted as a final rule after the completion of separate public notice and comment procedures, it is clear that, for purposes of the present document, all earlier public comments as regards any goods now covered by § 102.21 relating to textile and apparel products (that is, those submitted in response to the interim and proposed rule documents discussed above) have been rendered moot and thus are no longer relevant. Accordingly, this document contains no substantive discussion of any such comments insofar as they involve § 102.21 goods.

Since the § 102.21 origin rules will also apply for the purposes cited elsewhere in part 102 (that is, in § 102.0), Customs believes that all appearances of possible conflict between the two sets of rules should be avoided. In keeping with the precedence to be given to the § 102.21 rules, the most appropriate means for accomplishing this is (1) to remove, or otherwise exclude, from the table under § 102.20 all those HTSUS references, together with their related tariff shift and/or other requirements, that are included in the § 102.21(b)(5) definition of ''textile or apparel product'' and (2) in order to ensure continuity of regulatory standards, to provide that the regulations set forth in this final rule document will take effect on July 1, 1996, when the § 102.21 provisions become operative (see § 102.21(a)). Accordingly, the following changes have been made to the § 102.20 table as set forth below to reflect these considerations:

1. The listing for subheading 3005.90 has been removed.

2. A new Chapter 39 Note has been added to provide that origin shall be determined under the provisions of § 102.21 in the case of goods classified in subheadings 3921.12.15, 3921.13.15, and 3921.90.2550.

3. Since the new Chapter 42 Note as proposed in the May 5, 1995, document would be superseded by the § 102.21 provisions, this proposed Note has been modified to simply provide that origin shall be determined under the provisions of § 102.21 in the case of goods classified in subheadings 4202.12.40–80, 4202.22.40–80, 4202.32.40–95, 4202.92.15–30, and 4202.92.60–90.

4. The Section XI provisions have been removed.

5. The Chapter 64 Note has been modified by adding a sentence at the end to provide that origin shall be determined under the provisions of § 102.21 in the case of goods classified in subheadings 6405.20.60, 6406.10.77, 6406.10.90, and 6406.99.15.

6. Since the new Chapter 65 Note as proposed in the May 5, 1995, document would be superseded by the § 102.21 provisions, this proposed Note has been omitted.

7. The listing for headings 6501–6502 has been removed.

8. The listing for headings 6503–6506 has been replaced by the following: (1) A listing for subheading 6505.10 (hair-nets), which specifies a change to that subheading from any other subheading; and (2) a listing for heading 6506, which follows the interim tariff shift rules for headings 6503–6506 but with one consequential editorial change in the first rule.

9. The listing for heading 6601 has been removed.

10. A new Chapter 70 Note has been added to provide that origin shall be determined under the provisions of § 102.21 in the case of goods classified in subheadings 7019.19.15 and 7019.19.28 (subheadings 7019.10.15 and 7019.10.28 in the interim texts—see the 1996 HTSUS conforming changes discussion below).

11. The listing for subheading 7019.20 has been removed.

12. The listing for subheadings 8708.10–8708–29 has been replaced by separate listings for subheading 8708.10 and for subheading 8708.29, with the tariff shift rule in each case following the interim rule.

13. The listing for headings 8804–8805 has been replaced by a listing for heading 8805, with consequential editorial changes to the interim tariff shift rule to reflect that only one heading is involved.

14. A new Chapter 91 Note has been added to provide that origin shall be determined under the provisions of § 102.21 in the case of goods classified in subheading 9113.90.40.

15. The new Chapter 94 Note proposed in the May 5, 1995, document has been modified by adding a sentence at the end to provide that origin shall be determined under the provisions of § 102.21 in the case of goods classified in subheadings 9404.90.10 and 9404.90.80–95.

16. The listing for subheading 9502.91 has been removed.

17. A new Chapter 96 Note has been added to provide that origin shall be determined under the provisions of § 102.21 in the case of goods classified in subheading 9612.10.9010.

In addition, for the above reasons and based on the considerations reflected in the below comment discussion regarding § 102.19(a), references to ''§ 102.21'' have been added to the texts of §§ 102.13, 102.15 and 102.17 as set forth below.

*Changes to Conform to 1996 HTSUS*

A number of conforming changes have been made to the table under § 102.20 as set forth in this document, principally to the tariff shift rules therein, to reflect changes included in the 1996 version of the HTSUS as a result of amendments made to the international Harmonized System. Those HTSUS changes involve primarily the product coverage and/or numbering of some headings and subheadings, and the conforming changes reflected in the § 102.20 texts in this document are not intended to have any other substantive effect. The specific § 102.20 conforming changes incorporated in this document are reflected in the text of Note 1 to Section VI and in the following heading and subheading listings: 0405.10, 0405.20, 0405.90, 0406, 0901.90, 1520, 1521–1522, 1903, 1904.10, 1904.20, 1904.90, 1905, 2106.90, 2207, 2208.20–2208.70, 2208.90, 2836.99, 2841.61–2841.69, 2848, 2849.10–2849.90, 2903.11–2903.30, 2903.41–2903.49, 2903.51–2904.90, 2905.11–2905.19, 2905.45, 2914.31–2914.39, 2914.40–2914.70, 2932.11–2932.99, 3206.11–3206.19, 3206.20–3209.90, 3214.10–3214.90, 3302, 3304.10–3306.10, 3306.20, 3306.90–3307.90, 3402.11, 3402.12–3402.20, 3502.11–3502.19, 3502.20–3502.90, 3823.11–3823.13, 3823.19, 3823.70, 3824.10, 3824.20, 3824.30, 3824.40, 3824.50, 3824.60, 3824.71–3824.90, 4823.60–4823.70, 4823.90, 7019.11–7019.19, 7019.40–7019.59, 7116, 7507.11–7508.90, 7616.10–7616.99, 7907, 8005, 8406.10, 8406.81–8406.82, 8456.10–8456.99, 8469.11–8469.12, 8469.20–8469.30, 8470.10–8471.50, 8471.60–8472.90, 8475.10, 8475.21–8475.29, 8476.21–8476.89, 8506.10, 8506.30, 8506.40, 8506.50–8506.80, 8510.10–8510.30, 8517.11–8517.80, 8519.10–8519.40, 8519.92–8519.93, 8519.99, 8520.10–8520.20, 8520.32, 8520.33, 8520.39–8520.90, 8521.10 8521.90, 8525.30–8525.40, 8527.12–8527.13, 8527.19–8527.90, 8528.12–8528.30, 8539.10–8539.31, 8539.32–8539.39, 8539.41–8539.49, 8540.11–8540.20, 8540.40–8540.60, 8540.71–8540.99, 8543.11–8543.19,

8543.20–8543.30, 8543.40–8543.89, 9007.11–9007.19, 9007.20, 9010.10, 9010.41–9010.50, 9010.60, 9018.11, 9018.12–9018.14, 9018.19, 9022.12–9022.14, 9022.19–9022.90, 9030.10–9030.40, 9030.82–9030.83, 9030.89–9030.90, 9031.10–9031.30, 9031.41–9031.49, 9031.80, and 9614.20. In order to accurately reflect the public comments and the context in which they were submitted, the comment discussion set forth below refers to the interim § 102.20 texts and published proposed changes thereto and thus does not reflect these conforming changes.

Discussion of Comments

A total of 183 commenters responded to the solicitation of comments in the interim and proposed rule documents referred to above. The comments submitted, except those relating to textile and apparel products and those relating to the uniform origin rule concept, and the Customs responses thereto are set forth below.

*Removal of §§ 10.22, 102.14 and 134.43(e)—U.S. Goods Returned*

*Comments:* Section 10.22, Customs Regulations (19 CFR 10.22), provides that assembled articles eligible for subheading 9802.00.80, HTSUS, treatment are considered products of the country of assembly for purposes of country of origin marking. Section 102.14 of the interim regulations provides that U.S. goods advanced in value or improved in condition abroad are considered to be products of the country where the U.S. goods were advanced in value or improved in condition, and § 134.43(e) of the interim regulations provides for special methods of marking goods the origin of which is determined under § 102.14 of the interim regulations. Five comments opposed the removal of these sections, and five comments favored their removal.

The commenters opposing the removal assert that since the foreign assembly of U.S. components does not necessarily result in a substantial transformation or tariff shift, resulting in a change in origin of a good, §§ 10.22 and 134.43(e) provide a means to identify U.S. components in goods assembled abroad. Additionally, in situations where assembled goods consist largely or entirely of U.S.-made components and there is a change in origin, it is claimed that the use of ''Assembled in'' will be eliminated, and ''Made in'' or ''Product of'' is not only inaccurate, but does not serve the purpose ''to inform the ultimate purchaser of the country of origin''. Furthermore, it is stated that U.S. Note 2(a), Subchapter II, Chapter 98, HTSUS, still provides that any product of the U.S. advanced in value or improved in condition, or assembled abroad will be considered a foreign article upon its return to the U.S.

The commenters who favor the removal of §§ 10.22, 102.14 and 134.43(e) assert that U.S. products should not have to be marked upon return to the U.S., unless they are substantially transformed. Requiring U.S. goods to be marked restricts U.S. companies to the term ''Assembled in'' when all the components being assembled are of U.S. origin, and it is suggested that this does not advise the ultimate purchaser as to the real origin of the imported merchandise.

All of the comments, favorable and unfavorable, urged the continued use of ''Assembled in'' when an eligible subheading 9802.00.80, HTSUS, assembly operation constitutes a substantial transformation conferring origin pursuant to § 102.20 of the interim regulations. The commenters also urged the general usage of the legend ''Assembled in'' as a valid country of origin marking when an assembled good is a product of the country indicated.

One commenter also suggested that if § 10.22 is removed without further amending part 134 to authorize the use of ''Assembled in'' for subheading 9802.00.80 merchandise, there will be ambiguity as to whether ''Assembled in'' is a permissible country of origin marking under the Customs Regulations, inasmuch as rulings approving the use of ''Assembled in'' are still in effect. Furthermore, if § 10.22 is removed, it was suggested that Part 134 be amended to confirm that in all cases, information respecting assembly of an imported product may be noted within an origin statement.

*Customs Response:* Customs' proposal to remove § 10.22 was originally discussed in the May 5, 1995, notice of proposed rulemaking in the context of the uniform rules proposal. However, as demonstrated by the above comments, the proposed removal of § 10.22 is directly related to the proposed removal of §§ 102.14 and 134.43(e) of the interim regulations. For this reason, Customs is responding collectively to comments regarding the proposed removal of §§ 10.22, 102.14 and 134.43(e).

Customs agrees that 19 U.S.C. 1304 does not preclude the use of ''Assembled in'' or require the use of ''Made in'' or ''Product of'' in a country of origin statement. However, outside the context of articles eligible for subheading 9802.00.80, HTSUS, treatment (*i.e.*, when § 10.22 is applicable), Customs in the past has by rulings determined that the phrase ''Assembled in'' is not an acceptable country of origin statement. Reference was made by a commenter to C.S.D. 79–244 as support that Customs approves of the marking ''Assembled in''. However, that determination involved calculators assembled in Hong Kong with U.S. and/or foreign components. Consequently, it appears that the calculators imported into the United States were eligible for entry under item 807.00, Tariff Schedules of the United States (TSUS) (now subheading 9802.00.80, HTSUS). It is clear that there has been confusion as to the use of ''Assembled in'' when articles eligible for subheading 9802.00.80, HTSUS, treatment contain foreign components as demonstrated by the series of inconsistent rulings subsequent to the determination made in HQ 731507. Consequently, instead of modifying all of the inconsistent rulings concerning the use of ''Assembled in'', and since articles eligible for subheading 9802.00.80, HTSUS, treatment may not undergo a substantial transformation or tariff shift in the country of assembly, it is Customs' opinion that § 10.22 as well as § 102.14 of the interim regulations should be removed so that the country of origin of articles assembled or advanced in value abroad is determined in the same manner as any other good imported into the United States.

All of the comments mention the purpose of 19 U.S.C. 1304, which is to inform the ultimate purchaser of the country of origin. Some of the comments assert that § 10.22 provides the ultimate purchaser with information regarding the country of assembly and the origin of the components used, while other comments suggest that the country of assembly may not necessarily be the true country of origin. It is Customs' opinion that an ultimate purchaser most likely will not be aware that an article imported with the marking ''Assembled in'' is eligible for subheading 9802.00.80, HTSUS, treatment. While U.S. Note 2(a), Subchapter II, Chapter 98, HTSUS, does provide that any product of the United States advanced in value or improved in condition, or assembled abroad, will be considered a foreign article upon its return to the United States, Customs has reconsidered the position that this Note applies for general country of origin purposes. Therefore, once § 10.22 and § 102.14 of the interim regulations are removed, all rulings based on those regulations may no longer be relied upon. Accordingly, goods of U.S. origin which are assembled abroad or

otherwise advanced in value or improved in condition abroad, but which do not undergo a change in origin as a result of these operations, will not be required to have any country of origin marking pursuant to 19 U.S.C. 1304 when they are imported into the United States.

However, since all of the comments favor the use of ''Assembled in'', Customs has reconsidered the proposal to remove all regulations allowing the use of this phrase. Therefore, § 134.43(e) will be retained but in modified form, as set forth below, so as to be limited to assembled goods when the origin of such goods is the country of final assembly.

*Section 102.1(g)—Definition of Wholly Obtained or Produced*

*Comment:* A commenter suggests adoption of the Kyoto Convention Rules of Origin definition of ''wholly obtained goods'' in order to eliminate doubts as to when a good is considered to be wholly the growth, product or manufacture of one country.

*Customs response:* The definition of ''wholly obtained or produced'' contained in § 102.1(g), which is incorporated by reference in § 102.11(a)(1), is substantively identical to the definition set forth in Annex D.1 to the Kyoto Convention, with the single exception that the Part 102 definition also includes goods taken from outer space, provided that they are obtained by that country or a person of that country. Therefore, Customs agrees with this commenter that the definition of wholly obtained or produced goods, which is patterned after Kyoto Convention Annex D.1, provides more predictability in determining when goods are wholly the growth product or manufacture of a single country.

*Section 102.1(m)—Definition of Minor Processing*

*Comment:* One comment was received regarding this section. This commenter expressed concern regarding subparagraph (5), which includes ''[u]nloading, reloading, or any other operation necessary to maintain the good in good condition.'' The commenter stated that this language appears overly broad and could be misinterpreted to apply to industrial operations necessary to preserve a good, but which also alter the essential character of the good. Therefore, this commenter suggests that this provision be amended to read as follows: ''Unloading, reloading, or any other insubstantial operation that does not add significant value to the good and is performed solely to preserve or maintain the good in good condition for shipment.''

*Customs Response:* Customs disagrees. The underlying premise of this comment is that the definitions of § 102.1, unlike most regulatory ''definitions'', can operate independently of other regulatory provisions. This, however, is not the case here. The definition of ''minor processing'' only can operate in the context of other rules set forth in part 102, particularly those provisions setting forth a criterion for determining origin. The definition of ''minor processing'' does not operate as a general disqualifer to the origin criteria of other provisions, such as the way in which the ''non-qualifying operations'' set forth in § 102.17 are generally applicable to all determinations under the specific tariff rules of § 102.20. When the definition of ''minor processing'' is applicable, it normally is expressed as part of a ''negative'' origin criterion, meaning that it is used to illustrate when a change of origin does not occur. Therefore, if the other operations suggested by the commenter also are performed, the good will not be deemed to have been produced ''only'' as a result of ''minor processing'', and thus a change of origin could still be possible under the rules.

*Section 102.1(p)—Definition of Substantial Transformation*

*Comment:* One commenter submits that as a result of the proposed elimination of the definition, the question of what constitutes a ''substantial transformation'' now can be determined only on the basis of the specific § 102.20 rule. The commenter also suggests that in the absence of a general definition of ''substantial transformation'', there will be a lack of certainty which is not only needed for Customs origin determinations, but also for other purposes such as origin determinations relating to ''industrial property rights''.

*Customs Response:* Customs disagrees. First, it is the position of Customs that the principle of substantial transformation is reflected and codified not only in the § 102.20 rules but also in the entire hierarchy of § 102.11. In fact, § 102.20 is only applicable through its incorporation in § 102.11(a)(3). The definition of ''substantial transformation'' was set forth in interim § 102.1(p) only because of the references made to that term in interim § 102.16 and in certain specific interim rules contained in § 102.20. Customs, however, stated in the May 5, 1995, notice of proposed rulemaking that § 102.16 (in its entirety) and the references to ''substantial transformation'' contained in certain § 102.20 specific rules were being proposed for removal because experience in administering the interim regulations had demonstrated that the application of the hierarchy contained in § 102.11 will yield a result that codifies the substantial transformation principle set forth in interim § 102.1(p). If origin is not determined under § 102.11(a)(3) [the section in which the § 102.20 rules are incorporated by reference], the question of whether or not there has been a substantial transformation is not yet answered; the next step in the hierarchy must be considered. As a result of the application of the hierarchy, a specific determination of origin of a good can be made. If, in the final analysis, the origin of the good under the hierarchy is different from the origin of its materials, then there will have been a substantial transformation of those materials.

Therefore, contrary to the underlying premise of this comment, it is specifically because of the need for more certainty in origin determinations that Customs is expressing the substantial transformation principle through the step-by-step operation of the § 102.11 hierarchy. Customs' proposed removal of those provisions, which merely incorporate the abstract definition of ''substantial transformation'' without expressing when the criteria have been met, is consistent with and promotes the overall objective of certainty.

*Section 102.11(c)—General Rules*

*Comments:* Two commenters state that § 102.11(c), as applied to mixtures and composite goods, is contrary to 19 U.S.C. 1304 and to judicial precedents promulgated thereunder. These commenters expressed concern that pursuant to § 102.11(c), when no single material, foreign or domestic, imparts the essential character, the mixture will have the origins of the significant materials or ingredients used to produce that mixture, as opposed to considering the mixture itself as a new and different article of commerce.

These commenters also suggest that Customs include an ''escape clause'' to appropriately deal with these and other unforeseeable instances when processing in a country under existing precedent constitutes a substantial transformation, but is not treated as such under the new rules. In this regard, the commenter suggests that when processing is deemed insufficient under § 102.11(a)(3) or § 102.11(b) to confer origin in the country where the processing takes place, this should

create a presumption that no substantial transformation occurs. However, this presumption could be rebutted by factual evidence establishing that the processing causes a change in name, character or use.

*Customs Response:* Customs disagrees. Section 102.11 sets forth the hierarchical rules for determining the country of origin of goods other than textile and apparel products which are covered by § 102.21. If the country of origin of a good is not determined under § 102.11(a) or (b), § 102.11(c) of the hierarchy must be considered. Thus, by the time § 102.11(c) of the hierarchy is reached, it already has been determined: (1) That the processing performed with respect to foreign materials contained in the good was insufficient to meet the specific tariff rule under § 102.20; and (2) for mixtures and composite goods, that there is no single material that imparts the essential character to such goods.

Consequently, when this provision is applicable, the country of origin of such sets, mixtures, or composite goods is the country or countries of origin of those materials or components meriting equal consideration for determining the essential character of the good. A material or component need not be determined to actually impart the essential character to a good in order to merit equal consideration (*i.e.*, be considered a consequential material or component) for such purpose of making the essential character determination for classification or origin purposes.

Section 102.11(c) is not a departure from Customs practice under the country of origin marking statute. Indeed, it follows and is specifically intended to codify Treasury Decision (T.D.) 91–7, dated January 8, 1991, in which Customs considered, *inter alia*, the country of origin marking requirements of GRI 3, HTSUS, sets, mixtures and composite goods. In this decision, Customs stated that, notwithstanding that these goods may be classified pursuant to GRI 3(b) on the basis of the material or component that imparts the essential character to the good, ''if the materials or components are not substantially transformed as a result of their inclusion in a set or mixed or composite goods * * * each item must be individually marked to indicate its own country of origin.'' Contrary to the suggestions by the commenters, the practice established in T.D. 91–7 has not been limited to ''sets'', but also has been applied to mixtures and composite goods. *See* HQ 735085 dated June 4, 1993.

With regard to the suggestion by one of the commenters that the Part 102 rules contain an escape clause, it is the opinion of Customs that such a clause would negate the primary benefit of these rules: Codification of the substantial transformation principle as interpreted by Customs and the courts, while providing predictability, transparency and objectivity in origin determinations.

*Sections 102.12 and 102.11(b)(2)—Fungible Goods and Materials*

*Comment:* One comment was received regarding § 102.12 which provides for the country of origin determination of commingled fungible goods to be made by either direct physical identification or, if that is impractical, by the use of one of the inventory management methods provided under the Appendix to Part 181 of the Customs Regulations (which implements the preferential tariff treatment provisions of the NAFTA). While this commenter endorsed the need for an alternative method to physical identification, the commenter stated that the use of an inventory management method to determine origin of these goods is not workable. As an alternative, the commenter suggests that Customs expand and codify the ''major supplier'' marking policy that exists for country of origin marking of fruit juice products made from juice concentrate of various countries.

*Customs Response:* First, it should be clarified that the ''major supplier marking'' policy is not an origin rule, but rather is a manner of marking policy that is applicable to certain goods after the determination of origin is made. In contrast, § 102.12, like all of the rules of part 102, will be used to determine the origin of the good at issue. It is only after reaching the origin determination that Customs can address the issue of the appropriate manner of marking the good for purposes of 19 U.S.C. 1304. Both the ''major-supplier'' rule, which applies to manner of marking, and the inventory management option, which is used to determine origin, co-exist. If, under the inventory management method, a single origin is determined, there is no need to use a ''major-supplier'' approach to mark the good in question.

In T.D. 89–66, dated April 7, 1989, which was cited by this commenter, Customs addressed only the issue of the number of countries representing sources of the foreign juice concentrate that had to be physically identified on the retail juice products. The question of origin regarding the juice products already had been settled as a result of the Court of International Trade decision in *National Juice Products Assn.* v. *United States*, 628 F.Supp. 978 (CIT 1986).

Therefore, Customs reserves the right to address the manner of marking issue relating to commingled goods and materials on a case-by-case basis similar to the way the issue was addressed for the juice concentrate products. Customs believes, however, that §§ 102.11(b)(2) and 102.12 provide a practical solution to the problems that gave rise to the major supplier country of origin marking policy. These provisions allow for practical and logistical problems to be resolved at the time the origin determination is being made for fungible goods and materials. Contrary to the commenter's suggestion, the specific inventory management methods set forth in the appendix to part 181 of the Customs Regulations are not so circumscribed to the NAFTA preference rules that they cannot be employed for other origin determination purposes. The examples provided in that Appendix clearly illustrate how accounting methods can be used to assign origin to inputs and outputs. Therefore, Customs believes that inventory management methods allow for adaptable recordkeeping that provides another option to determine origin.

*Section 102.13—De Minimis*

*Comments:* Two commenters expressed concern that the de minimis rule set forth in § 102.13 is not applicable to certain agriculture products. These commenters note that if a ''major supplier'' marking rule is adopted, it can include a de minimis amount of 7 percent.

*Customs Response:* These commenters also confuse ''manner of marking'' issues with ''determination of origin'' issues. Section 102.13 is only applicable in conjunction with the specific tariff rules of § 102.20. Due to the nature of these products and because of health and food safety concerns, Customs has exercised its discretion not to allow a de minimis standard to apply in determining the origin of most agricultural products. This policy, which is incorporated into § 102.13, is consistent with Customs' past practice with regard to country of origin determinations of agricultural products. Therefore, Customs will retain the rule in § 102.13 as it currently exists.

*Removal of § 102.16—Goods and Its Parts; Parts of Parts*

*Comments:* Two commenters express concern that, by the elimination of § 102.16, Customs is adopting an ''essential character'' standard in its origin hierarchy for all goods (except for

''sets'') for which country of origin is not determined pursuant to § 102.11(a). Another commenter submits that by eliminating § 102.16, Customs ignores the situation in which imported goods classified as an ''unfinished article'' under GRI 2(a) may be subject to extensive and significant manufacturing processes that change the name, character, or use of the article and add enormous value to the finished product. This commenter suggests adopting the NAFTA preference rules which in some cases include a value added criterion for determining ''originating'' status.

In opposing the removal of § 102.16, these commenters also expressed concern that the hierarchy set forth in § 102.11 does not codify the principle of substantial transformation for goods classified pursuant to GRI 2(a) and the court's decision in *United States* v. *Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940); on the other hand, one of the commenters suggests that origin would not necessarily be determined under § 102.11(b) (on the basis of essential character) if several equally important parts are assembled. Another commenter sought specific clarification in connection with the removal of § 102.16 as to whether the country of origin of a single component which has not undergone the applicable change in tariff classification will always be found to impart the ''essential character'' to the product.

*Customs Response:* It is apparent that these commenters have assumed that interim § 102.16 had a much broader application than it actually did. First, § 102.16, by its very terms, only applied to goods which were assembled from parts that were classified along with the good in the same undivided heading or in the same subheading. Second, even when § 102.16 was applicable, the country of origin of the good would not always be determined under § 102.16. If pursuant to this section Customs concluded (as has happened in some instances) that there was no substantial transformation of the parts, then resort must be had to the next step in the hierarchy under § 102.11, that is, paragraph (b) (or paragraph (c) if the good is a ''set''). In other words, § 102.16 was only applicable within the context of § 102.11(a)(3) and the specific tariff rules of § 102.20. It did not have a life of its own.

Customs also does not agree with the other underlying premise of these comments, *i.e.*, that Customs is creating the ''essential character'' standard. As Customs thought had been made clear in the **SUPPLEMENTARY INFORMATION** portion of the May 5, 1995, notice, whether or not there is a change in the essential character of an article is the principle factor considered by the courts in determining whether there has been a substantial transformation. In *United States* v. *Gibson-Thomsen Co., supra*, the court found that the marking statute was not intended by the Congress to have application to an imported article further processed in the United States so that it became a ''new article having a new name, character *and* use'' (emphasis added).

Although the courts with customs jurisdiction in more recent cases, and Customs in its rulings, have often characterized the standard as ''new name, character *or* use'', the courts and Customs have actually required a change in the name, character *and* use of an imported article for a finding of substantial transformation into a new and different article of commerce. In addition, the courts have actually given much less significance in recent cases to the ''name'' and ''use'' of an article but have emphasized the significance of a change in its ''character'' in making substantial transformation decisions. *See, e.g.*: *National Juice Products Assn.* v. *United States, supra*; *Uniroyal, Inc.* v. *United States*, 542 F.Supp. 1026 (CIT 1982); and *National Hand Tool Corp.* v. *United States*, 16 CIT 308, *aff'd* 989 F.2d 1201 (Fed. Cir. 1993). Therefore, consistent with the courts' interpretation of the substantial transformation standard over recent years, Customs has administered the standard as originally enunciated by the *Gibson-Thomsen Co.* decision as requiring a change in the name, character *and* use of the article and has placed more emphasis on a change in the character of the article than on any change in its name or use. With regard to one of the commenter's suggestions of using the NAFTA preference rules incorporating a value-content requirement, Customs notes that even the Court of International Trade has stated that ''there is no reason to find 'substantial transformation' on the basis of value added in the United States.'' *National Hand Tool Corp.* v. *United States, supra.*

As previously noted, the § 102.11 hierarchy does not stop at the failure of the foreign materials to meet the specific tariff rule of § 102.20. Therefore, one commenter correctly observed that in the case involving multiple parts that are classified in the same undivided heading or same subheading as the finished good (*e.g.*, multiple forgings for a single hand tool), it is possible to conclude that no single one of those parts imparts the essential character to the finished tool. (For purposes of this determination under § 102.11(b), materials which are classified at the subheading level specified in the rule under a general descriptive provision (*e.g.* a ''parts'' provision) will be considered, when distinct in style or type, as separate materials, while materials which are classified at the specified subheading level under a provision which reflects a more specific description (e.g. ''fresh cut flowers'' under subheading 0603.10) will be considered collectively as a ''single material''.) If the good is not classified as a ''set'', ''mixture'' or ''composite good'', § 102.11(c) would not be applicable and in such instance § 102.11(d) would be applicable. If the production of the good from the parts involved more than ''simple assembly'' or ''minor processing'', then it is possible to conclude pursuant to § 102.11(d)(3), that the country of origin of the good is the last country in which the good underwent production.

In response to the question of whether, if there is only one component in a good which is classified in a provision from which a change in tariff classification is not allowed under the § 102.20 rule, that one component always will determine the country of origin, the answer is yes for the following reason. The specific tariff (tariff shift in most cases) rules were developed with the specific view of not allowing a change in tariff classification from materials that can impart the essential character to the good. In those instances in which the tariff shift rule excludes a particular tariff provision, Customs has determined that the processing required to shift from that tariff provision to the provision for the good is not, in itself, sufficient to result in a change in the essential character of the materials classified in the provision from which a change is not allowed. Therefore, unless the good is classified as a set, if a good is made from a single material that is classified in a tariff provision from which a change is not allowed, the single material will be found under § 102.11(b) to impart the essential character to the good, and the country of origin of that material will be the country of origin of the good under Part 102.

As an example of the foregoing, a forging for a flat wrench is imported into the United States. The shape of the flat wrench is defined by the forging such that the two teeth of the open end of the wrench are in place with just a thin web of metal which must be removed, and the closed end of the wrench (a circle) also has a thin piece of metal inside which must be removed, and then heat treated, belt polished, vibrated, acid cleaned, and chrome

plated. If the flat wrench forging is the only material that does not meet the tariff shift rule under § 102.20 as a result of being classified in a provision from which a change is not allowed (the forging is usually classified in the same provision as the finished wrench), this is the single material that imparts the essential character to the finished flat wrench, and the country of origin of this material is the country of origin of the finished flat wrench. In order to clarify this issue, § 102.18(b) has been modified as set forth below to make it clear that if there is only one component or material that is classified in a provision from which a change in tariff classification is not allowed under the § 102.20 rule, that material will constitute the single material that imparts the essential character to the good for purposes of determining country of origin under § 102.11(b).

*Section 102.18(a)—Rules of Interpretation*

*Comments:* One commenter states that since § 102.18(a) only applies to rules which contain an exception relating to GRI 2(a) of the HTSUS, two questions remain unanswered. First, how will the origin differ when an unassembled article is shipped with all of its parts in one shipment, therefore invoking GRI 2(a), versus shipping parts separately and thereby not triggering the application of GRI 2(a)? Second, does the assembly of the article under either of the above scenarios determine the country of origin of the assembled article? If the answer to the second question is yes, the commenter questions whether this applies only when the rule for the article does not contain a GRI 2(a) exception.

Another commenter presents an example of semi-knocked-down (''SKD'') bicycles (classified under heading 8712), which are complete bicycles, individually boxed and ready for sale to the ultimate purchaser which, however, are not fully assembled (the seat, seat post, front wheel [consisting of a hub, spokes, nipples, rim, tire, inner tube and rim strip], pedals, handlebars and handlebar stem are not assembled to the bike, but are simply placed separately in the shipping carton in order to reduce the size of the carton thereby reducing freight costs). The SKD bicycles are classifiable as complete bicycles under GRI 2(a), and the commenter seeks confirmation that as a result of the applicability of § 102.18(a) and the proposed new text of § 102.17(e), the assembly or collection of the bicycles will not result in a tariff shift.

*Customs Response:* The first commenter correctly notes that § 102.18(a) is applicable only when there is reference to GRI 2(a) in a specific tariff rule under § 102.20, which, in turn, only applies in the context of determining origin under § 102.11(a)(3). Section 102.18(a) operates just like the definitions in § 102.1: It cannot be invoked unless specifically referenced in a rule. Thus, the question of whether or not the assembly of an unassembled good confers origin cannot be answered in the abstract. This determination will depend upon the application of the hierarchical rules of § 102.11 to the specific goods and parts in question. Customs also agrees with the conclusions of the second commenter, but probably for slightly different reasons. The response below to the example presented by the second commenter illustrates how the GRI 2(a) exception operates in the § 102.20 rules.

The § 102.20 specific tariff shift rule for bicycles, which are classified in heading 8712, HTSUS, is as follows:

8711–8713

A change to heading 8711 through 8713 from any other heading, including another heading within that group, except from heading 8714 when that change is pursuant to General Rule of Interpretation 2(a).

If the production of an SKD bicycle in Country A entails the use of a subassembly imported from Country B that is classifiable under heading 8714, HTSUS, § 102.18(a) is applicable and the tariff shift from the subassembly (classifiable under heading 8714) to the SKD bicycle (classifiable under 8712 pursuant to GRI 2(a)) will not be allowed.

Also, pursuant to the proposed new text of § 102.17(e), a tariff shift would not be allowed for collections of bicycle parts or incomplete bicycle ''subassemblies'' which as collected are classifiable in the same manner as the complete bicycle, pursuant to GRI 2(a). However, neither § 102.17(e) nor § 102.18(a) will be the reason that the final assembly of the SKD bicycle into the fully assembled bicycle does not result in a tariff shift. In this instance, the tariff shift does not occur simply because the unassembled SKD bicycle and the fully assembled bicycle are classified in the same tariff provision.

*Section 102.19—NAFTA Preference Override*

1. Section 102.19(a)

*Comments:* One commenter believes that the application of this provision can result in more than one NAFTA country of origin. Another commenter states that § 102.19(a) should be applicable to goods the origin of which is determined under § 102.21.

*Customs Response:* Customs disagrees with the comment that this provision can result in more than one country of origin. In § 102.19(a), the word ''single'' before the words ''NAFTA country'' expressly makes clear that it is impossible for originating goods that meet the criteria of this provision to have multiple countries of origin. Customs has not been presented with a scenario in which two parts of a good were produced at the exact same time in two NAFTA countries, which would be the only circumstances in which there can be *two last* NAFTA countries ''in which the good underwent production other than minor processing''. Moreover, § 102.11(c) will never be applicable to goods that meet the criteria of § 102.19(a), since this provision is triggered whenever a single country of origin is not determined after applying both § 102.11(a) and § 102.11(b).

Customs, however, agrees that § 102.21 should be included within the scope of § 102.19(a). Paragraph (c) of § 102.21 (''general rules'') already incorporates by reference all of the additional requirements and conditions of §§ 102.12 through 102.19. Nevertheless, in order to make this point even clearer, § 102.19(a) as set forth below has been modified to expressly refer to § 102.21 so that if a good, which otherwise meets the requirements of § 102.19, is not determined under § 102.21 to have a single NAFTA country, the country of origin of such a good will be determined under § 102.19.

2. Section 102.19(b)

*Comments:* Two commenters requested clarification that this provision does not apply for marking purposes but rather applies solely for customs duty purposes.

*Customs Response:* Customs agrees that this provision does not apply for country of origin marking. As stated in the **SUPPLEMENTARY INFORMATION** portion of the May 5, 1995, notice of proposed rulemaking, the term ''Customs duty purposes'' in § 102.19(b) is intended to include merchandise processing fees. This term, however, does not include country of origin marking. Customs believes, however, that the fact that the provision clearly states it is applicable for ''Customs duty purposes'' makes it clear that the use of this provision for any other purpose, such as for country of origin marking, would be improper.

Therefore, Customs believes that there is no need to amend the provision.

*Headings 0202, 0210 and 1602 (Meats)*

*Comments:* One comment concerned the fact that the specific tariff rules for these goods do not allow some operations, such as the grinding or blending of imported beef with U.S. beef to produce hamburger meat or patties, to constitute an acceptable change in tariff classification. This commenter also believes that the USDA has the specific statutory jurisdiction over the marking of meat and poultry products whether imported or domestic, pursuant to the Federal Meat Inspection Act, 21 U.S.C. 601.

*Customs Response:* Customs disagrees. Although Customs has not issued a specific ruling regarding this issue, it is Customs' position that the grinding or blending of foreign raw beef with U.S. beef does not constitute a substantial transformation. In other cases concerning food, Customs has not recognized merely blending or chopping food, without cooking or other preparation, to constitute a substantial transformation. In this regard, it should be noted that consistent with its application of the substantial transformation principle, the tariff shift rules for prepared meat (heading 1601) allow a change from any other chapter, which will include the frozen, salted, and dried meats of Chapter 2.

With regard to the country of origin marking of imported meats, it suffices to point out that 19 U.S.C. 1304, the country of origin marking statute, applies to all goods of foreign origin, unless specifically exempt by statute or by the specific regulations authorized by the statute. This statute does not exempt imported meat products from marking, unless Customs determines that the product is substantially transformed into a new and different article by the U.S. importer/processor. As stated above, Customs does not view the mere grinding of fresh meats into hamburger as a substantial transformation; therefore, Customs believes that, notwithstanding any other domestic laws that may be applicable for its marking, such meats should be marked as to country of origin prior to reaching the ultimate purchaser thereof in the United States. In connection with this issue, it should be noted that Customs has issued a General Notice regarding the country of origin marking of beef jerky. 26 Cust. Bull. And Decisions 51 (December 16, 1992). While Customs in this General Notice recognized that there may be conflicting country of origin marking requirements imposed by the USDA and Customs, Customs nevertheless explained the legal basis for the Customs marking determination as well as the basis for Customs jurisdiction in the matter.

*Heading 0304 (Fish Fillets and Other Fish Meat, Fresh, Chilled, or Frozen)*

*Comment:* The specific rules for the goods of this heading, except for fillets, require a change to these goods from any other chapter, while for fish fillets the rules allow a change to this heading from any other heading. One commenter states that the rule should generally allow a change to goods of this heading from any other heading, citing the belief that the production of fish meat requires as much or more processing than the production of fillets.

*Customs Response:* The commenter has not provided, nor has Customs been able to find, any evidence to substantiate the claim that the production of fish meat results in a substantial transformation of the fish. The Explanatory Notes to the Harmonized System describe ''other fish meat'' merely as fish meat from which the bones have been removed, whereas the production of fillets from fish involves specific operations which have been recognized by the Court of International Trade as resulting in a substantial transformation of the fish. *See Koru North America* v. *United States,* 701 F.Supp. 229 (CIT 1988), discussed in the **SUPPLEMENTARY INFORMATION** portion of the May 5, 1995, notice of proposed rulemaking.

*Heading 0710 (Vegetables, Uncooked, Steamed, Boiled or Frozen)*

*Comments:* Two comments were received concerning this specific rule. These commenters expressed concern that the rule does not recognize a substantial transformation resulting from the processing performed to produce mixtures of vegetables classified in subheading 0710.90. One commenter noted that in producing their vegetable combinations, imported vegetables are combined with domestic vegetables in precise mixtures through highly sophisticated proprietary mathematical formulas, using state-of-the-art weighing and mixing processes. According to one commenter, the combinations are the result of extensive marketing and product research as well as capital investment and technology to appropriately provide for the blending of the different vegetables. Therefore, these commenters suggest that this specific rule be amended to allow a change to subheading 0710.90 (mixtures of vegetables) from any other subheading, provided that no single vegetable ingredient of foreign origin constitutes 75 percent or more of the product by net weight.

*Customs Response:* Customs cannot agree to this proposal. Customs addressed the very facts presented by these commenters in a ruling issued in the year before the proposed rules were published. In HQ 735085, dated June 4, 1993, the frozen vegetable products were produced by combining foreign broccoli, cauliflower, water chestnuts, and peas with domestic carrots, yellow peppers, and asparagus and then packaging them for retail sale. Beyond bagging, there was no processing of the combined frozen vegetables, such as cooking or adding sauces. Customs found that the individual imported vegetables retain their identities after the combining operations. Consequently, the vegetable mixtures were not considered different kinds of food articles, and imported vegetables were not considered to have undergone a substantial transformation. In HQ 735085, Customs distinguished prior rulings such as HQ 555524, dated April 11, 1990, (which involved manufacturing soup by mixing eleven ingredients, boiling the mixture to achieve desired consistency, and packaging for retail sale). Customs still adheres to the position expressed in HQ 735085 and for this reason does not agree that the specific tariff rule for vegetable mixtures classified in subheading 0710.90 should be amended as proposed by the commenters.

*Headings 0904–0910 (Spices)*

*Comment:* One comment was received concerning the proposal to delete the second tariff shift rule for headings 0904–0910, which provides for a change to crushed, ground, or powdered products of heading 0904 through 0910 from within Chapter 9, if put up for retail sale. This commenter submits that the cleaning (by gas treatment or otherwise), crushing or grinding, and retail packaging of spices substantially transforms the imported whole spices into new and different articles of commerce having a new name, character or use.

*Customs Response:* Customs agrees. In view of the commenter's analysis and in light of the fact that Customs Headquarters has never issued a binding letter ruling with respect to the country of origin marking of spices, Customs has reconsidered the proposal to amend the § 102.20 rules for these goods and has reverted to its original position, published in T.D. 94–4 (59 FR 110) on January 3, 1994. Accordingly, the May 5, 1995, proposal to delete the second tariff shift rule set forth in § 102.20 for goods of headings 0904–0910 should

not be adopted, and the interim tariff shift rules as published in the January 3, 1994, document are reflected in this final rule document.

*Heading 1517 (Vegetable oil)*

*Comment:* One comment was received in connection with the rules for this heading. The interim rules for this heading provided for a tariff classification change to subheading 1517.10 (margarine, excluding liquid margarine) from any other heading and a change to subheading 1517.90 (other edible mixtures or preparations of animal or vegetable fats) from any other chapter. In consideration of an initial comment, Customs proposed in the May 5, 1995, document to amend the rule for subheading 1517.90 by adding an alternative second tariff shift rule which would allow a change from any other heading so long as ''no single oil ingredient of foreign origin constitutes more than 60 percent by volume of the good''. The commenter believes that the processing and blending required to create various blends and grades of a type of oil (*e.g.* palm and sheanut oils) requires rigorous quality control procedures in order to achieve the necessary physical characteristics and thus should be considered a substantial transformation whether or not the resulting product contains more than 60 percent by volume from a single foreign country.

*Customs Response:* Customs disagrees. First, the tariff shift rule for subheading 1517.90, as proposed to be amended, is supported by the case law. *See National Juice Products Association* v. *United States, supra,* where the Court of International Trade upheld Customs determination that imported orange juice concentrate is not substantially transformed when mixed with water, orange essences, orange oil and in some cases fresh juice and either packaged in cans and frozen or pasteurized, chilled and packed in liquid form, and *Coastal States Marketing, Inc.* v. *United States,* 646 F.Supp. 255 (CIT 1986), where the court held that mixing Soviet Union gas oil with Italian fuel oil in Italy did not result in a substantial transformation such that the mixture became a product of Italy. In both of these cases, the court concluded that the essential character of the foreign component (juice concentrate and Russian oil) remained unchanged after the mixing process. The proposed tariff shift rule which would allow a change of origin if no single foreign oil ingredient in the mixture exceeds 60 percent of the mixture is designed to ensure that there is a change in the essential character of the foreign vegetable oil. This proposed rule is consistent with the proposed rule for mixtures of juices (*e.g.*, a mixture of apple, grape, papaya juices), which is based upon the conclusion that in such mixtures, the individual fruit juices would lose their separate identities and thus there would be a change in the name, character and use of the individual juice ingredients. Thus, this rule represents an effort to distinguish between those blending operations which generally do not result in a substantial transformation and other blending processes which can result in a substantial transformation due to a change in name, character, and use.

However, Customs believes that a technical correction of the proposed amendment to the § 102.20 rule for this subheading is required, involving expression of the 60 percent requirement in terms of ''weight'', rather than in terms of ''volume'', because the unit of measure indicated in the HTSUS for subheading 1517.90 is kilograms. The second tariff shift rule for subheading 1517.90 as set forth below has been modified accordingly.

*Chapter 20 Note*

*Comments:* The Note for the Chapter 20 rules under § 102.20 provides that, notwithstanding the specific rules of the chapter, nuts of Chapter 20 that have been prepared merely by roasting, either dry or in oil (including processing incidental to roasting), shall be treated as a good of the country in which the fresh good was produced. One commenter submits that the roasting of nuts should be considered a substantial transformation. This commenter also suggests that the mixing of nuts should constitute a substantial transformation since FDA regulations (21 CFR 164.110) consider mixed nuts a standardized food which, as such, must meet certain formulation requirements.

*Customs Response:* Customs disagrees. It has been the Customs position for ten years that roasting, or roasting and salting, or roasting and salting and coloring, of pistachio nuts, without more, does not result in a substantial transformation. *See* T.D. 85–158, dated October 15, 1985. Thus, the Chapter Note is consistent with prior Customs position and practice for these goods. With regard to the mixing of different nuts, Customs is not persuaded, by the fact that the Food and Drug Administration considers these mixtures to be a standardized product, that various types of nuts have been substantially transformed as a result of being combined with one another. The same analogy could have been made with regard to the orange juice concentrate and retail juice beverages involved in the *National Juice Products Ass'n., supra.* Moreover, just as Customs believes that the individual frozen vegetables which are combined and packaged for retail sale remain separately identifiable (HQ 735085, June 4, 1993), Customs maintains that the individual types of nuts that are blended together after roasting and salting do not lose their identities and therefore are not substantially transformed into new and different articles of commerce, having a new name, character, and use.

*Subheadings 2009.11–2009.30 (Fruit and Vegetable Juices)*

*Comment:* One comment was received concerning this tariff shift rule. This commenter suggested that this rule, which allows a change to these subheadings from any other chapter, be amended to preclude a change from heading 0805 (fresh or dried citrus fruit). The commenter points out that this change would make these rules consistent with the NAFTA preference rules for these goods.

*Customs Response:* Customs cannot agree. First, it should be pointed out that the purpose for development of these rules is not to provide origin determinations that are necessarily consistent with the NAFTA preference rules (19 U.S.C. 3332). Instead, Customs' goal has been to develop rules that would codify the substantial transformation principle as interpreted by the courts and Customs. Customs recognizes that the NAFTA preference rules are not always consistent with the origin determinations reached under the substantial transformation principle. As a result sometimes the part 102 rules will be less restrictive and in some cases they may appear to be more restrictive. The part 102 rules are less restrictive than the NAFTA preference rules for goods of subheading 2009.11 through 2009.30 because Customs has consistently recognized the production of fruit juices from the fresh fruit as a substantial transformation of the fresh fruit into a new and different article of commerce. *See* HQ 555982 dated August 1991 (substantial transformation of grapefruit and oranges made into juice concentrate) and HQ 084346 dated August 8, 1989 (substantial transformation of cranberries made into juice concentrate).

*Subheading 2101.10 (Extracts, Essences and Concentrates of Coffees)*

*Comments:* Three comments were received concerning the § 102.20 tariff shift rule for heading 2101, which requires a change to heading 2101 (extracts, essences, and concentrates of

coffee, etc.) from any other heading. These commenters submit that the rule should be amended to allow a change to subheading 2101.10.21 (extracts, essences, and concentrates of coffee) from elsewhere within heading 2101 since they believe that a change from ''soluble coffee powder'' to ''retail instant coffee products'' should be recognized as a substantial transformation. They cite as support for their position the argument that bulk soluble powder is not purchased by consumers but by coffee manufacturers and is used in non-coffee products such as ice cream as well as in coffee products. They further submit that the use of expensive machinery and the employment of experts and technically-skilled persons are necessary in order to blend, agglomerate, aromatize (often the flavoring and aromas are proprietary) and eventually package the product for retail sale. They claim that the cost of such processing runs about 120 percent of the cost of the soluble powder.

*Customs Response:* Customs does not agree that the operations described above result in a substantial transformation of water soluble coffee powders (known technically in the trade as spray-dried coffees). Customs addressed this issue in a ruling as early as 1986 (HQ 727913 dated February 5, 1986). In that case, the agglomerated coffee was produced in Canada as a result of blending and agglomeration of various Latin American spray dried coffees. Customs found that the agglomerated coffee imported into the United States from Canada had to be marked to indicate the individual Latin American countries.

Customs most recently addressed this issue in HQ 734479 issued on January 29, 1993. Customs still does not believe that the blending and agglomeration of spray dried coffees from different countries result in a new and different article of commerce, having a new name, character and use. The facts presented in the 1993 ruling concerned the processing of the various Latin American blends of spray dried coffees in a European Community (EC) country, which at that time was subject to the 100 percent special duty rates applicable to these products from the EC. After reviewing the technical literature regarding the processes, Customs concluded that blending and agglomerating spray dried coffee constituted refining and finishing operations which did not change the fundamental character or use of the spray dried coffee. Customs further concluded, consistent with prior rulings, that the agglomerated coffee, while an improved product, remained instant coffee after the processing, and therefore, was not considered an EC product but a product of the various Latin American countries from which the coffee originated. As one requester of a marking ruling issued in 1991 pointed out, the ''spray-dried powder is a finished form of coffee that can be dissolved in hot water to produce a tasteful cup of coffee.'' Customs believes that such a statement is testament to the absence of a substantial transformation when the coffee powders are subjected to the agglomeration process.

*Heading 2710 (Petroleum Products)*

*Comment:* One comment was received concerning the tariff shift rules for this heading, which allow a change to the heading from any other heading or a change to goods of the heading from other goods of that heading if the change resulted from a chemical reaction (defined in the Chapter 27 Note). The commenter suggests that the tariff shift criteria applicable to heading 2710 should be expanded to include a change within heading 2710 from motor fuel blending stocks to motor fuel. The commenter argues that finished gasoline differs from each of the blending stocks in name, character and use. Thus, under the traditional change in name, character and use test, the commenter submits that the blending of the various stocks to produce gasoline constitutes a substantial transformation.

*Customs Response:* Customs disagrees. The specific rules for heading 2710 codify prior Customs rulings regarding the country of origin of various petroleum products. For example, in HQ 555032 dated September 23, 1988, and HQ 557180 dated December 23, 1993, Customs addressed the issue of whether certain petroleum products, such as gasoline and diesel fuel, produced in the U.S. Virgin Islands qualify for duty-free treatment under General Note 3(a)(iv), HTSUS (the duty-free program for products of U.S. insular possessions). Customs determined that one or more substantial transformations occurred when crude oil imported into the Virgin Islands was subjected to refining and other processes, resulting in chemical reactions and the creation of various motor fuel blending stocks and other motor fuel components. Thus, it was determined in the above rulings that the petroleum products qualifed as ''products of'' the insular possession. While Customs also held in HQ 555032 and HQ 557180 that the subsequent blending of the blending stocks and other motor fuel components in the Virgin Islands to create the final petroleum products resulted in a substantial transformation, this portion of these rulings was not an origin determination but rather pertained solely to the issue of whether the imported crude oil could be considered a domestic material for purposes of the foreign material value limitation of General Note 3(a)(iv), HTSUS. Therefore, the § 102.20 rules, which provide for a change to heading 2710 from any other heading (*e.g.*, crude petroleum of heading 2709) or a change to any good of heading 2710 from any other good of heading 2710, provided the change is the result of a chemical reaction (*e.g.*, alkylate produced from a chemical reaction affecting a heading 2710 good), are consistent with Customs country of origin rulings on these products. However, as Customs previously has stated, the Part 102 rules will not be applicable for determining the value content requirements under duty preference programs.

*Subheading 2936.90 (Vitamins)*

*Comment:* One comment was received concerning the specific tariff rule for these goods. This commenter suggested that the rule, which provides for a change to this subheading from any other subheading except from subheadings 2936.10 through 2936.29, should be less restrictive. This commenter believes that changes from the other vitamin provisions in this heading should be allowed.

*Customs Response:* Customs disagrees. Consistent with Customs' interpretation of the substantial transformation standard, this rule is designed to keep simple blending of different vitamins, which after such blending remain classified in this heading, from being considered a substantial transformation. Customs believes that no degree of blending can substantially transform foreign constituent vitamin components into a product of the country in which the blending occurs. The Customs position on this matter is consistent with the position regarding similar processing of other chemical products, such as pharmaceuticals and herbicides. See the analysis of comments below in connection with these products.

*Chapter 30 (Pharmaceuticals)*

*Comments:* Six comments were filed in response to the interim and proposed § 102.20 rules applicable to pharmaceuticals of Chapter 30. These rules, for the most part, allow a change to the subheadings of this chapter, which consist of prepared pharmaceuticals, from any other subheading except from the bulk pharmaceuticals of Chapter 29 or other

provisions. The commenters essentially claim that the formulation of dosage form pharmaceuticals is a substantial transformation of the bulk pharmaceuticals of Chapter 29. They claim that the Chapter 29 pharmaceuticals are unsuitable for therapeutic or prophylactic use. In order to be usable, the commenters state that the pharmaceuticals must be worked up to particular dosage forms which involves numerous complex intermediate steps ranging from exact weighing to final presentation in tablets, capsules, injections or ointments and which adds more than 50 percent to the value of the product. In this regard one commenter argues that for a gastric acid secretion pharmaceutical, a substantial transformation occurs when a special coating is given to the medicine so that it can pass through the stomach intact for release in the intestines. Finally, some commenters claim that the ''40 percent'' criterion that is contained in the specific rules for blends of pharmaceuticals, is inconsistent with current practice. Under these rules, if a mixture or blend of bulk pharmaceuticals, classified in this chapter, contains at least 40 percent domestic content of the bulk pharmaceutical, the specific tariff rule of § 102.20 would be met.

*Customs Response:* Customs disagrees with these comments. Customs believes that the § 102.20 rules properly reflect Customs' current position regarding the substantial transformation of bulk pharmaceuticals. It is Customs' view as reflected most recently in 1993 (HQ 735146 issued on November 15, 1993 ) that the bulk (pure) active pharmaceutical ingredient which is reduced in potency by dilution with other inert ingredients, such as starch and other excipient, is not substantially transformed into a new and different article having a new name, character and use. The essential character of these products, both chemically and functionally, remains the same after the processes performed to make them readily consumable. For example, when Customs concluded in the 1993 ruling that the processing of 100 percent pure acetaminophen, through granulation and addition of excipient to make a 90 percent pure product that is then used to make tablets, was not a substantial transformation, Customs took note of the following: (1) Like most pharmaceutical products, the ''name'' of the product did not change from the bulk pharmaceutical to the finished product (the product was still referred to as ''acetaminophen''); (2) the ''use'' did not change, since both the original and finished products were used for medicinal purposes (while the metabolic activity of the drug is standardized as a result of a controlled dilution, it is not changed); and (3) finally, the essential character of the product as a medicine did not change even after processing into tablets. The essence of the pharmaceutical ingredient had not changed fundamentally. Indeed, regardless of the commercial brand under which it is marketed, the product being purchased to provide pain relief is the drug, acetaminophen. Similar rulings were issued previously in 1979 (HQ 005716 dated July 12, 1979, C.S.D. 80–34, with regard to the granulation and dilution of Naproxin with starch) and in 1986 (HQ 554067 dated May 23, 1986, with regard to oxfendazole, a veterinary drug, which was micropulverized and packaged into dosages fit for veterinary use). Thus, in response to the comment concerning encapsulation, Customs believes that this process does not alter the fundamental nature of the pharmaceutical. Although it helps to deliver the product, the pharmaceutical still has the same activity.

In response to the comments claiming that significant value is added as a result of the processing of the bulk pharmaceuticals, Customs finds relevant the fact that the Court of International Trade has held that in determining the issue of substantial transformation, the ''name, character, or use'' test should be sufficient since the use of a value criteria can lead to anomalous results. *National Hand Tool* v. *U.S., supra.* In any case, however, Customs believes that in regard to the total production of pharmaceuticals classified in Chapter 30, the predominate costs are incurred in the production of the bulk pharmaceutical drugs classified in Chapter 29 and other chapters under the HTSUS. In most instances, costs of end processing of the pharmaceutical drug are inconsequential when compared to the enormous costs involved in the multi-stage chemical reactions and separations and the years of research needed to develop and produce the bulk pharmaceutical.

Finally, Customs also disagrees with the commenters' objections to the ''40 percent'' criterion in the tariff shift rules for pharmaceuticals mixtures. Under this rule, a change of origin can occur as a result of blending different imported bulk pharmaceuticals with domestic pharmaceuticals if the finished product (*i.e.,* the Chapter 30 product) contains at least 40 percent, by weight, of domestic bulk pharmaceutical. Customs finds this rule to be entirely consistent with, if not more liberal than, Customs' current practice of applying the substantial transformation principle to blending operations involving chemical products. Generally, the simple blending together of chemicals, which does not result in a chemical reaction that creates a new chemical has not been recognized as a substantial transformation. However, if one or more of the chemical ingredients was produced in the country where the blending occurs, Customs would not view the production of the mixture as resulting solely from a simple combining or blending operation. *See, e.g.,* 19 CFR 10.195(a)(2). Customs, however, does not always find a substantial transformation in cases in which there is more than a simple blending. The ''40 percent'' rule, however, codifies the position that when the blending operation involves as least 40 percent domestic origin bulk pharmaceutical, it will not be considered a simple blending and will always be sufficient to confer origin.

*Headings 3302 Through 3303 (Perfumes)*

*Comment:* One comment was received concerning the § 102.20 rules for these goods. The first of the two rules disallows a change to heading 3302 (mixtures of odiferous substances that are ''of a kind used as raw materials in industry'') from essential oils of heading 3301 and from ethyl alcohols of headings 2207 and 2208. The rule for perfumes and toilet waters (heading 3303) disallows a change from the perfume oil mixtures and blends of subheading 3302.90. The commenter objects to the above rules, claiming that they are too restrictive.

*Customs Response:* Customs disagrees. The commenters fail to note that the rules do allow a change from the essential oils of heading 3301 to the perfumes and toilet waters of heading 3303, which is consistent with Customs' application of the substantial transformation principle to these goods. In HQ 723312 dated November 22, 1983 (cited with approval in HQ 733945 dated March 26, 1991), Customs ruled that the production of perfumes as a result of blending foreign essential oil with U.S. origin denatured alcohol, stabilizer, coloring matter and water resulted in a substantial transformation of the foreign essential oil. The § 102.20 rule for perfumes goes even further by allowing the denatured alcohols included in the blend to be foreign as well. Thus, it appears that the commenter's objection is to the fact that the rules do not allow a simple dilution of perfume bases (a change from subheading 3302.90 to heading 3303) or

a simple blending of essential oils and alcohols (a change from heading 3301, 2207 or 2208 to heading 3302). Customs believes that a simple dilution or blending of these goods does not represent a substantial transformation into a new and different article of commerce. However, Customs believes that when the raw materials of headings 3301, 2207 and 2208 are processed to make a finished product such as perfumes or toilet water, they have been substantially transformed, and, as stated above, the § 102.20 rule codifies this position.

*Subheading 3402.11 (Linear Alkylbenzene Sulfonates)*

*Comment:* Two comments were received concerning the § 102.20 rule for these goods which provides: ''A change to subheading 3402.11 through 3402.20 from any other subheading, including another subheading within the group.'' Although both commenters support Customs' efforts toward greater objectivity and predictability in origin determinations, they suggest that a change from subheading 3817.10 to subheading 3402.11 should not be allowed since such a change can result from a very simple process which does not result in a substantial transformation.

*Customs Response:* Customs agrees that the described change should not be recognized as constituting a substantial transformation. The process normally involves in part the segregation of the individual linear alkylbenzene components from mixed linear alkylbenzenes classified in subheading 3817.10. However, in § 102.20, Note 2 to the Section VI (Chapters 28 through 38) tariff shift rules sets forth a ''Separation Prohibition'' provision which expressly precludes ''a change from one classification to another merely as the result of the separation of one or more individual materials or components from a man-made mixture unless the isolated material/component, itself, also underwent a chemical reaction.'' Therefore, Customs believes that the concerns raised by the commenters will be resolved by this note. However, in order to clarify this issue, the § 102.20 rule for subheading 3402.11 has been modified to make clear that a substantial transformation does not result from a change from mixed linear alkylbenzenes of subheading 3817.10.

*Headings 3701–3703 (Photographic Film)*

*Comments:* Two comments were received concerning these rules. One of these comments focused primarily on the general result of operating under § 102.14 (U.S. goods returned) and thus is no longer relevant in light of the adoption of the proposal to remove this section as discussed above. The other commenter claims that the § 102.20 rules should allow a change in tariff classification from jumbo rolls of film classified in subheading 3702.41 to the smaller sized film cartridges classified in subheading 3702.51 and subheading 3702.41 so as to be consistent with the substantial transformation principle.

*Customs Response:* Customs disagrees. The rules for these goods require a change to headings 3701 though 3703 from headings outside that group. It has been a longstanding position of Customs that cutting to length and width does not result in a substantial transformation of the article subjected to such processing. Customs specifically addressed this issue in connection with the production of photographic film cartridges in HQ 732842 dated February 23, 1990. In HQ 732842, the foreign material consisted of sheets of photographic film in rolls measuring 58 inches wide and 9,500 feet long, which were subjected to processes consisting of applying a non-photosensitive emulsion coating, cutting the bulk photographic film to length and width, inserting them into cassettes, and then placing the cassettes into plastic sealed containers and cartons for retail sale. The imported film base in HQ 732842 already had been ''sensitized'', *i.e.*, it already had been subjected to an application of photosensitive emulsion. (This is the process which, in ORR 217–69 dated March 28, 1969, Customs had ruled resulted in a substantial transformation of the film base into photographic film, a new article with new physical characteristics (light sensitivity and ability to form an image from which a positive can be made) and new uses different from the base from which it was made.) Thus, Customs concluded in HQ 732842 that the processes to which the already-sensitized photographic film was further subjected (*e.g.*, cutting to length and width, inserting into cartridges, and packaging) did not result in a new and different article with new name, character and use.

Customs believes that the positions expressed in the above rulings properly interpreted the substantial transformation standard, and the § 102.20 rules for these goods are entirely consistent with these rulings. The rules allow a change from headings 3701 through heading 3703 from headings outside the group. This would allow changes from the unsensitized film base (plastic or paper provisions outside of Chapter 37), consistent with ORR Ruling 217–69. Moreover, the rules do not allow a change from one size of sensitized film to another when the difference in sizes is in terms of length and width.

*Subheadings 3808.10 and 3808.20–3808.90 (Pesticides, Herbicides and Fungicides)*

*Comments:* Three comments were received. These commenters object to the proposed tariff shift rules for subheadings 3808.10 and 3808.20–3808.90 that do not allow a change in origin for bulk insecticides, fungicides, herbicides, rodenticides or pesticides of Chapter 28 or 29 that are converted to Chapter 38 products. One commenter agrees that if the conversion only represents mere dilution, there is no change in origin; however, it is suggested that § 102.17 of the interim regulations disqualifies operations involving the mere dilution with water or another substance. Rather, it is stated that some conversion processes are more than ''mere dilution'', such as where an active ingredient is converted to a finished product by formulation and granulation. During formulation, the ingredient is blended with selected inert ingredients and milled. Although the inert ingredients do not chemically react with the active ingredient, it is stated that they do provide a specific functionality as dispersants, wetting agents, defoamers, buffers, binder, diluents, etc. Following the formation process, the material undergoes granulation which is an agglomeration process designed to produce product granules of specified size and characteristics.

One commenter asserts that Customs ignores sophisticated manufacturing procedures such as the conversion of bulk Flumetron into the finished products ''Cotoran 4L'' and ''Cotoran DF''. ''Cotoran 4L'' is manufactured by grinding Flumetron and dispersing the ground product in liquid. ''Cotoran DF'' is a dry herbicide produced by blending Flumetron with inert materials (form of dilution) which is then granulated into the finished product. Another commenter suggests that origin should be conferred by processes such as chemical transformation, physical processing that would place an herbicide into a substrate or medium, and physical processing which modifies a quality.

*Customs Response:*

Customs disagrees. These rules are consistent with Customs' practice and interpretation of the substantial transformation principle. In HQ 555064 dated March 29, 1990, Customs determined that the formulation of

propanil-4, a herbicide for rice, from technical propanil did not constitute a substantial transformation for purposes of the Caribbean Basin Economic Recovery Act. This decision was based on T.D. 78–168, 12 Cust. Bull. 353 (1978), which held that the formulation of the herbicide diuron wettable powder by mixing technical diuron with various agents was not a substantial transformation for purposes of the Generalized System of Preferences. These findings are also consistent with *National Juice Products Association* v. *United States, supra,* where the court found that imported manufacturing orange juice concentrate was the very essence of frozen concentrated orange juice and reconstituted orange juice. The court noted that the addition of water, orange essence and oils to the concentrate, while making it suitable for retail sale, did not change the fundamental character of the imported product and, therefore, was not a substantial transformation.

While Customs does not dispute the importance to the end user of placing herbicides, such as Flumetron, into its final dilute wettable form, it is the opinion of Customs that these final steps simply place the herbicide in an applicable form without changing its function or chemical structure. Additionally, because the bulk product is more compact than the finished product, it is economically feasible to trade the bulk form (''Flumetron'') of the herbicide rather than the final dilute wettable or liquid forms of the herbicide (''Cotoran''). It is also the opinion of Customs that these tail-end procedures are far less important when compared to the production of the bulk herbicide. The manufacture of the bulk herbicide is a complicated multi-step organic synthesis which takes place in a petrochemical facility. This process normally follows a significant number of years and amount of resources committed to the research and development of the bulk herbicide. Thus, in addition to the fact that the process of mixing the bulk herbicide with inert materials or with a wetting agent to place it in an end use form does not change the essential character of the herbicide, this process, when compared to the manufacture, research, and testing of the bulk herbicide, involves significantly less economic outlay. Therefore, it is the opinion of Customs that the processing of bulk herbicides into dilute wettable form herbicides does not substantially transform the bulk herbicides.

*Headings 4104–4107 (Leather)*

*Comment:* One comment was received concerning the May 5, 1995, proposal to amend the § 102.20 interim rule for headings 4104 through 4107 to disallow a change from ''wet blues'' leather to ''finished leather''. This commenter supported the proposed amendment on the grounds that processing raw hides to wet blues leather is sufficient to confer origin and that additional processing to make wet blues into finished leather constitutes finishing operations which are insufficient to change the country of origin of the leather.

*Customs Response:* Customs agrees with the comment. For the above reasons and the reasons cited in the May 5, 1995, notice, the proposed rule for goods of heading 4104 through 4107 is reflected in § 102.20 as set forth below.

*Headings 6401–6405 (Complete Footwear)*

*Comment:* The interim § 102.20 rule for the above goods provides for a change to headings 6401 through 6405 from any heading outside the group, except from formed uppers. One comment was received concerning this rule. This commenter noted, and expressed approval for, the fact that the above rule is consistent with Customs longstanding application of the substantial transformation principle to footwear.

*Customs Response:* Customs agrees that the § 102.20 rule for these goods is consistent with its interpretation of the substantial transformation principle. It should be noted that Customs' practice in this area is also in direct compliance with the decision in *Uniroyal, Inc.* v. *United States, supra,* where the court held that footwear uppers which were ''lasted'' or permanently molded into the ultimate shape, form, and size of the complete shoe, were not substantially transformed by the attachment thereto of an outsole since the upper was the very ''essence'' of the finished shoe. Therefore, with the exception of footwear with uppers and soles made of wool felt (which are covered by new § 102.21—*see* the above discussion regarding rules of origin for textile and apparel products), the § 102.20 rule for goods of headings 6401 through 6405 is set forth below without substantive change.

*Headings 7010–7018 (Glass Articles)*

*Comments:* Only one comment was received in response to the May 5, 1995, proposal to amend several of the § 102.20 rules for goods of the above headings. This comment expressed support for the proposed amendment to the § 102.20 rules applicable to decorative crystal, which will now recognize certain prescribed operations performed on uncut and unpolished glassware blanks as resulting in a change of origin of the glass blanks.

*Customs Response:* For the reasons stated in the background discussion for the proposed amendments, as well as the reasons cited elsewhere in this document for general changes affecting these rules, and in consideration of the comment received, the proposed changes to the § 102.20 rules for goods of headings 7010 through 7018, are adopted and set forth below without substantive change.

*Chapter 72 Note (Cold Rolled, Flat Rolled Steel)*

*Comments:* Three comments were received in response to the July 12, 1995, proposal to amend the § 102.20 rules for Chapter 72 goods by adding a note that allowed cold rolled, flat rolled steel, which is produced by reduction of hot rolled flat rolled steel, to be treated as a good of the country in which the cold reduction occurred. Two commenters supported the note as proposed. One of these commenters stated that the proposed note was consistent with Customs' longstanding position that these cold rolled flat rolled products are substantially transformed in the country where cold reduction took place. The second of these commenters noted its support for all of the Chapter 72 and 73 rules, citing its belief that these rules are more transparent and predictable for determining country of origin. The third commenter supported the principle reflected in the proposed Chapter 72 note but also suggested that the scope should not be limited to flat rolled products but rather should include other products such as pipe that are subjected to a cold reduction process. This commenter stated that the rationale for the Chapter 72 note, *i.e.*, that there is a significant reduction in the thickness of hot rolled, flat rolled, product which changes the crystalline structure of the steel products by elongating it, applies to hot extruded tubular products which are subjected to a cold reduction process.

*Customs Response:* Customs does not agree with the comment suggesting that the proposed note be amended to cover additional products. Customs believes that the cold reduction of hot rolled flat rolled steel results in a substantial transformation of the hot rolled flat rolled steel not only because there has been reduction in size but also because of the changes in use caused by this process.

Unlike the circumstances relating to the hot extrusions (hollows) and wire rod, Customs finds that the hot rolled flat rolled steel product is not necessarily dedicated to becoming cold rolled flat rolled steel. The cold reduction process results in changing a product (hot rolled steel) which has versatile uses to one that has limited uses. For example, in HQ 080277 dated September 21, 1987, in which Customs ruled that hot rolled steel coil was substantially transformed when made into cold rolled full hard steel coil as result of a cold reduction process, Customs noted the fact that each of the two products was marketable to a distinct consumer group and that thin gauge hot rolled coil generally could be substituted for cold rolled full hard steel coil in commercial applications. Thus, hot rolled flat rolled steel is not dedicated to become cold rolled flat rolled steel before it can be used for any intended purpose. For example, hot rolled, flat rolled steel can be used as steel planks, ship hulls and similar products, or it can be cold rolled into steel sheeting having specific uses (e.g., automobile steel). For reasons explained more fully below, Customs does not agree that the same rationale applies to wire and tube products.

*Heading 7210 (Flat Rolled Steel, Coated, Clad or Plated)*

*Comment:* One comment was received regarding the § 102.20 rule for heading 7210 (flat-rolled iron or steel of 600 mm or more, coated, clad, or plated), under which a change from headings 7208 through 7212 is not allowed. This commenter proposes that origin be conferred when flat-rolled steel of heading 7209 is coated, clad, or plated.

*Customs Response:* Customs disagrees. Consistent with the rationale set forth in the *Superior Wire* case discussed in the response to the next comment, it is the position of Customs that a substantial transformation does not occur through the coating, cladding or plating of flat-rolled steel. It is Customs' view that the use and character of such products are predetermined by the imported steel, and that coating, cladding, and plating merely constitute finishing steps in the completion of the product.

*Headings 7217 and 7223 (Wire)*

*Comments:* Four comments pertain to the processing of wire rod into wire. Under the § 102.20 rules, a change is not allowed to heading 7217 (wire of iron or non-alloy steel) from headings 7213 through 7215 (bars and rods of iron or non-alloy steel); nor is a change allowed to heading 7223 (wire of stainless steel) from heading 7221 or 7222 (bars and rods of stainless steel).

Each of the four commenters believes that a change should be allowed when wire rod is converted to wire under certain circumstances. One commenter believes that the rule should take into account the heat treatment (annealing) involved in treating stainless steel rod; another commenter is of the opinion that drawing and annealing the rod should confer origin if at least a minimum reduction of 75 percent in surface area occurs; and a third commenter proposes that origin be conferred when the conversion of wire rod to wire includes the process of galvanizing. The fourth commenter believes that a change should be allowed to heading 7217 from headings 7213 through 7215 if there is either a substantial transformation or a regional value content of not less than 50 percent of the net cost of the good. A change would not be allowed if the carbon content of the wire rod is less than a certain minimum, the reduction in cross-sectional area is less than 75 percent, and the wire is not further processed by heat treatment or coating.

*Customs Response:* In *Superior Wire* v. *United States*, 11 CIT 608, 669 F. Supp. 472 (CIT 1987), *aff'd*, 867 F.2d 1409 (Fed. Cir. 1989), the Court of International Trade held that the drawing of wire rod into wire through a multi-stage process did not constitute a substantial transformation of the wire rod, since there was no significant change in use or character of the imported material. The court noted that while the wire emerged stronger and more rounded after drawing the wire rod, its strength characteristic was metallurgically predetermined, and the chemical content of the rod and the processes used in its manufacture determined the properties the wire would have after drawing. Thus, while the wire rod and wire had different names and identities in the industry, the court found that they were essentially different stages of the same product.

The § 102.20 rules codify the court's decision in *Superior Wire* that a substantial transformation does not occur when wire rod is converted to wire. While the record in *Superior Wire* does not indicate whether annealing also took place, Customs notes that the most significant operation involved in transforming wire rod to wire is the drawing process, which reduces the rod in cross-sectional area. It is Customs opinion, based on the rationale of *Superior Wire*, that heat treatment (annealing) and/or galvanizing (which may be performed subsequent to the drawing process) do not change the use or character of the wire, which is predetermined by the wire rod. These processes are merely finishing steps in the processing of the wire rod to wire. With regard to the fourth commenter's suggestion of the use of a value added criterion, the Customs responses to previous comments in this document (*e.g.* § 102.16, § 102.20 (pharmaceuticals)) are hereby incorporated by reference.

*Subheading 7304.41 (Pipes and Tubes)*

*Comments:* Two comments were received regarding the § 102.20 rule applicable to seamless tubing and pipe classifiable under subheading 7304.41, HTSUS. The rule for these goods provides for a change to heading 7301 through 7307 from any other heading, including another heading within that group. The two commenters oppose this § 102.20 rule. One commenter states that these products are produced by cold working processes performed on thick-walled hot extrusions known as hollows. The hollows are subjected to a cold-working process known as ''pilgering'' which employs matched pairs of rotating dies in conjunction with a mandrel to reduce the diameter and wall thickness. Drawbenches, another cold-working process, is also used in conjunction with pilgering equipment to produce the smallest-sized product range. Other processes, including degreasing, heat treating, straightening, cutting, deburring, and polishing, are also performed. The commenters claim that these processes performed on hollows to produce stainless steel pipe and tube in sizes ranging from ¼ inch up to 1½ inch in outside diameter result in a substantial transformation of the hollows.

*Customs Response:* Customs disagrees. Customs has found the decision in *Superior Wire* v. *United States, supra*, supportive of the conclusion that tube hollows cold drawn to smaller sizes are not substantially transformed. *See* HQ 558825 dated February 9, 1995, and HQ 556932 dated January 14, 1993. In HQ 556932, only a seven-step process performed on imported steel rod, consisting of pickling, drawing, threading, die-forming, threading of bolts and tapping of nuts, heat treatment, and in some cases, plating, collectively constituted a single substantial transformation. Accordingly, Customs disagrees that the § 102.20 rule, which disallows a change in origin for hollows subjected to pilgering, are inconsistent with the court's application of the substantial transformation test to similar merchandise, *e.g.*, wire rod to wire. To the extent that there may be

rulings which indicate that similar processes resulted in a substantial transformation, these rulings were issued prior to the decision in *Superior Wire.*

*Subheadings 8470.10–8471.91 (Calculating, ADP Machines (Computers))*

*A. Comments on Computers in General*

For those § 102.20 rules for goods of Chapters 84 and 85, which generally disallowed tariff changes resulting from a ''simple assembly'', Customs proposed revisions which clarified that only those changes from specifically identified tariff provisions will be disallowed when the production of the good resulted from a ''simple assembly'' as defined under § 102.1(o). Only those provisions from which a change in tariff classification indeed can result from simple assembly are now included in the ''simple assembly'' provisos in these tariff shift rules. Thus, the proposed rules for subheadings 8470.10 through 8471.91 (which covers ADP machines) was proposed to be revised to read as follows:

A change to subheading 8470.10 through 8471.91 from any subheading outside that group, except from heading 8473; or A change to subheading 8470.10 through 8471.91 from any subheading within that group or from heading 8473, provided the change is not the result of a simple assembly.

Three comments were received concerning the § 102.20 rules applicable to the production of computers from foreign materials. One commenter claims that, since a change in tariff classification occurs when a CPU chip is mounted onto a stuffed printed circuit board, a change of origin should also occur as a result of this operation. Another commenter states its belief that in order to determine the origin of a computer not wholly obtained in a country, one must identify the country in which an identically classified PCA (printed circuit assembly) underwent a prescribed change in classification and then assign that origin to the entire computer. Finally, the third commenter complained that under the § 102.20 rules, the assembly of a motherboard (single board computer) into a housing would not represent the requisite change in tariff classification under the rules.

*Customs Response:* Customs disagrees with the above comments. As noted above, many of the tariff changes are precluded because of a ''simple assembly'' of the finished good. Section 102.1(o) defines this term as ''the fitting together of five or fewer parts all of which are foreign (excluding fasteners such as screws, bolts, etc.) by bolting, gluing, soldering, sewing or by other means without more than minor processing.''

With respect to the comment regarding the mounting of a CPU chip onto an otherwise stuffed printed circuit board, Customs has ruled that the simple mounting of a CPU chip (classifiable in heading 8542, HTSUS) onto a stuffed printed circuit board (classifiable in heading 8473, HTSUS), which results in a good (a ''motherboard'') classified in subheading 8470.10 through 8471.91, is not a complex and meaningful operation which should confer origin. *See*, HQ 734518 dated June 28, 1993, wherein Customs ruled that the mounting of a CPU chip onto the motherboard was a simple operation which did not constitute a substantial transformation. Therefore, if both the CPU chip and the stuffed printed circuit board are of foreign origin, pursuant to § 102.1(o), the operation of mounting the CPU chip onto the board is a simple assembly and the result reached under the § 102.20 rule is consistent with the Customs position set forth in the cited ruling.

However, if either the CPU chip or the stuffed printed circuit board is of domestic origin, the operation would not be considered a simple assembly under § 102.1(o) and, therefore, the motherboard would meet the tariff shift rule and a change of origin would occur. In addition, even if there is a ''simple assembly'' and the tariff shift rule is not met, by operation of the § 102.11 hierarchy, it must be determined under § 102.11(b) whether one of these parts imparts the essential character to the finished motherboard. If, as a result of the consideration of relevant factors set forth in § 102.18(b), it is determined that one of these parts imparts the essential character to the good, the origin of that part is the origin of the good. If neither of these parts imparts the essential character to the good, then pursuant to § 102.11(d) the origin of the good would be the country of origin of both parts if they are products of the same country, or the country in which the motherboard was finally assembled if these parts have different countries of origin.

Contrary to the general tenor of the comments, Customs believes that, as compared to Customs current practice and rulings under which these goods may have multiple countries of origin in many instances, the part 102 rules for computers are fairly liberal and easily implemented. Essentially, any change in tariff classification at the subheading (six-digit) level results in a change of origin, unless the change is from heading 8473 (parts for computers) or unless the change is from another subheading within the same group covered by the rule, in which case the change in tariff classification still could be allowed so long as the change did not result from a ''simple assembly'' of the finished good.

With respect to the issue of the motherboard, Customs has consistently held that a completed motherboard imparts the essential character to a computer and is therefore classified in the same provision as the computer. The term, ''motherboard'' generally refers to a single board computer generally missing only the housing, fan, and power supply. Therefore, Customs would not consider that there has been a substantial transformation, *i.e.*, a change in name, character or use as a result of incorporating a motherboard into a housing. Therefore, since the motherboard is not classified under heading 8473 or outside the subheading covering the computer to which it relates, but instead is classified as the computer itself, any foreign motherboard will not meet the § 102.20 rule, even if the finished computer did not result from a ''simple assembly''. Customs believes this interpretation is entirely consistent with Customs' longstanding position that the motherboard, when assembled into a housing to make the finished computer, does not undergo a substantial transformation. *See* HQ 734093 dated August 8, 1991, where Customs ruled for country of origin marking purposes that the final assembly of motherboards (*i.e.*, boards that already included the CPU chips) with other components consisting primarily of connectors did not result in a substantial transformation of the motherboard.

*B. Comment on Subheading 8470.50 (Point-of-Sale Terminals)*

One comment was received concerning the specific rule applicable to point-of-sale terminals which are classifiable in subheading 8470.50, HTSUS. This commenter states that these goods rarely consist of more than five parts (a logic unit, a keyboard, a printer unit, a display stand and a cash drawer) and thus expresses concern about the difficulty in meeting the § 102.20 rule.

*Customs Response:* Customs disagrees with this comment, which was not supported by specific facts. Customs believes it is unlikely that the assembly of a point-of-sale terminal would include five or fewer parts. For instance, if the assembler adds a power cord or power supply to the unit as described by the commenter, and all of these parts

were assembled in one country, there would have been an assembly of more than five parts.

*C. Comment on Processor Units of Subheadings 8471.20 and 8471.91*

One comment was received concerning the application of the § 102.20 rule for goods of the above subheading. This commenter expressed concern that the incorporation of a hard disk drive and a floppy disk drive of subheading 8471.93, or a display unit of subheading 8471.92, into processor units of subheadings 8471.20 and 8471.91 would not be an acceptable change in tariff classification under § 102.20.

*Customs Response:* Customs disagrees. One of the § 102.20 rules for processor units of subheadings 8471.29 and 8471.91 expressly allows a change in tariff classification from hard or floppy disk drives of subheading 8471.93 to display units of subheading 8471.92, since these latter subheadings are outside the group to which the tariff shift rule applies (that is, subheadings 8470.10 through 8471.91). Therefore, incorporating disk drives and display units into ADP processor units would result in a tariff shift, thereby conferring origin. This tariff shift rule is consistent with Customs' current position. *See* HQ 735608 dated April 21, 1995, wherein Customs held that foreign components, consisting of case assemblies, partially completed motherboards (*i.e.*, without the CPU and, in some cases, BIOS), hard disk drives and slot boards, which were further processed and assembled into desktop computers in the United States were substantially transformed as a result of the U.S. operations.

*Subheadings 8471.92–8472.90 (Other Machines for Transcribing or Processing Coded Data or Other Office Machines)*

*A. Comment on Subheading 8471.92 (Printers)*

The § 102.20 rules for goods of subheadings 8471.92 through 8472.90 were proposed to be revised in the May 5, 1995, notice of proposed rulemaking to read as follows:

> A change to subheading 8471.92 through 8472.90 from any subheading outside that group, except heading 8473; or A change to subheading 8471.92 through 8472.90 from any subheading within that group or from heading 8473, provided the change is not the result of a simple assembly.

One comment was received on the § 102.20 rules as they relate to printers. This commenter claims that a substantial transformation occurs in the country where any one of the media transport, control or print mechanisms are combined with the others, and with other parts, to make a functional printer. The concerns expressed by this commenter are linked to the fact that as a result of the application of GRI 2(a), the tariff classification for printers, subheading 8471.92, includes unassembled printers as well as printers missing one of the components (*i.e.*, media transport, control or print mechanisms). Thus, if the components at issue are classified in the same provision as the finished printer as a result of GRI 2(a), the § 102.20 rule, which requires a change to the subheading from another subheading outside the group, or a subheading change within the described group if the change did not result from a simple assembly, will not be met.

*Customs Response:* Customs believes that the result described by this commenter properly reflects the application of the substantial transformation principle. With the exception of the rule for television receivers (subheadings 8528.10 through 8528.20) and video display units (computer monitors) of subheading 8471.92) discussed later in this document, Customs believes that even when there are two or more materials that are classified in a provision from which a change in tariff classification is not allowed under the § 102.20 rule, if one material (*e.g.*, a printer subassembly) is classified in the same HTSUS provision as the finished good, such material invariably will constitute pursuant to § 102.11(b) the ''single material'' that ''imparts the essential character'' to the good, and the origin of that material will be the origin of the finished good.

On the other hand, if the printer is imported completely unassembled, but the § 102.20 rule will not have been met because of the classification of the unassembled printer as the finished good, country of origin may not be able to be determined under § 102.11(b) if no single one of the unassembled components, alone, imparts the essential character to the printer. In such instance, if there are more than five parts, or if some of the parts are of domestic origin, pursuant to § 102.11(d), the country of origin of the printer could be the country of assembly. This possibility further supports the opinion of Customs that the § 102.20 rules, coupled with the operation of the § 102.11 hierarchy, do not depart from Customs' current application of the substantial transformation principle.

*B. Comments on Subheading 8471.93 (Storage Devices)*

The § 102.20 rule for these goods is the same rule applicable to the printers discussed in the previous comment analysis. The tariff classification for ADP storage units will include units without read-write units assembled therein and read-write units separately entered. Similar to the printer components discussed above, these components are classified pursuant to GRI 2(a) as unassembled or incomplete storage units because they have the essential character of the finished good. Therefore, like the printers components, these units do not meet the § 102.20 tariff shift rule for storage devices. Two comments were received concerning the § 102.20 rule for these goods. Both commenters expressed concern that the assembly of a storage unit into a rack containing other storage units would not be considered a substantial transformation and that when multiple storage units are rack mounted (storage array), they would retain their original country of origin.

*Customs Response:* The response to the comment concerning printers is hereby incorporated by reference since the analysis set forth therein is equally applicable to the storage units described by these commenters. However, Customs agrees with the present commenter's observation that, in this case, if the § 102.20 rule is not met, the country of origin will be the country or countries of origin of the storage units. The storage unit(s), regardless of their number, will be considered as the ''single material that imparts the essential character'' to the good, and pursuant to § 102.11(b), the country or countries of origin of the storage units will be the country or countries of origin of the rack mounted storage units. Customs believes this outcome is entirely consistent with that reached under the current application of the substantial transformation principle.

*C. Comment on Subheading 8471.93 (Control/adapter Units)*

One comment was received with respect to the § 102.20 rule for these goods. This commenter states that if control or adapter units were to be assembled in the United States, they could be comprised of other ADP units (disk drives and power supplies) which would not undergo a tariff shift.

*Customs Response:* Customs disagrees with this observation and believes that the rule in question appropriately reflects the substantial transformation principle. The disk drive and the power supply do not impart the essential

character to the finished control or adapter unit. In fact, a control or adapter unit that is imported without the disk drive and power supply would be classifiable as an unfinished control or adapter unit as a result of the application of GRI 2(a). Thus, the fact that there will be no change in tariff classification is consistent with the view of Customs that the subsequent assembly of these units with the disk drive and power supply does not substantially transform the imported units. *See* the above comment analysis regarding printers. Contrary to the commenter's claim, this result does not represent a departure from current practice, and there are no rulings to support the commenter's position.

*Heading 8473 (Parts and Accessories of Machines of Headings 8469–8472)*

*Comments:* The § 102.20 rule for goods of heading 8473 proposed in the May 5, 1995, notice of proposed rulemaking provides for a tariff shift to heading 8473 ''from any other heading, except when the change is from heading 8414, 8501, 8504, 8534, 8541, or 8542 as a result of a simple assembly.'' Three comments were received concerning this proposed rule. One commenter stated its view that the process of fabricating key components should not be a necessary condition for a final product to obtain origin status. Another commenter claims that any change from heading 8414, 8501, 8504, 8534, 8541, or 8542 to heading 8473 should be considered a substantial transformation. This commenter cites example 3 in 19 CFR 10.14(b) in which a complex and meaningful production process of a circuit board is described. Finally, the third commenter seeks to have the rule further revised to allow the programming of goods of heading 8473 to result in a change of origin. As support for this position, this commentor cites HQ 733085 dated July 13, 1990, as clarified and affirmed by HQ 558868 dated February 23, 1995, wherein Customs held that the U.S. programming of random access memory (''RAM'') chips in access security cards constituted a substantial transformation of the imported card.

*Customs Response:* Customs strongly disagrees with the comments advocating that the § 102.20 rule should allow simple assemblies of key components to confer origin. It has been long established as a principle, by both Customs and the courts, that key components can impart the essential character to the good and consequently will not be substantially transformed by subsequent processing and assembly operations. *See Uniroyal, Inc.* v. *United States,* supra. The operations described in the example cited in 19 CFR 10.14(b) clearly do not constitute a ''simple assembly'' and therefore would meet the criteria set forth in the proposed § 102.20 rule. Thus, the proposed rule is consistent with the example cited by the commenter. On the other hand, since a good of heading 8473 can be created by the mere joining of two items, Customs believes the § 102.20 rule properly disallows changes from key components of goods classified under heading 8473 when the change in tariff classification results from a ''simple assembly''. This result is consistent with the position of Customs and the courts that not all assembly and testing operations result in a substantial transformation of the articles subjected to these operations.

Customs also does not agree with the comment that the programming of goods classifiable in heading 8473 should be allowed to result in a change in origin such as is allowed for goods classified in headings 8541 and 8542. Articles that are classified in heading 8473 consist of a combination of goods that are more than a single integrated circuit of headings 8541 and 8542 and are already identifiable as computer parts and accessories. In order for a good to be classifiable as a computer part or accessory of heading 8473, it usually consists of a significant number of different types of electronic components. As such, they have a substantial identity as computer parts and accessories which is distinct from any individual integrated circuits of which they may be composed. Therefore, any programming of the individual chips resident on a printed circuit board that already has the identity of a heading 8473 ADP part or accessory in no way changes the name, character or use of that computer part or accessory. On the other hand, articles classified in headings 8541 and 8542 are utilized in any number of different goods which are classified in numerous other provisions. Customs recently ruled in HQ 958314, issued November 29, 1995, that the good which was the subject of HQ 733085 and HQ 558868 cited by the third commenter is classifiable, both before and after the programming, in heading 8542. The programming of goods of headings 8541 and 8542 changes their essential character since the programming dedicates the chips to certain applications and the § 102.20 rule for these goods expressly codifies this position. Customs believes its views are consistent with the court's decision in *Data General Corporation* v. *United States,* 4 CIT 182 (1982). Therefore, the May 5, 1995, proposed revision of the § 102.20 rule for these goods of heading 8473 should be adopted.

*Subheadings 8482.10–8482.80 (Bearings)*

*Comments:* The § 102.20 rule set forth in the May 5, 1995, notice of proposed rulemaking for subheadings 8482.10 through 8482.80 provides as follows:

> A change to subheading 8482.10 through 8482.80 from any other heading; or
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> A change to subheading 8482.10 through 8482.80 from any other subheading, including another subheading within that group, except from inner or outer races or rings of subheading 8482.99.

One comment was received on the proposed rule. This commentor claims that the processes of grinding, polishing and heat treating of rings and races should confer origin.

*Customs Response:* Customs disagrees. It remains the position of Customs that these types of operations are merely finishing operations which do not confer origin. None of these operations changes the essential character of the article which is processed. The name, character and use of the article remain the same after these operations are performed. *See National Hand Tool Corp.* v. *United States, supra,* wherein the court held that operations such as grinding, polishing and heat treating are merely finishing operations which do not constitute a substantial transformation. Therefore, the revision of the § 102.20 rule for these goods should be adopted as proposed.

*Subheading 8518.21–8518.22 (Loudspeakers)*

*Comment:* One commenter alleges that the § 102.20 rule for subheadings 8518.21 and 8518.22, which requires a change from any other heading, is inconsistent with the substantial transformation test. This commenter states that consumer speakers mounted in an enclosure, classifiable under either subheading 8518.21 or subheading 8518.22, can consist of a tweeter, a mid-range, a woofer, or any combination of the these three loudspeakers, while the speaker drive units (i.e., loudspeakers), which are not mounted in an enclosure and which are used to manufacture complete speaker systems, are not consumer products and are classifiable under subheading 8518.29, HTSUS. Therefore, it is claimed that the § 102.20 rule is contrary to the substantial transformation test in that it does not consider the intricacies of the crossover network, the circuitry usually necessary to deliver each band of signals to the correct loudspeaker when a speaker

system contains a tweeter, a mid-range, and a woofer.

*Customs Response:* Customs disagrees. In HQ 556699 dated December 28, 1992, Customs held that the manufacture of completed speakers consisting of a woofer, tweeter, midrange cone drivers, crossover networks, and particle board from which the speaker housing was constructed were considered ''products of'' Mexico for purposes of the GSP, but only the cost or value of the particle board could be included in the 35 percent value-content calculation. In that ruling Customs also found that the enclosure of a stereo chassis (radio receiver, dual cassette deck) with a housing, and with the addition of speakers, did not serve to change the identity of the stereo chassis and did not transform the stereo chassis into a new and different article of commerce because the stereo chassis was the essence of the stereo system.

The interim § 102.20 rule for these goods provides for a change in heading. In HQ 559139 dated August 31, 1995, Customs considered the country of origin of a loudspeaker system classifiable under subheading 8518.22, HTSUS, containing a woofer, a tweeter, and a crossover network under the interim Part 102 regulations. Applying the hierarchy set forth in § 102.11, Customs determined that since the woofer and tweeter installed into the loudspeaker system were classifiable under the same heading, namely heading 8518, HTSUS, the § 102.20 rule was not met and § 102.11(b) was then applicable. Since both the woofer and the tweeter were equally important in producing the sound frequencies of the system, neither component imparted the essential character to the loudspeaker system for purposes of determining its country of origin under § 102.11(b). Thus, the country of origin of the loudspeaker system was finally determined, pursuant to § 102.11(d), to be the last country in which the loudspeaker system underwent production, other than by simple assembly or minor processing, which is consistent with the determination in HQ 556699.

In HQ 559139 Customs also determined, under the interim part 102 rules, the country of origin of loudspeaker systems containing only a woofer. Pursuant to § 102.11(b) of the interim regulations, the country of origin was determined to be the country of origin of the woofer and not the country where the loudspeaker system was manufactured. While Customs has not issued a ruling regarding the origin of a loudspeaker containing only one speaker drive unit outside of the context of the interim part 102 rules, it is the position of Customs that the cited ruling under the interim Part 102 rules reflects a proper application of the substantial transformation test. Just as the stereo chassis in HQ 556699 was considered the very essence of the stereo system, the woofer in HQ 559139 was the single material imparting the essential character of the loudspeaker and no crossover network was required to produce the desired sound. Therefore, it is the opinion of Customs that the Part 102 rules codify the Customs interpretation of the substantial transformation principle with respect to loudspeakers classifiable in subheadings 8518.21 and 8518.22, HTSUS.

*Subheadings 8528.10–8528.20 (Televisions) and Subheading 8471.92 (Display Units)*

*A. Comments on Television Receivers*

The May 5, 1995, notice of proposed rulemaking proposed to amend the § 102.20 rule for the above goods to read as follows:

> A change to subheading 8528.10 through 8528.20 from any other subheading, including another subheading within that group, except from subheading 8540.11 through 8540.12.

Two comments were received in response to the above proposed text. The commenters state that the drafters of the HTSUS clearly recognized the overwhelming importance of the television chassis to the functioning of a television by creating 8-digit breakouts for incomplete or unfinished television receivers (subheadings 8528.10.04 and 8528.10.08). These subheadings cover, *inter alia*, ''assemblies for television receivers consisting of all the parts specified in additional U.S. Note 10 to this chapter plus a power supply'' (which collectively are known in the industry as ''chassis'') which thus fall under the same 6-digit subheading (8528.10) as the television receiver itself. The commenters further state that by creating these subheadings under the 6-digit subheading for television receivers, the HTSUS drafters recognized that the function of the chassis is so important that it must be classified as an incomplete or unfinished television receiver (and not merely as a part thereof). (In the background discussion of the May 5, 1995, proposed amendment, Customs stated that ''the television tube may determine origin for some television sets.'') The commenters state that since the chassis is considered to be an incomplete or unfinished television receiver, without the picture tube, it would be inconsistent for Customs to conclude that the picture tube constitutes the single material imparting the essential character to the television receiver.

*Customs Response:* After careful consideration of the comments, it is Customs' view that, for purposes of determining the country of origin of a finished television receiver, neither the picture tube nor the television chassis independently imparts the essential character to the television receiver. Customs previously has recognized the substantial transformation of both a foreign chassis and a foreign tube when assembled with other components to make a finished television receiver. In HQ 711967 dated March 17, 1980, Customs found that U.S.-origin picture tubes, cabinets, and wiring were substantially transformed in Mexico when they were assembled in Mexico with Korean origin printed circuit boards, power transformers, yokes and tuners, since the operations performed in Mexico resulted in the foreign components becoming integral parts of a new article (the television receiver). On the other hand, in HQ 732170 dated January 5, 1990, Customs ruled that the assembly in the United States of a foreign chassis with a U.S. picture tube assembly and remote control unit resulted in a substantial transformation of the imported chassis and other components. As the above rulings illustrate, Customs has considered both the chassis and the tube assembly as integral parts of a finished television receiver. In neither case did a foreign chassis or a foreign tube determine the country of origin of the completely assembled television receiver. It is for the purpose of maintaining this result that the § 102.20 rule will not be satisfied whenever either the tube or the chassis is of foreign origin. As illustrated below, however, Customs believes that a proper application of the § 102.11 hierarchy will yield a result that is entirely consistent with the results reached in the above cited Customs rulings.

In applying the proposed § 102.20 rule for television receivers, Customs finds that neither the chassis nor the picture tube undergoes the requisite tariff shift. Therefore, it is necessary to proceed to § 102.11(b) to see if origin of the television receiver can be determined under that provision. Section 102.11(b) states that where the country of origin cannot be determined under paragraph (a), the country of origin of the good is the country or countries of origin of the ''single material'' that imparts the essential character to the good. Customs does not

agree with the commenters' suggestion that the fact that the chassis is classified in the same 6-digit HTSUS subheading as the television receiver should dictate the conclusion that the chassis is the ''single material'' that imparts the essential character to the television. Based upon consideration of the factors cited in § 102.18(b), Customs would conclude that for purposes of determining the country of origin of a television under § 102.11(b), neither the picture tube assembly nor the television chassis independently imparts the essential character to this good.

Section 102.11(c) also will not be applicable since the completed television receiver is not classified under the HTSUS as a ''set'', ''mixture'', or ''composite good''. Thus, the country of origin of the television receiver must be determined under § 102.11(d)(1). Under § 102.11(d), unless the finished television receiver is produced as a result of a ''simple assembly'' (as defined in § 102.1(o)) of the tube assembly, chassis, and cabinet which are all goods of the same country, the country of origin of the finished television receiver will be the country in which it is finally assembled.

*B. Comments on Video Display Units (Computer Monitors) of Subheading 8471.92:*

One comment was received concerning the proposed § 102.20 rules for display units classified in subheading 8571.92 (the text of the proposed rules is set forth in the above discussion of printers of subheading 8471.93). This commenter expressed concern that if a power supply and a cathode ray tube (CRT) are of foreign origin but all other components are domestic, the § 102.20 rule will not be satisfied.

*Customs Response:* If the CRT is imported separately it will be classified in heading 8540 and thus the proposed § 102.20 rule for display units will be met under the facts described by the commenter. Therefore, Customs assumes that this commenter's primary concern stems from the fact that a CRT-deflection yoke subassembly is classified in subheading 8471.92 as an unfinished display unit, and the subsequent combining of this subassembly with another part, such as a power supply, will not meet the requisite change in tariff classification rule.

Inasmuch as Customs traditionally has treated televisions and computer monitors as comparable articles for purposes of rulings regarding substantial transformation of televisions, such rulings are equally relevant for resolving substantial transformation issues for computer monitors; accordingly, the above comment response regarding television receivers is relevant to the § 102.20 rules for display units. In HQ 734966 dated October 18, 1993, Customs noted prior rulings on the substantial transformation of television tubes and chassis and ruled that the assembly in the United States of a foreign integral tube component (CRT and mounted yoke), printed circuit board, video board, cabinet backs and fronts, cables along with U.S. electrical connectors, wires, etc., to create the finished video display terminals resulted in a substantial transformation of the foreign components.

Consistent with the view expressed above with regard to television chassis which are classified in the same provision as the finished television receivers, Customs concludes that the fact that the CRT-yoke subassembly is classified in the same provision as the finished display unit does not dictate the conclusion that this component, alone, imparts the essential character to the video display unit for origin purposes. The integral role played by parts (for example, a subassembly consisting of the printed circuit board, video board, cabinet backs and fronts, electrical connectors, etc.) classified in heading 8473 (a provision excluded under the specific tariff shift rule) in the function of a video display unit is well established. Thus, in cases involving facts similar to those presented in HQ 734966, origin will not be determined on the basis of the CRT-yoke subassembly under § 102.11(b), and since such facts would not involve a ''simple assembly'' as defined in § 102.1(o), Customs believes the same origin result that was reached in HQ 734966 can be reached under § 102.11(d).

*Heading 9001 (Spectacle Lenses, Optical Elements)*

*Comment:* One comment was received regarding the § 102.20 rules applicable to spectacle lens and other optical elements made from lens blanks of Chapter 70. The relevant § 102.20 rules provide as follows:

> A change to subheading 9001.40 through 9001.90 from any other subheading, including another subheading within that group, except from lens blanks of heading 7014 or subheading 7015.10.
>
> A change to subheading 9002.11 through 9002.90 from any other subheading, including another subheading within that group, except from subheading 9001.90 or lens blanks of heading 7014.

This commenter claims that since grinding and polishing lens blanks (which are classified in heading 7014) to produce unmounted lenses (which are classified in heading 9001) results in a change in tariff classification, it should be recognized as a substantial transformation under the § 102.20 rules for unmounted lenses.

*Customs Response:* Customs disagrees. As Customs has stated consistently in connection with the proposed uniform origin rule concept, the Part 102 rules are intended to codify the interpretation of the substantial transformation principle by Customs and the courts, rather than to create a new standard for determining origin. As has been recognized by the courts, the fact that certain operations may or may not result in a change in tariff classification is not always dispositive of the issue of substantial transformation. *See Superior Wire* v. *United States, supra.* Thus, Customs has endeavored to develop a hierarchy for determining country of origin which allows certain tariff classification changes to result in origin changes, while disallowing others which yield results that are inconsistent with the substantial transformation principle as interpreted by Customs and the courts.

With regard to the issue raised by this commenter, in HQ 555923 dated June 17, 1991, Customs ruled that the further grinding and polishing of lens blanks into finished lenses did not result in a ''double substantial transformation'' of the raw materials, which consisted of cylindrical rods of base metals, specialty glasses, and sheets or rods of dielectrics, for purposes of the value-content requirement under the Generalized System of Preferences. This ruling was affirmed upon reconsideration in HQ 556360 dated July 7, 1992, where Customs ruled that the raw materials used to make the lens blanks did not undergo a second substantial transformation as a result of the further operations to make polished lenses. (Of note is the fact that Customs has applied, consistent with the court cases in this area, a more liberal application of the substantial transformation standard for purposes of the second substantial transformation required to receive duty preferences.) In a more recent internal advice opinion relating to an investigation, Customs again took the position that the processing of foreign lens blanks into polished unmounted lenses did not result in a substantial transformation of the lens blanks since, once the lens blanks were formed into the configuration of the lens, they had a predetermined character and use as a lens and could

not be used thereafter for other purposes. Customs believes that the application of the substantial transformation principle in the above cases is supported by the court decisions in *Superior Wire* v. *United States, supra,* and *National Hand Tool Corp.* v. *United States, supra.* Thus, the § 102.20 rules for these heading 9001 goods properly disallows the change in tariff classification from lens blanks. As a result of the operation of the § 102.11 hierarchy, the country of origin of unmounted lenses of heading 9001 made from foreign lens blanks of heading 7014 or subheading 7015.90 will be determined to be the country of origin of the lens blank pursuant to § 102.11(b).

*Subheadings 9003.11–9003.19 (Eyeglass Frames)*

*Comment:* One comment was received concerning the § 102.20 rules for the above goods. The rules pertaining to subheadings 9003.11 through 9003.10 provide as follows:

> A change to subheading 9003.11 through 9003.19 from any other heading; or
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> A change to subheading 9003.11 through 9003.19 from any other subheading, including another subheading within that group, except from subheading 9003.90, unless the temples or fronts are domestically produced.

The commenter claims that the above rules are inconsistent with the country of origin rules presently applied by Customs. The commenter states that under Customs' current practice, it has consistently and uniformly been recognized that unfinished and unusable eyeglass temples and fronts manufactured in Country A, which are exported to Country B for further processing and finishing operations, are subjected to a substantial transformation and thus qualify as products of Country B for country of origin marking purposes.

*Customs Response:* Customs recognizes that its position on substantial transformation of eyeglass frames has not been consistent over the years. In HQ 709266 dated July 11, 1978 Customs ruled that the assembly of eyeglass frames did not constitute a substantial transformation. In C.S.D. 80–43, dated July 17, 1979, however, Customs ruled that eyeglass fronts and temples that were subjected to further processing and assembly were substantially transformed. In HQ 728504 dated October 15, 1985, Customs again reverted to the conclusion that the assembly of imported eyeglass fronts and temples did not result in a substantial transformation of those parts. The latter position was again taken in HQ 734663 dated September 4, 1992, wherein Customs ruled that fronts and temples, which were imported into the United States in partially finished conditions from various suppliers worldwide and which were colored and assembled together in the United States along with other minor parts, were not substantially transformed in the United States. Subsequently, in HQ 734771 dated December 17, 1992, Customs ruled that fronts and temples, which were further machined, trimmed, assembled and polished, were substantially transformed.

Contrary to the commenter's claim, Customs has not recognized all finishing and assembly of fronts and temples into eyeglass frames as resulting in a substantial transformation of those parts. The above rulings, however, illustrate why both Customs and the trade community need more transparency and predictability in origin determinations. Customs believes that the proposed § 102.20 rules for eyeglass frames and the remaining rules in the § 102.11 hierarchy achieve this goal, while remaining faithful to the substantial transformation principle. The tariff shift rules in question still allow a change from fronts and temples to finished frames, provided that either the temples or fronts are domestic materials, *i.e.,* they are goods of the country of assembly. In the absence of such a limitation, a change of origin could result from the simple combining of two foreign parts (fronts and temples), a result which neither Customs nor the courts have allowed under the application of the substantial transformation principle.

If the country of origin is not determined under § 102.11(a)(3) (that is, by meeting the criteria in the § 102.20 rules), § 102.11(b) of the hierarchy would next apply. However, since both the fronts and temples are important components of eyeglass frames, it would be difficult to conclude that either the fronts or the temples, alone, impart the essential character to the finished frames. Thus, it would be highly unlikely that country of origin could be determined pursuant to § 102.11(b). Accordingly, the country of origin of the eyeglass frame most probably would have to be determined under § 102.11(d). If the good was not produced as a result of a ''simple assembly'' (as defined in § 102.1(o)) of fronts and temples from the same country, the country in which the eyeglass frames were assembled would be the country of origin under § 102.20(d). If there was a ''simple assembly'' of fronts and temples of the same country of origin, then the country of origin of those parts would be the country of origin of the eyeglass frames under § 102.11(d). Customs believes the foregoing demonstrates that the application of the § 102.11 hierarchy will result in origin determinations that are not only consistent with Customs' past practice but also far more transparent and predictable.

*Subheadings 9018.31–9019.90 (Surgical Instruments)*

*Comment:* The § 102.20 rules applicable to the above goods basically require a change from any other subheading, except from certain provisions that are not relevant to the one comment submitted regarding these goods. A commenter claims that surgical instruments often are made from steel forgings produced in one country (*e.g.,* the United States or Germany) and further processed by machining operations in a second country (*e.g.,* Pakistan, Hungary, Russia). Both the forgings and the machined surgical instruments are classified in subheading 9018.90 as other medical instruments. The commenter claims that on several occasions, Customs has ruled that the machining of a steel forging substantially transforms the forging into a surgical instrument and cites C.S.D. 80–15 of June 25, 1979, HQ 553197 dated February 11, 1985, and C.S.D. 90–53 of February 12, 1990, as support for his position. The commenter claims that the § 102.20 rules should codify these rulings.

*Customs Response:* Customs disagrees. The Court of International Trade recently considered whether the processing of forgings classified in the same provision as the finished good resulted in a substantial transformation in *National Hand Tool Corp.* v. *United States,* supra, a country of origin marking case. At issue in *National Hand Tool* was whether certain imported hand tool components processed in the United States underwent a substantial transformation. The components were either cold-formed or hot-forged into their final shape in Taiwan (except the speeder handle, which was bent to shape in the United States), while others underwent heat treatment in Taiwan. In holding that there was no substantial transformation of the imported forgings, the court found that the name of each article as imported was the same as that of the completed tool, that the character of the articles remained unchanged after the operations, and that the use of the imported articles was predetermined at the time of importation. Customs is now of the opinion that steel forgings subjected to processes similar to those considered in *National Hand Tool* also

do not undergo a substantial transformation, because such processing does not result in a change in the name, character, and use of the imported steel forgings. *See* HQ 558747 dated January 20, 1995. The Part 102 rules codify Customs current position which applies the rationale of *National Hand Tool.*

Assuming *arguendo* that two or more imported forgings are classified in subheadings 9018.31 through 9019.90 as parts or accessories of surgical instruments, the § 102.20 rule will not be met when the finished surgical instruments are produced. The next step is to go to § 102.11(b) and determine whether a single imported component imparts the essential character to the surgical instruments. Since the forgings are classified in provisions from which a change is not allowed under the applicable § 102.20 rule, pursuant to § 102.18(b) these are the parts considered for purposes of determining if a single material imparts the essential character to the finished good. Depending upon the type of surgical instrument at issue, a single steel forging could constitute the single material that imparts the essential character to the surgical instrument. In such instances, under § 102.11(b), the country of origin would be the country in which that steel forging is produced. This result would be entirely consistent with the position taken by the court in the *National Hand Tool* case.

*Headings 9101–9110 (Watches and Watch Movements)*

*Comments:* Customs proposed to amend the § 102.20 rules for clocks and watches and for complete and assembled movements by adding in each case a second rule to allow changes from complete movements, unassembled (movement sets), of subheading 9110.11 or 9110.90, or from rough movements of subheading 9110.19 or 9110.90. Customs also proposed to amend the rules applicable to heading 9110 (relating to watch and clock movements, complete and unassembled or partly assembled, incomplete movements, and rough movements) by deleting the alternative rule which allowed a change from subheading 9114.90 ''if there had been a substantial transformation.''

Two comments were received concerning the above proposals. Both commenters generally agree with the proposed amendments. One commenter agrees with Customs position that a change should not be allowed from an incomplete watch or clock movement, assembled, to a complete movement, but only to the extent that such items are so close to being complete movements that the final manufacturing steps needed to complete the movements are insignificant. The other commenter questions why Customs did not also propose to allow a change to headings 9101 through 9109 from incomplete watch or clock movements, assembled, of subheading 9110.12. This commenter states that from the producer's standpoint, the manufacturing operations necessary to produce a finished movement from either an incomplete movement or a rough movement are significant.

With regard to the § 102.20 rule for heading 9110, one of the commenters is of the opinion that the rule should allow a change to this heading from any other heading or subheading, including subheading 9114.90. The other commenter, however, agrees with Customs' ''apparent analysis'' that little or no manufacturing may be involved when, for example, a movement set is put together from subheading 9114.90 assemblies and subassemblies.

*Customs Response:* Customs continues to believe that a change in tariff classification should not be allowed from subheading 9110.12 to headings 9101 through 9109 because an incomplete movement may be essentially a movement and, therefore, allowing such a change would be inconsistent with Customs' longstanding interpretation of the substantial transformation principle. Customs also notes that, as stated in the May 5, 1995, notice of proposed rulemaking, the proposal to exclude the alternative rule for heading 9110 is necessary to avoid redundancy. Customs believes that if a required change in tariff classification does not occur under § 102.20, when in fact there has been a substantial transformation of the foreign material at issue, a substantial transformation result will still be reached under the § 102.11 rules.

As noted in the May 5, 1995, notice of proposed rulemaking and elsewhere in this document, the general rules for determining the country of origin of a good in §§ 102.11 (a) through (d) are applied in a hierarchal and sequential manner. Thus, although a prescribed change in tariff classification may not occur for purposes of determining origin under §§ 102.11(a)(3) and 102.20, the country of origin of a movement made from an incomplete movement of subheading 9110.12 or a part of subheading 9114.90 will nevertheless be determined once the appropriate rule in the § 102.11 hierarchy is applied. Depending upon several factors, the foreign material classified in subheading 9110.12 or 9114.90 may constitute the single material that imparts the essential character to the complete movement for purposes of determining the country of origin under § 102.11(b). On the other hand, if there are several components properly being considered under §§ 102.11(b) and 102.18(b), and if no single component imparts the essential character to the complete movement, then the country of origin will be determined to be the country in which the movement was produced (provided that such production was not the result of a ''simple assembly'' of parts from the same country).

*Subheading 9506.31 (Golf Clubs)*

*Comment:* The § 102.20 rule for golf clubs provides for a change to subheading 9506.31 (complete golf clubs) from any other subheading, except from subheading 9506.39 (parts of golf clubs). One comment was received concerning this rule. A commenter states that it has been Customs' longstanding position that the process of joining the essential component parts—heads, shafts and grips—into completed golf clubs constitutes a substantial transformation and, therefore, the country where this process occurs is the country of origin of the golf clubs. As support, this commenter cites several Customs rulings (HQ 724901 dated April 9, 1984, HQ 728213 dated July 3, 1985, HQ 733185 dated April 11, 1990, HQ 733151 dated September 11, 1990, HQ 734136 dated June 17, 1991, and HQ 735125 dated November 17, 1993) in which Customs ruled that the assembly of either a foreign head or shaft with a domestic head or shaft and a domestic grip, or the use of foreign grips in the manufacture of completed golf clubs in the United States, resulted in a substantial transformation of the foreign head or shaft or grip so that the country of origin of the completed golf club was the United States where the assembly took place.

*Customs Response:* Contrary to the commenter's suggestion, Customs has not taken the general position that the country of origin of a golf club is the country in which it is finally assembled. In fact, Customs has never ruled on the question of whether the assembly in the United States of a foreign head and shaft with either a foreign or domestic grip into a completed club results in a substantial transformation of the imported components, thereby making the United States the country of origin of the completed club. Customs, however, believes that the § 102.20 rule for golf clubs allows for the substantial transformation principle to be applied in a manner consistent with the approach taken in the rulings cited by

the commenter. Applying the § 102.20 rule to determine whether the foreign components change their origin as a result of an assembly operation, Customs finds no tariff shift for the imported components. However, if the hierarchal rules of § 102.11 are properly applied to the circumstances in the above-cited rulings (*e.g.*, assembly of a golf club using a foreign head and a domestic shaft and grip) Customs finds that the same origin result can be reached under the § 102.11 hierarchy.

If the § 102.20 rule is not met, § 102.11(b) will be applicable. If there is a single component that imparts the essential character to the golf club, the country of origin of that component will be the country of origin of the golf club. If no single component can be found to impart the essential character to the finished golf club, § 102.11(d) is then applicable (§ 102.11(c) would not be relevant in this case). If the golf club was not produced as a result of a ''simple assembly'' (as defined in § 102.1(o)) of parts from the same country, then the country of origin of the finished golf club would be the country of assembly. Therefore, Customs believes that the Part 102 rules as a whole codify the substantial transformation principle as applied to golf clubs.

Other Changes

In addition to the changes mentioned in connection with the above discussion of public comments, the regulatory texts set forth below incorporate the following additional changes which Customs believes are necessary based on further internal review of the interim and proposed regulatory texts:

1. A second sentence has been added to the introductory text of § 102.20 to provide that requisite tariff shifts within the same heading must involve changes in subheadings at the same (that is, 6-digit) level. Since tariff classification is the basis for the § 102.20 rules, Customs believes that it is essential for those rules to incorporate the fundamental rule of tariff classification, as stated in General Rule of Interpretation 6 of the Harmonized System and the HTSUS, that only subheadings at the same level are comparable.

2. In § 102.20, the tariff shift rules for subheadings 4202.12–4202.22, 4202.31–4202.32, 4202.91–4202.99 and 4302.30 have been modified to refer to the assembly of ''foreign'' (rather than ''imported'') cut components, because the word ''imported'' does not necessarily convey the origin significance that was intended to be attached to the cut components.

3. In § 102.20, the listings for headings 6815 and 7113–7115 have been redrafted to reflect subheading rules, as intended by the wording of the respective interim tariff shift rules.

4. In § 102.20, the listing for subheadings 7505.11–7505.22 has been redrafted to reflect a heading 7505 rule. This change removes an ambiguity in the tariff shift rule and ensures consistency with the rules for other related headings of Chapter 75.

5. In § 102.20, the listing for headings 8545–8548 has been broken into two listings, one for subheadings 8545.11–8547.90 and the other for heading 8548. This change clarifies the intent and removes an ambiguity from the interim text.

6. In § 102.20, the words ''domestically produced'' at the end of the second tariff shift rule for subheadings 9003.11–9003.19 have been replaced by ''domestic materials'' because ''produced'' has no specific legal meaning within Part 102 whereas ''domestic material'' is defined in § 102.1(d).

7. In § 102.20, the listing for headings 9701–9706 has been broken into two listings, one for subheadings 9701.10–9701.90 and the other for headings 9702–9706. This change clarifies the intent and removes an ambiguity from the interim text.

8. Finally, a number of other editorial changes have been made in the interim and proposed texts, including a large number of changes to the provisions in the table under § 102.20. These changes, which correct typographical or other obvious errors or inconsistencies in language, are also not substantive in effect.

Conclusion

Accordingly, based on the comments received and the analysis of those comments as set forth above, and based on the additional considerations discussed above, Customs believes that the interim NAFTA Marking Rules and the other interim regulations published as T.D. 94–4 and the proposed amendments to those interim regulations published on May 5, 1995, and on July 12, 1995, should be adopted as a final rule with certain changes thereto as discussed above and as set forth below. Although this document sets forth the majority of the interim regulatory amendments and proposed changes thereto adopted herein as a final rule and thus both republishes portions of the interim texts without change and amends other portions of the interim texts to incorporate the changes discussed above, it does not republish those unchanged interim amendments involving § 12.130.

Inapplicability of Public Notice and Comment Procedures

Pursuant to the provisions of 5 U.S.C. 553(a), public notice and comment procedures are inapplicable to these final regulations because they are within the foreign affairs function of the United States.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Based on the supplementary information set forth above and because these regulations implement obligations of international agreements, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

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

List of Subjects

*19 CFR Part 10*

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

*19 CFR Part 12*

Customs duties and inspection, Labeling, Marking, Reporting and recordkeeping requirements, Textiles and textile products.

*19 CFR Part 102*

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

*19 CFR Part 134*

Country or origin, Customs duties and inspections, Imports, Labeling, Marking, Packaging and containers.

Amendments to the Regulations

Accordingly, part 10 is amended and the interim rule amending parts 12 and 134 of the Customs Regulations (19 CFR parts 12 and 134) and adding part 102

of the Customs Regulations (19 CFR part 102), which was published at 59 FR 110–140 on January 3, 1994, and which was corrected at 59 FR 5082 on February 3, 1994, is adopted as a final rule with certain changes as discussed above and set forth below.

## PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows, and the specific authority citation for § 10.22 is removed:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

### § 10.22 [Removed]

2. Section 10.22 is removed.

## PART 102—RULES OF ORIGIN

1. The authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

### §§ 102.14 and 102.16 [Removed]

2. Sections 102.14 and 102.16 are removed and § 102.12 is republished, and §§ 102.0, 102.1, 102.11, 102.13, 102.15, 102.17, 102.18, 102.19 and 102.20 are revised, to read as follows:

### § 102.0 Scope.

Except in the case of goods covered by § 102.21, this part sets forth rules for determining the country of origin of imported goods for the purposes specified in paragraph 1 of Annex 311 of the North American Free Trade Agreement (''NAFTA''). These specific purposes are: country of origin marking; determining the rate of duty and staging category applicable to originating textile and apparel goods as set out in Section 2 (Tariff Elimination) of Annex 300–B (Textile and Apparel Goods); determining the rate of duty and staging category applicable to an originating good as set out in Annex 302.2 (Tariff Elimination). The rules for determining the country of origin of textile and apparel products set forth in § 102.21 apply for the foregoing purposes and for the other purposes stated in that section.

## Subpart A—General

### § 102.1 Definitions.

(a) *Advanced in value.* ''Advanced in value'' means an increase in the value of a good as a result of production with respect to that good, other than by means of those ''minor processing'' operations described in paragraphs (m)(5), (m)(6), and (m)(7) of this section.

(b) *Commingled.* ''Commingled'' means physically combined or mixed.

(c) *Direct physical identification.* ''Direct physical identification'' means identification by visual or other organoleptic examination.

(d) *Domestic material.* ''Domestic material'' means a material whose country of origin as determined under these rules is the same country as the country in which the good is produced.

(e) *Foreign material.* ''Foreign material'' means a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.

(f) *Fungible goods or fungible materials.* ''Fungible goods or fungible materials'' means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.

(g) *A good wholly obtained or produced.* A good ''wholly obtained or produced'' in a country means:

(1) A mineral good extracted in that country;

(2) A vegetable or plant good harvested in that country;

(3) A live animal born and raised in that country;

(4) A good obtained from hunting, trapping or fishing in that country;

(5) A good (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with that country and flying its flag;

(6) A good produced on board factory ships from the goods referred to in paragraph (g)(5) of this section, provided such factory ships are registered or recorded with that country and fly its flag;

(7) A good taken by that country or a person of that country from the seabed or beneath the seabed outside territorial waters, provided that country has rights to exploit such seabed;

(8) A good taken from outer space, provided they are obtained by that country or a person of that country;

(9) Waste and scrap derived from:

(i) Production in a country, or

(ii) Used goods collected in that country provided such goods are fit only for the recovery of raw materials; and

(10) A good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (10) of this section or from their derivatives, at any stage of production.

(h) *Harmonized System.* ''Harmonized System'' means the Harmonized Commodity Description and Coding System, including its general rules of Interpretation, Section Notes and Chapter Notes, as adopted and implemented by the United States.

(i) *Improved in condition.* ''Improved in condition'' means the enhancement of the physical condition of a good as a result of production with respect to that good, other than by means of those ''minor processing'' operations described in paragraphs (m)(5), (m)(6), and (m)(7) of this section.

(j) *Incorporated.* ''Incorporated'' means physically incorporated into a good as a result of production with respect to that good.

(k) *Indirect materials.* ''Indirect materials'' means a good used in the production, testing or inspection of another good but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of that other good, including:

(1) Fuel and energy;

(2) Tools, dies and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the goods;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

(l) *Material.* ''Material'' means a good that is incorporated into another good as a result of production with respect to that other good, and includes parts, ingredients, subassemblies, and components.

(m) *Minor processing.* ''Minor processing'' means the following:

(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;

(2) Cleaning, including removal of rust, grease, paint, or other coatings;

(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;

(4) Trimming, filing or cutting off small amounts of excess materials;

(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;

(6) Putting up in measured doses, packing, repacking, packaging, repackaging;

(7) Testing, marking, sorting, or grading;

(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or

(9) Repairs and alterations, washing, laundering, or sterilizing.

(n) *Production.* ''Production'' means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good.

(o) *Simple assembly.* ''Simple assembly'' means the fitting together of five or fewer parts all of which are foreign (excluding fasteners such as screws, bolts, etc.) by bolting, gluing, soldering, sewing or by other means without more than minor processing.

(p) *Value.* ''Value'' means, with respect to § 102.13:

(1) In the case of a good, its customs value or transaction value within the meaning of the appendix to part 181 of this chapter; or

(2) In the case of a material, its customs value or value within the meaning of the appendix to part 181 of this chapter.

## Subpart B—Rules of Origin

### § 102.11 General rules.

The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by § 102.21.

(a) The country of origin of a good is the country in which:

(1) The good is wholly obtained or produced;

(2) The good is produced exclusively from domestic materials; or

(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

(b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

(1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or

(2) If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.

(c) Where the country of origin cannot be determined under paragraph (a) or (b) of this section and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3, the country of origin of the good is the country or countries of origin of all materials that merit equal consideration for determining the essential character of the good.

(d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

(1) If the good was produced only as a result of minor processing, the country of origin of the good is the country or countries of origin of each material that merits equal consideration for determining the essential character of the good;

(2) If the good was produced by simple assembly and the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, the country of origin of the good is the country of origin of those parts; or

(3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

### § 102.12 Fungible goods.

When fungible goods of different countries of origin are commingled the country of origin of the goods:

(a) Is the countries of origin of those commingled goods; or

(b) If the good is fungible, has been commingled, and direct physical identification of the origin of the commingled good is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.

### § 102.13 De Minimis.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, foreign materials that do not undergo the applicable change in tariff classification set out in § 102.20 or satisfy the other applicable requirements of that section when incorporated into a good shall be disregarded in determining the country of origin of the good if the value of those materials is no more than 7 percent of the value of the good or 10 percent of the value of a good of Chapter 22, Harmonized System.

(b) Paragraph (a) of this section does not apply to a foreign material incorporated in a good provided for in Chapter 1, 2, 3, 4, 7, 8, 11, 12, 15, 17, or 20 of the Harmonized System.

(c) Foreign components or materials that do not undergo the applicable change in tariff classification set out in § 102.21 or satisfy the other applicable requirements of that section when incorporated into a textile or apparel product covered by that section shall be disregarded in determining the country of origin of the good if the total weight of those components or materials is not more than 7 percent of the total weight of the good.

### § 102.15 Disregarded materials.

(a) The following materials shall be disregarded when determining whether the good undergoes the applicable change in tariff classification set out in § 102.20 or § 102.21, or satisfies the other applicable requirements of those sections:

(1) Packaging materials and containers in which a good is packaged for retail sale that are classified with the good;

(2) Accessories, spare parts or tools delivered with the good that are classified with the good and shipped with the good;

(3) Packing materials and containers in which a good is packed for shipment; and

(4) Indirect materials.

(b) [Reserved]

### § 102.17 Non-qualifying operations.

A foreign material shall not be considered to have undergone an applicable change in tariff classification specified in § 102.20 or § 102.21 or to have met any other applicable requirements of those sections merely by reason of one or more of the following:

(a) A change in end-use;

(b) Dismantling or disassembly;

(c) Simple packing, repacking or retail packaging without more than minor processing;

(d) Mere dilution with water or another substance that does not materially alter the characteristics of the material; or

(e) Collecting parts that, as collected, are classifiable in the same tariff provision as an assembled good pursuant to General Rule of

Interpretation 2(a), without any additional operation other than minor processing.

**§ 102.18 Rules of interpretation.**

(a) When General Rule of Interpretation (GRI) 2(a) is referred to in § 102.20 as an exception to an allowed change in tariff classification, this means that such change will not be acceptable for purposes of that section if the change results from the assembly of parts into an incomplete or unfinished good which is classifiable in the same manner as a complete or finished good pursuant to GRI 2(a).

(b) (1) For purposes of identifying the material that imparts the essential character to a good under § 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good. For purposes of this paragraph (b)(1):

(i) The materials to be considered must be classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good under consideration. For example, in the case of a good classified in HTSUS subheading 8607.11 (the rule for which specifies a change to subheading 8607.11 from any other subheading, except from subheading 8607.12, and except from subheading 8607.19 when that change is pursuant to GRI 2(a)), the only materials that may be considered for purposes of identifying the materials that impart the essential character to the good are those that are classified in subheadings 8607.11, 8607.12 and, if the tariff shift is pursuant to GRI 2(a), 8607.19;

(ii) Materials that may be considered include materials produced by the producer of the good and incorporated in the good. For example, if a producer of a good purchases raw materials and converts those raw materials into a component that is incorporated in the good, that component is a material that may be considered for purposes of identifying the materials that impart the essential character to the good, provided that the component is classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good; and

(iii) If there is only one material that is classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good, then that material will represent the single material that imparts the essential character to the good under § 102.11.

(2) For purposes of determining which one of two or more materials described in paragraph (b)(1) of this section imparts the essential character to a good under § 102.11, various factors may be examined depending upon the type of good involved. These factors include, but are not limited to, the following:

(i) The nature of each material, such as its bulk, quantity, weight or value; and

(ii) The role of each material in relation to the use of the good.

**§ 102.19 NAFTA preference override.**

(a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good.

(b) If, under any other provision of this part, the country of origin of a good which is originating within the meaning of § 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

**§ 102.20 Specific rules by tariff classification.**

The following rules are the rules specified in § 102.11(a)(3) and other sections of this part. Where a rule under this section permits a change to a subheading from another subheading of the same heading, the rule shall be satisfied only if the change is from a subheading of the same level specified in the rule.

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| **(a)** | **Section I: Chapters 1 through 5** |
| 0101–0106 | A change to heading 0101 through 0106 from any other chapter. |
| 0201–0209 | A change to heading 0201 through 0209 from any other chapter. |
| 0210.11–0210.20 | A change to subheading 0210.11 through 0210.20 from any other chapter. |
| 0210.90 | A change to subheading 0210.90 from any other chapter; or<br>A change to edible meals and flours of subheading 0210.90 from any product other than edible meals and flours of Chapter 2. |
| 0301–0303 | A change to heading 0301 through 0303 from any other chapter. |
| 0304 | A change to heading 0304 from any other chapter; or<br>A change to fillets of heading 0304 from any other heading. |
| 0305.10 | A change to subheading 0305.10 from any other subheading. |
| 0305.20 | A change to subheading 0305.20 from any other chapter. |
| 0305.30 | A change to subheading 0305.30 from any other subheading, except from fillets of heading 0304. |
| 0305.41–0305.69 | A change to subheading 0305.41 through 0305.69 from any other chapter. |
| 0306 | A change to heading 0306 from any other chapter. |
| 0307 | A change to heading 0307 from any other chapter; or<br>A change to edible meals and flours from within Chapter 3. |
| 0401 | A change to heading 0401 from any other chapter. |
| 0402.10–0402.29 | A change to subheading 0402.10 through 0402.29 from any other chapter. |
| 0402.91–0402.99 | A change to subheading 0402.91 through 0402.99 from any other chapter. |
| 0403.10 | A change to subheading 0403.10 from any other subheading. |
| 0403.90 | A change to subheading 0403.90 from any other chapter; or<br>A change to sour cream or kephir from any other product of Chapter 4. |

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| 0404 | A change to heading 0404 from any other heading. |
| 0405.10 | A change to subheading 0405.10 from any other heading. |
| 0405.20 | A change to subheading 0405.20 from any other chapter, except from subheading 1901.90; or<br>A change to subheading 0405.20 from any other subheading, provided that the good contains no more than 50 percent by weight of milk solids. |
| 0405.90 | A change to subheading 0405.90 from any other heading. |
| 0406 | A change to heading 0406 from any other heading. |
| 0407–0410 | A change to heading 0407 through 0410 from any other chapter. |
| 0501–0511 | A change to heading 0501 through 0511 from any other chapter. |
| **(b)** | **Section II: Chapters 6 through 14** |
| **Note:** Notwithstanding the specific rules of this section, an agricultural or horticultural good grown in the territory of a country shall be treated as a good of that country even if grown from seed or bulbs, root stock, cuttings, slips or other live parts of plants, or from whole plants, imported from a foreign country. | |
| 0601–0602 | A change to heading 0601 through 0602 from any other heading, including another heading within that group. |
| 0603–0604 | A change to heading 0603 through 0604 from any other heading, including another heading within that group, except from heading 0602. |
| 0701–0709 | A change to heading 0701 through 0709 from any other chapter. |
| 0710 | A change to heading 0710 from any other chapter. |
| 0711 | A change to heading 0711 from any other chapter. |
| 0712 | A change to heading 0712 from any other chapter; or<br>A change to powdered vegetables of heading 0712 from any other product of Chapter 7, if put up for retail sale. |
| 0713–0714 | A change to heading 0713 through 0714 from any other chapter. |
| 0801–0810 | A change to heading 0801 through 0810 from any other chapter. |
| 0811 | A change to heading 0811 from any other chapter. |
| 0812 | A change to heading 0812 from any other chapter. |
| 0813 | A change to heading 0813 from any other chapter. |
| 0814 | A change to heading 0814 from any other chapter. |
| 0901.11–0901.12 | A change to subheading 0901.11 through 0901.12 from any other chapter. |
| 0901.21–0901.22 | A change to subheading 0901.21 through 0901.22 from any subheading outside that group. |
| 0901.90 | A change to subheading 0901.90 from any other chapter. |
| 0902–0903 | A change to heading 0902 through 0903 from any other chapter. |
| 0904–0910 | A change to heading 0904 through 0910 from any other chapter; or<br>A change to crushed, ground, or powdered products of heading 0904 through 0910 from within Chapter 9, if put up for retail sale; or<br>A change to subheading 0910.91 from any other subheading, provided that a single spice ingredient of foreign origin constitutes no more than 60 percent by weight of the good. |
| 1001–1008 | A change to heading 1001 through 1008 from any other chapter. |
| 1101–1106 | A change to heading 1101 through 1106 from any other chapter. |
| 1107 | A change to heading 1107 from any other chapter. |
| 1108–1109 | A change to heading 1108 through 1109 from any other heading, including another heading within that group. |
| 1201–1207 | A change to heading 1201 through 1207 from any other chapter. |
| 1208 | A change to heading 1208 from any other heading. |
| 1209–1214 | A change to heading 1209 through 1214 from any other chapter. |
| 1301–1302 | A change to heading 1301 through 1302 from any other chapter. |
| 1401–1404 | A change to heading 1401 through 1404 from any other chapter. |
| **(c)** | **Section III: Chapter 15** |
| 1501–1516 | A change to heading 1501 through 1516 from any other chapter. |
| 1517.10 | A change to subheading 1517.10 from any other heading. |
| 1517.90 | A change to subheading 1517.90 from any other chapter, except from heading 3823; or<br>A change to subheading 1517.90 from any other heading, provided that no single oil ingredient of foreign origin constitutes more than 60 percent by weight of the good. |
| 1518 | A change to heading 1518 from any other heading. |
| 1520 | A change to heading 1520 from any other heading, except from subheading 2905.45 and heading 3823. |
| 1521–1522 | A change to heading 1521 through 1522 from any other chapter, except from heading 3823. |
| **(d)** | **Section IV: Chapters 16 through 24** |
| 1601–1605 | A change to heading 1601 through 1605 from any other chapter. |
| 1701–1702 | A change to heading 1701 through 1702 from any other chapter. |
| 1703 | A change to heading 1703 from any other chapter. |
| 1704 | A change to heading 1704 from any other heading. |
| 1801–1803 | A change to heading 1801 through 1803 from any other chapter. |
| 1804 | A change to heading 1804 from any other heading, except from heading 1803. |
| 1805 | A change to heading 1805 from any other heading, except from subheading 1803.20. |
| 1806.10 | A change to subheading 1806.10 from any other heading, except from heading 1805 or from Chapter 17; or<br>A change to subheading 1806.10 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar. |
| 1806.20 | A change to subheading 1806.20 from any other heading, except from Chapter 17; or |

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| | A change to subheading 1806.20 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar. |
| 1806.31 | A change to subheading 1806.31 from any other subheading. |
| 1806.32 | A change to subheading 1806.32 from any other subheading. |
| 1806.90 | A change to subheading 1806.90 from any other subheading. |
| 1901.10 | A change to subheading 1901.10 from any other subheading. |
| 1901.20 | A change to subheading 1901.20 from any other subheading. |
| 1901.90 | A change to subheading 1901.90 from any other heading. |
| 1902.11–1902.19 | A change to subheading 1902.11 through 1902.19 from any other heading. |
| 1902.20 | A change to subheading 1902.20 from any other subheading. |
| 1902.30–1902.40 | A change to subheading 1902.30 through 1902.40 from any other heading. |
| 1903 | A change to heading 1903 from any other heading. |
| 1904.10 | A change to subheading 1904.10 from any other heading. |
| 1904.20 | A change to subheading 1904.20 from any other subheading. |
| 1904.90 | A change to subheading 1904.90 from any other heading. |
| 1905 | A change to heading 1905 from any other heading. |
| **Chapter 20 Note:** Notwithstanding the specific rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as a good of the country in which the fresh good was produced. | |
| 2001–2007 | A change to heading 2001 through 2007 from any other chapter. |
| 2008.11 | A change to subheading 2008.11 from any other chapter, provided that the change is not the result of mere blanching of peanuts. |
| 2008.19–2008.99 | A change to subheading 2008.19 through 2008.99 from any other chapter, provided that the change is not the result of mere blanching of nuts. |
| 2009.11–2009.30 | A change to subheading 2009.11 through 2009.30 from any other chapter. |
| 2009.40–2009.80 | A change to subheading 2009.40 through 2009.80 from any other chapter. |
| 2009.90 | A change to subheading 2009.90 from any other chapter; or |
| | A change to subheading 2009.90 from any other subheading, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good. |
| 2101 | A change to heading 2101 from any other heading. |
| 2102 | A change to heading 2102 from any other heading. |
| 2103.10 | A change to subheading 2103.10 from any other heading. |
| 2103.20 | A change to subheading 2103.20 from any other heading. |
| 2103.30 | A change to subheading 2103.30 from any other subheading; or |
| | A change to prepared mustard of subheading 2103.30 from mustard flour or meal. |
| 2103.90 | A change to subheading 2103.90 from any other subheading. |
| 2104.10 | A change to subheading 2104.10 from any other subheading. |
| 2104.20 | A change to subheading 2104.20 from any other subheading. |
| 2105 | A change to heading 2105 from any other heading. |
| 2106.10 | A change to subheading 2106.10 from any other subheading. |
| 2106.90 | A change to a good of subheading 2106.90, other than to compound alcoholic preparations, from any other subheading, except from Chapter 4, Chapter 17, heading 2009, subheading 1901.90 or subheading 2202.90; or |
| | A change to subheading 2106.90 from Chapter 4 or subheading 1901.90, provided that the good contains no more than 50 percent by weight of milk solids; or |
| | A change to subheading 2106.90 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar; or |
| | A change to subheading 2106.90 from heading 2009 or subheading 2202.90, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good; or |
| | A change to compound alcoholic preparations of subheading 2106.90 from any other subheading, except from subheading 2208.20 through 2208.50. |
| 2201 | A change to heading 2201 from any other chapter. |
| 2202.10 | A change to sweetened and/or flavored waters of subheading 2202.10 from any other chapter; or |
| | A change to other beverages of subheading 2202.10 from any other heading. |
| 2202.90 | A change to subheading 2202.90 from any other subheading, except from Chapter 4 or heading 1901, 2009, or 2106; or |
| | A change to subheading 2202.90 from Chapter 4 or heading 1901, provided that the good contains no more than 50 percent by weight of milk solids; or |
| | A change to subheading 2202.90 from heading 2009 or subheading 2106.90, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good. |
| 2203 | A change to heading 2203 from any other heading. |
| 2204.10–2204.29 | A change to subheading 2204.10 through 2204.29 from any other subheading outside that group. |
| 2204.30 | A change to subheading 2204.30 from any other heading. |
| 2205 | A change to heading 2205 from any other heading, except from heading 2204; or |
| | A change to vermouth of heading 2205 from heading 2204. |
| 2206 | A change to heading 2206 from any other heading. |
| 2207 | A change to heading 2207 from any other heading, except from compound alcoholic preparations of subheading 2106.90 or heading 2208. |
| 2208.20–2208.70 | A change to subheading 2208.20 through 2208.70 from any other subheading outside that group, except from subheading 2106.90; or |

| HTSUS | Tariff shift and/or other requirements |
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| | A change to liqueurs or cordials of subheading 2208.70 from any other product. |
| 2208.90 | A change to subheading 2208.90 from any other subheading, except from subheading 2106.90; or<br>A change to kirschwasser or ratafia of subheading 2208.90 from any other product. |
| 2209 | A change to heading 2209 from any other heading. |
| 2301–2308 | A change to heading 2301 through 2308 from any other chapter. |
| 2309.10 | A change to subheading 2309.10 from any other heading. |
| 2309.90 | A change to subheading 2309.90 from any other heading, except from Chapter 4 or heading 1901; or<br>A change to subheading 2309.90 from Chapter 4 or heading 1901, provided that the good contains no more than 50 percent by weight of milk solids. |
| 2401 | A change to heading 2401 from any other chapter. |
| 2402–2403 | A change to heading 2402 through 2403 from any other heading, including another heading within that group. |
| **(e)** | **Section V: Chapters 25 through 27** |
| 2501–2516 | A change to heading 2501 through 2516 from any other heading, including another heading within that group. |
| 2517.10–2517.20 | A change to subheading 2517.10 through 2517.20 from any other heading. |
| 2517.30 | A change to subheading 2517.30 from any other subheading. |
| 2517.41–2517.49 | A change to subheading 2517.41 through 2517.49 from any other heading. |
| 2518–2530 | A change to heading 2518 through 2530 from any other heading, including another heading within that group. |
| 2601–2621 | A change to heading 2601 through 2621 from any other heading, including another heading within that group. |
| **Chapter 27 Note:** For purposes of this chapter, a ''chemical reaction'' is defined as a process in which chemical bonds in molecules are broken and new chemical bonds are formed between the fragmented molecules and/or added elements so that one or more of the original bond/s no longer link the same chemical element/s or functional group/s. | |
| 2701–2706 | A change to heading 2701 through 2706 from any other heading, including any heading within that group. |
| 2707.10–2707.99 | A change to subheading 2707.10 through 2707.99 from any other heading; or<br>A change to subheading 2707.10 through 2707.99 from any other subheading, including any subheading within that group, provided that the good resulting from such change is the product of a chemical reaction. |
| 2708–2709 | A change to heading 2708 through 2709 from any other heading, including another heading within that group. |
| 2710 | A change to heading 2710 from any other heading; or<br>A change to any good of heading 2710 from any other good of heading 2710, provided that the good resulting from such change is the product of a chemical reaction. |
| 2711.11 | A change to subheading 2711.11 from any other subheading, except from subheading 2711.21. |
| 2711.12–2711.19 | A change to subheading 2711.12 through 2711.19 from any other subheading, including another subheading within that group, except from subheading 2711.29. |
| 2711.21 | A change to subheading 2711.21 from any other subheading, except from subheading 2711.11. |
| 2711.29 | A change to subheading 2711.29 from any other subheading, except from subheading 2711.12 through 2711.21. |
| 2712–2714 | A change to heading 2712 through 2714 from any other heading, including another heading within that group. |
| 2715 | A change to heading 2715 from any other heading, except from heading 2714 or subheading 2713.20. |
| 2716 | A change to heading 2716 from any other heading. |
| **(f)** | **Section VI: Chapters 28 through 38** |

**Notes:** 1. Chemical reaction origin rule—

Any good of Chapters 28, 29, 31, 32 or 38, except a good of heading 3823, that is the product of a chemical reaction shall be considered to be a good of the country in which the reaction occurred.

A chemical reaction is defined as a process in which chemical bonds in molecules are broken and new chemical bonds are formed between the fragmented molecules and/or added elements so that one or more of the original bonds no longer link the same chemical element/s or functional group/s.

Notwithstanding any of the line-by-line rules, the ''chemical reaction'' rule may be applied to any good classified in the above chapters.

2. Separation prohibition—

A foreign material/component will not be deemed to have satisfied all applicable requirements of these rules by reason of a change from one classification to another merely as the result of the separation of one or more individual materials or components from a man-made mixture unless the isolated material/component, itself, also underwent a chemical reaction.

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| 2801.10–2801.30 | A change to subheading 2801.10 through 2801.30 from any other subheading, including another subheading within that group. |
| 2802 | A change to heading 2802 from any other heading, except from heading 2503. |
| 2803 | A change to heading 2803 from any other heading. |
| 2804.10–2804.50 | A change to subheading 2804.10 through 2804.50 from any other subheading, including another subheading within that group. |
| 2804.61–2804.69 | A change to subheading 2804.61 through 2804.69 from any other subheading outside that group. |
| 2804.70–2804.90 | A change to subheading 2804.70 through 2804.90 from any other subheading, including another subheading within that group. |
| 2805 | A change to heading 2805 from any other heading. |
| 2806.10–2806.20 | A change to subheading 2806.10 through 2806.20 from any other subheading, |
| including another subheading within that group.. | |
| 2807–2808 | A change to heading 2807 through 2808 from any other heading, including another heading within that group. |
| 2809.10–2809.20 | A change to subheading 2809.10 through 2809.20 from any other subheading, including another subheading within that group. |
| 2810 | A change to heading 2810 from any other heading. |
| 2811.11 | A change to subheading 2811.11 from any other subheading. |

| HTSUS | Tariff shift and/or other requirements |
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| 2811.19 | A change to subheading 2811.19 from any other subheading, except from subheading 2811.22. |
| 2811.21 | A change to subheading 2811.21 from any other subheading. |
| 2811.22 | A change to subheading 2811.22 from any other subheading, except from subheading 2505.10, 2506.10, or 2811.19. |
| 2811.23–2811.29 | A change to subheading 2811.23 through 2811.29 from any other subheading, including another subheading within that group. |
| 2812.10–2813.90 | A change to subheading 2812.10 through 2813.90 from any other subheading, including another subheading within that group. |
| 2814 | A change to heading 2814 from any other heading. |
| 2815.11–2815.12 | A change to subheading 2815.11 through 2815.12 from any other subheading outside that group. |
| 2815.20–2815.30 | A change to subheading 2815.20 through 2815.30 from any other subheading, including another subheading within that group. |
| 2816.10 | A change to subheading 2816.10 from any other subheading. |
| 2816.20 | A change to subheading 2816.20 from any other subheading, except from subheading 2530.90. |
| 2816.30 | A change to subheading 2816.30 from any other subheading. |
| 2817 | A change to heading 2817 from any other heading, except from heading 2608. |
| 2818.10–2818.30 | A change to subheading 2818.10 through 2818.30 from any other subheading, including another subheading within that group, except from heading 2606 or subheading 2620.40. |
| 2819.10–2819.90 | A change to subheading 2819.10 through 2819.90 from any other subheading, including another subheading within that group. |
| 2820.10–2820.90 | A change to subheading 2820.10 through 2820.90 from any other subheading, including another subheading within that group, except from subheading 2530.90 or heading 2602. |
| 2821.10 | A change to subheading 2821.10 from any other subheading. |
| 2821.20 | A change to subheading 2821.20 from any other subheading, except from subheading 2530.30 or 2601.11 through 2601.20. |
| 2822 | A change to heading 2822 from any other heading, except from heading 2605. |
| 2823 | A change to heading 2823 from any other heading. |
| 2824.10–2824.90 | A change to subheading 2824.10 through 2824.90 from any other subheading, including another subheading within that group, except from heading 2607. |
| 2825.10–2825.40 | A change to subheading 2825.10 through 2825.40 from any other subheading, including another subheading within that group. |
| 2825.50 | A change to subheading 2825.50 from any other subheading, except from heading 2603. |
| 2825.60 | A change to subheading 2825.60 from any other subheading, except from subheading 2615.10. |
| 2825.70 | A change to subheading 2825.70 from any other subheading, except from subheading 2613.10. |
| 2825.80 | A change to subheading 2825.80 from any other subheading, except from subheading 2617.10. |
| 2825.90 | A change to subheading 2825.90 from any other subheading, provided that the good classified in subheading 2825.90 is the product of a ''chemical reaction'' as defined in Note 1. |
| 2826.11–2833.19 | A change to subheading 2826.11 through 2833.19 from any other subheading, including another subheading within that group. |
| 2833.21 | A change to subheading 2833.21 from any other subheading, except from subheading 2530.20. |
| 2833.22–2833.26 | A change to subheading 2833.22 through 2833.26 from any other subheading, including another subheading within that group. |
| 2833.27 | A change to subheading 2833.27 from any other subheading, except from subheading 2511.10. |
| 2833.29 | A change to subheading 2833.29 from any other subheading, except from heading 2520. |
| 2833.30–2833.40 | A change to subheading 2833.30 through 2833.40 from any other subheading, including another subheading within that group. |
| 2834.10–2834.29 | A change to subheading 2834.10 through 2834.29 from any other subheading, including another subheading within that group. |
| 2835.10–2835.25 | A change to subheading 2835.10 through 2835.25 from any other subheading, including another subheading within that group. |
| 2835.26 | A change to subheading 2835.26 from any other subheading, except from heading 2510. |
| 2835.29–2835.39 | A change to subheading 2835.29 through 2835.39 from any other subheading, including another subheading within that group. |
| 2836.10 | A change to subheading 2836.10 from any other subheading. |
| 2836.20 | A change to subheading 2836.20 from any other subheading, except from subheading 2530.90. |
| 2836.30–2836.40 | A change to subheading 2836.30 through 2836.40 from any other subheading, including another subheading within that group. |
| 2836.50 | A change to subheading 2836.50 from any other subheading, except from heading 2509, subheading 2517.41 or 2517.49, heading 2521, or subheading 2530.90. |
| 2836.60 | A change to subheading 2836.60 from any other subheading, except from subheading 2511.20. |
| 2836.70 | A change to subheading 2836.70 from any other subheading, except from heading 2607. |
| 2836.91 | A change to subheading 2836.91 from any other subheading. |
| 2836.92 | A change to subheading 2836.92 from any other subheading, except from subheading 2530.90. |
| 2836.99 | A change to bismuth carbonate of subheading 2836.99 from any other subheading, except from subheading 2617.90; or<br>A change to subheading 2836.99 from any other subheading, provided that the good classified in subheading 2836.99 is the product of a ''chemical reaction'' as defined in Note 1. |
| 2837.11–2837.20 | A change to subheading 2837.11 through 2837.20 from any other subheading, including another subheading within that group. |
| 2838 | A change to heading 2838 from any other heading. |
| 2839.11–2839.19 | A change to subheading 2839.11 through 2839.19 from any other subheading outside that group. |
| 2839.20–2839.90 | A change to subheading 2839.20 through 2839.90 from any other subheading, including another subheading within that group. |

| HTSUS | Tariff shift and/or other requirements |
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| 2840.11–2840.20 | A change to subheading 2840.11 through 2840.20 from any other subheading outside that group, except from subheading 2528.10. |
| 2840.30 | A change to subheading 2840.30 from any other subheading. |
| 2841.10–2841.40 | A change to subheading 2841.10 through 2841.40 from any other subheading, including another subheading within that group. |
| 2841.50 | A change to subheading 2841.50 from any other subheading, except from heading 2610. |
| 2841.61–2841.69 | A change to subheading 2841.61 through 2841.69 from any other subheading outside that group. |
| 2841.70 | A change to subheading 2841.70 from any other subheading, except from subheading 2613.90. |
| 2841.80 | A change to subheading 2841.80 from any other subheading, except from heading 2611. |
| 2841.90 | A change to subheading 2841.90 from any other subheading, provided that the good classified in subheading 2841.90 is the product of a ''chemical reaction'' as defined in Note 1. |
| 2842.10 | A change to subheading 2842.10 from any other subheading. |
| 2842.90 | A change to subheading 2842.90 from any other subheading, provided that the good classified in subheading 2842.90 is the product of a ''chemical reaction'' as defined in Note 1. |
| 2843.10 | A change to subheading 2843.10 from any other subheading, except from heading 7106, 7108, 7110, or 7112. |
| 2843.21–2843.29 | A change to subheading 2843.21 through 2843.29 from any other subheading, including another subheading within that group. |
| 2843.30–2843.90 | A change to subheading 2843.30 through 2843.90 from any other subheading, including another subheading within that group, except from subheading 2616.90. |
| 2844.10 | A change to subheading 2844.10 from any other subheading, except from subheading 2612.10. |
| 2844.20 | A change to subheading 2844.20 from any other subheading. |
| 2844.30 | A change to subheading 2844.30 from any other subheading, except from subheading 2844.20. |
| 2844.40–2844.50 | A change to subheading 2844.40 through 2844.50 from any other subheading, including another subheading within that group. |
| 2845 | A change to heading 2845 from any other heading. |
| 2846 | A change to heading 2846 from any other heading, except from subheading 2530.90. |
| 2847 | A change to heading 2847 from any other heading. |
| 2848 | A change to heading 2848 from any other heading. |
| 2849.10–2849.90 | A change to subheading 2849.10 through 2849.90 from any other subheading, including another subheading within that group. |
| 2850–2851 | A change to heading 2850 through 2851 from any other heading, including another heading within that group. |
| 2901.10–2901.90 | A change to subheading 2901.10 through 2901.90 from any other subheading, including another subheading within that group, except from acyclic petroleum oils of heading 2710 or from subheading 2711.13, 2711.14, 2711.19, or 2711.29. |
| 2902.11 | A change to subheading 2902.11 from any other subheading. |
| 2902.19 | A change to subheading 2902.19 from any other subheading, except from non-aromatic cyclic petroleum oils of subheading 2707.50, 2707.99, or heading 2710. |
| 2902.20 | A change to subheading 2902.20 from any other subheading, except from subheading 2707.10, 2707.50, or 2707.99. |
| 2902.30 | A change to subheading 2902.30 from any other subheading, except from subheading 2707.20, 2707.50, or 2707.99. |
| 2902.41–2902.44 | A change to subheading 2902.41 through 2902.44 from any other subheading, including another subheading within that group, except from subheading 2707.30, 2707.50 or 2707.99. |
| 2902.50 | A change to subheading 2902.50 from any other subheading. |
| 2902.60 | A change to subheading 2902.60 from any other subheading, except from subheading 2707.30, 2707.50, 2707.99, or heading 2710. |
| 2902.70–2902.90 | A change to subheading 2902.70 through 2902.90 from any other subheading, including another subheading within that group, except from subheading 2707.50, 2707.99, or heading 2710. |
| 2903.11–2903.30 | A change to subheading 2903.11 through 2903.30 from any other subheading, including another subheading within that group. |
| 2903.41–2903.49 | A change to subheading 2903.41 through 2903.49 from any other subheading outside that group. |
| 2903.51–2904.90 | A change to subheading 2903.51 through 2904.90 from any other subheading, including another subheading within that group. |
| 2905.11–2905.19 | A change to subheading 2905.11 through 2905.19 from any other subheading, including another subheading within that group. |
| 2905.22–2905.29 | A change to subheading 2905.22 through 2905.29 from any other subheading, including another subheading within that group, except from subheading 1301.90, 3301.90, or 3805.90. |
| 2905.31–2905.44 | A change to subheading 2905.31 through 2905.44 from any other subheading, including another subheading within that group. |
| 2905.45 | A change to subheading 2905.45 from any other subheading, except from heading 1520. |
| 2905.49–2905.50 | A change to subheading 2905.49 through 2905.50 from any other subheading, including another subheading within that group. |
| 2906.11 | A change to subheading 2906.11 from any other subheading, except from subheading 3301.24 or 3301.25. |
| 2906.12–2906.13 | A change to subheading 2906.12 through 2906.13 from any other subheading, including another subheading within that group. |
| 2906.14 | A change to subheading 2906.14 from any other subheading, except from heading 3805. |
| 2906.19 | A change to subheading 2906.19 from any other subheading, except from subheading 3301.90 or 3805.90. |
| 2906.21 | A change to subheading 2906.21 from any other subheading. |
| 2906.29 | A change to subheading 2906.29 from any other subheading, except from subheading 2707.60 or 3301.90. |
| 2907.11 | A change to subheading 2907.11 from any other subheading, except from subheading 2707.60. |
| 2907.12–2907.22 | A change to subheading 2907.12 through 2907.22 from any other subheading, including another subheading within that group, except from subheading 2707.99. |
| 2907.23 | A change to subheading 2907.23 from any other subheading. |

| HTSUS | Tariff shift and/or other requirements |
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| 2907.29–2907.30 | A change to subheading 2907.29 through 2907.30 from any other subheading, including another subheading within that group, except from subheading 2707.99. |
| 2908 | A change to heading 2908 from any other heading. |
| 2909.11–2909.49 | A change to subheading 2909.11 through 2909.49 from any other subheading, including another subheading within that group. |
| 2909.50 | A change to subheading 2909.50 from any other subheading, except from subheading 3301.90. |
| 2909.60 | A change to subheading 2909.60 from any other subheading. |
| 2910.10–2910.90 | A change to subheading 2910.10 through 2910.90 from any other subheading, including another subheading within that group. |
| 2911 | A change to heading 2911 from any other heading. |
| 2912.11–2912.13 | A change to subheading 2912.11 through 2812.13 from any other subheading, including another subheading within that group. |
| 2912.19–2912.49 | A change to subheading 2912.19 through 2912.49 from any other subheading, including another subheading within that group, except from subheading 3301.90. |
| 2912.50–2912.60 | A change to subheading 2912.50 through 2912.60 from any other subheading, including another subheading within that group. |
| 2913 | A change to heading 2913 from any other heading. |
| 2914.11–2914.19 | A change to subheading 2914.11 through 2914.19 from any other subheading, including another subheading within that group, except from subheading 3301.90. |
| 2914.21–2914.22 | A change to subheading 2914.21 through 2914.22 from any other subheading, including another subheading within that group. |
| 2914.23 | A change to subheading 2914.23 from any other subheading, except from subheading 3301.90. |
| 2914.29 | A change to subheading 2914.29 from any other subheading, except from subheading 3301.90 or 3805.90. |
| 2914.31–2914.39 | A change to subheading 2914.31 through 2914.39 from any other subheading outside that group, except from subheading 3301.90. |
| 2914.40–2914.70 | A change to subheading 2914.40 through 2914.70 from any other subheading, including another subheading within that group, except from subheading 3301.90. |
| 2915.11–2915.35 | A change to subheading 2915.11 through 2915.35 from any other subheading, including another subheading within that group. |
| 2915.39 | A change to subheading 2915.39 from any other subheading, except from subheading 3301.90. |
| 2915.40–2915.90 | A change to subheading 2915.40 through 2915.90 from any other subheading, including another subheading within that group. |
| 2916.11–2916.20 | A change to subheading 2916.11 through 2916.20 from any other subheading, including another subheading within that group. |
| 2916.31–2916.39 | A change to subheading 2916.31 through 2916.39 from any other subheading, including another subheading within that group, except from subheading 3301.90. |
| 2917.11–2917.39 | A change to subheading 2917.11 through 2917.39 from any other subheading, including another subheading within that group. |
| 2918.11–2918.22 | A change to subheading 2918.11 through 2918.22 from any other subheading, including another subheading within that group. |
| 2918.23 | A change to subheading 2918.23 from any other subheading, except from subheading 3301.90. |
| 2918.29–2918.30 | A change to subheading 2918.29 through 2918.30 from any other subheading, including another subheading within that group. |
| 2918.90 | A change to subheading 2918.90 from any other subheading, except from heading 3301.90. |
| 2919 | A change to heading 2919 from any other heading. |
| 2920.10–2926.90 | A change to subheading 2920.10 through 2926.90 from any other subheading, including another subheading within that group. |
| 2927–2928 | A change to heading 2927 through 2928 from any other heading, including another heading within that group. |
| 2929.10–2930.90 | A change to subheading 2929.10 through 2930.90 from any other subheading, including another subheading within that group. |
| 2931 | A change to heading 2931 from any other heading. |
| 2932.11–2932.99 | A change to subheading 2932.11 through 2932.99 from any other subheading, including another subheading within that group, except from subheading 3301.90. |
| 2933.11–2934.90 | A change to subheading 2933.11 through 2934.90 from any other subheading, including another subheading within that group. |
| 2935 | A change to heading 2935 from any other heading. |
| 2936.10–2936.29 | A change to subheading 2936.10 through 2936.29 from any other subheading, including another subheading within that group. |
| 2936.90 | A change to subheading 2936.90 from any other subheading, except from subheading 2936.10 through 2936.29. |
| 2937–2941 | A change to heading 2937 through 2941 from any other heading, including another heading within that group. |
| 2942 | A change to heading 2942 from any other chapter. |
| 3001.10 | A change to subheading 3001.10 from any other subheading, except from subheading 0206.10 through 0208.90 or 0305.20, heading 0504 or 0510, or subheading 0511.99 if the change from these provisions is not to a powder classified in subheading 3001.10. |
| 3001.20–3001.90 | A change to subheading 3001.20 through 3001.90 from any other subheading, including another subheading within that group. |
| 3002.10–3002.90 | A change to subheading 3002.10 through 3002.90 from any other subheading, including another subheading within that group. |
| 3002.90 | A change to subheading 3002.90 from any other subheading. |
| 3003.10 | A change to subheading 3003.10 from any other subheading, except from subheading 2941.10, 2941.20, or 3003.20. |
| 3003.20 | A change to subheading 3003.20 from any other subheading, except from subheading 2941.30 through 2941.90. |
| 3003.31 | A change to subheading 3003.31 from any other subheading, except from subheading 2937.91. |

| HTSUS | Tariff shift and/or other requirements |
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| 3003.39 | A change to subheading 3003.39 from any other subheading, except from hormones or their derivatives classified in Chapter 29. |
| 3003.40 | A change to subheading 3003.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, or 1302.39 or alkaloids or derivatives thereof classified in Chapter 29. |
| 3003.90 | A change to subheading 3003.90 from any other subheading, provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content. |
| 3004.10 | A change to subheading 3004.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.10, or 3003.20. |
| 3004.20 | A change to subheading 3004.20 from any other subheading, except from subheading 2941.30 through 2941.90 or 3003.20. |
| 3004.31 | A change to subheading 3004.31 from any other subheading, except from subheading 2937.91, 3003.31, or 3003.39. |
| 3004.32 | A change to subheading 3004.32 from any other subheading, except from subheading 3003.39 or adrenal cortical hormones classified in Chapter 29. |
| 3004.39 | A change to subheading 3004.39 from any other subheading, except from subheading 3003.39 or hormones or derivatives thereof classified in Chapter 29. |
| 3004.40 | A change to subheading 3004.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, or 3003.40 or alkaloids or derivatives thereof classified in Chapter 29. |
| 3004.50 | A change to subheading 3004.50 from any other subheading, except from subheading 3003.90 or vitamins classified in Chapter 29 or products classified in heading 2936. |
| 3004.90 | A change to subheading 3004.90 from any other subheading, except from subheading 3003.90, and provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content. |
| 3005.10 | A change to subheading 3005.10 from any other subheading. |
| 3006.10 | A change to subheading 3006.10 from any other subheading, except from subheading 1212.20 or 4206.10. |
| 3006.20–3006.60 | A change to subheading 3006.20 through 3006.60 from any other subheading, including another subheading within that group. |
| 3101 | A change to heading 3101 from any other heading, except from subheading 2301.20 or from powders and meals of subheading 0506.90, heading 0508, or subheading 0511.91 or 0511.99. |
| 3102.10–3102.21 | A change to subheading 3102.10 through 3102.21 from any other subheading, including another subheading within that group. |
| 3102.29 | A change to subheading 3102.29 from any other subheading, except from subheading 3102.21 or 3102.30. |
| 3102.30 | A change to subheading 3102.30 from any other subheading. |
| 3102.40 | A change to subheading 3102.40 from any other subheading, except from subheading 3102.30. |
| 3102.50 | A change to subheading 3102.50 from any other subheading. |
| 3102.60 | A change to subheading 3102.60 from any other subheading, except from subheading 2834.29 or 3102.30. |
| 3102.70 | A change to subheading 3102.70 from any other subheading. |
| 3102.80 | A change to subheading 3102.80 from any other subheading, except from subheading 3102.10 or 3102.30. |
| 3102.90 | A change to subheading 3102.90 from any other subheading, except from subheading 3102.10 through 3102.80. |
| 3103.10–3103.20 | A change to subheading 3103.10 through 3103.20 from any other subheading, including another subheading within that group. |
| 3103.90 | A change to subheading 3103.90 from any other subheading, except from subheading 3103.10 or 3103.20. |
| 3104.10–3104.30 | A change to subheading 3104.10 through 3104.30 from any other subheading, including another subheading within that group. |
| 3104.90 | A change to subheading 3104.90 from any other subheading, except from subheading 3104.10 through 3104.30. |
| 3105.10 | A change to subheading 3105.10 from any other subheading, except from Chapter 31. |
| 3105.20 | A change to subheading 3105.20 from any other heading, except from heading 3102 through 3104. |
| 3105.30–3105.40 | A change to subheading 3105.30 through 3105.40 from any other subheading, including another subheading within that group. |
| 3105.51–3105.59 | A change to subheading 3105.51 through 3105.59 from any other subheading, including another subheading within that group, except from subheading 3102.10 through 3103.90 or 3105.30 through 3105.40. |
| 3105.60 | A change to subheading 3105.60 from any other subheading, except from heading 3103 through 3104. |
| 3105.90 | A change to subheading 3105.90 from any other chapter, except from subheading 2834.21. |
| 3201.10–3202.90 | A change to subheading 3201.10 through 3202.90 from any other subheading, including another subheading within that group. |
| 3203 | A change to heading 3203 from any other heading. |
| 3204.11–3204.17 | A change to subheading 3204.11 through 3204.17 from any other subheading, including another subheading within that group. |
| 3204.19 | A change to subheading 3204.19 from any other subheading, except from subheading 3204.11 through 3204.17. |
| 3204.20–3204.90 | A change to subheading 3204.20 through 3204.90 from any other subheading, including another subheading within that group. |
| 3205 | A change to heading 3205 from any other heading. |
| 3206.11–3206.19 | A change to subheading 3206.11 through 3206.19 from any other subheading outside that group. |
| 3206.20–3209.90 | A change to subheading 3206.20 through 3209.90 from any other subheading, including another subheading within that group. |
| 3210 | A change to heading 3210 from any other heading. |
| 3211 | A change to heading 3211 from any other heading, except from subheading 3806.20. |
| 3212.10–3212.90 | A change to subheading 3212.10 through 3212.90 from any other subheading, including another subheading within that group. |
| 3213 | A change to heading 3213 from any other heading. |
| 3214.10–3214.90 | A change to subheading 3214.10 through 3214.90 from any other subheading, including another subheading within that group, except from subheading 3824.50. |
| 3215 | A change to heading 3215 from any other heading. |

| HTSUS | Tariff shift and/or other requirements |
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| 3301.11–3301.90 | A change to subheading 3301.11 through 3301.90 from any other subheading, including another subheading within that group. |
| 3302 | A change to heading 3302 from any other heading, except from subheading 2106.90 or heading 2207, 2208, or 3301. |
| 3303 | A change to heading 3303 from any other heading, except from subheading 3302.90. |
| 3304.10–3306.10 | A change to subheading 3304.10 through 3306.10 from any other subheading, including another subheading within that group. |
| 3306.20 | A change to subheading 3306.20 from any other subheading, except from Chapter 54. |
| 3306.90–3307.90 | A change to subheading 3306.90 through 3307.90 from any other subheading, including another subheading within that group. |
| 3401 | A change to heading 3401 from any other heading. |
| 3402.11 | A change to subheading 3402.11 from any other subheading, except from subheading 3817.10. |
| 3402.12–3402.20 | A change to subheading 3402.11 through 3402.20 from any other subheading, including another subheading within that group. |
| 3402.90 | A change to subheading 3402.90 from any other heading. |
| 3403.11–3403.19 | A change to subheading 3403.11 through 3403.19 from any other subheading, including another subheading within that group, except from heading 2710 or 2712. |
| 3403.91–3403.99 | A change to subheading 3403.91 through 3403.99 from any other subheading, including another subheading within that group. |
| 3404.10–3404.20 | A change to subheading 3404.10 through 3404.20 from any other subheading, including another subheading within that group. |
| 3404.90 | A change to subheading 3404.90 from any other subheading, except from heading 1521 or subheading 2712.20 or 2712.90. |
| 3405.10–3405.90 | A change to subheading 3405.10 through 3405.90 from any other subheading, including another subheading within that group. |
| 3406–3407 | A change to heading 3406 through 3407 from any other heading, including another heading within that group. |
| 3501.10–3501.90 | A change to subheading 3501.10 through 3501.90 from any other subheading, including another subheading within that group. |
| 3502.11–3502.19 | A change to subheading 3502.11 through 3502.19 from any other subheading outside that group, except from heading 0407. |
| 3502.20–3502.90 | A change to subheading 3502.20 through 3502.90 from any other subheading, including another subheading within that group. |
| 3503–3504 | A change to heading 3503 through 3504 from any other heading, including another heading within that group. |
| 3505.10 | A change to subheading 3505.10 from any other subheading. |
| 3505.20 | A change to subheading 3505.20 from any other subheading, except from heading 1108. |
| 3506.10 | A change to subheading 3506.10 from any other subheading, except from heading 3503 or subheading 3501.90. |
| 3506.91–3506.99 | A change to subheading 3506.91 through 3506.99 from any other subheading, including another subheading within that group. |
| 3507 | A change to heading 3507 from any other heading. |
| 3601–3606 | A change to heading 3601 through 3606 from any other heading, including any other heading within that group. |
| 3701–3703 | A change to heading 3701 through 3703 from any other heading outside that group. |
| 3704–3706 | A change to heading 3704 through 3706 from any other heading, including another heading within that group. |
| 3707.10–3707.90 | A change to subheading 3707.10 through 3707.90 from any other subheading, including another subheading within that group. |
| 3801.10 | A change to subheading 3801.10 from any other subheading. |
| 3801.20 | A change to subheading 3801.20 from any other subheading, except from heading 2504 or subheading 3801.10. |
| 3801.30 | A change to subheading 3801.30 from any other subheading. |
| 3801.90 | A change to subheading 3801.90 from any other subheading, except from heading 2504. |
| 3802–3805 | A change to heading 3802 through 3805 from any other heading, including another heading within that group. |
| 3806.10–3806.90 | A change to subheading 3806.10 through 3806.90 from any other subheading, including another subheading within that group. |
| 3807 | A change to heading 3807 from any other heading. |
| 3808.10 | A change to subheading 3808.10 from any other subheading, except from subheading 1302.14 or from any insecticide classified in Chapter 28 or 29. |
| 3808.20 | A change to subheading 3808.20 from any other subheading, except from fungicides classified in Chapter 28 or 29. |
| 3808.30 | A change to subheading 3808.30 from any other subheading, except from herbicides, antisprouting products and plant-growth regulators classified in Chapter 28 or 29; or<br>A change to a mixture of subheading 3808.30 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients. |
| 3808.40 | A change to subheading 3808.40 from any other subheading. |
| 3808.90 | A change to subheading 3808.90 from any other subheading, except from rodenticides and other pesticides classified in Chapter 28 or 29; or<br>A change to a mixture of subheading 3808.90 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients. |
| 3809.10 | A change to subheading 3809.10 from any other subheading, except from subheading 3505.10. |
| 3809.91–3809.99 | A change to subheading 3809.91 through 3809.99 from any other subheading, including another subheading within that group. |
| 3810–3816 | A change to heading 3810 through 3816 from any other heading, including another heading within that group. |
| 3817.10–3817.20 | A change to subheading 3817.10 through 3817.20 from any other subheading, including another subheading within that group, except from subheading 2902.90. |
| 3818 | A change to heading 3818 from any other heading. |

| HTSUS | Tariff shift and/or other requirements |
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| 3819 | A change to heading 3819 from any other heading, except from heading 2710. |
| 3820 | A change to heading 3820 from any other heading, except from subheading 2905.31. |
| 3821 | A change to heading 3821 from any other heading. |
| 3822 | A change to heading 3822 from any other heading, except from subheading 3002.10 or 3502.90 or heading 3504. |
| 3823.11–3823.13 | A change to subheading 3823.11 through 3823.13 from any other subheading, including another subheading within that group, except from heading 1520. |
| 3823.19 | A change to subheading 3823.19 from any other subheading. |
| 3823.70 | A change to subheading 3823.70 from any other subheading, except from heading 1520. |
| 3824.10 | A change to subheading 3824.10 from any other subheading, except from heading 3505, subheading 3806.10 or 3806.20, or heading 3903, 3905, 3906, 3909, 3911, or 3913. |
| 3824.20 | A change to subheading 3824.20 from any other subheading. |
| 3824.30 | A change to subheading 3824.30 from any other subheading, except from heading 2849. |
| 3824.40 | A change to subheading 3824.40 from any other subheading. |
| 3824.50 | A change to subheading 3824.50 from any other subheading, except from subheading 3214.90. |
| 3824.60 | A change to subheading 3824.60 from any other subheading. |
| 3824.71–3824.90 | A change to subheading 3824.71 through 3824.90 from any other subheading, including another subheading within that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound. |
| **(g)** | **Section VII: Chapters 39 through 40** |

**Chapter 39 Note:** The country of origin of goods classified in subheadings 3921.12.15, 3921.13.15, and 3921.90.2550 shall be determined under the provisions of § 102.21.

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| 3901–3915 | A change to heading 3901 through 3915 from any other heading, including another heading within that group, provided that the domestic polymer content is no less than 40 percent by weight of the total polymer content. |
| 3916.10–3918.90 | A change to subheading 3916.10 through 3918.90 from any other subheading, including another subheading within that group. |
| 3919.10–3919.90 | A change to subheading 3919.10 through 3919.90 from any other subheading outside that group. |
| 3920.10–3921.90 | A change to subheading 3920.10 through 3921.90 from any other subheading, including another subheading within that group. |
| 3922–3926 | A change to heading 3922 through 3926 from any other heading, including another heading within that group. |
| 4001.10–4001.22 | A change to subheading 4001.10 through 4001.22 from any other subheading, including another subheading within that group. |
| 4001.29 | A change to subheading 4001.29 from any other subheading, except from subheading 4001.21 or 4001.22. |
| 4001.30 | A change to subheading 4001.30 from any other subheading. |
| 4002.11–4002.70 | A change to subheading 4002.11 through 4002.70 from any other subheading, including another subheading within that group. |
| 4002.80–4002.99 | A change to subheading 4002.80 through 4002.99 from any other subheading, including another subheading within that group, provided that the domestic rubber content is no less than 40 percent by weight of the total rubber content. |
| 4003–4004 | A change to heading 4003 through 4004 from any other heading, including another heading within that group. |
| 4005 | A change to heading 4005 from any other heading, except from heading 4001 or 4002. |
| 4006–4010 | A change to heading 4006 through 4010 from any other heading, including another heading within that group. |
| 4011.10–4012.90 | A change to subheading 4011.10 through 4012.90 from any other subheading, including another subheading within that group. |
| 4013 | A change to heading 4013 from any other heading. |
| 4014.10–4014.90 | A change to subheading 4014.10 through 4014.90 from any other subheading, including another subheading within that group. |
| 4015 | A change to heading 4015 from any other heading. |
| 4016.10–4016.99 | A change to subheading 4016.10 through 4016.99 from any other subheading, including another subheading within that group. |
| 4017 | A change to heading 4017 from any other heading. |
| **(h)** | **Section VIII: Chapters 41 through 43** |
| 4101–4103 | A change to heading 4101 through 4103 from any other chapter. |
| 4104–4107 | A change to heading 4104 through 4107 from any other heading, including another heading within that group. |
| 4108–4111 | A change to heading 4108 through 4111 from any other heading, including another heading within that group. |

**Chapter 42 Note:** The country of origin of goods classified in subheadings 4202.12.40 through 4202.12.80, 4202.22.40 through 4202.22.80, 4202.32.40 through 4202.32.95, 4202.92.15 through 4202.92.30, and 4202.92.60 through 4202.92.90 shall be determined under the provisions of § 102.21.

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| 4201 | A change to heading 4201 from any other heading. |
| 4202.11 | A change to subheading 4202.11 from any other heading. |
| 4202.12–4202.22 | A change to subheading 4202.12 through 4202.22 from any other heading, provided that the change does not result from the assembly of foreign cut components. |
| 4202.29 | A change to subheading 4202.29 from any other heading. |
| 4202.31–4202.32 | A change to subheading 4202.31 through 4202.32 from any other heading, provided that the change does not result from the assembly of foreign cut components. |
| 4202.39 | A change to subheading 4202.39 from any other heading. |
| 4202.91–4202.99 | A change to subheading 4202.91 through 4202.99 from any other heading, provided that the change does not result from the assembly of foreign cut components. |
| 4203–4206 | A change to heading 4203 through 4206 from any other heading, including another heading within that group. |

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| 4301 | A change to heading 4301 from any other chapter. |
| 4302.11–4302.20 | A change to subheading 4302.11 through 4302.20 from any other heading. |
| 4302.30 | A change to subheading 4302.30 from any other subheading, provided that the change does not result from the assembly of foreign cut fur components. |
| 4303–4304 | A change to heading 4303 through 4304 from any other heading, including another heading within that group. |
| **(i)** | **Section IX: Chapters 44 through 46** |
| 4401–4411 | A change to heading 4401 through 4411 from any other heading, including another heading within that group. |
| 4412 | A change to heading 4412 from any other heading; or<br>A change to surface-covered plywood of heading 4412 from any other plywood that is not surface-covered or is surface-covered only with a clear or transparent material which does not obscure the grain, texture, or markings of the face ply. |
| 4413–4421 | A change to heading 4413 through 4421 from any other heading, including another heading within that group. |
| 4501 | A change to heading 4501 from any other heading. |
| 4502 | A change to heading 4502 from any other heading, except from heading 4501. |
| 4503–4504 | A change to heading 4503 through 4504 from any other heading, including another heading within that group. |
| 4601 | A change to subheading 4601.10 through 4601.99 from any other subheading, including another subheading within that group. |
| 4602 | A change to heading 4602 from any other heading. |
| **(j)** | **Section X: Chapters 47 through 49** |
| 4701–4702 | A change to heading 4701 through 4702 from any other heading, including another heading within that group. |
| 4703.11–4704.29 | A change to subheading 4703.11 through 4704.29 from any other subheading, including another subheading within that group. |
| 4705–4707 | A change to heading 4705 through 4707 from any other heading, including another heading within that group. |
| 4801–4807 | A change to heading 4801 through 4807 from any other heading, including another heading within that group. |
| 4808.10 | A change to subheading 4808.10 from any other heading. |
| 4808.20–4808.30 | A change to subheading 4808.20 through 4808.30 from any other heading, except from heading 4804. |
| 4808.90 | A change to subheading 4808.90 from any other chapter. |
| 4809 | A change to heading 4809 from any other heading. |
| 4810 | A change to heading 4810 from any other heading. |
| 4811.10–4811.31 | A change to subheading 4811.10 through 4811.31 from any other heading. |
| 4811.39 | A change to subheading 4811.39 from any other heading, except from heading 4804. |
| 4811.40–4811.90 | A change to subheading 4811.40 through 4811.90 from any other heading. |
| 4812–4814 | A change to heading 4812 through 4814 from any other heading, including another heading within that group. |
| 4815 | A change to heading 4815 from any other heading. |
| 4816 | A change to heading 4816 from any other heading, except from heading 4809. |
| 4817–4822 | A change to heading 4817 through 4822 from any other heading, including another heading within that group. |
| 4823.11 | A change to subheading 4823.11 from any other subheading. |
| 4823.19 | A change to subheading 4823.19 from any other subheading. |
| 4823.20–4823.59 | A change to subheading 4823.20 through 4823.59 from any other chapter. |
| 4823.60–4823.70 | A change to subheading 4823.60 through 4823.70 from any other subheading, including another subheading within that group. |
| 4823.90 | A change to a good of subheading 4823.90, other than to cards not punched and for punchcard machines, from any other subheading; or<br>A change to cards not punched and for punchcard machines of subheading 4823.90 from any other chapter. |
| 4901–4911 | A change to heading 4901 through 4911 from any other heading, including another heading within that group. |
| **(k)** | **Section XII: Chapters 64 through 67** |

**Chapter 64 Note:** For purposes of this chapter, the term ''formed uppers'' means uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom. The country of origin of goods classified in subheadings 6405.20.60, 6406.10.77, 6406.10.90, and 6406.99.15 shall be determined under the provisions of § 102.21.

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| 6401–6405 | A change to heading 6401 through 6405 from any other heading outside that group, except from formed uppers. |
| 6406.10 | A change to subheading 6406.10 from any other subheading. |
| 6406.20–6406.99 | A change to subheading 6406.20 through 6406.99 from any other chapter. |
| 6505.10 | A change to subheading 6505.10 from any other subheading. |
| 6506 | A change to heading 6506 from any other heading, except from heading 6501 through 6502; or<br>A change to heading 6506 from heading 6501 by means of a blocking process; or<br>A change to heading 6506 from heading 6502, provided that the change is the result of at least three processing steps (e.g. dyeing, blocking, trimming, or adding a sweatband). |
| 6507 | A change to heading 6507 from any other heading. |
| 6602 | A change to heading 6602 from any other heading. |
| 6603.10 | A change to subheading 6603.10 from any other heading. |
| 6603.20 | A change to subheading 6603.20 from any other heading; or<br>A change to subheading 6603.20 from subheading 6603.90, except when that change is pursuant to General Rule of Interpretation 2(a). |
| 6603.90 | A change to subheading 6603.90 from any other heading. |
| 6701 | A change to heading 6701 from any other heading; or<br>A change to articles of feather or down of heading 6701 from feathers or down. |

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| 6702–6704 | A change to heading 6702 through 6704 from any other heading, including another heading within that group. |
| **(l)** | **Section XIII: Chapters 68 through 70** |
| 6801–6808 | A change to heading 6801 through 6808 from any other heading, including another heading within that group. |
| 6809.11 | A change to subheading 6809.11 from any other heading. |
| 6809.19 | A change to subheading 6809.19 from any other heading. |
| 6809.90 | A change to subheading 6809.90 from any other subheading. |
| 6810.11–6810.19. | A change to subheading 6810.11 through 6810.19 from any other heading. |
| 6810.91 | A change to subheading 6810.91 from any other subheading. |
| 6810.99 | A change to subheading 6810.99 from any other heading. |
| 6811.10 | A change to subheading 6811.10 from any other heading. |
| 6811.20 | A change to subheading 6811.20 from any other heading. |
| 6811.30 | A change to subheading 6811.30 from any other heading. |
| 6811.90 | A change to subheading 6811.90 from any other heading. |
| 6812.10 | A change to subheading 6812.10 from any other heading. |
| 6812.20 | A change to subheading 6812.20 from any other subheading. |
| 6812.30 | A change to subheading 6812.30 from any other subheading, except from subheading 6812.20. |
| 6812.40 | A change to subheading 6812.40 from any other subheading. |
| 6812.50 | A change to subheading 6812.50 from any other subheading. |
| 6812.60–6812.70. | A change to subheading 6812.60 through 6812.70 from any other subheading outside that group. |
| 6812.90 | A change to subheading 6812.90 from any other heading. |
| 6813 | A change to heading 6813 from any other heading. |
| 6814.10 | A change to subheading 6814.10 from any other heading. |
| 6814.90 | A change to subheading 6814.90 from any other heading. |
| 6815.10–6815.99. | A change to subheading 6815.10 through 6815.99 from any other subheading, including another subheading within that group. |
| 6901–6914 | A change to heading 6901 through 6914 from any other chapter. |
| **Chapter 70 Note:** The country of origin of goods classified in subheadings 7019.19.15 and 7019.19.28 shall be determined under the provisions of §102.21. | |
| 7001 | A change to heading 7001 from any other heading. |
| 7002 | A change to heading 7002 from any other heading. |
| 7003–7006 | A change to heading 7003 through 7006 from any other heading outside that group. |
| 7007 | A change to heading 7007 from any other heading. |
| 7008 | A change to heading 7008 from any other heading. |
| 7009.10 | A change to subheading 7009.10 from any other subheading. |
| 7009.91–7009.92 | A change to subheading 7009.91 through 7009.92 from any other heading. |
| 7010 | A change to heading 7010 from any other heading. |
| 7011 | A change to heading 7011 from any other heading, except from subheading 7003.30. |
| 7012–7018 | A change to heading 7012 through 7018 from any other heading, including another heading within that group; or<br>A change from uncut and unpolished glassware blanks classified in heading 7013 to cut and polished glassware classified in heading 7013, provided that there has been a substantial amount of both cutting and polishing operations in a single country. |
| 7019.11–7019.19 | A change to subheading 7019.11 through 7019.19 from any other heading. |
| 7019.31–7019.32 | A change to subheading 7019.31 through 7019.32 from any other subheading outside that group. |
| 7019.39 | A change to subheading 7019.39 from any other subheading. |
| 7019.40–7019.59 | A change to subheading 7019.40 through 7019.59 from any other subheading outside that group. |
| 7019.90 | A change to subheading 7019.90 from any other heading. |
| 7020. | A change to heading 7020 from any other heading, except from heading 7010 through 7018. |
| **(m)** | **Section XIV: Chapter 71** |
| 7101 | A change to heading 7101 from any other heading, except from heading 0307. |
| 7102–7103 | A change to heading 7102 through 7103 from any other chapter. |
| 7104–7105 | A change to heading 7104 through 7105 from any other heading, including another heading within that group. |
| 7106 | A change to heading 7106 from any other chapter. |
| 7107 | A change to heading 7107 from any other chapter, except from Chapter 72 through 76 or Chapter 78 through 83. |
| 7108 | A change to heading 7108 from any other chapter. |
| 7109 | A change to heading 7109 from any other chapter, except from Chapter 72 through 76 or Chapter 78 through 83. |
| 7110 | A change to heading 7110 from any other chapter. |
| 7111 | A change to heading 7111 from any other chapter, except from Chapter 72 through 76 or Chapter 78 through 83. |
| 7112 | A change to heading 7112 from any other heading. |
| 7113.11–7115.90 | A change to subheading 7113.11 through 7115.90 from any other subheading, including another subheading within that group. |
| 7116 | A change to heading 7116 from any other heading, except that pearls strung but without the addition of clasps or other ornamental features of precious metals or stones, shall have the origin of the pearls. |
| 7117–7118 | A change to heading 7117 through 7118 from any other heading, including another heading within that group. |
| **(n)** | **Section XV: Chapters 72 through 83** |

**Chapter 72 Note:** Notwithstanding the specific rules of this chapter, hot-rolled flat-rolled steel which is cold-reduced (by cold rolling) shall be treated as a good of the country in which the cold-rolled steel is produced.

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| 7201–7206 | A change to heading 7201 through 7206 from any other heading, including another heading within that group. |
| 7207 | A change to heading 7207 from any other heading, except from heading 7206. |
| 7208 | A change to heading 7208 from any other heading. |
| 7209 | A change to heading 7209 from any other heading, except from heading 7208 or 7211. |
| 7210 | A change to heading 7210 from any other heading, except from heading 7208 through 7212. |
| 7211 | A change to heading 7211 from any other heading, except from heading 7208 through 7209. |
| 7212 | A change to heading 7212 from any other heading, except from heading 7208 through 7211. |
| 7213 | A change to heading 7213 from any other heading. |
| 7214 | A change to heading 7214 from any other heading, except from heading 7213. |
| 7215 | A change to heading 7215 from any other heading, except from heading 7213 through 7214. |
| 7216 | A change to heading 7216 from any other heading, except from heading 7208 through 7215. |
| 7217 | A change to heading 7217 from any other heading, except from heading 7213 through 7215. |
| 7218 | A change to heading 7218 from any other heading. |
| 7219–7220 | A change to heading 7219 through 7220 from any other heading outside that group. |
| 7221–7222 | A change to heading 7221 through 7222 from any other heading outside that group. |
| 7223 | A change to heading 7223 from any other heading, except from heading 7221 through 7222. |
| 7224 | A change to heading 7224 from any other heading. |
| 7225–7226 | A change to heading 7225 through 7226 from any other heading outside that group. |
| 7227–7228 | A change to heading 7227 through 7228 from any other heading outside that group. |
| 7229 | A change to heading 7229 from any other heading, except from heading 7227 through 7228. |
| 7301–7307 | A change to heading 7301 through 7307 from any other heading, including another heading within that group. |
| 7308 | A change to heading 7308 from any other heading, except for changes resulting from the following processes performed on angles, shapes, or sections classified in heading 7216:<br>(a) drilling, punching, notching, cutting, cambering, or sweeping, whether performed individually or in combination;<br>(b) adding attachments or weldments for composite construction;<br>(c) adding attachments for handling purposes;<br>(d) adding weldments, connectors or attachments to H-sections or I-sections; provided that the maximum dimension of the weldments, connectors, or attachments is not greater than the dimension between the inner surfaces of the flanges of the H-sections or I-sections;<br>(e) painting, galvanizing, or otherwise coating; or<br>(f) adding a simple base plate without stiffening elements, individually or in combination with drilling, punching, notching, or cutting, to create an article suitable as a column. |
| 7309–7314 | A change to heading 7309 through 7314 from any other heading, including another heading within that group. |
| 7315.11–7315.12 | A change to subheading 7315.11 through 7315.12 from any other heading; or<br>A change to subheading 7315.11 through 7315.12 from subheading 7315.19 or 7315.90, except when that change is pursuant to General Rule of Interpretation 2(a). |
| 7315.19 | A change to subheading 7315.19 from any other subheading. |
| 7315.20–7315.89 | A change to subheading 7315.20 through 7315.89 from any other heading; or<br>A change to subheading 7315.20 through 7315.89 from subheading 7315.90, except when that change is pursuant to General Rule of Interpretation 2(a). |
| 7315.90 | A change to subheading 7315.90 from any other subheading. |
| 7316 | A change to heading 7316 from any other heading, except from heading 7312 or 7315. |
| 7317–7318 | A change to heading 7317 through 7318 from any other heading, including another heading within that group. |
| 7319 | A change to heading 7319 from any other heading. |
| 7320 | A change to heading 7320 from any other heading. |
| 7321.11–7321.83 | A change to subheading 7321.11 through 7321.83 from any other heading; or<br>A change to subheading 7321.11 through 7321.83 from heading 7321.90, except when that change is pursuant to General Rule of Interpretation 2(a). |
| 7321.90 | A change to subheading 7321.90 from any other heading. |
| 7322–7323 | A change to heading 7322 through 7323 from any other heading, including another heading within that group. |
| 7324.10–7324.29 | A change to subheading 7324.10 through 7324.29 from any other subheading, including another subheading within that group. |
| 7324.90 | A change to subheading 7324.90 from any other subheading. |
| 7325–7326 | A change to heading 7325 through 7326 from any other heading, including another heading within that group. |
| 7401–7407 | A change to heading 7401 through 7407 from any other heading, including another heading within that group. |
| 7408 | A change to heading 7408 from any other heading, except from heading 7407. |
| 7409 | A change to heading 7409 from any other heading. |
| 7410 | A change to heading 7410 from any other heading, except from plate, sheet, or strip classified in heading 7409 of a thickness less than 5mm. |
| 7411–7418 | A change to heading 7411 through 7418 from any other heading, including another heading within that group. |
| 7419.10–7419.99 | A change to subheading 7419.10 through 7419.99 from any other subheading, including another subheading within that group. |
| 7501 | A change to heading 7501 from any other heading. |
| 7502 | A change to heading 7502 from any other heading. |
| 7503 | A change to heading 7503 from any other heading. |
| 7504 | A change to heading 7504 from any other heading. |
| 7505 | A change to heading 7505 from any other heading. |
| 7506 | A change to heading 7506 from any other heading; or<br>A change to foil, not exceeding 0.15 mm in thickness, from any other good of heading 7506, provided that there has been a reduction in thickness of no less than 50 percent. |
| 7507.11–7508.90 | A change to subheading 7507.11 through 7508.90 from any other subheading, including another subheading within that group. |
| 7601–7604 | A change to heading 7601 through 7604 from any other heading, including another heading within that group. |
| 7605 | A change to heading 7605 from any other heading, except from heading 7604. |

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| 7606–7615 | A change to heading 7606 through 7615 from any other heading, including another heading within that group. |
| 7616.10–7616.99 | A change to subheading 7616.10 through 7616.99 from any other subheading, including another subheading within that group. |
| 7801–7803 | A change to heading 7801 through 7803 from any other heading, including another heading within that group. |
| 7804.11–7804.20 | A change to subheading 7804.11 through 7804.20 from any other subheading, including another subheading within that group; or<br>A change to any of the following goods classified in subheading 7804.11 through 7804.20, including from materials also classified in subheading 7804.11 through 7804.20: powder except from flakes; flakes except from powder; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate. |
| 7805–7806 | A change to heading 7805 through 7806 from any other heading, including another heading within that group; or<br>A change to any of the following goods classified in heading 7805 through 7806, including from materials also classified in heading 7805 through 7806: tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands. |
| 7901–7906 | A change to heading 7901 through 7906 from any other heading, including another heading within that group; or<br>A change to any of the following goods classified in heading 7901 through 7906, including from materials also classified in heading 7901 through 7906: Matte; unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes. |
| 7907 | A change to heading 7907 from any other heading. |
| 8001 | A change to heading 8001 from any other heading. |
| 8002–8004 | A change to heading 8002 through 8004 from any other heading, including another heading within that group; or<br>A change to any of the following goods classified in heading 8002 through 8004, including from materials also classified in heading 8002 through 8004: Bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate. |
| 8005 | A change to heading 8005 from any other heading; or<br>A change to foil of heading 8005 from powder or flakes of that heading; or<br>A change to powder of heading 8005 from foil of that heading; or<br>A change to flakes of heading 8005 from foil of that heading. |
| 8006–8007 | A change to heading 8006 through 8007 from any other heading, including another heading within that group; or<br>A change to any of the following goods classified in heading 8006 through 8007, including from materials also classified in heading 8006 through 8007: Tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands. |
| **Chapter 81 Note:** Waste and scrap are products of the country in which they are collected. | |
| 8101.10–8101.92 | A change to subheading 8101.10 through 8101.92 from any other subheading, including another subheading within that group; or<br>A change to any of the following goods classified in subheading 8101.10 through 8101.92, including from materials also classified in subheading 8101.10 through 8101.92: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip. |
| 8101.93 | A change to subheading 8101.93 from any other subheading, except from subheading 8101.92. |
| 8101.99 | A change to subheading 8101.99 from any other subheading; or<br>A change to any of the following goods classified in subheading 8101.99, including from materials also classified in subheading 8101.99: Tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands. |
| 8102.10–8102.92 | A change to subheading 8102.10 through 8102.92 from any other subheading, including another subheading within that group; or<br>A change to any of the following goods classified in subheading 8102.10 through 8102.92, including from materials also classified in subheading 8102.10 through 8102.92: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip. |
| 8102.93 | A change to subheading 8102.93 from any other subheading, except from subheading 8102.92. |
| 8102.99 | A change to subheading 8102.99 from any other subheading. |
| 8103.10–8113.00 | A change to subheading 8103.10 through 8113.00 from any other subheading, including another subheading within that group; or<br>A change to any of the following goods classified in subheading 8103.10 through 8113.00, including from materials also classified in subheading 8103.10 through 8113.00: Matte; unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands. |
| 8201.10–8202.40 | A change to subheading 8201.10 through 8202.40 from any other subheading, including another subheading within that group. |
| 8202.91 | A change to subheading 8202.91 from any other subheading, except from subheading 8202.99. |
| 8202.99 | A change to subheading 8202.99 from any other heading. |
| 8203.10–8207.90 | A change to subheading 8203.10 through 8207.90 from any other subheading, including another subheading within that group. |
| 8208–8215 | A change to heading 8208 through 8215 from any other heading, including another heading within that group. |
| 8301.10–8301.50 | A change to subheading 8301.10 through 8301.50 from any other subheading, including another subheading within that group, except from subheading 8301.60 when that change is pursuant to General Rule of Interpretation 2(a). |

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| 8301.60–8301.70 | A change to subheading 8301.60 through 8301.70 from any other chapter. |
| 8302.10–8302.60 | A change to subheading 8302.10 through 8302.60 from any other subheading, including another subheading within that group. |
| 8303–8304 | A change to heading 8303 through 8304 from any other heading, including another heading within that group. |
| 8305.10–8305.90 | A change to subheading 8305.10 through 8305.90 from any other subheading, including another subheading within that group. |
| 8306–8307 | A change to heading 8306 through 8307 from any other heading, including another heading within that group. |
| 8308.10–8308.90 | A change to subheading 8308.10 through 8308.90 from any other subheading, including another subheading within that group. |
| 8309–8310 | A change to heading 8309 through 8310 from any other heading, including another heading within that group. |
| 8311.10–8311.90 | A change to subheading 8311.10 through 8311.90 from any other subheading, including another subheading within that group. |
| **(o)** | **Section XVI: Chapters 84 through 85** |
| **Note:** Tariff changes within Chapters 84 and 85 which occur only as a result of the application of General Rule of Interpretation 2(a) of the HTSUS shall not be sufficient to confer origin. | |
| 8401.10 | A change to subheading 8401.10 from any other subheading. |
| 8401.20 | A change to subheading 8401.20 from any other subheading; or<br>A change to completed machinery and apparatus classified in subheading 8401.20 from parts classified in subheading 8401.20. |
| 8401.30 | A change to subheading 8401.30 from any other subheading. |
| 8401.40 | A change to subheading 8401.40 from any other heading. |
| 8402.11–8402.12 | A change to subheading 8402.11 through 8402.12 from any other subheading outside that group. |
| 8402.19–8402.20 | A change to subheading 8402.19 through 8402.20 from any other subheading, including another subheading within that group. |
| 8402.90 | A change to subheading 8402.90 from any other heading, except from heading 7303, 7304, 7305, or 7306 unless the change from these headings involves bending to shape. |
| 8403.10 | A change to subheading 8403.10 from any other subheading. |
| 8403.90 | A change to subheading 8403.90 from any other heading. |
| 8404.10–8404.20 | A change to subheading 8404.10 through 8404.20 from any other subheading, including another subheading within that group. |
| 8404.90 | A change to subheading 8404.90 from any other heading. |
| 8405.10 | A change to subheading 8405.10 from any other subheading. |
| 8405.90 | A change to subheading 8405.90 from any other heading. |
| 8406.10 | A change to subheading 8406.10 from any other subheading. |
| 8406.81–8406.82 | A change to subheading 8406.81 through 8406.82 from any other subheading outside that group. |
| 8406.90 | A change to subheading 8406.90 from any other heading. |
| 8407 | A change to heading 8407 from any other heading. |
| 8408 | A change to heading 8408 from any other heading. |
| 8409.10 | A change to subheading 8409.10 from any other heading. |
| 8409.91–8409.99 | A change to subheading 8409.91 through 8409.99 from any other heading, except a change resulting from a simple assembly. |
| 8410.11–8410.13 | A change to subheading 8410.11 through 8410.13 from any other subheading outside that group. |
| 8410.90 | A change to subheading 8410.90 from any other heading. |
| 8411.11–8411.82 | A change to subheading 8411.11 through 8411.82 from any other subheading outside that group. |
| 8411.91–8411.99 | A change to subheading 8411.91 through 8411.99 from any other heading. |
| 8412.10–8412.80 | A change to subheading 8412.10 through 8412.80 from any other subheading, including another subheading within that group. |
| 8412.90 | A change to subheading 8412.90 from any other heading. |
| 8413.11–8413.82 | A change to subheading 8413.11 through 8413.82 from any other subheading, including another subheading within that group. |
| 8413.91 | A change to subheading 8413.91 from any other heading. |
| 8413.92 | A change to subheading 8413.92 from any other heading. |
| 8414.10–8414.80 | A change to subheading 8414.10 through 8414.80 from any other subheading, including another subheading within that group. |
| 8414.90 | A change to subheading 8414.90 from any other heading. |
| 8415.10–8415.83 | A change to subheading 8415.10 through 8415.83 from any subheading, including another subheading within that group, except a change within that group resulting from a simple assembly. |
| 8415.90 | A change to subheading 8415.90 from any other subheading, except from heading 7411, 7608, 8414, 8501, or 8535 through 8537 when resulting from a simple assembly. |
| 8416.10–8416.30 | A change to subheading 8416.10 through 8416.30 from any other subheading, including another subheading within that group. |
| 8416.90 | A change to subheading 8416.90 from any other heading. |
| 8417.10–8417.80 | A change to subheading 8417.10 through 8417.80 from any other subheading, including another subheading within that group. |
| 8417.90 | A change to subheading 8417.90 from any other heading. |
| 8418.10–8418.91 | A change to subheading 8418.10 through 8418.91 from any other subheading, including another subheading within that group. |
| 8418.99 | A change to subheading 8418.99 from any other heading, except from heading 7303, 7304, 7305, or 7306 unless the change from these headings involves bending to shape. |
| 8419.11–8419.89 | A change to subheading 8419.11 through 8419.89 from any other subheading, including another subheading within that group. |

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| 8419.90 | A change to subheading 8419.90 from any other heading, except from heading 7303, 7304, 7305, or 7306 unless the change from these headings involves bending to shape, and except from heading 8501 when resulting from a simple assembly. |
| 8420.10 | A change to subheading 8420.10 from any other subheading. |
| 8420.91 | A change to subheading 8420.91 from any other heading. |
| 8420.99 | A change to subheading 8420.99 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8421.11–8421.39 | A change to subheading 8421.11 through 8421.39 from any other subheading, including another subheading within that group. |
| 8421.91 | A change to subheading 8421.91 from any other heading. |
| 8421.99 | A change to subheading 8421.99 from any other heading. |
| 8422.11–8422.40 | A change to subheading 8422.11 through 8422.40 from any other subheading, including another subheading within that group. |
| 8422.90 | A change to subheading 8422.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8423.10–8423.89 | A change to subheading 8423.10 through 8423.89 from any other subheading, including another subheading within that group. |
| 8423.90 | A change to subheading 8423.90 from any other heading. |
| 8424.10–8424.89 | A change to subheading 8424.10 through 8424.89 from any other subheading, including another subheading within that group. |
| 8424.90 | A change to subheading 8424.90 from any other heading, except from subheading 8414.40 or 8414.80. |
| 8425.11–8430.69 | A change to subheading 8425.11 through 8430.69 from any other subheading, including another subheading within that group. |
| 8431 | A change to heading 8431 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8432.10–8432.80 | A change to subheading 8432.10 through 8432.80 from any other subheading, including another subheading within that group. |
| 8432.90 | A change to subheading 8432.90 from any other heading. |
| 8433.11–8433.60 | A change to subheading 8433.11 through 8433.60 from any other subheading, including another subheading within that group. |
| 8433.90 | A change to subheading 8433.90 from any other heading, except from heading 8407 or 8408 when resulting from a simple assembly. |
| 8434.10–8434.20 | A change to subheading 8434.10 through 8434.20 from any other subheading, including another subheading within that group. |
| 8434.90 | A change to subheading 8434.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8435.10 | A change to subheading 8435.10 from any other subheading. |
| 8435.90 | A change to subheading 8435.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8436.10–8436.80 | A change to subheading 8436.10 through 8436.80 from any other subheading, including another subheading within that group. |
| 8436.91 | A change to subheading 8436.91 from any other heading. |
| 8436.99 | A change to subheading 8436.99 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly. |
| 8437.10–8437.80 | A change to subheading 8437.10 through 8437.80 from any other subheading, including another subheading within that group. |
| 8437.90 | A change to subheading 8437.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly. |
| 8438.10–8438.80 | A change to subheading 8438.10 through 8438.80 from any other subheading, including another subheading within that group. |
| 8438.90 | A change to subheading 8438.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly. |
| 8439.10–8439.30 | A change to subheading 8439.10 through 8439.30 from any other subheading, including another subheading within that group. |
| 8439.91 | A change to subheading 8439.91 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly. |
| 8439.99 | A change to subheading 8439.99 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly. |
| 8440.10 | A change to subheading 8440.10 from any other subheading. |
| 8440.90 | A change to subheading 8440.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly. |
| 8441.10–8441.80 | A change to subheading 8441.10 through 8441.80 from any other subheading, including another subheading within that group. |
| 8441.90 | A change to subheading 8441.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly. |
| 8442.10–8442.30 | A change to subheading 8442.10 through 8442.30 from any other subheading outside that group. |
| 8442.40 | A change to subheading 8442.40 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8442.50 | A change to subheading 8442.50 from any other heading. |
| 8443.11–8443.60 | A change to subheading 8443.11 through 8443.60 from any other subheading outside that group. |
| 8443.90 | A change to subheading 8443.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8444 | A change to heading 8444 from any other heading. |
| 8445.11–8447.90 | A change to subheading 8445.11 through 8447.90 from any other subheading outside that group. |

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| 8448.11–8448.19 | A change to subheading 8448.11 through 8448.19 from any other subheading, including another subheading within that group. |
| 8448.20–8448.59 | A change to subheading 8448.20 through 8448.59 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8449 | A change to heading 8449 from any other heading. |
| 8450.11–8450.20 | A change to subheading 8450.11 through 8450.20 from any other subheading, including another subheading within that group. |
| 8450.90 | A change to subheading 8450.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8451.10–8451.80 | A change to subheading 8451.10 through 8451.80 from any other subheading, including another subheading within that group. |
| 8451.90 | A change to subheading 8451.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8452.10–8452.29 | A change to subheading 8452.10 through 8452.29 from any other subheading outside that group. |
| 8452.30–8452.40 | A change to subheading 8452.30 through 8452.40 from any other subheading, including another subheading within that group. |
| 8452.90 | A change to subheading 8452.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8453.10–8453.80 | A change to subheading 8453.10 through 8453.80 from any other subheading, including another subheading within that group. |
| 8453.90 | A change to subheading 8453.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8454.10–8454.30 | A change to subheading 8454.10 through 8454.30 from any other subheading, including another subheading within that group. |
| 8454.90 | A change to subheading 8454.90 from any other heading. |
| 8455.10–8455.22 | A change to subheading 8455.10 through 8455.22 from any other subheading, including another subheading within that group. |
| 8455.30 | A change to subheading 8455.30 from any other heading. |
| 8455.90 | A change to subheading 8455.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8456.10–8456.99 | A change to subheading 8456.10 through 8456.99 from any other heading. |
| 8457.10 | A change to subheading 8457.10 from any other heading, except from heading 8458 through 8465 when resulting from a simple assembly. |
| 8457.20–8465.99 | A change to subheading 8457.20 through 8465.99 from any other heading, including another heading within that group. |
| 8466.10–8466.94 | A change to subheading 8466.10 through 8466.94 from any other heading outside that group, except from heading 8501 when resulting from a simple assembly. |
| 8467.11–8467.89 | A change to subheading 8467.11 through 8467.89 from any other subheading, including another subheading within that group. |
| 8467.91–8467.99 | A change to subheading 8467.91 through 8467.99 from any other heading, except from heading 8407. |
| 8468.10–8468.80 | A change to subheading 8468.10 through 8468.80 from any other subheading, including another subheading within that group. |
| 8468.90 | A change to subheading 8468.90 from any other heading. |
| 8469.11–8469.12 | A change to subheading 8469.11 through 8469.12 from any other subheading outside that group. |
| 8469.20–8469.30 | A change to subheading 8469.20 through 8469.30 from any other subheading outside that group. |
| 8470.10–8471.50 | A change to subheading 8470.10 through 8471.50 from any other subheading outside that group, except from heading 8473; or<br>A change to subheading 8470.10 through 8471.50 from any other subheading within that group or from heading 8473, provided that the change is not the result of a simple assembly. |
| 8471.60–8472.90 | A change to subheading 8471.60 through 8472.90 from any other subheading outside that group, except from subheading 8504.40 or heading 8473; or<br>A change to subheading 8471.60 through 8472.90 from any other subheading within that group or from subheading 8504.40 or from heading 8473, provided that the change is not the result of a simple assembly. |
| 8473 | A change to heading 8473 from any other heading, except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly. |
| 8474.10–8474.80 | A change to subheading 8474.10 through 8474.80 from any other subheading outside that group, except from heading 8501; or<br>A change to subheading 8474.10 through 8474.80 from any other subheading within that group or from heading 8501, provided that the change is not the result of a simple assembly. |
| 8474.90 | A change to subheading 8474.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8475.10 | A change to subheading 8475.10 from any other subheading. |
| 8475.21–8475.29 | A change to subheading 8475.21 through 8475.29 from any other subheading outside that group. |
| 8475.90 | A change to subheading 8475.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8476.21–8476.89 | A change to subheading 8476.21 through 8476.89 from any other subheading outside that group. |
| 8476.90 | A change to subheading 8476.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8477.10–8477.80 | A change to subheading 8477.10 through 8477.80 from any other subheading, including another subheading within that group. |
| 8477.90 | A change to subheading 8477.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8478.10 | A change to subheading 8478.10 from any other subheading. |

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| 8478.90 | A change to subheading 8478.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8479.10–8479.89 | A change to subheading 8479.10 through 8479.89 from any other subheading, including another subheading within that group. |
| 8479.90 | A change to subheading 8479.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8480 | A change to heading 8480 from any other heading. |
| 8481.10–8481.80 | A change to subheading 8481.10 through 8481.80 from any other heading, or from subheading 8481.90 except when resulting from a simple assembly. |
| 8481.90 | A change to subheading 8481.90 from any other heading. |
| 8482.10–8482.80 | A change to subheading 8482.10 through 8482.80 from any other heading; or<br>A change to subheading 8482.10 through 8482.80 from any other subheading, including another subheading within that group, except from inner or outer races or rings classified in subheading 8482.99.05, 8482.99.15, or 8482.99.25. |
| 8482.91–8482.99 | A change to subheading 8482.91 through 8482.99 from any other heading. |
| 8483.10 | A change to subheading 8483.10 from any other subheading. |
| 8483.20 | A change to subheading 8483.20 from any other subheading, except from subheading 8482.10 through 8482.80. |
| 8483.30–8483.60 | A change to subheading 8483.30 through 8483.60 from any other subheading, including another subheading within that group. |
| 8483.90 | A change to subheading 8483.90 from any other heading. |
| 8484.10–8484.90 | A change to subheading 8484.10 through 8484.90 from any other subheading, including another subheading within that group. |
| 8485 | A change to subheading 8485 from any other heading. |
| 8501 | A change to heading 8501 from any other heading. |
| 8502 | A change to heading 8502 from any other heading. |
| 8503 | A change to heading 8503 from any other heading. |
| 8504.10–8504.50 | A change to subheading 8504.10 through 8504.50 from any other subheading outside that group. |
| 8504.90 | A change to subheading 8504.90 from any other heading. |
| 8505.11–8505.30 | A change to subheading 8505.11 through 8505.30 from any other subheading, including another subheading within that group. |
| 8505.90 | A change to subheading 8505.90 from any other heading. |
| 8506.10 | A change to subheading 8506.10 from any other subheading; or<br>A change to a primary cell or battery of maganese dioxide of an external volume not exceeding 300 $cm^3$ of subheading 8506.10 from any other good of subheading 8506.10; or<br>A change to a primary cell or battery of maganese dioxide of an external volume exceeding 300 $cm^3$ of subheading 8506.10 from any other good of subheading 8506.10. |
| 8506.30 | A change to subheading 8506.30 from any other subheading; or<br>A change to a primary cell or battery of mercuric oxide of an external volume not exceeding 300 $cm^3$ of subheading 8506.30 from any other good of subheading 8506.30; or<br>A change to a primary cell or battery of mercuric oxide of an external volume exceeding 300 $cm^3$ of subheading 8506.30 from any other good of subheading 8506.30. |
| 8506.40 | A change to subheading 8506.40 from any other subheading; or<br>A change to a primary cell or battery of silver oxide of an external volume not exceeding 300 $cm^3$ of subheading 8506.40 from any other good of subheading 8506.40; or<br>A change to a primary cell or battery of silver oxide of an external volume exceeding 300 $cm^3$ of subheading 8506.40 from any other good of subheading 8506.40. |
| 8506.50–8506.80 | A change to subheading 8506.50 through 8506.80 from any other subheading outside that group; or<br>A change to a primary cell or battery of an external volume not exceeding 300 $cm^3$ of subheading 8506.50 through 8506.80 from any other good of subheading 8506.50 through 8506.80; or<br>A change to a primary cell or battery of an external volume exceeding 300 $cm^3$ of subheading 8506.50 through 8506.80 from any other good of subheading 8506.50 through 8506.80. |
| 8506.90 | A change to subheading 8506.90 from any other heading. |
| 8507.10–8507.80 | A change to subheading 8507.10 through 8507.80 from any other subheading, including another subheading within that group. |
| 8507.90 | A change to subheading 8507.90 from any other heading. |
| 8508.10–8508.80 | A change to subheading 8508.10 through 8508.80 from any other subheading, including another subheading within that group. |
| 8508.90 | A change to subheading 8508.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8509.10–8509.80 | A change to subheading 8509.10 through 8509.80 from any other subheading, including another subheading within that group. |
| 8509.90 | A change to subheading 8509.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8510.10–8510.30 | A change to subheading 8510.10 through 8510.30 from any other subheading, including another subheading within that group. |
| 8510.90 | A change to subheading 8510.90 from any other heading, except from heading 8501 when resulting from a simple assembly. |
| 8511.10–8511.80 | A change to subheading 8511.10 through 8511.80 from any other subheading, including another subheading within that group. |
| 8511.90 | A change to subheading 8511.90 from any other heading. |
| 8512.10–8512.30 | A change to subheading 8512.10 through 8512.30 from any other subheading outside that group. |
| 8512.40 | A change to subheading 8512.40 from any other subheading, except from subheading 8512.90 or heading 8501 when resulting from a simple assembly. |
| 8512.90 | A change to subheading 8512.90 from any other heading. |

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| 8513.10 | A change to subheading 8513.10 from any other subheading. |
| 8513.90 | A change to subheading 8513.90 from any other heading. |
| 8514.10–8514.40 | A change to subheading 8514.10 through 8514.40 from any other subheading, including another subheading within that group. |
| 8514.90 | A change to subheading 8514.90 from any other heading. |
| 8515.11–8515.80 | A change to subheading 8515.11 through 8515.80 from any other subheading outside that group. |
| 8515.90 | A change to subheading 8515.90 from any other heading. |
| 8516.10–8516.79 | A change to subheading 8516.10 through 8516.79 from any other subheading, including another subheading within that group. |
| 8516.80 | A change to subheading 8516.80 from any other heading. |
| 8516.90 | A change to subheading 8516.90 from any other heading. |
| 8517.11–8517.80 | A change to subheading 8517.11 through 8517.80 from any other subheading outside that group, except from subheading 8517.90; or<br>A change to subheading 8517.11 through 8517.80 from subheading 8517.90, provided that the change is not the result of a simple assembly. |
| 8517.90 | A change to subheading 8517.90 from any other heading. |
| 8518.10–8518.50 | A change to subheading 8518.10 through 8518.50 from any other heading. |
| 8518.90 | A change to subheading 8518.90 from any other heading. |
| 8519.10–8519.40 | A change to subheading 8519.10 through 8519.40 from any other subheading, including another subheading within that group. |
| 8519.92–8519.93 | A change to subheading 8519.92 through 8519.93 from any other subheading outside that group. |
| 8519.99 | A change to subheading 8519.99 from any other subheading. |
| 8520.10–8520.20 | A change to subheading 8520.10 through 8520.20 from any other subheading, including another subheading within that group. |
| 8520.32–8520.33 | A change to subheading 8520.32 through 8520.33 from any other subheading outside that group. |
| 8520.39–8520.90 | A change to subheading 8520.39 through 8520.90 from any other subheading, including another subheading within that group. |
| 8521.10–8521.90 | A change to subheading 8521.10 through 8521.90 from any other subheading, including another subheading within that group. |
| 8522 | A change to heading 8522 from any other heading. |
| 8523 | A change to heading 8523 from any other heading. |
| 8524 | A change to heading 8524 from any other heading. |
| 8525.10–8525.20 | A change to subheading 8525.10 through 8525.20 from any other subheading outside that group. |
| 8525.30–8525.40 | A change to subheading 8525.30 through 8525.40 from any other subheading, including another subheading within that group, except a change to video camera recorders of subheading 8525.40 from television cameras of subheading 8525.30. |
| 8526.10–8526.92 | A change to subheading 8526.10 through 8526.92 from any other subheading, including another subheading within that group. |
| 8527.12–8527.13 | A change to subheading 8527.12 through 8527.13 from any other subheading outside that group. |
| 8527.19–8527.90 | A change to subheading 8527.19 through 8527.90 from any other subheading, including another subheading within that group. |
| 8528.12–8528.30 | A change to subheading 8528.12 through 8528.30 from any other subheading, including another subheading within that group, except from subheading 8540.11 through 8540.12. |
| 8529 | A change to heading 8529 from any other heading. |
| 8530.10–8530.80 | A change to subheading 8530.10 through 8530.80 from any other subheading, including another subheading within that group. |
| 8530.90 | A change to subheading 8530.90 from any other heading. |
| 8531.10–8531.80 | A change to subheading 8531.10 through 8531.80 from any other subheading, including another subheading within that group, except from subheading 8531.90 when resulting from a simple assembly. |
| 8531.90 | A change to subheading 8531.90 from any other heading. |
| 8532.10–8532.30 | A change to subheading 8532.10 through 8532.30 from any other subheading, including another subheading within that group. |
| 8532.90 | A change to subheading 8532.90 from any other heading. |
| 8533.10–8533.40 | A change to subheading 8533.10 through 8533.40 from any other subheading, including another subheading within that group. |
| 8533.90 | A change to subheading 8533.90 from any other heading. |
| 8534 | A change to heading 8534 from any other heading. |
| 8535.10–8535.90 | A change to subheading 8535.10 through 8535.90 from any other subheading, including another subheading within that group. |
| 8536.10–8536.90 | A change to subheading 8536.10 through 8536.90 from any other subheading, including another subheading within that group. |
| 8537 | A change to heading 8537 from any other heading. |
| 8538 | A change to heading 8538 from any other heading. |
| 8539.10–8539.31 | A change to subheading 8539.10 through 8539.31 from any other subheading, including another subheading within that group. |
| 8539.32–8539.39 | A change to subheading 8539.32 through 8539.39 from any other subheading outside that group. |
| 8539.41–8539.49 | A change to subheading 8539.41 through 8539.49 from any other subheading outside that group. |
| 8539.90 | A change to subheading 8539.90 from any other heading. |
| 8540.11–8540.20 | A change to subheading 8540.11 through 8540.20 from any other subheading, including another subheading within that group. |
| 8540.40–8540.60 | A change to subheading 8540.40 through 8540.60 from any other subheading outside that group. |
| 8540.71–8540.99 | A change to subheading 8540.71 through 8540.99 from any other subheading, including another subheading within that group. |

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| 8540.91–8540.99 | A change to subheading 8540.91 through 8540.99 from any other subheading, including another subheading within that group, except when resulting from a simple assembly. |
| 8541–8542 | A change to heading 8541 through 8542 from any other subheading, including another subheading within that group; or<br>A change to a mounted chip, die or wafer classified in heading 8541 or 8542 from an unmounted chip, die or wafer classified in heading 8541 or 8542; or<br>A change to a programmed ''read only memory'' (ROM) chip from an unprogrammed ''programmable read only memory'' (PROM) chip. |
| 8543.11–8543.19 | A change to subheading 8543.11 through 8543.19 from any other subheading outside that group. |
| 8543.20–8543.30 | A change to subheading 8543.20 through 8543.30 from any other subheading, including another subheading within that group. |
| 8543.40–8543.89 | A change to subheading 8543.40 through 8543.89 from any other subheading outside that group. |
| 8543.90 | A change to subheading 8543.90 from any other heading. |
| 8544.11–8544.70 | A change to subheading 8544.11 through 8544.70 from any other subheading, including another subheading within that group, except when resulting from a simple assembly. |
| 8545.11–8547.90 | A change to subheading 8545.11 through 8547.90 from any other subheading, including another subheading within that group. |
| 8548 | A change to heading 8548 from any other heading. |
| **(p)** | **Section XVII: Chapters 86 through 89** |
| 8601 | A change to heading 8601 from any other heading. |
| 8602 | A change to heading 8602 from any other heading. |
| 8603–8606 | A change to heading 8603 through 8606 from any other heading, including another heading within that group, except from heading 8607 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8607.11 | A change to subheading 8607.11 from any other subheading, except from subheading 8607.12, and except from subheading 8607.19 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8607.12 | A change to subheading 8607.12 from any other subheading, except from subheading 8607.11, and except from subheading 8607.19 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8607.19 | A change to subheading 8607.19 from any other subheading. |
| 8607.21–8607.99 | A change to subheading 8607.21 through 8607.99 from any other heading, except to mounted brake linings and pads of subheading 8607.21 through 8607.99 from subheading 6813.10. |
| 8608 | A change to heading 8608 from any other heading. |
| 8609 | A change to heading 8609 from any other heading, except from heading 7309 through 7311. |
| 8701–8705 | A change to heading 8701 through 8705 from any other heading, including another heading within that group, except from heading 8706. |
| 8706 | A change to heading 8706 from any other heading. |
| 8707 | A change to heading 8707 from any other heading, except from subheading 8708.29 when that change is pursuant to General Rule of Interpretation 2(a). |
| **Note:** Any change to heading 8708 from subheading 8709.90, 8716.90, 8431.20, or 8431.49 shall not be considered to satisfy a required change in tariff classification. | |
| 8708.10 | A change to subheading 8708.10 from any other subheading. |
| 8708.29 | A change to subheading 8708.29 from any other subheading. |
| 8708.31 | A change to subheading 8708.31 from any other heading, except to mounted brake linings and pads of subheading 8708.31 from subheading 6813.10. |
| 8708.39 | A change to subheading 8708.39 from any other heading. |
| 8708.40 | A change to subheading 8708.40 from any other subheading, except from subheading 8708.99 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8708.50 | A change to subheading 8708.50 from any other subheading, except from subheading 8708.99 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8708.60 | A change to subheading 8708.60 from any other subheading. |
| 8708.70 | A change to subheading 8708.70 from any other subheading. |
| 8708.80 | A change to subheading 8708.80 from any other subheading, except from subheading 8708.99 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8708.91 | A change to subheading 8708.91 from any other subheading, except from subheading 8708.99 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8708.92 | A change to subheading 8708.92 from any other subheading. |
| 8708.93 | A change to subheading 8708.93 from any other subheading. |
| 8708.94 | A change to subheading 8708.94 from any other subheading, except from subheading 8708.99 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8708.99 | A change to subheading 8708.99 from any other subheading. |
| 8709.11–8709.19 | A change to subheading 8709.11 through 8709.19 from any other subheading outside that group, except from subheading 8709.90 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8709.90 | A change to subheading 8709.90 from any other heading, except from subheading 8431.20 or heading 8708. |
| 8710 | A change to heading 8710 from any other heading. |
| 8711–8713 | A change to heading 8711 through 8713 from any other heading, including another heading within that group, except from heading 8714 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8714 | A change to heading 8714 from any other heading, except from subheading 6813.10 to mounted brake linings or pads classified in heading 8714. |
| 8715 | A change to heading 8715 from any other heading. |
| 8716.10–8716.80 | A change to subheading 8716.10 through 8716.80 from any other heading, except from subheading 8716.90 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8716.90 | A change to subheading 8716.90 from any other heading, except from subheading 8709.90 or 8431.49. |

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| 8801–8802 | A change to heading 8801 through 8802 from any other heading outside that group, except from heading 8803 when that change is pursuant to General Rule of Interpretation 2(a). |
| 8803.10–8803.90 | A change to subheading 8803.10 through 8803.90 from any other subheading, including another subheading within that group. |
| 8805 | A change to heading 8805 from any other heading. |
| 8901–8903 | A change to heading 8901 through 8903 from any other heading outside that group. |
| 8904 | A change to heading 8904 from any other heading. |
| 8905 | A change to heading 8905 from any other chapter. |
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| 8906–8907 | A change to heading 8906 through 8907 from any other heading, including another heading within that group, except from heading 8903 or 8905. |
| 8908 | A change to heading 8908 from any other chapter. |
| **(q)** | **Section XVIII: Chapters 90 through 92** |
| 9001.10 | A change to subheading 9001.10 from any other subheading, except from subheading 8544.70. |
| 9001.20–9001.30 | A change to subheading 9001.20 through 9001.30 from any other subheading, including another subheading within that group. |
| 9001.40–9001.90 | A change to subheading 9001.40 through 9001.90 from any other subheading, including another subheading within that group, except from lens blanks of heading 7014 or subheading 7015.10. |
| 9002.11–9002.90 | A change to subheading 9002.11 through 9002.90 from any other subheading, including another subheading within that group, except from subheading 9001.90 or from lens blanks of heading 7014. |
| 9003.11–9003.19 | A change to subheading 9003.11 through 9003.19 from any other heading; or<br>A change to subheading 9003.11 through 9003.19 from any other subheading, including another subheading within that group, except from subheading 9003.90 if the temples or fronts are not domestic materials. |
| 9003.90 | A change to subheading 9003.90 from any other heading. |
| 9004 | A change to heading 9004 from any other heading, except from subheading 9001.40 or 9001.50. |
| 9005.10–9005.80 | A change to subheading 9005.10 through 9005.80 from any other subheading, including another subheading within that group. |
| 9005.90 | A change to subheading 9005.90 from any other heading, except from heading 9001 or 9002. |
| 9006.10–9006.69 | A change to subheading 9006.10 through 9006.69 from any other subheading, including another subheading within that group. |
| 9006.91–9006.99 | A change to subheading 9006.91 through 9006.99 from any other heading. |
| 9007.11–9007.19 | A change to subheading 9007.11 through 9007.19 from any other subheading, including another subheading within that group. |
| 9007.20 | A change to subheading 9007.20 from any other subheading; or<br>A change to a projector for film of less than 16mm width of subheading 9007.20 from any other projector of subheading 9007.20; or<br>A change from a projector for film of less than 16mm width of subheading 9007.20 to any other projector of subheading 9007.20. |
| 9007.91–9007.92 | A change to subheading 9007.91 through 9007.92 from any other heading, except from lenses of heading 9002 when resulting from a simple assembly. |
| 9008.10–9008.40 | A change to subheading 9008.10 through 9008.40 from any other subheading, including another subheading within that group. |
| 9008.90 | A change to subheading 9008.90 from any other heading, except from lenses of heading 9002 when resulting from a simple assembly. |
| 9009.11–9009.30 | A change to subheading 9009.11 through 9009.30 from any other subheading, including another subheading within that group. |
| 9009.90 | A change to subheading 9009.90 from any other heading. |
| 9010.10 | A change to subheading 9010.10 from any other subheading. |
| 9010.41–9010.50 | A change to subheading 9010.41 through 9010.50 from any other subheading outside that group. |
| 9010.60 | A change to subheading 9010.60 from any other subheading. |
| 9010.90 | A change to subheading 9010.90 from any other heading. |
| 9011.10–9011.80 | A change to subheading 9011.10 through 9011.80 from any other subheading, including another subheading within that group. |
| 9011.90 | A change to subheading 9011.90 from any other heading. |
| 9012.10 | A change to subheading 9012.10 from any other subheading, including another subheading within that group. |
| 9012.90 | A change to subheading 9012.90 from any other heading. |
| 9013.10 | A change to subheading 9013.10 from any other subheading, except from optical telescopes of subheading 9005.80. |
| 9013.20–9013.80 | A change to subheading 9013.20 through 9013.80 from any other subheading, including another subheading within that group. |
| 9013.90 | A change to subheading 9013.90 from any other subheading, except from subheading 9002.19 when resulting from a simple assembly. |
| 9014.10–9014.80 | A change to subheading 9014.10 through 9014.80 from any other subheading, including another subheading within that group. |
| 9014.90 | A change to subheading 9014.90 from any other heading. |
| 9015.10–9015.80 | A change to subheading 9015.10 through 9015.80 from any other subheading, including another subheading within that group. |
| 9015.90 | A change to subheading 9015.90 from any other heading. |
| 9016 | A change to heading 9016 from any other heading. |
| 9017.10–9017.80 | A change to subheading 9017.10 through 9017.80 from any other subheading, including another subheading within that group. |

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| 9017.90 | A change to subheading 9017.90 from any other heading. |
| 9018.11 | A change to subheading 9018.11 from any other subheading, except to electro-cardiographs from printed circuit assemblies when resulting from a simple assembly. |
| 9018.12–9018.14 | A change to subheading 9018.12 through 9018.14 from any other subheading outside that group, except from subheading 9018.19. |
| 9018.19 | A change to subheading 9018.19 from any other subheading, except to patient monitoring systems from printed circuit assemblies when resulting from a simple assembly. |
| 9018.20–9018.32 | A change to subheading 9018.20 through 9018.32 from any other subheading, including another subheading within that group. |
| 9018.39 | A change to subheading 9018.39 from any other subheading, except from surgical tubing of subheading 4009.10 when resulting from a simple assembly. |
| 9018.41–9018.50 | A change to subheading 9018.41 through 9018.50 from any other subheading, including another subheading within that group. |
| 9018.90 | A change to subheading 9018.90 from any other subheading, except from subheading 9001.90 or synthetic rubber classified in heading 4002 when resulting from a simple assembly; or<br>A change to defibrillators from printed circuit assemblies, except when resulting from a simple assembly. |
| 9019.10–9019.20 | A change to subheading 9019.10 through 9019.20 from any other subheading, including another subheading within that group. |
| 9020 | A change to heading 9020 from any other heading. |
| 9021.11 | A change to subheading 9021.11 from any other subheading, including another subheading within that group. |
| 9021.19 | A change to subheading 9021.19 from any other subheading, except from nails classified in heading 7317 or screws classified in heading 7318 when resulting from a simple assembly. |
| 9021.21–9021.90 | A change to subheading 9021.21 through 9021.90 from any other subheading, including another subheading within that group. |
| 9022.12–9022.14 | A change to subheading 9022.12 through 9022.14 from any other subheading outside that group. |
| 9022.19–9022.90 | A change to subheading 9022.19 through 9022.90 from any other subheading, including another subheading within that group. |
| 9023 | A change to heading 9023 from any other heading. |
| 9024.10–9024.80 | A change to subheading 9024.10 through 9024.80 from any other subheading, including another subheading within that group. |
| 9024.90 | A change to subheading 9024.90 from any other heading. |
| 9025.11–9025.80 | A change to subheading 9025.11 through 9025.80 from any other subheading, including another subheading within that group. |
| 9025.90 | A change to subheading 9025.90 from any other heading. |
| 9026.10–9026.80 | A change to subheading 9026.10 through 9026.80 from any other subheading, including another subheading within that group. |
| 9026.90 | A change to subheading 9026.90 from any other heading. |
| 9027.10–9027.90 | A change to subheading 9027.10 through 9027.90 from any other subheading, including another subheading within that group. |
| 9028.10–9028.30 | A change to subheading 9028.10 through 9028.30 from any other subheading, including another subheading within that group. |
| 9028.90 | A change to subheading 9028.90 from any other heading. |
| 9029.10–9029.20 | A change to subheading 9029.10 through 9029.20 from any other subheading, including another subheading within that group. |
| 9029.90 | A change to subheading 9029.90 from any other heading. |
| 9030.10–9030.40 | A change to subheading 9030.10 through 9030.40 from any other subheading, including another subheading within that group. |
| 9030.82–9030.83 | A change to subheading 9030.82 through 9030.83 from any other subheading outside that group. |
| 9030.89–9030.90 | A change to subheading 9030.89 through 9030.90 from any other subheading outside that group. |
| 9031.10–9031.30 | A change to subheading 9031.10 through 9031.30 from any other subheading, including another subheading within that group. |
| 9031.41–9031.49 | A change to subheading 9031.41 through 9031.49 from any other subheading outside that group. |
| 9031.80 | A change to subheading 9031.80 from any other subheading. |
| 9031.90 | A change to subheading 9031.90 from any other heading. |
| 9032.10–9032.89 | A change to subheading 9032.10 through 9032.89 from any other subheading, including another subheading within that group. |
| 9032.90 | A change to subheading 9032.90 from any other subheading, except from heading 8537 when resulting from a simple assembly. |
| 9033 | A change to heading 9033 from any other heading. |
| **Chapter 91 Note:** The country of origin of goods classified in subheading 9113.90.40 shall be determined under the provisions of § 102.21. | |
| 9101–9107 | A change to heading 9101 through 9107 from any other heading outside that group, except from heading 9108 through 9110; or<br>A change to heading 9101 through 9107 from complete movements, unassembled, classified in subheading 9110.11 or 9110.90, or from rough movements classified in subheading 9110.19 or 9110.90. |
| 9108–9109 | A change to heading 9108 through 9109 from any other heading outside that group, except from heading 9110; or<br>A change to heading 9108 through 9109 from complete movements, unassembled, classified in subheading 9110.11 or 9110.90, or from rough movements classified in subheading 9110.19 or 9110.90. |
| 9110 | A change to heading 9110 from any other heading, except from subheading 9114.90. |
| 9111.10–9111.80 | A change to subheading 9111.10 through 9111.80 from any other subheading outside that group, except from subheading 9111.90 when that change is pursuant to General Rule of Interpretation 2(a). |
| 9111.90 | A change to subheading 9111.90 from any other heading. |
| 9112.10–9112.80 | A change to subheading 9112.10 through 9112.80 from any other subheading outside that group, except from subheading 9112.90 when that change is pursuant to General Rule of Interpretation 2(a). |
| 9112.90 | A change to subheading 9112.90 from any other heading. |

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| 9113 | A change to heading 9113 from any other heading. |
| 9114 | A change to heading 9114 from any other heading. |
| 9201–9208 | A change to heading 9201 through 9208 from any other heading, including another heading within that group, except from heading 9209 when that change is pursuant to General Rule of Interpretation 2(a). |
| 9209 | A change to heading 9209 from any other heading. |
| **(r)** | **Section XIX: Chapter 93** |
| 9301–9304 | A change to heading 9301 through 9304 from any other heading, including another heading within that group, except from heading 9305 when that change is pursuant to General Rule of Interpretation 2(a). |
| 9305 | A change to heading 9305 from any other heading. |
| 9306 | A change to heading 9306 from any other heading. |
| 9307 | A change to heading 9307 from any other heading. |
| **(s)** | **Section XX: Chapters 94 through 96** |

**Chapter 94 Note:** For a good classifiable in subheadings 9404.30 through 9404.90 which does not meet the appropriate tariff shift rule specified for those subheadings, the country of origin is the country where all cutting and sewing operations required to form the outer shell were performed. If all cutting and sewing operations required to form the outer shell were not performed in a single country, the country of origin will be the single country where the component of the outer shell which determines the classification of that good was produced. If a single country did not produce a component of the outer shell which determines the classification of that good, then the country of origin will be the country in which the good last underwent a substantial assembly process. Notwithstanding the foregoing provisions of this Note, the country of origin of goods classified in subheadings 9404.90.10 and 9404.90.80 through 9404.90.95 shall be determined under the provisions of § 102.21.

| | |
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| 9401.10–9401.80 | A change to subheading 9401.10 through 9401.80 from any other subheading outside that group, except from subheading 9403.10 through 9403.80, and except from subheading 9401.90 or 9403.90 when that change is pursuant to General Rule of Interpretation 2(a). |
| 9401.90 | A change to subheading 9401.90 from any other heading, except from subheading 9403.90. |
| 9402 | A change to heading 9402 from any other heading, except from subheading 9401.10 through 9401.80 or subheading 9403.10 through 9403.80, and except from subheading 9401.90 or 9403.90 when that change is pursuant to General Rule of Interpretation 2(a). |
| 9403.10–9403.80 | A change to subheading 9403.10 through 9403.80 from any other subheading outside that group, except from subheading 9401.10 through 9401.80, and except from subheading 9401.90 or 9403.90 when that change is pursuant to General Rule of Interpretation 2(a). |
| 9403.90 | A change to subheading 9403.90 from any other heading, except from subheading 9401.90. |
| 9404.10–9404.29 | A change to subheading 9404.10 through 9404.29 from any other heading. |
| 9404.30–9404.90 | A change to down- and/or feather-filled goods classified in subheading 9404.30 through 9404.90 from any other heading; or<br>For all other goods classified in subheading 9404.30 through 9404.90, a change from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, or 6001 through 6002, or subheading 6307.90. |
| 9405.10–9405.60 | A change to subheading 9405.10 through 9405.60 from any other subheading outside that group, except from subheading 9405.91 through 9405.99 when that change is pursuant to General Rule of Interpretation 2(a). |
| 9405.91–9405.99 | A change to subheading 9405.91 through 9405.99 from any other heading. |
| 9406 | A change to heading 9406 from any other heading. |
| 9501 | A change to heading 9501 from any other chapter, except from heading 8714 when that change is pursuant to General Rule of Interpretation 2(a). |
| 9502.10 | A change to subheading 9502.10 from any other subheading, except from skins for stuffed dolls classified in subheading 9502.99. |
| 9502.99 | A change to subheading 9502.99 from any other heading, except from subheading 9503.41 through 9503.49. |
| 9503.10–9503.30 | A change to subheading 9503.10 through 9503.30 from any other subheading, including another subheading within that group. |
| 9503.41–9503.49 | A change to toys classified in subheading 9503.41 through 9503.49 from any other heading; or<br>A change to toys classified in subheading 9503.41 through 9503.49 from parts and accessories classified in subheading 9503.41 through 9503.49; or<br>A change to parts and accessories classified in subheading 9503.41 through 9503.49 from any other heading, except from heading 9502, 6111, or 6209. |
| 9503.50–9503.60 | A change to subheading 9503.50 through 9503.60 from any other subheading, including another subheading within that group. |
| 9503.70–9503.90 | A change to subheading 9503.70 through 9503.90 from any other chapter. |
| 9504.10–9506.29 | A change to subheading 9504.10 through 9506.29 from any other subheading, including another subheading within that group. |
| 9506.31 | A change to subheading 9506.31 from any other subheading, except from subheading 9506.39. |
| 9506.32–9506.99 | A change to subheading 9506.32 through 9506.99 from any other subheading, including another subheading within that group. |
| 9507.10–9507.30 | A change to subheading 9507.10 through 9507.30 from any other chapter. |
| 9507.90 | A change to subheading 9507.90 from any other subheading, except from heading 5004 through 5006, subheading 5402.10 through 5402.49, subheading 5406.10 through 5406.20, or heading 5603 or 5404. |
| 9508 | A change to heading 9508 from any other heading. |

**Chapter 96 Note:** The country of origin of goods classified in subheading 9612.10.9010 shall be determined under the provisions of § 102.21.

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| 9601 | A change to heading 9601 from any other heading. |
| 9602 | A change to heading 9602 from any other heading. |

| HTSUS | Tariff shift and/or other requirements |
|---|---|
| 9603 | A change to heading 9603 from any other heading. |
| 9604–9605 | A change to heading 9604 through 9605 from any other heading, including another heading within that group. |
| 9606.10 | A change to subheading 9606.10 from any other heading. |
| 9606.21–9606.29 | A change to subheading 9606.21 through 9606.29 from any other heading. |
| 9606.30 | A change to subheading 9606.30 from any other heading. |
| 9607.11–9607.19 | A change to subheading 9607.11 through 9607.19 from any other subheading, except from subheading 9607.20 when that change is pursuant to General Rule of Interpretation 2(a). |
| 9607.20 | A change to subheading 9607.20 from any other subheading. |
| 9608.10–9608.40 | A change to subheading 9608.10 through 9608.40 from any other subheading, including another subheading within that group, except from subheading 9608.60. |
| 9608.50 | A change to subheading 9608.50 from any other heading. |
| 9608.60–9608.99 | A change to subheading 9608.60 through 9608.99 from any other subheading, including another subheading within that group. |
| 9609.10 | A change to subheading 9609.10 from any other subheading. |
| 9609.20 | A change to subheading 9609.20 from any other chapter. |
| 9609.90 | A change to subheading 9609.90 from any other chapter. |
| 9610–9612 | A change to heading 9610 through 9612 from any other heading, including another heading within that group. |
| 9613.10–9613.20 | A change to subheading 9613.10 through 9613.20 from any other subheading outside that group. |
| 9613.30–9613.80 | A change to subheading 9613.30 through 9613.80 from any other subheading, including another subheading within that group. |
| 9613.90 | A change to subheading 9613.90 from any other heading. |
| 9614.20 | A change to subheading 9614.20 from any other subheading, except to roughly shaped blocks of wood or root of subheading 9614.20 from heading 4407. |
| 9614.90 | A change to subheading 9614.90 from any other heading. |
| 9615.11–9615.90 | A change to subheading 9615.11 through 9615.90 from any other subheading, including another subheading within that group. |
| 9616–9618 | A change to heading 9616 through 9618 from any other heading, including another heading within that group. |
| **(t)** | **Section XXI: Chapter 97** |
| 9701.10–9701.90 | A change to subheading 9701.10 through 9701.90 from any other subheading, including another subheading within that group. |
| 9702–9706 | A change to heading 9702 through 9706 from any other heading, including another heading within that group. |

## PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

### § 134.32 [Amended]

2. In § 134.32, paragraph (r) is removed.

3. In § 134.43, paragraph (e) is revised to read as follows:

### § 134.43 Methods of marking specific articles.

* * * * *

(e) *Assembled articles.* Where an article is produced as a result of an assembly operation and the country of origin of such article is determined under this chapter to be the country in which the article was finally assembled, such article may be marked, as appropriate, in a manner such as the following:

(1) Assembled in (country of final assembly);

(2) Assembled in (country of final assembly) from components of (name of country or countries of origin of all components); or

(3) Made in, or product of, (country of final assembly).

Michael H. Lane,

*Acting Commissioner of Customs.*

Approved: May 29, 1996.

John P. Simpson,

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 96–14027 Filed 6–5–96; 8:45 am]

BILLING CODE 4820–02–P

Federal Register

Thursday
June 6, 1996

## Part III

# Department of Education

**Comprehensive Local Reform Assistance; Applications for New Awards**

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.317]**

## Comprehensive Local Reform Assistance; Notice Inviting Applications for New Awards With Fiscal Year (FY) 1995 Funds

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application requirements, and instructions needed to apply for a grant under this competition.

*Purpose of Program:* To assist local educational agencies (LEAs) in the development and implementation of comprehensive local improvement plans directed at enabling all children to reach challenging academic standards.

*Eligible Applicants:* LEAs in New Hampshire are eligible to apply for grants. The Secretary is especially interested in receiving applications from consortia of LEAs in the State.

Note: By statute, the Secretary may award direct grants to LEAs in a State that was not participating in Goals 2000 as of October 20, 1995, if the State educational agency (SEA) approves LEA participation in the program. Five States—Alabama, Montana, New Hampshire, Oklahoma, and Virginia—were not participating in Goals 2000 as of October 20, 1995. On May 28, 1996, the Secretary published in the Federal Register a notice inviting applications from LEAs in Montana and Oklahoma, whose SEAs had previously approved LEA participation in this direct grant program. On May 29, 1996, the New Hampshire SEA approved LEA participation in the program.

*Deadline for Transmittal of Applications:* July 15, 1996.

*Deadline for Intergovernmental Review:* August 1, 1996.

*Available Funds:* The amount of funds available to LEAs in New Hampshire is $1,290,294. This amount is based on the State's FY 1995 Goals 2000 allotment.

In accordance with section 402 of the Department of Education Organization Act, 20 USC 3462, the Secretary may use up to 1% of the funds from the State's allotment to pay the expenses and fees of non-Federal experts necessary to review the applications submitted in response to this notice.

In the event that there are an insufficient number of funded applications from LEAs in the State to use all of the State's allotment, the Secretary may reallot the remaining funds consistent with the Act.

The Secretary does not intend to conduct a competition for FY 1996 funds. Instead, pursuant to 34 CFR 75.253, the Secretary intends to make continuation awards from the State's FY 1996 allotment to successful applicants under this notice. The Secretary expects to conduct a new competition when FY 1997 funds become available.

*Estimated Range of Awards:* $20,000–$100,000 annually. (The Secretary estimates that both the initial FY 1995 awards and the continuation awards from the FY 1996 allotment will fall within this range.)

*Estimated Average Size of Awards:* $40,000 annually. (The Secretary estimates that both the initial FY 1995 awards and the continuation awards from the FY 1996 allotment will average $40,000.)

*Estimated Numbers of Awards:* 32.

(Note: These estimates are projections for the guidance of potential applicants. The Department of Education and applicants are not bound by any estimates in this notice.)

*Project Period:* Up to 24 months.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

**SUPPLEMENTARY INFORMATION:**

(a) Background

Section 304(e) of the Goals 2000: Educate America Act (Pub. L. 103–227) (20 USC 5801 *et seq.*) (the Act), which was added to the Act as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, authorizes the Secretary to award direct grants to LEAs in States that were not participating in Goals 2000 as of October 20, 1995, if the applicable SEA approves the LEAs' participation in the program. Alabama, Montana, New Hampshire, Oklahoma and Virginia were not participating in Goals 2000 as of that date. On May 28, 1996, the Secretary published in the Federal Register a notice inviting applications from LEAs in Montana and Oklahoma, whose SEAs had previously approved LEA participation in this direct grant program. On May 29, 1996, the New Hampshire SEA approved LEA participation in the program.

Under Section 304(e), the Secretary may award grants for purposes consistent with the provisions of the Act. The Goals 2000 Act is designed to help States and communities develop and implement their own education reforms focused on challenging academic standards in order to increase student academic achievement. With broad-based, grassroots involvement, LEAs participating in Goals 2000 develop comprehensive strategies for helping all students reach challenging academic standards, such as through upgrading assessments and curriculum to reflect high standards, improving the quality of teaching, expanding the use of technology, strengthening accountability for teaching and learning, and building strong partnerships among schools and families, employers, and others in the community.

The Secretary has determined that grants awarded under Section 304(e) will be used to support the development and implementation of comprehensive local improvement plans designed to help all children reach challenging academic standards. In particular, the Secretary encourages LEAs to address in their applications how their reform strategies might include enhanced preservice teacher education and professional development activities of educators that are directly connected to challenging standards.

Where appropriate, LEAs should use funds awarded under this notice to build upon comprehensive reform strategies that have already been initiated. An LEA that has not yet developed or completed a comprehensive local improvement plan consistent with the statutory provisions referenced in this notice may seek FY 1995 funds to do so. An LEA that has already developed such a plan may seek funds to implement the plan.

LEAs are not required or expected to submit their local improvement plans to the U.S. Department of Education for review and approval, whether or not those plans are developed or implemented with funds awarded under this notice. Local plans that have been or are being developed pursuant to State requirements, and that also receive funding under Goals 2000, would only remain subject to any State review processes that may exist.

Pursuant to 34 CFR 75.253, the Secretary intends to make available to

successful applicants continuation awards from the State's FY 1996 allotment.

Application Requirements

The authorizing statute—section 304(e) of the Act—permits the Secretary to fund LEA applications that are consistent with the provisions of Goals 2000. The Secretary has determined that grants under this competition must be used for the development or implementation of comprehensive local improvement plans to help *all* students reach challenging academic standards. In particular, a local improvement plan that is developed or implemented with funds awarded under section 304(e) must be consistent with the requirements in sections 309(a)(3)(B) through (E) of the Act. Adapted to this direct grant program, these requirements specify that local plans—

(1) Describe a process of broad-based community participation in the development, implementation, and evaluation of the local improvement plan;

(2) Address districtwide education improvement, directed at enabling all students to meet the State content standards and State student performance standards (or local standards, if there are no State standards), including specific goals and benchmarks; reflect the priority of the State improvement plan (if there is a comprehensive State improvement plan) and include a strategy for—

(a) Improving teaching and learning, with strategies such as enhanced professional development and preservice education activities aligned to the standards;

(b) Improving governance, management, and accountability for performance; and

(c) Generating, maintaining, and strengthening parental and community involvement.

(3) Promote the flexibility of local schools in developing plans that address the particular needs of their school and community and are consistent with the local improvement plan; and

(4) Describe how the LEA will encourage and assist schools to develop and implement comprehensive school improvement plans that focus on helping all students reach State (or local) content standards and student performance standards.

Selection Criteria

The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition. The maximum score for all of the criteria is 100 points. The maximum score for each criterion is indicated in parenthesis with the criterion.

(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purposes of the authorizing statute, including consideration of:

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (24 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of:

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (18 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including:

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including:

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(ii) To determine personnel qualifications under paragraphs (4)(i) (A) and (B), the Secretary considers:

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which:

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (13 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation:

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State processes and on State, areawide, regional, and local coordination for review of proposed Federal financial assistance.

Applicants must contact the State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. The New Hampshire State Single Point of Contact is Michael Blake, New Hampshire Office of State Planning, 2½ Beacon Street, Concord, New Hampshire, 03301, (603) 271–2155.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.317), Washington, D.C. 20202–4725,

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m.

(Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.317), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing: (1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted (CFDA# 84.317).

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

Notice to All Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:** Thomas Fagan, U.S. Department of Education, 600 Independence Avenue, S.W., Portals Building, Room 4000, Washington, D.C. 20202–2110, Telephone: (202) 401–0039, FAX: (202) 205–0303. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

*Program Authority:* Section 304(e) of the Goals 2000: Educate America Act, 20 U.S.C. 5884(b).

Dated: May 31, 1996.

Gerald N. Tirozzi,

*Assistant Secretary Elementary and Secondary Education.*

Appendix

**BILLING CODE 4000–01–P**

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and the Office of Management and Budget, Paperwork Reduction Project 1875–0102, Washington, DC 20503.

Instructions for ED Form No. 524

*General Instructions*

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

*Section A—Budget Summary—U.S. Department of Education Funds*

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1–11.

Lines 1–11, Columns (a)–(e)

For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1–11, Column (f)

Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, Columns (a)–(e)

Show the total budget request for each project year for which funding is requested.

Line 12, Column (f)

Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

*Section B—Budget Summary—Non-Federal Funds*

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1–11 of Section B.

Lines 1–11, Columns (a)–(e)

For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1–11, Column (f)

Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, Columns (a)–(e)

Show the total matching or other contribution for each project year.

Line 12, Column (f)

Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

*Section C—Other Budget Information—Pay attention to applicable program specific instructions, if attached*

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Section A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Instructions for Part III Application Narrative

Before preparing the Application Narrative an applicant should read the information in this notice, including the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of your proposal;

2. Describe the proposal in light of each of the selection criteria in the order in which the criteria are listed in this application; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 20 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. The Department has found that successful applications for similar programs generally meet this page limit.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1810–0594 (Expiration date: August 31, 1996). The time required to complete this information collection is estimated to average 50 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, DC 20202–4651. *If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Thomas Fagan, U.S. Department of Education, 600 Independence Avenue, SW., Portals Building, Room 4000, Washington, DC 20202–2110.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

SF 424B (4-88) Back

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

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As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013

# Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>For Material Change Only:<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>Congressional District, *if known*: | Congressional District, *if known*: |
| 6. Federal Department/Agency: | 7. Federal Program Name/Description:<br><br>CFDA Number, *if applicable*: _____ |
| 8. Federal Action Number, *if known*: | 9. Award Amount, *if known*:<br>$ |
| 10. a. Name and Address of Lobbying ~~Entity~~ Registrant<br>*(if individual, last name, first name, MI)*: | b. Individuals Performing Services *(including address if different from No. 10a)*<br>*(last name, first name, MI)*: |

~~(attach Continuation Sheet(s) SF-LLL-A, if necessary)~~

| 11. Amount of Payment *(check all that apply)*: | 13. Type of Payment *(check all that apply)*: |
|---|---|
| $ _____ ☐ actual ☐ planned | ☐ a. retainer<br>☐ b. one-time fee<br>☐ c. commission<br>☐ d. contingent fee<br>☐ e. deferred<br>☐ f. other; specify: _____ |
| 12. Form of Payment *(check all that apply)*:<br>☐ a. cash<br>☐ b. in-kind; specify: nature _____<br>value _____ | |

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

~~(attach Continuation Sheet(s) SF-LLL-A, if necessary)~~

15. ~~Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No~~

| 16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C.1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No.: _____ Date: _____ |
|---|---|

| Federal Use Only. | Authorized for Local Reproduction<br>Standard Form - LLL |
|---|---|

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate~~. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503

BILLING CODE 4000–01–C

*Notice to All Applicants*

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

*To Whom Does This Provision Apply?*

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All Applicants for New Awards Must Include Information in Their Applications To Address This New Provision in Order To Receive Funding Under This Program.*

*What Does This Provision Require?*

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

*What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?*

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

[FR Doc. 96–14163 Filed 6–5–96; 8:45 am]
BILLING CODE 4000–01–P

Federal Register

Thursday
June 6, 1996

Part IV

# Environmental Protection Agency

**40 CFR Part 73**

**Acid Rain Program, $SO_2$ Allowance Auction and Electronic Allowance Transfer; Advanced Notice of Proposed Rulemaking**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 73

**[FRL–5513–6]**

**RIN 2060–AG75**

### Acid Rain Program, $SO_2$ Allowance Auction and Electronic Allowance Transfer

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

**ACTION:** Advanced notice of proposed rulemaking; notice and request for comment.

**SUMMARY:** Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990, (the Act) authorized the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program to reduce the adverse health and ecological effects of acidic deposition. Under the Acid Rain Program, electric utilities must have an allowance for each ton of sulfur dioxide ($SO_2$) that their generating facilities emit.

Title IV mandates that EPA hold or sponsor yearly auctions and direct sales of allowances for a small portion of the total allowances allocated each year. The United States General Accounting Office has recommended that EPA change the design of the auction to a single-price auction, in which each bidder would pay the market-clearing price. Currently, the auction is a ''price-discriminating'' auction, meaning that all bids are ranked beginning with the highest dollar amount and that each winning bidder pays what he or she bids until all allowances are sold. EPA is soliciting comments on whether to change the current design of the acid rain allowance auctions. EPA is also seeking comment on whether to change the requirement that additional allowances offered in EPA auctions have a set minimum price in whole dollars. Lastly, EPA is seeking comment on whether to change the timing of the annual auctions from late March to late October.

Title IV also provides for the transfer of allowances and states that a transfer will not be effective until EPA receives and records a written certification of the transfer signed by a responsible official of each party. EPA is considering development of a system to allow electronic submittal of allowance transfers. EPA is seeking comment on whether to propose allowing such electronic transfers.

**DATES:** Comments must be received on or before August 5, 1996.

**ADDRESSES:** All written comments must be identified with the appropriate docket number (Docket No. A–96–19) and be submitted in duplicate to: EPA Air Docket Section (6102), U. S. Environmental Protection Agency, Waterside Mall, Room M1500, 1st floor, 401 M Street SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Linda Reidt Critchfield, U. S. Environmental Protection Agency, Acid Rain Division (6204J), 401 M Street SW., Washington, D.C. (202) 233–9087, call the Acid Rain Hotline at (202) 233–9620, or visit the Acid Rain Program web page at http://www.epa.gov/docs/acidrain/ardhome.html.

**SUPPLEMENTARY INFORMATION:** EPA's Acid Rain Program established an innovative, market-based allowance trading system to reduce $SO_2$ emissions, one of the primary precursors of acid rain. Under this system, fossil fuel-fired power plants, the principal emitters of $SO_2$, were allocated tradeable allowances based on their past fuel usage and emissions. Each allowance entitles a unit to emit 1 ton of $SO_2$ during or after the year specified in the allowance serial number. At the end of the year, the number of allowances a unit holds must equal or exceed total emissions at that unit; otherwise, stringent penalties will apply. After the year 2000, the total number of allowances allocated each year will be about half of what the utility industry emitted in 1980.

Allowances may be bought, sold, or banked like any other commodity. If a unit has surplus allowances, it may sell them to units whose emissions levels exceed their allowance supply, or it may save them for future years.

#### Allowance Auctions

Because the availability of allowances is crucial to ensure the economic efficiency of emissions limitations and facilitate the addition of new electric-generating capacity, title IV of the Act mandates that EPA hold or sponsor yearly auctions and direct sales of allowances for a small portion of the total allowances allocated each year. In addition, title IV requires that EPA provide a written guarantee ensuring priority for certain new independent power producers (IPPs) in purchasing allowances in the direct sales. The auctions, sales, and IPP guarantee provisions of title IV help ensure that units, including new IPPs, have a public source of allowances beyond those allocated initially. Moreover, the auctions, which began in 1993, provide price information to the allowance market early in the regulatory program, 1995 being the first year in which allowances are required to be held.

To supply the sales and auctions with allowances, EPA has set aside in a Special Allowance Reserve 2.8 percent of the total annual allowances allocated to all units. During Phase I, when the allowances allocated total 5.7 million allowances annually, 150,000 allowances are available every year for auctions. During Phase II, when allowance allocations total 8.95 million allowances annually, 200,000 allowances are earmarked annually for auctions and 50,000 designated for the direct sales. Private allowance holders (such as utilities or brokers) also may offer their allowances for sale at the EPA auctions, provided that the allowances are dated for the year in which they are offered, for any previous year, or for 7 years in the future.

The auctions and sales are conducted for EPA by the Chicago Board of Trade (CBOT). Section 416 of the Act gives EPA the authority to delegate the administration of the auctions and sales.

EPA is soliciting comments on whether the Agency should propose to change the design and timing of the annual acid rain allowance auctions. The United States General Accounting Office (GAO) recommended changing the design of the auction from a ''price-discriminating'' auction to a uniform or single-price auction. *See* Air Pollution: Allowance Trading Offers an Opportunity to Reduce Emissions at Less Cost, GAO/RCED–95–30 (December 1994). A price-discriminating auction is an auction in which all bids are ranked, beginning with the highest dollar amount, and each winning bidder pays what he or she bids until all allowances are sold. Such a design produces a range of winning prices. In a uniform or single-price auction, bids are ranked the same way, but all winning bidders pay only the market-clearing price. The market clearing price is the price of the last available allowance that is sold.

Section 416(d)(2) of the Act provides that ''the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated'' 42 U.S.C. 7651o(d)(2). EPA has interpreted this language to require auction sales based on bid price (i.e., a price-discriminating auction where bidders pay what they bid) as opposed to auction sales based on a single, market-clearing price paid by all of the winning bidders, as proposed by the GAO report. 56 FR 23744, 23746 (May 23, 1991) (proposed rule); *see* 56 FR 65592, 65603 (December 17, 1991) (final

rule). EPA is considering whether the statutory language provides flexibility to change to a single-price auction. A single-price auction may have the benefit of producing a less confusing price signal for utilities participating in each auction since there will be only one winning price, the clearing price.

In the first three auctions, the gap between the average price paid (the price utilities received for the sale of their allowances withheld for auction) and the market-clearing price has narrowed. In 1993, the average price paid in the spot auction was $156 and the market-clearing or lowest successful bid was $131. In 1994, the average price paid in the spot auction was $159 and the market-clearing price was $150. In 1995, the average price paid in the spot auction was $132 and the market-clearing price was $130. In 1996, the average price paid in the spot auction was $68 and the market-clearing price was $66. Therefore, over the course of four auctions, the gap between the average spot price paid and the market-clearing price has narrowed from $25 in 1993 to $9 in 1994 and to $2 in 1995 and 1996. This narrowing of the gap may indicate that the current format does not impede the market, but the Agency would like to receive comments on how the auction design affects allowance market participants.

EPA also is seeking comment on whether the timing of the auctions should be changed from ''no later than March 31 of each year'' (40 CFR 73.70(b)) to no later than October 31 of every year. Aside from price discovery, one of the initial purposes of the allowance auctions was to provide a source of allowances to new units. In the existing regulations, EPA timed the auction to precede the direct sale, which begins on June 1 each year (56 FR 65598). This reason for the timing of the auction may no longer be applicable. No direct sales have actually been made, and EPA is eliminating the direct sale program and the related IPP written guarantee. By October 31, new (or existing) units will have three quarters of emissions data and therefore will have a better idea of their allowance needs for the year and be better able to use the auction in planning for program compliance. Furthermore, auctions completed by October 31 would allow utilities to freely offer their allowances in the auctions and avoid conflicting with the transfer restrictions that are imposed after the allowance transfer deadline has passed and before the compliance deductions have been completed. § 73.50(b)(2).

EPA would also like comment on whether additional allowances offered by utilities to be sold in EPA auctions must have a minimum price in whole dollars. Under 40 CFR § 73.70, authorized account representatives (AARS) may offer allowances for sale at EPA auctions and must notify EPA of their minimum price in whole dollars. All bids in previous EPA auctions were required to be in whole dollars. Beginning with the March 1996 auction, bids were accepted in increments of $0.01. Since bids are now accepted in increments other than whole dollars, EPA is seeking comment on whether or not allowance offers should also be accepted with unrestricted minimum prices.

Electronic Transfer

Title IV states that allowance transfers are effective when ''written certification of the transfer, signed by a responsible official of each party to the transfer, is received and recorded by'' EPA. 42 U.S.C. 7651b(b). Accordingly, EPA's current regulations require that, to record an allowance transfer with EPA, parties must submit an Allowance Transfer Form that includes ''signatures of the authorized account representatives [AARS] of both the transferor and transferee accounts.'' 40 CFR 73.50(b)(1)(ii). An Allowance Transfer Form also lists the serial numbers of the allowances to be transferred. Once a complete Allowance Transfer Form is submitted to the EPA, EPA records the transfer in the Allowance Tracking System within 5 business days if the transfer meets all applicable requirements.

In order to facilitate ''the orderly and competitive functioning of the allowance system'' (42 U.S.C. 7651b(c)), EPA is investigating methods for electronic submission of allowance transfers. This would eliminate the need to mail the transfer forms between AARs and then to EPA, allowing the transfer to be recorded more quickly and saving money for the buyer and the seller. The most straightforward option for submitting an electronic transfer is to allow the seller to submit the transfer information. If allowances are transferred to the wrong account or the incorrect number of allowances are transferred to the correct buyer, these errors would be corrected through EPA's normal error correction procedure. Another option is to have both the buyer and seller submit transfer forms, and if the transfer information on the forms matches perfectly, EPA processes the transfer. This raises a potential problem if there are the slightest differences in the transfer information on the two forms, since the computer will reject the transfer. A third option is to have the seller submit the transfer form to EPA and have the buyer approve it prior to processing by EPA. This option may be more difficult to implement using existing software that has been developed for transferring information electronically, since that software does not provide ''signoff'' capability.

EPA is interested in learning whether participants in the allowance market would like to forego the requirement that both AARs ''sign'' a single transfer form in order to implement the electronic transfer capability. Comment is also requested on the three options described above and any other options and how such options can be implemented consistent with statutory requirements.

* * * * *

All written comments will be considered carefully in determining whether a subsequent proposal to change future auctions and to allow for electronic transfers will be prepared.

Administrative Requirements

*A. Executive Order 12866*

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this notice is a ''significant regulatory action'' because the notice seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA responses to those comments, and any changes made in response to OMB suggestions or

recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

*B. Miscellaneous*

Requirements under the Unfunded Mandates Act, Paperwork Reduction Act, and Regulatory Flexibility Act will be addressed if and when the Agency issues a proposed rule based on the comments received in this advanced notice of proposed rulemaking.

Dated: May 24, 1996.

Carol M. Browner,

*Administrator, U.S. Environmental Protection Agency*

[FR Doc. 96–14112 Filed 6–5–96; 8:45 am]

**BILLING CODE 6560–50–P**

Federal Register

Thursday
June 6, 1996

## Part V

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 121**

**Flight Attendant Requirements; Proposed Rule**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 121

**[Docket No. 25874; Notice No. 89–9]**

**RIN 2120–AC32**

## Flight Attendant Requirements

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Proposed rule, withdrawal.

**SUMMARY:** The FAA is withdrawing a previously published notice of proposed rulemaking (NPRM) that proposed to amend the regulations for situations where passengers are on board aircraft that are parked at the gate. The FAA has determined that because there has been a considerable lapse of time since the issuance of the NPRM in April of 1989, the NPRM should be withdrawn.

**DATES:** This withdrawal is made on June 6, 1996.

**FOR FURTHER INFORMATION CONTACT:** Donell Pollard, Air Transportation Division, Federal Aviation Administration, 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–3735.

**SUPPLEMENTARY INFORMATION:** On April 14, 1989, the FAA published Notice No. 89–9 [54 FR 15134] proposing to amend the regulations covering situations where passengers remain on board an aircraft when it is parked at the gate. The current rule permits a reduction of flight attendants at intermediate stops; Notice 89–9 proposed to extend that reduction to beginning and ending stops. The FAA also proposed that, for airplanes of 101–150 passenger seats, two flight attendants rather than one should be required at all stops for reasons of safety and security. Finally, the NPRM proposed certain training requirements for persons who would be allowed to substitute for flight attendants at stops where passengers remain on board.

The FAA received 12 comments on the proposal. The Air Transport Association (ATA) commented that it favors the reduction in the number of flight attendants at beginning and ending stops; however, it opposes the increase in the number of flight attendants for the 101–150 passenger airplane. ATA estimated that this change could cost up to $12 million annually. The Association of Flight Attendants (AFA) commented that the FAA should allow no reduction in the number of flight attendants for reasons of safety and security, but favored the proposed increase, from one to two, in the number of flight attendants required to remain onboard the 101–150 airplane. A joint comment submitted by other flight attendant associations supported this position. That comment also pointed out that allowing persons to substitute for flight attendants would add yet another group that would have information on the air carrier's security program. Likewise, the Air Line Pilots Association (ALPA) supported a full complement of flight attendants on board when passengers are boarding or deplaning, and included additional criteria for the emergency evacuation of an airplane. The National Transportation Safety Board (NTSB) stated that all of the flight attendants should be on board during the active stages of boarding and deplaning, but agreed that the number of flight attendants could be reduced during enroute stops. The NTSB agreed that this reduction should be based on the number of floor level exits. The NTSB also suggested specific training for those persons who would be allowed to substitute for flight attendants. Finally, several individuals commented that they did not support this rulemaking based on safety considerations.

Because it has now been almost 7 years since the proposal was published, the FAA acknowledges that these comments should not be relied on as necessarily representing the positions of persons interested in this proposal. Because the airline industry is a dynamic and changing industry, comments made in 1989 may or may not reflect the effect that this proposal would have on air carriers and individuals today.

For these reasons, the FAA has decided to withdraw NPRM No. 89–9. The FAA may issue a new proposal in the future.

In consideration of the above, Notice No. 89–9, issued April 14, 1989, is hereby withdrawn.

Issued in Washington, DC on May 31, 1996.

Thomas C. Accardi,

*Director, Flight Standards Service.*

[FR Doc. 96–14262 Filed 6–5–96; 8:45 am]

**BILLING CODE 4910–13–M**

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## REMINDERS

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.

## RULES GOING INTO EFFECT TODAY

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Import and export user fees; published 5-7-96

**AGRICULTURE DEPARTMENT**

Import quotas and fees:

Section 22 import fees, cotton reentry into U.S., and market stabilization price calculation; Federal regulatory reform; published 6-6-96

**DEFENSE DEPARTMENT**

Vocational rehabilitation and education:

Veterans education--

Educational assistance test program; rates payable increase; published 6-6-96

**ENVIRONMENTAL PROTECTION AGENCY**

Debarment and suspension (nonprocurement):

Clean Air and Water Acts; facilities ineligibility in performance of Federal contracts, grants, and loans; published 6-6-96

Hazardous waste:

Treatment, storage, and disposal facilities--

Tanks, surface impoundments, and containers; organic air emission standards; published 11-13-95

Tanks, surface impoundments, and containers; organic air emission standards; published 2-9-96

Water pollution control:

Water quality standards--

Arizona surface waters; published 5-7-96

**FEDERAL COMMUNICATIONS COMMISSION**

Radio broadcasting:

Accelerated expiration of broadcast station license; published 6-6-96

**INTERIOR DEPARTMENT**

Natural resource damage assessments; published 5-7-96

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

General Electric; correction; published 6-6-96

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

Sanctions invoked under Highway Safety Act of 1966:

Federal regulatory review--

Review process simplification; published 6-6-96

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Lamps, reflective devices, and associated equipment--

High intensity discharge light source use in replaceable bulb headlamp systems; published 5-7-96

National Highway System Designation Act of 1995; implementation:

Compliance and transfer of funds procedures--

Motorcycle helmet use legislation references and requirements; removed; published 6-6-96

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Effectively connected income and the branch profits tax; published 3-8-96

Effectively connected income; branch profits tax and branch-level interest tax

Correction; published 4-1-96

Foreign corporations--

Determination of interest expense deduction; published 3-8-96

Determination of interest expense deduction; correction; published 4-10-96

**VETERANS AFFAIRS DEPARTMENT**

Disabilities rating schedule:

Endocrine system; published 5-7-96

Vocational rehabilitation and education:

Veterans education--

Educational assistance test program; rates payable increase; published 6-6-96

Graduate students in undergraduate courses; enrollment measurement; published 6-6-96

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Agricultural Marketing Service**

Specialty crops; import regulations:

Medjhool dates grown in California; comments due by 6-10-96; published 4-9-96

**AGRICULTURE DEPARTMENT**

**Forest Service**

Alaska Federal public lands subsistence management regulations

Waters subject to subsistence priority regulation; identification; Federal Subsistence Program and Federal Subsistence Board's Authority; expansion; comments due by 6-14-96; published 4-4-96

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Endangered and threatened species:

Sea turtle conservation; shrimp trawling requirements--

Soft turtle excluder devices approval removed, etc.; comments due by 6-10-96; published 4-24-96

Fishery conservation and management:

Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; comments due by 6-10-96; published 4-15-96

Gulf of Alaska groundfish; comments due by 6-14-96; published 6-4-96

Limited access management of Federal fisheries in and off of Alaska

Gulf of Alaska and Bering Sea and Aleutian Islands groundfish; comments due by 6-13-96; published 5-15-96

Ocean salmon off coasts of Washington, Oregon, and California; comments due by 6-10-96; published 5-24-96

**DEFENSE DEPARTMENT**

Acquisition regulations:

Government property; use and charges clause class deviation; comments due by 6-14-96; published 5-15-96

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards:

Equivalent emission limitations by permit; implementation; comments due by 6-10-96; published 5-10-96

Air quality implementation plans; approval and promulgation; various States:

Illinois; comments due by 6-10-96; published 5-10-96

Ohio; comments due by 6-14-96; published 5-15-96

Wisconsin; comments due by 6-10-96; published 5-10-96

Air quality planning purposes; designation of areas:

Arizona; comments due by 6-10-96; published 5-10-96

Hazardous waste:

Land disposal restrictions--

Wood preserving wastes and toxicity characteristic metal wastes; comments due by 6-10-96; published 5-10-96

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 6-12-96; published 5-13-96

National priorities list update; comments due by 6-12-96; published 5-13-96

**FEDERAL COMMUNICATIONS COMMISSION**

Freedom of Information Act; implementation; comments due by 6-14-96; published 4-15-96

Radio stations; table of assignments:

Illinois; comments due by 6-10-96; published 4-26-96

Kansas; comments due by 6-13-96; published 4-29-96

Missouri; comments due by 6-10-96; published 4-26-96

New Mexico; comments due by 6-10-96; published 4-26-96

Ohio; comments due by 6-13-96; published 4-29-96

Pennsylvania; comments due by 6-10-96; published 4-26-96

Wisconsin; comments due by 6-10-96; published 4-26-96

Telecommunications Act of 1996; implementation:

Customer proprietary network information, etc.; telecommunications carriers' use; comments due by 6-11-96; published 5-28-96

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Animal drugs, feeds, and related products:

Protein derived from ruminants prohibited in ruminant feed; comments due by 6-13-96; published 5-14-96

Food for human consumption:

Food labeling--

Nutrient content claims; dietary supplements, nutrition and ingredient labeling; comment periods extension; comments due by 6-10-96; published 4-15-96

Human drugs:

Orally ingested (OTC) drug products containing alcohol as inactive ingredient; maximum concentration limit; comments due by 6-10-96; published 5-10-96

Medical devices:

Analyte specific regents; classification/ reclassification as restricted devices; comments due by 6-12-96; published 3-14-96

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Alaska Federal public lands subsistence management regulations

Waters subject to subsistence priority regulation; identification; Federal Subsistence Program and Federal Subsistence Board's Authority; expansion; comments due by 6-14-96; published 4-4-96

**INTERIOR DEPARTMENT**

**Minerals Management Service**

Outer Continental Shelf; oil, gas, and sulphur operations:

Tracts offered for sale; high bids, acceptance or rejection; time period extension; comments due by 6-14-96; published 5-15-96

**JUSTICE DEPARTMENT**

**Justice Programs Office**

Grants:

Violence against women; arrest policies; comments due by 6-13-96; published 5-14-96

**LABOR DEPARTMENT**

**Wage and Hour Division**

Migrant and seasonal agricultural worker protection:

Employ, independent contractor and joint employment, definitions; comments due by 6-12-96; published 3-29-96

**NUCLEAR REGULATORY COMMISSION**

Production and utilization facilities; domestic licensing:

Reporting reliability and availability information for risk-significant systems and equipment; comments due by 6-11-96; published 2-12-96

**PERSONNEL MANAGEMENT OFFICE**

Employment:

Federal employee training; comments due by 6-12-96; published 5-13-96

**RAILROAD RETIREMENT BOARD**

Railroad Unemployment Insurance Act:

Representative payment; comments due by 6-10-96; published 4-11-96

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Regattas and marine parades:

Newport-Bermuda Regatta; comments due by 6-12-96; published 5-13-96

Searsport Lobster Boat Races; comments due by 6-12-96; published 5-13-96

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

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McCauley; comments due by 6-11-96; published 4-12-96

McDonnell Douglas; comments due by 6-10-96; published 4-10-96

Class E airspace; comments due by 6-14-96; published 5-2-96

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Accelerator control systems; comments due by 6-14-96; published 4-30-96

Lamps, reflective devices, and associated equipment--

Headlamp concealment devices; Federal regulatory review; comments due by 6-10-96; published 4-11-96

**TRANSPORTATION DEPARTMENT**

**Surface Transportation Board**

Carrier rates and service terms:

Rail common carriage; disclosure, publication, and notice of change of rates and other service terms; comments due by 6-10-96; published 5-9-96

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Excise taxes:

Gasoline and diesel fuel dye injection systems; comments due by 6-12-96; published 3-14-96


## LIST OF PUBLIC LAWS

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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