6–18–96
Vol. 61 No. 118
Pages 30797–31002

# federal register

Tuesday
June 18, 1996

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

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

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

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

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

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

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

How To Cite This Publication: Use the volume number and the page number. Example: 61 FR 12345.

## SUBSCRIPTIONS AND COPIES

| | |
|---|---|
| **PUBLIC** | |
| Subscriptions: | |
| Paper or fiche | 202–512–1800 |
| Assistance with public subscriptions | 512–1806 |
| General online information | 202–512–1530 |
| Single copies/back copies: | |
| Paper or fiche | 512–1800 |
| Assistance with public single copies | 512–1803 |
| **FEDERAL AGENCIES** | |
| Subscriptions: | |
| Paper or fiche | 523–5243 |
| Assistance with Federal agency subscriptions | 523–5243 |

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

FEDERAL REGISTER WORKSHOP

### THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

### WASHINGTON, DC

[Two Sessions]

WHEN: July 9, 1996 at 9:00 am, and July 23, 1996 at 9:00 am.

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

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

# Contents

Federal Register
Vol. 61, No. 118
Tuesday, June 18, 1996

**Agricultural Marketing Service**
NOTICES
Eggs and egg products:
Pasteurized shell eggs (in-shell eggs), 30851

**Agriculture Department**
*See* Agricultural Marketing Service

**Army Department**
*See* Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Umatilla Depot Activity, OR; chemical agent demilitarization facility; construction and operation, 30862
Yuma Proving Ground, AZ, 30862

**Arts and Humanities, National Foundation**
*See* National Foundation on the Arts and the Humanities

**Centers for Disease Control and Prevention**
NOTICES
Grants and cooperative agreements; availability, etc.:
Acquired Immunodeficiency Syndrome (AIDS) and human immunodeficiency virus (HIV)—
Infection; epidemiological research studies, 30899–30902
Hemophilia complications prevention through hemophilia treatment centers, 30903–30906
Human immunodeficiency virus (HIV)—
Prevention of sexual transmission by HIV-seropositive men; formative behavioral intervention research, 30906–30909
Injury control training and demonstration center, 30909–30912
Tuberculosis prevention and control programs in developing countries; effectiveness improvement, 30912–30914

**Children and Families Administration**
NOTICES
Grants and cooperative agreements; availability, etc.:
Abandoned infants assistance and temporary child care for children with disabilities and crisis nurseries programs, 30871–30899

**Civil Rights Commission**
NOTICES
Meetings; State advisory committees:
Alabama, 30851
Delaware, 30851
Hawaii, 30851–30852
New Jersey, 30852

**Commerce Department**
*See* International Trade Administration
*See* Minority Business Development Agency
*See* National Institute of Standards and Technology

**Commodity Futures Trading Commission**
NOTICES
Contract market proposals:
Chicago Mercantile Exchange—
Oriented Strand Board, 30861
Meetings:
Internal controls and risk management practices; interactive symposium, 30861–30862

**Copyright Office, Library of Congress**
RULES
Digital audio recording devices and media; statements of account; verification, 30808–30814

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

**Employment and Training Administration**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 30922

**Energy Department**
*See* Federal Energy Regulatory Commission
RULES
Acquisition regulations:
Miscellaneous amendments
Correction, 30823–30824
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Los Alamos National Laboratory, NM, 30862–30863
Meetings:
Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, 30863
Fusion Energy Sciences Advisory Committee, 30864
Spent nuclear fuel and high level radioactive waste; acceptance, storage, and transportation responsibilities; performance plan; comment request
Technical and contractual issues; presolicitation conference, 30864–30865

**Engineers Corps**
NOTICES
Regulatory guidance letters, 30990–31002

**Environmental Protection Agency**
RULES
Air pollutants, hazardous; national emission standards:
Hazardous air pollutants list; additions and deletions—
Caprolactam; delisting, 30816–30823
Surface coating operations from new or existing shipbuilding and ship repair facilities—
Compliance date revision and implementation plan submittal deadline extension, 30814–30816
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Surface coating operations from new or existing shipbuilding and ship repair facilities—
Compliance date revision and implementation plan submittal deadline extension, 30846–30847

**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 30867–30868
Clean Water Act:
St. Croix River, MN and WI; adequate facilities for safe and sanitary removal and treatment of sewage; reasonable availability, 30868
Reports; availability, etc.:
Waste technologies industries (WTI) incinerator risk assessment issues; technical workshop report, 30868–30869

**Executive Office of the President**
*See* Presidential Documents
*See* Trade Representative, Office of United States

**Federal Aviation Administration**
**RULES**
Airworthiness directives:
MDB Flugtechnik, 30801–30803
Class E airspace, 30803–30804
**PROPOSED RULES**
Class E airspace, 30842–30844
**NOTICES**
Passenger facility charges; applications, etc.:
Charlottesville-Albermarle Airport, VA, 30933–30934

**Federal Communications Commission**
**PROPOSED RULES**
Common carrier services:
Federal-State Joint Board on Universal Service—Meeting, 30847–30848

**Federal Emergency Management Agency**
**NOTICES**
Disaster and emergency areas:
Kentucky, 30869
Minnesota, 30869
North Dakota, 30869
West Virginia, 30870

**Federal Energy Regulatory Commission**
**RULES**
Electric utilities (Federal Power Act):
Open access same-time information system (formerly real-time information networks) and standards of conduct for public utilities
Conference cancellation, etc., 30804
**NOTICES**
Environmental statements; availability, etc.:
Paiute Pipeline Co., 30866–30867
*Applications, hearings, determinations, etc.:*
Colorado Interstate Gas Co., 30865
Dow Intrastate Gas Co., 30865
Koch Gateway Pipeline Co., 30865
Northern Natural Gas Co., 30865–30866
Texas Gas Transmission Corp., 30866
Transcontinental Gas Pipe Line Corp., 30866

**Federal Railroad Administration**
**RULES**
Railroad accident reporting, 30940–30987

**Federal Reserve System**
**NOTICES**
Banks and bank holding companies:
Change in bank control, 30870
Formations, acquisitions, and mergers, 30870–30871
Permissible nonbanking activities, 30871

**Financial Management Service**
*See* Fiscal Service

**Fiscal Service**
**NOTICES**
Senior Executive Service:
Performance Review Board; membership, 30937

**Government Ethics Office**
**NOTICES**
Senior Executive Service:
Performance Review Board; membership, 30927

**Health and Human Services Department**
*See* Centers for Disease Control and Prevention
*See* Children and Families Administration
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration

**Interior Department**
*See* Land Management Bureau
*See* National Park Service
*See* Surface Mining Reclamation and Enforcement Office

**Internal Revenue Service**
**PROPOSED RULES**
Income taxes:
Extraordinary dividends; distributions to corporate shareholders, 30845–30846
**NOTICES**
Organization, functions, and authority delegations:
Chiefs, Appeals Offices, et al., 30937–30938

**International Trade Administration**
**NOTICES**
Antidumping:
Anhydrous sodium metasilicate from—France, 30852–30854
Forged steel crankshafts from—United Kingdom, 30854–30856

**International Trade Commission**
**NOTICES**
Meetings; Sunshine Act, 30921

**Justice Department**
*See* National Institute of Justice

**Labor Department**
*See* Employment and Training Administration

**Land Management Bureau**
**NOTICES**
Realty actions; sales, leases, etc.:
Arizona, 30916–30917
Oregon, 30917–30918

**Library of Congress**
*See* Copyright Office, Library of Congress

**Minority Business Development Agency**
**NOTICES**
Business development center program applications:
Illinois, 30856–30858

**National Credit Union Administration**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 30922–30923

**National Foundation on the Arts and the Humanities**
NOTICES
Grants and cooperative agreements; availability, etc.:
Artist in residency in correctional institutions project, 30923

**National Highway Traffic Safety Administration**
RULES
Motor vehicle safety standards:
Child restraint systems—
Booster seat safety; test dummies use in compliance tests, 30824–30836
PROPOSED RULES
Motor vehicle safety standards:
Bumper standard—
Golf carts and other small light-weight vehicles, 30848–30850

**National Institute of Justice**
NOTICES
Grants and cooperative agreements; availability, etc.:
Law enforcement and corrections technology research, 30921
Policing research and evaluation, 30921
Sentencing reforms and their effects on corrections; evaluation and research, 30921–30922

**National Institute of Standards and Technology**
NOTICES
National Fire Codes:
Fire safety standards, 30858–30859
Technical committee reports, 30859–30861

**National Institutes of Health**
NOTICES
Grants and cooperative agreements; availability, etc.:
Novel heparin-binding peptides; scientific and commercial development, 30914–30915
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Cary Medical Corp., 30915–30916

**National Park Service**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 30918–30920
National Register of Historic Places:
Pending nominations, 30920–30921

**National Transportation Safety Board**
NOTICES
Meetings; Sunshine Act, 30923

**Nuclear Regulatory Commission**
PROPOSED RULES
Agreement State licenses; recognition of areas under exclusive Federal jurisdiction wihin agreement State, 30839–30842
Rulemaking petitions:
Amersham Corp., 30837–30839
NOTICES
Environmental statements; availability, etc.:
Pacific Gas & Electric Co., 30924
Meetings:
Nuclear Safety Research Review Committee, 30924–30925
Meetings; Sunshine Act, 30926–30927
Petitions; Director's decisions:
Arizona Public Service Co., 30925–30926

**Office of United States Trade Representative**
*See* Trade Representative, Office of United States

**Personnel Management Office**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 30930

**Postal Rate Commission**
NOTICES
Post office closings; petitions for appeal:
Trevett, ME, 30930–30931

**Presidential Documents**
PROCLAMATIONS
*Special observances:*
Father's Day (Proc. 6904), 30797
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.:
HIV/AIDS, Presidential Advisory Council on; amendment to EO 12963 (EO 13009), 30799

**Public Health Service**
*See* Centers for Disease Control and Prevention
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration

**Research and Special Programs Administration**
RULES
Pipeline safety:
Gas pipeline safety standards; Federal regulatory reform Correction, 30824
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 30934–30936
Meetings:
Pipeline safety program; regulatory review and improved customer service, 30936–30937

**Securities and Exchange Commission**
NOTICES
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 30931–30932
Philadelphia Stock Exchange, Inc., 30932–30933

**Substance Abuse and Mental Health Services Administration**
NOTICES
Meetings; advisory committees:
July, 30916

**Surface Mining Reclamation and Enforcement Office**
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Texas, 30805–30808

**Trade Representative, Office of United States**
NOTICES
Caribbean Basin Economic Recovery Act; beneficiary countries status; report to Congress, 30927–30929

Japan:
Consumer photographic film and paper; barriers to market access; Section 304 determinations, 30929–30930

**Transportation Department**
*See* Federal Aviation Administration
*See* Federal Railroad Administration
*See* National Highway Traffic Safety Administration
*See* Research and Special Programs Administration

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

**United States Information Agency**
**NOTICES**
Meetings:
Public Diplomacy, U.S. Advisory Commission, 30938

**Veterans Affairs Department**
**NOTICES**
Meetings:
Wage Committee, 30938

**Separate Parts In This Issue**

**Part II**
Department of Transportation, Federal Railroad Administration, 30940–30987

**Part III**
Department of Defense, Engineers Corps, 30990–31002

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

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

## CFR PARTS AFFECTED IN THIS ISSUE

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


**3 CFR**

**Proclamations:**
6904.....30797

**Executive Orders:**
12963 (Amended by EO 13009).....30799
13009.....30799

**10 CFR**

**Proposed Rules:**
34.....30837
150.....30839
170.....30839

**14 CFR**
39.....30801
71.....30803

**Proposed Rules:**
71 (2 documents) .....30842, 30843

**18 CFR**
37.....30804

**26 CFR**

**Proposed Rules:**
1.....30845

**30 CFR**
943.....30805

**37 CFR**
201.....30808

**40 CFR**
63 (2 documents) .....30814, 30816

**Proposed Rules:**
63.....30846

**47 CFR**

**Proposed Rules:**
36.....30847
69.....30847

**48 CFR**
911.....30823
952.....30823
970.....30823

**49 CFR**
192.....30824
225.....30940
571.....30824

**Proposed Rules:**
571.....30848
581.....30848

Federal Register
Vol. 61, No. 118
Tuesday, June 18, 1996

# Presidential Documents

Title 3—

The President

Proclamation 6904 of June 13, 1996

## Father's Day, 1996

By the President of the United States of America

*A Proclamation*

America owes a debt of gratitude to the fathers that help our Nation's children grow up safe and happy. Providing a wellspring of love for their families to draw upon, these men strengthen our communities and enable their daughters and sons to master life's lessons with confidence. They share with us their experiences and energies, creating the strong foundation on which our children build their lives. A father's arm is there to protect and steer—whether cradling a newborn baby, steadying the rider of a first two-wheeler, or walking his child down the aisle.

Fatherhood provides one of life's most profound joys and one of its most solemn responsibilities. Everyone who has been blessed by a father's love knows the abiding respect it inspires and the self-esteem that can grow from a dad's affectionate guidance. We must do all we can to encourage fathers as they strive to provide the fundamental emotional and economic support that helps ensure their families' well-being. Programs like the Fatherhood Initiative, the Responsible Fatherhood Project, and Parent's Fair Share work to support American fathers, emphasize their role as mentors and providers, and advocate their involvement in their children's health and education.

On this Father's Day and throughout the year, let us thank fathers for their sacrifices and struggles and celebrate the special care they give their loved ones every day. With grateful words and actions, we honor all those who have embraced fatherhood's unique rewards.

NOW THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 16, 1996, as Father's Day. I invite the States, communities, and all the citizens of the United States to observe this day with appropriate ceremonies and activities that demonstrate our deep appreciation and affection for our fathers.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of June, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twentieth.

William J. Clinton

[FR Doc. 96–12619
Filed 6–17–96; 8:45 am]
Billing code 3195–01–P

Federal Register
Vol. 61, No. 118
Tuesday, June 18, 1996

# Presidential Documents

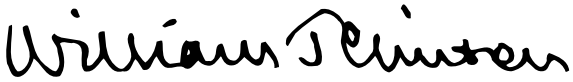
Title 3—

The President

Executive Order 13009 of June 14, 1996

## Amendment to Executive Order No. 12963 Entitled Presidential Advisory Council on HIV/AIDS

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to increase the membership of the Presidential Advisory Council on HIV/AIDS, it is hereby ordered that Executive Order No. 12963 is amended by deleting the number ''30'' in the second sentence of section 1(a) of that order and inserting the number ''35'' in lieu thereof.



THE WHITE HOUSE,
*June 14, 1996.*

[FR Doc. 96–15656
Filed 6–17–96; 8:45 am]
Billing code 3195–01–P

# Rules and Regulations

Federal Register
Vol. 61, No. 118
Tuesday, June 18, 1996

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

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 96–CE–18–AD; Amendment 39–9669; AD 96–13–01]**

**RIN 2120–AA64**

## Airworthiness Directives; MDB Flugtechnik AG Model MD3–160 Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to MDB Flugtechnik AG Model MD3–160 airplanes. This action requires inserting a supplement Aircraft Flight Manual (AFM), installing a placard prohibiting aerobatics and spinning, inspecting the nosewheel steering system for damaged parts and improper rigging, and if necessary, replacing the parts and re-rigging the nosewheel steering system (NWS). Two incidents on certain MD3–160 airplanes while in flight causing the airplanes to go into a left spin and loose rudder control prior to landing prompted this AD action. The actions specified by this AD are intended to prevent the rudder pedals from locking up and the nosewheel steering from disengaging, which if not detected and corrected, could cause loss of control of the airplane.

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

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

Comments for inclusion in the Rules Docket must be received on or before August 12, 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–18–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from MDB Flugtechnik AG, Flugplatz, CH–3368 Bleienbach, Switzerland. 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–18–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:** Gregory J. Holt, Program Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.3830, ext. 2716; facsimile (322) 230.6899 or Mr. Roman T. Gabrys, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

**SUPPLEMENTARY INFORMATION:** The Swiss Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on MDB Flugtechnik AG (Flugtechnik) Model MD3–160 airplanes. The Swiss FOCA advises that two incidents on certain MD3–160 airplanes were caused by disengagement of the nosewheel steering while in flight making the airplane roll into a left turn, which was controllable with aileron inputs. The airplane was able to land with restricted rudder control. During the second incident, the pilot was unable to re-engage the nosewheel steering while in flight and prior to landing, and rudder control was never effected. In test flights, the manufacturer has succeeded at reproducing this rudder pedal lockup under unusual combinations of nosewheel steering angle, steering disengage lever position, and rudder pedal position. This situation can only occur when the nose wheel steering disengage link is rotated above its disengage ''neutral'' position either by excessive nosewheel rotation, or by excessive rotation of the selector lever. The NWS mechanism may be sensitive to play in the nosewheel steering damper block assembly at the top of the nose leg and also sensitive to inconsistencies in rigging procedures. Further investigations have revealed that it is possible to inadvertently damage the disengage mechanism if the nosewheel is maneuvered by a towbar with the steering disengaged.

Flugtechnik has issued service bulletin (SB) No. MD–SB–27–001, Original Issue May 1995, which specifies inserting a supplement to the Aircraft Flight Manual (AFM), fabricating and installing a placard on the instrument panel, and inspecting the NWS system and replacing any damaged parts prior to further flight.

The Swiss FOCA classified this service bulletin as mandatory and issued airworthiness directive (AD) HB 95–303, dated July 17, 1995, in order to assure the continued airworthiness of these airplanes in Switzerland. This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement between the United States and Switzerland. Pursuant to this bilateral airworthiness agreement, the Swiss FOCA has kept the FAA informed of the situation described above.

After examining the circumstances and reviewing all available information related to the incidents described above including that received from the Swiss FOCA, the FAA has determined that AD action should be taken in order to prevent the rudder pedals from locking up and the nosewheel steering from disengaging, which if not detected and corrected, could cause loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Flugtechnik Model MD3–160 airplanes of the same type design registered for operation in the United States, this AD requires:

—inserting a supplement to the AFM prohibiting aerobatics and spinning,
—fabricating and installing a placard in the pilot's clear view, that prohibits aerobatics and spinning,
—inspecting the NWS engage/disengage mechanism for extensive rotational

play, and if rotational play exists, prior to further flight, adjusting the rigging of the rudder/nosewheel steering mechanism,

—inspecting the shimmy damper for a bent piston rod, and if bent or the damper bottoms out, prior to further flight, replacing the damping pieces.

The actions are to be done in accordance with the instructions in the ACCOMPLISHMENT INSTRUCTIONS section of MDB Flugtechnik AG Service Bulletin No. MD–SB–27–001, Original Issue May 1995.

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–18–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:

96–13–01 MDB Flugtechnik AG: Amendment 39–9669; Docket No. 96–CE–18–AD.

*Applicability:* Model MD3–160 airplanes, all serial numbers, 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 (h) 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 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter, as indicated in this AD.

To prevent the rudder pedals from locking up and the nosewheel steering (NWS) from disengaging, which if not detected and corrected, could cause loss of control of the airplane, accomplish the following:

(a) Insert Temporary Flight Manual Supplement No. TEMP AFM–001, dated April 1995, into the MD3–160 Swiss Trainer Airplane Flight Manual in accordance with the *ACCOMPLISHMENT INSTRUCTIONS* section, paragraph B(1) in Flugtechnik Service Bulletin (SB) No. MD–SB–27–001, Original Issue May 1995.

(b) Fabricate and install a placard, in an area visible to the pilot (using letters no smaller than ⅛-inch in height) with the following language on the airplane instrument panel:

''AEROBATICS AND SPINNING IN AEROBATIC AND UTILITY CATEGORY IS PROHIBITED''

(c) Inspect the shimmy damper for a bent piston rod and proper operation in accordance the *ACCOMPLISHMENT INSTRUCTIONS* section, paragraphs D (1) and (2) of Flugtechnik SB MD–SB–27–001, Original Issue May 1995. If the piston rod is bent, prior to further flight, replace the piston rod in accordance with the applicable portion of the airplane maintenance manual.

(d) Inspect the NWS engage/disengage mechanism and rudder for proper rotation position and excessive rotational play in accordance with paragraphs E (1), (2), and (3) of the service bulletin referenced in paragraph (c) of this AD. If the rotation is not correct or excessive play is evident, prior to further flight, re-adjust the rigging for the rudder/nosewheel steering mechanism in accordance with the applicable portion of the airplane maintenance manual.

(e) Inspect the nosewheel steering for excessive play in the damping mechanism in accordance with paragraphs F (1) through (5) in the service bulletin referenced in paragraph (c) of this AD. If any play exists, prior to further flight, replace the damping pieces and the console covers in accordance with the applicable portion of the airplane maintenance manual.

(f) After the initial inspections, repetitively inspect, at intervals not to exceed 50 hours TIS, in accordance with paragraphs (c), (d), and (e) of this AD.

(g) 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.

(h) 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, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Office.

(i) The inspections and replacements required by this AD shall be done in accordance with MDB Flugtechnik AG Service Bulletin No. MD–SB–27–001, Original Issue May 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MDB Flugtechnik AG, Flugplatz, CH–3368 Bleienbach, Switzerland. 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.

(j) This amendment (39–9669) becomes effective on July 12, 1996.

Issued in Kansas City, Missouri, on June 11, 1996.

Henry A. Armstrong,

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

[FR Doc. 96–15249 Filed 6–17–96; 8:45 am]

**BILLING CODE 4910–13–P**

---

## 14 CFR Part 71

**[Airspace Docket No. 95–AAL–3]**

## Alteration of Class E Airspace; Nome and Unalakleet, AK

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

**ACTION:** Final rule.

**SUMMARY:** This amendment amends the Class E2 airspace at Unalakleet, AK, and Class E5 airspace area at Nome, and Unalakleet, Alaska, to provide controlled airspace for aircraft executing the Standard Instrument Approach Procedure (SIAP) at the Nome and Unalakleet Airports. The areas will be depicted on aeronautical charts to provide a reference for pilots operating under VFR.

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

**FURTHER INFORMATION CONTACT:** Robert C. Durand, AAL–531, 222 West 7th Avenue #14, Anchorage, AK, 99513–7587; telephone: (907) 271–5898.

**SUPPLEMENTARY INFORMATION:**

### History

On July 14,1995, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Class E2 surface areas and the Class E5 airspace at Nome and Unalakleet, AK (60 FR 37969). This action was to provide controlled airspace for newly developed Microwave Landing System (MLS) approaches at Nome and Unalakleet; and a Global Positioning System (GPS) Instrument Flight Rules (IFR) procedure at the Unalakleet Airport. The additional airspace will provide required controlled airspace for aircraft operating under IFR procedures. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the Nome, AK, Class E2 proposal was received. The FAA has reevaluated the airspace requirements for the Nome MLS approach to runway 9 and determined that sufficient Class E2 airspace exists and therefore, withdraws the proposal to expand the Nome, AK, Class E2 airspace at this time. No other comments were received. The Class E airspace designations for surface areas of an airport are published in paragraph 6002 of FAA Order 7400.9C, dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1, and Class E airspace designations for airspace areas extending upward 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) revises the Class E2 surface area at Unalakleet, AK, and revises the Class E5 airspace at Nome and Unalakleet, AK. This action will provide required controlled airspace for IFR procedures at the Nome and Unalakleet Airports and allow charting of the airspace that will enable pilots to circumnavigate the area or otherwise comply with IFR procedures.

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

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 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 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 6002 Class E airspace areas designated as a surface area for an airport.*

* * * * *

AAL AK E2 Unalakleet, AK [Revised]

Unalakleet Airport, AK
(Lat. 63°53′17″N, long. 160°47′55″W)
North River NDB
(Lat. 63°54′27″N, long. 160°48′43″W)
Unalakleet VORTAC
(Lat. 63°53′31″N, long. 160°41′04″W)

Within a 4.2-mile radius of Unalakleet Airport and within 3.5 miles each side of the North River NDB 314° bearing extending from the 4.2-mile radius of Unalakleet Airport to 8.4 miles west of the North River NDB and within 1.6 miles each side of the 289° radial of the Unalakleet VORTAC extending from the 4.2 mile radius to 11 miles west of the Unalakleet VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

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

* * * * *

AAL AK E5 Nome, AK [Revised]

Nome Airport, AK
(Lat. 64°30′44″N, long. 165°26′43″W)
Nome VORTAC

(Lat. 64°29′06″N, long. 165°15′11″W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Nome Airport and within 14 miles of the Nome VORTAC extending clockwise from the 002° radial to the 185° radial of the VORTAC and within 20 miles of the Nome VORTAC extending clockwise from the 185° radial to the 305° radial of the VORTAC and within 4 miles north and 8 miles south of the 106° radial of the Nome VORTAC extending from the VORTAC to 16 miles east and within 4 miles north and 8 miles south of the Nome VORTAC 271° radial extending from the 6.6-miles radius to 27 miles west of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within a 39-mile radius of the Nome VORTAC and within 39 miles each side of the Nome VORTAC 092° radial extending from the 39-mile radius to 77.4 miles east of the VORTAC; excluding that airspace more than 12 miles from the shoreline .

* * * * *

AAL AK E5 Unalakleet, AK [Revised]

Unalakleet Airport, AK
(Lat. 63°53′17″N, long. 160°47′55″W)
Unalakleet VORTAC
(Lat. 63°53′31″N, long. 160°41′04″W)
Unalakleet Localizer
(Lat. 63°52′52″N, long. 160°47′42″W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Unalakleet Airport and within 2 miles each side of the 289° radial of the Unalakleet VORTAC extending from the 6.7-mile radius to 14.1 miles west of the VORTAC and within 3 miles east and 3 miles west of the Unalakleet Localizer front course extending from the 6.7-mile radius to 12.9 miles north of the airport; and that airspace extending upward from 1,200 feet above the surface within a 20-mile radius of the Unalakleet VORTAC extending clockwise from the 165° radial to the 322° radial and within 4 miles east and 8 miles west of the Unalakleet Localizer front course extending from the Localizer to 21.7 miles north of the airport and within 4 miles north and 8 miles south of the Unalakleet VORTAC 289° radial extending from 11 miles west of the VORTAC to 27 miles west of the VORTAC; excluding that airspace more than 12 miles from the shoreline.

* * * * *

Issued in Anchorage, AK, on May 29, 1996.

Trent Cummings,

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

[FR Doc. 96–15416 Filed 6–17–96; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 37

**[Docket No. RM95–9–000]**

## Open Access Same-Time Information System

June 11, 1996.

**AGENCY:** Federal Energy Regulatory Commission, Energy.

**ACTION:** Final rule; cancellation of technical conference and provision for filing of comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) had previously announced that it would hold a technical conference on June 17, 1996 [1] following the submission of an additional report from the How Group correcting any deficiencies in the standards and protocols document issued with the final rule in this proceeding. This notice cancels the technical conference and allows comments on the report filed with the Commission on June 7, 1996.

**DATES:** Comments on the report must be received by July 8, 1996.

**ADDRESSES:** Comments should be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:**

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1283

William Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0849

Gary D. Cohen (Legal Information), Electric Rates and Corporate Regulation, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0321

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem at (202) 208–1397 if dialing locally, or 1–800–856–3920 if dialing long distance. CIPS may also be accessed through the Fed world system (by modem or Internet). To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps. full duplex, no parity, 8 data bits and 1 stop bit. The full text of this document will be available on CIPS in ASCII and Wordperfect 5.1 format. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3104, 888 First Street, N.E., Washington, D.C. 20426.

The Commission previously announced that it would hold a technical conference on June 17, 1996 to discuss any remaining issues in this proceeding. The Commission scheduled the technical conference to follow the submission of an additional report from the How Group correcting any deficiencies in the standards and protocols document (Standards and Protocols) that accompanied the OASIS Final Rule. The How Group submitted the requested report to the Commission on June 7, 1996.

After a review of this report, the Commission has concluded that the technical conference scheduled for June 17, 1996 is unnecessary and is hereby cancelled.

The June 7, 1996 report is available for inspection and copying in the Commission's Public Reference Room and is accessible through the Commission Issuance Posting System. Interested persons may submit comments on this report on or before July 8, 1996.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–15405 Filed 6–17–96; 8:45 am]

**BILLING CODE 6717–01–M**

[1] *See,* Open Access Same-time Information System and Standards of Conduct, Order No. 889, FERC Stats. & Regs. ¶ 31,037, 61 FR 21737 (May 10, 1996).

**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 943**

**[SPATS No. TX–027–FOR]**

## Texas Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Texas regulatory program (hereinafter referred to as the ''Texas program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to Texas' existing regulations pertaining to identification of interests and compliance information and Commission of Texas (Commission) review of outstanding permits and revisions and one addition to Texas' existing statures pertaining to rulemaking and permitting, permit approval or denial, and suspension or rescission of improvidently issued permits. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal regulations and SMCRA.

**EFFECTIVE DATE:** June 18, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jack R. Carson, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Texas Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

### I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. Background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the February 27, 1980, Federal Register (45 FR 12998). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 943.10, 943.15, and 943.16.

### II. Submission of the Proposed Amendment

By letter dated August 30, 1995 (Administrative Record No. TX–595), Texas submitted a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to required program amendments codified at 30 CFR 943.16 (r), (t), and (u) [59 FR 13200, March 21, 1994, and 60 FR 15675, March 27, 1995]. The provisions of the Texas Coal Mining Regulations (TCMR) and of the Texas Surface Coal Mining and Reclamation Act (TSCMRA) at Article 5920–11 that Texas proposed to amend were TCMR 778.116(m), identification of interests and compliance information; TCMR 788.225(g)(1), Commission review of outstanding permits; section 6(b) of TSCMRA, rulemaking and permitting; section 21(c) of TSCMRA, reporting notices of violation in permit applications; and section 21a of TSCMRA, suspension or rescission of improvidently issued permits.

OSM announced receipt of the proposed amendment in the September 20, 1995, Federal Register (60 FR 48675), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on October 20, 1995.

By letter dated May 13, 1993 (Administrative Record No. TX–551), Texas submitted a proposed amendment to its program pursuant to SMCRA. By letter dated September 18, 1995 (Administrative Record No. TX–598), Texas revised the May 13, 1993, proposed amendment. The revised amendment included a definition for the term ''violation notice'' at TCMR 701.008(104), which was proposed as partial response to a required amendment at 30 CFR 943.16(k). Since this proposed definition is closely associated with Texas' August 30, 1995, proposed revisions pertaining to identification of interests and compliance information, it is being transferred to and addressed in this final rule. Decisions concerning the rest of the proposed changes in the May 13, 1993, proposed amendment, as revised on September 18, 1995, will be addressed in a separate Federal Register.

OSM announced receipt of the September 18, 1995, revised amendment in the October 25, 1995, Federal Register (60 FR 54620), and in the same document opened the public comment period. The public comment period closed on November 9, 1995. No comments were received pertaining to the proposed definition of ''violation notice.''

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

*A. Texas Coal Mining Regulations (TCMR)*

1. TCMR 701.008(104) Definition of Violation Notice

Texas proposed to add the following definition of ''violation notice'' at TCMR 701.008(104).

> ''Violation notice'' means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

The definition for ''violation notice'' was inadvertently omitted from the State regulations in Texas' Final Rule Adoption No. SMRD 2–88 (May 22, 1989). At 30 CFR 943.16(k), OSM required Texas to submit an amendment that included this definition (57 FR 37447, August 19, 1992). The proposed definition is substantively identical to the counterpart Federal definition that existed on August 19, 1992. However, OSM revised its definition of violation notice on October 28, 1994 (59 FR 54306). As show below, the revised Federal definition clarifies the types of violations that would form the basis for permit denial under section 510(c) of SMCRA and under the implementing Federal regulation at 30 CFR 778.14(c). OSM determined that incorporating by reference the amended definition of ''violation notice'' into 30 CFR 778.14(c) eliminated the need for including regulation language on the types of violation information that must be reported in a permit application.

> ''Violation notice'' means any written notification from a governmental entity, whether by letter, memorandum, judicial or administrative pleading, or other written communication, of a violation of the Act; any Federal rule or regulation promulgated pursuant thereto; a State program; or any Federal or State law, rule, or regulation pertaining to air or water environmental protection in connection with a surface coal mining operation. It includes, but is not limited to, or notice of violation; an imminent harm cessation order; a failure-to abate cessation order; a final order, bill, or

demand letter pertaining to a delinquent civil penalty; a bill or demand letter pertaining to delinquent abandoned mine reclamation fees; and a notice of bond forfeiture, where one or more violations upon which the forfeiture was based have not been corrected.

While the Texas definition lacks the clarity of the revised Federal definition, it is not inconsistent with it. On March 15, 1996 (Administrative Record No. TX–595.06), OSM contacted Texas to discuss this issue. Texas responded that it will interpret its proposed definition of ''violation notice'' consistent with the revised Federal definition. Also, as discussed in finding B.2., the Texas statute at Article 5920–11, section 21(c) of TSCMRA does require the reporting of notices of violation in permit applications consistent with the requirements under section 510(c) of SMCRA. Therefore, the Director approves the definition of ''violation notice'' at TCMR 701.008(104) to the extent that Texas interprets it consistent with the Federal definition. The required amendment at 30 CFR 943.16(k) is being revised to remove the requirement for a definition of ''violation notice.''

2. TCMR 778.116(m) Identification of Interests and Compliance Information

In response to the required amendment at 30 CFR 943.16(t) [finding No. 3, 60 FR 15675, March 27, 1995], Texas proposed revisions to TCMR 778.116(m) that are substantive in nature and contain language that is substantively identical to the language in the corresponding Federal regulation provisions at 30 CFR 778.14(c). Therefore, the Director finds that TCMR 778.116(m) is no less effective than the counterpart Federal regulation at 30 CFR 778.14(c). The Director approves the proposed revision to TCMR 778.116(m) and removes the required amendment at 30 CFR 943.16(t).

3. TCMR 788.225(g)(1) Commission Review of Outstanding Permits; Automatic Suspension and Rescission

In responds to the required amendment at 30 CFR 943.16(u) [finding No. 5, 60 FR 15675, March 27, 1995], Texas proposed a revision to TCMR 788.225(g)(1) that is substantive in nature and contains language that renders its provisions substantively identical to the corresponding Federal regulation provisions at 30 CFR 773.21(a).

The Federal regulation at 30 CFR 773.21(a) provides that the regulatory authority's findings with regard to a permittee's challenge of its decision to suspend and rescind an improvidently issued permit must be consistent with the provisions of 30 CFR 773.25. The provisions of 30 CFR 773.25 specify standards for challenging ownership and control links and the status of violations.

Since the Texas program did not have a direct counterpart to the Federal standards for challenging ownership and control links and the status of violations contained in 30 CFR 773.25 or to other requirements referred to in 30 CFR 773.25, Texas proposed a revision to TCMR 788.225(g)(1) to require that the Commission's findings with regard to a permittee's challenge of the Commission's decision to suspend and rescind an improvidently issued permit be consistent with the provisions of the Federal requirements at 30 CFR 773.25. Thus, Texas incorporated by reference the criteria for challenging ownership and control links and the status of violations specified by the Federal regulations.

Based on the above discussions, the Director finds the proposed revision to TCMR 788.225(g)(1) renders its provisions no less effective than the Federal regulation provisions at 30 CFR 773.21(a). Therefore, the Director approves the proposed revision to TCMR 778.225(g)(1) and removes the required amendment at 30 CFR 743.16(u).

*B. Texas Surface Coal Mining and Reclamation Act (TSCMRA), Article 5920–11*

Under Section 323.007 of the Government Code, the Texas Legislative Council revised the Texas statutes in a general code update bill. This bill, Chapter 76, Senate Bill (S.B.) 959, Acts of the 74th Legislature, Regular Session, 1995, codified the Texas Surface Coal Mining and Reclamation Act as Chapter 134, Natural Resources Code, and repealed Article 5920–11, Vernon's Texas Civil Statutes, subject to certain exceptions. During the same session, Chapter 272, S.B. 271 amended the Texas Surface Coal Mining and Reclamation Act, Article 5920–11, Vernon's Texas Civil Statutes. In a letter dated August 14, 1995 (Administrative Record No. TX–597), the Texas Legislative Counsel explained that ''under Section 311.031(c), Government Code, the repeal of a statute by a code does not affect an amendment of the statute by the same legislature that enacted the code. The amendment is preserved and given effect as part of the code provision that revised the statute so amended.''

In its August 30, 1995, submittal (Administrative Record No. TX–595), Texas provided a legal opinion of the effect of the enactments of S.B. 271 and S.B. 959. The opinion stated that ''the S.B. 271 amendments survive the repealer provision of S.B. 959 and are preserved as part of Chapter 134 of the Natural Resources Code. The statutory authority for the rules exists through the preservation of the amendments made through S.B. 271.'' S.B. 271 amends Article 5920–11 at section 6(b) of TSCMRA, rulemaking and permitting and section 21(c) of TSCMRA, permit approval or denial; and it adds new section 21a, suspension or rescission of improvidently issued permits.

1. Article 5920–11 Section 6(b) of TSCMRA, Rulemaking and Permitting Pursuant to the Administrative Procedure Act

The substantive revision proposed in section 6(b) of TSCMRA is the addition of the following provision allowing Texas to issue a notice of permit suspension or rescission of an improvidently issued permit without first conducting a formal adjudicative proceeding under the Texas Administrative Procedure Act (Chapter 2001, Government Code), while still allowing the permittee to file an appeal for administrative review of Texas' decision to suspend or rescind a permit.

(b) * * * The Administrative Procedure Act does not apply to actions by the Commission to suspend or rescind an improvidently issued permit as authorized by Section 21a of this Act, except that a permittee who is the subject of a suspension or rescission notice issued by the Commission under Section 21a of this Act may file an appeal for administrative review of the notice as provided by Commission rules, and such review shall be governed by the Administrative Procedure Act.

In a letter dated July 7, 1993 (Administrative Record No. TX–562), Texas had explained that it could not automatically suspend or rescind a permit because its Administrative Procedure Act at section 13(a) required that all parties in a contested case have the opportunity for an adjudicative hearing before legal rights, duties or privileges are determined. The proposed revision will allow Texas to automatically suspend or rescind a permit.

The general authority for suspension or revocation (rescission) of permits is found at section 201(c)(1) of SMCRA. The Federal regulation provisions at 30 CFR 773.21(a) provide for an automatic permit suspension and rescission process and 30 CFR 773.20(c)(2) requires regulatory authorities to give permittees the opportunity to request administrative review of a notice of suspension or rescission of an improvidently issued permit. Therefore,

the Director finds the revision to section 6(b) of TSCMRA is not inconsistent with SMCRA or the Federal regulations and is approving it.

2. Article 5920–11 Section 21(c) of TSCMRA, Reporting Notices of Violations in Permit Applications

In response to the required amendment at 30 CFR 943.16(r) [finding No. 2, 59 FR 13200, March 21, 1994], Texas proposed revisions to section 21(c) of TSCMRA that are substantive in nature and contain language that is substantively identical to section 510(c) of SMCRA.

The substantive proposed changes include revising the existing language of the first sentence of section 21(c) by adding the requirement that applicants report notices of violations of SMCRA and deleting the words ''within the state'' from the phrase ''in connection with any surface coal mining operation within the state during the three-year period * * *.'' Texas further clarified section 21(c) by adding new language requiring that the schedule include notices of violations of Federal regulations or Federal or state programs adopted under SMCRA. Texas, also, revised the existing second sentence (now the third sentence) by deleting the phrase ''or that the notice of violation is being contested by the applicant'' and adding the phrase ''or other laws referred to in this subsection'' after the phrases ''with a demonstrated pattern of willful violations of this Act'' and ''with such resulting irreparable damage to the environment as to indicate an intent not to comply with this Act.''

The proposed revisions remove the previous limitation contained in section 21(c) of TSCMRA regarding the listing of information for violations incurred only within the State of Texas. The proposed revisions clarify that a permit application must include information on (1) violations of Federal regulations and violations of Federal and State programs approved pursuant to SMCRA, not just the Texas program, and (2) air and water environmental protection violations of any governmental department or agency physically located in any state of the United States, not just Texas.

Therefore, based on the above discussions, the Director finds section 21(c) of TSCMRA, as revised, is consistent with and no less stringent than section 510(c) of SMCRA and is removing the required amendment at 30 CFR 943.16(r).

3. Article 5920–11 TSCMRA, section 21a, Suspension or Rescission of Improvidently Issued Permits

Texas proposes to add a new section which authorizes the Commission to adopt and enforce rules relating to suspension or rescission of improvidently issued permits that are consistent with and no less effective than Federal regulations adopted under SMCRA.

Section 201(c)(1) of SMCRA authorizes the suspension or rescission of permits for failure to comply with any of the provisions of SMCRA or any rules and regulations adopted pursuant to SMCRA. Furthermore, Section 503(a)(2) of SMCRA requires State programs to demonstrate that the State has the capability of carrying out the provisions of SMCRA and meeting its purposes through ''a State law which provides sanctions for violations of State laws, regulations, or conditions of permits concerning surface coal mining and reclamation operations, which sanctions shall meet the minimum requirements of this Act, including civil and criminal actions, forfeiture of bonds, suspensions, revocations * * *''

Therefore, the Director finds section 21a of TSCMRA is consistent with the intent of sections 201(c)(1) and 503(a)(2) of SMCRA and is approving it.

IV. Summary and Disposition of Comments

*Public Comments*

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

*Federal Agency Comments*

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Texas program.

The Bureau of Land Management responded on September 15, 1995, that the revised regulations addressed by the documents appeared to exceed Federal coal standards, and it had no other comments to that effect (Administrative Record No. TX–595.04).

The U.S. Army Corps of Engineers responded on September 18, 1995, that it found the changes to be satisfactory to that agency (Administrative Record No. TX–595.02).

The Soil Conservation Service (Natural Resources Conservation Service) responded on October 2, 1995, that it had no comments on the proposal (Administrative Record No. TX–595.05.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean air act (42 U.S.C. 7401 *et seq.*). None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA, Region VI (Administrative Record No. TX–595.01). EPA did not respond to OSM's request.

*State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments on proposed amendments which may have an effect on historic properties from the SHPO and ACHP. OSM solicited comments on the proposed amendment from the SHPO and ACHP (Administrative Record No. TX–595.01). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed amendment as submitted by Texas on August 30, 1995.

The Director approves, as discussed in: finding No. A.1., TCMR 701.008(104), definition of ''violation notice; finding No. A.2., TCMR 778.116(m), concerning identification of interests and compliance information; finding No. A.3., TCMR 788.225(g)(1), concerning automatic suspension and rescission of a permit; finding No. B.1., Article 5920–11, section 6(b) of TSCMRA, concerning rulemaking and permitting; finding No. B.2., Article 5920–11, section 21(c) of TSCMRA, concerning reporting notices of violations in permit applications; and finding No. B.3., Article 5920–11, section 21a of TSCMRA, concerning suspension or rescission of improvidently issued permits.

The Director approves the regulations and statutes as proposed by Texas with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 943, codifying decisions concerning the Texas program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

*Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Texas program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Texas of only such provisions.

VI. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. however, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No evironmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 28, 1996.

Brent Wahlquist,

*Regional Director, Mid-Continent Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended by adding paragraph (n) to read as follows:

**§ 943.15 Approval of regulatory program amendments.**

* * * * *

(n) The amendment submitted by Texas to OSM by letter dated August 30, 1995, and the definition of ''violation notice'' submitted by Texas to OSM by letter dated September 18, 1995, are approved effective June 18, 1996.

3. Section 943.16 is amended by removing paragraphs (r), (t), and (u) and by revising paragraph (k) to read as follows:

**§ 943.16 Required program amendments.**

* * * * *

(k) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the definitions at TCMR 770.101 to replace the definitions for ''applicant,'' ''application,'' ''complete application,'' ''general area,'' ''principal shareholder,'' and ''property to be mined,'' or otherwise demonstrate that these definitions are not necessary for the Texas program to be no less effective than the Federal regulations.

* * * * *

[FR Doc. 96–15145 Filed 6–17–96; 8:45 am]

BILLING CODE 4310–05–M

## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 201

**[Docket No. 93–2B]**

## Digital Audio Recording Devices and Media; Verification of Statements of Account

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Interim regulation.

**SUMMARY:** The Audio Home Recording Act of 1992 requires the Register of Copyrights to issue regulations that provide for the verification of the information contained in digital audio recording technology (DART) Statements of Account filed with the Office. The Copyright Office is adopting Interim Regulations that establish procedures for requesting verification, the scope of the verification, and the allocation of costs. The regulations are intended to ensure that proper payments have been made to copyright owners.

**DATES:** This interim regulation is effective June 18, 1996. Comments must be submitted on or before September 16, 1996. Reply comments must be

submitted on or before October 16, 1996.

**ADDRESSES:** If sent by mail, fifteen copies of written comments should be addressed to Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366. If by hand, fifteen copies should be brought to: Office of the General Counsel, Copyright Office, James Madison Memorial Building, Room LM–407, First and Independence Avenue, S.E., Washington, D.C. 20540.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024, or Tanya Sandros. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:**

I. Background

The Audio Home Recording Act (AHRA) requires manufacturing and importing parties that distribute digital audio recording devices or media in the United States to file Statements of Account with, and make royalty payments to, the Copyright Office. It also requires the Register of Copyrights to issue regulations to protect the confidentiality of the information contained in Statements of Account, to provide for the disclosure, in confidence, of Statements to interested copyright parties, and to provide for the verification of Statements of Account. 17 U.S.C. 1003(c)(2).

We published a Notice of Proposed Rulemaking on May 7, 1993. 58 FR 27251 (May 7, 1993). The Notice contained a proposed regulation concerning access to, and confidentiality of, Statements of Account and asked for public comment on that proposal and also on the form and content of a regulation governing audit and verification procedures.

In separate proceedings, we issued interim regulations governing the filing of Notices of Initial Distribution, 57 FR 55464 (November 25, 1992), and establishing requirements governing the filing dates, frequency of filing, and content of Statements of Account and the primary auditor's report that must be filed by persons subject to the statutory obligation. 59 FR 4586 (February 1, 1994). In a separate proceeding, we published interim regulations governing access to and confidentiality of Statements of Account. 60 FR 25995 (May 16, 1995).

II. Verification of Statements of Account

In the Notice of Proposed Rulemaking (NPRM), 58 FR 27251 (1993), we did not propose the actual language of a verification regulation. Instead, we noted that the Senate version of AHRA, S. 1623,[1] contained detailed provisions regarding audit and verification which were eliminated from the bill as passed, but which we indicated we were inclined to use as the framework for the regulations. We therefore solicited public comments and detailed proposals for the form and content of a verification regulation based on S. 1623. In addition, we asked ten specific questions.

The Office received eleven comments, including direct, reply, and surreply comments, from four parties. Comments were received from (1) the American Institute of Certified Public Accountants (AICPA); (2) the American Society of Composers, Authors, and Publishers, Broadcast Music, Inc., Copyright Management, Inc., the National Music Publishers' Association, Inc., SESAC, Inc., and the Songwriters Guild of America (The Copyright Parties); (3) the Alliance of Artists and Recording Companies (AARC); and (4) the Electronic Industries Association (EIA).

The comments revealed that while there was general agreement on a number of issues, there were sharp differences among the parties on certain key issues, especially, the scope of the verification procedure, the possible role of an arbitrating accountant or the Copyright Office in resolving disputes, and the standards to measure the independence of the verifying auditor. The Office believes these issues need to be resolved through another round of comments. However, the Office believes that interim regulations need to be adopted to allow for the verification of the Annual Statements of Accounts that have already been received.[2] Therefore, in order to go forward, the Copyright Office has had to take a certain approach, but these interim regulations represent only the Office's initial position, and are not intended necessarily to indicate the Office's final conclusions. Comments on the specific regulatory language and the issues they raise are particularly solicited.

What follows is a discussion of the comments and a description of the interim regulations adopted by the Office.

III. Period for Invoking a Verification Procedure

The first issue is one of timing: when should the Annual Statements of Account be available for a verification procedure and for how long? How often should the Annual Statements be audited?

S. 1623 did not provide for a time limit for initiating a verification procedure, but did state that no filer should be audited more than once a year.

EIA said it would accept a two or three year time limit following the filing of the Annual Statement of Account for verification. EIA, comments at 28. The Copyright Parties supported a rule stating that the verification procedure should not be conducted more than three years after the filing date of the Annual Statement of Account. Copyright Parties, reply at 25. AICPA supported a deadline beyond which verification procedures could not be conducted, and in its reply comments supported the three-year rule advanced by the Copyright Parties. AICPA, comments at 5, reply at 6.

AICPA recommends that only one verification audit should be permitted per Statement of Account. AICPA, comments at 5. EIA states there should be no more than one verification audit per year per Statement of Account. EIA, comments at 27. The Copyright Parties urge the adoption of regulations that permit interested parties to consolidate the verification procedure for several Annual Statements. The Copyright Parties agree that no manufacturer or importer should be audited more than once in a calendar or fiscal year and the Annual Statements should be verified no more than once. Copyright Parties, comments at 29, reply at 24.

While there was general agreement among the commentators supporting a time limit, because of the procedure for selecting a verifying auditor discussed below, we are measuring the time limit somewhat differently from the measurements proposed in the comments.

First, within three months of the filing deadline of the Annual Statement of Account, no verification procedure may be invoked. This will give the Licensing Division time to review the Annual Statement and resolve any discrepancies.

Second, after the three months, any interested copyright party will have until the third year anniversary of the filing deadline of the Annual Statement to notify the Copyright Office, the filer

[1] S. 1623, 102d Cong., 1st Sess. (1991).

[2] The first Annual DART Statement of Account was filed with the Office March 1, 1994. Since we are proposing that a verification procedure of an Annual Statement of Account can be invoked no later than three years after the filing deadline, it is important to provide interim regulations even while the verification procedure is being further refined.

and the primary auditor of his or her intent to invoke a verification procedure. The notice of one party will preserve the right of all interested copyright parties to participate in a verification procedure. While EIA's and the Copyright Parties' comments contemplated that the verification procedure itself would have to commence within three years of the filing of the Annual Statement of Account, the Office believes that this is not workable, because too many events, such as the Office publishing a notice in the Federal Register, and the subsequent coordination and selection of the verifying auditor, are beyond the petitioning party's sole control. The interested copyright party could not know how much time before the end of the three years he or she needed to allow to assure that the verification procedure began within three years of the filing deadline. Therefore, the Office has moved the tolling of the deadline from the time the verification procedure commences to the time when notice is filed by the interested copyright party that he or she wants to begin a verification procedure.

The interim regulations provide that there can be no more than one verification procedure a year of any manufacturing or importing party, but the verification procedure may include more than one Annual Statement of Account.

## IV. Selection of Verifying Auditor

Assuming that one or more copyright parties wants to invoke a verification procedure, how do they coordinate the selection of the verifying auditor? S. 1623 provided that the Register of Copyrights should establish a procedure by which interested copyright parties will coordinate the engagement of a verifying auditor to perform the verification procedure.

EIA commented that all parties would be best served by a formal procedure by which interested copyright parties provide public notice of their intent to invoke a verification procedure, permit other interested copyright parties to express an interest, and then jointly select a verifying auditor. EIA, comments at 29. The Copyright Parties recommended that we establish procedures by which interested copyright parties may coordinate the engagement of a verifying auditor to ensure that no manufacturing or importing party is audited more than once per year. Copyright Parties, comments at 10–11.

The Office believes that it is the responsibility of the copyright parties to select the verifying auditor and coordinate the verification procedure. The Office can only play a limited role in this process, acting to notify the copyright parties that a verification procedure is contemplated and who is proposing the procedure.

The Office will perform that role by publishing a notice in the Federal Register when it has been informed by an interested copyright party that he or she is interested in invoking a verification procedure. The notice will include whom to contact so that all interested copyright parties who want to be involved may coordinate their selection of the auditor. The party, or, if more than one, the joint interested parties will select the verifying auditor and will notify, within two months of the publication of the original Federal Register notice, the filer of the Annual Statement of Account, the primary auditor and the Register of Copyrights whether or not they wish to start a verification procedure.[3]

## V. Notice and Length of Verification Procedure

The NPRM also asked what would be reasonable notice before commencing a verification procedure, and how long the verification procedure should take.

EIA recommended that at least 30 days notice should be required and the manufacturer, importer, or primary auditor should be able to postpone the verification up to 60 days. EIA, comments at 6The Copyright Parties stated that 60 days is a reasonable notice before the verification procedure commences. The Copyright Parties observed that the duration of a verification procedure will vary from case to case, and that the duration is as much in the control of the manufacturer or importer as of the interested copyright parties or their verifying auditor. Copyright Parties, comments at 21–22. AICPA had no comment on the length of time required for notice of a verification procedure. It did suggest that the length of time to perform the procedure should be 90 to 120 days. AICPA, comments at 3.

The Office's interim regulations state that after the joint interested parties notify the filer of their intent to conduct a verification procedure, the verification procedure can begin one month later, or up to two months later if the filer or the primary auditor asks for a postponement. The Office agrees with the comments of the Copyright Parties that the duration of the verification procedure can vary from case to case and, therefore, the Office has not adopted any rules concerning how long the verification procedure should take.

## VI. Scope of Verification Procedure

The scope of the verification procedure has been one of the most contentious issues faced by the Office in drafting regulations to implement the AHRA. The Office is required to balance the need of the manufacturing and importing parties to avoid the disruption of their business and the exposure of confidential information, with the need of the interested copyright parties to be assured that sufficient royalties are deposited for distribution. EIA, comments at 2; Copyright Owners, comments at 2.

Section 1011(e)(1)(D) of S. 1623 provided that the goal of verification should be limited to examining the accuracy of information contained in the Statements of Account filed by manufacturing and importing parties, and that the procedure to achieve this goal should be no broader than is reasonably necessary in accordance with generally accepted auditing standards (GAAS). All parties to this proceeding agreed with these two principles, but nevertheless disagreed on how much review was needed to verify the information in the Statements of Accounts.

Of the four commenting parties, EIA advocated the narrowest scope of review. The Copyright Parties advocated the widest scope of review. AICPA and AARC took positions somewhere in between.

EIA said that the scope of the verification procedure should be a review by the verifying auditor of the audit performed by the primary auditor. This review would encompass an evaluation of the primary auditor's audit procedures, examination of the primary auditor's work papers, and consideration of the primary auditor's conclusions. In the event the verifying auditor believes the audit was not properly performed, or that additional procedures are needed, he or she would consult with the primary auditor. If the two auditors are unable to agree, they would submit the matter to a neutral, independent accountant selected by both parties to arbitrate the dispute. The role of this third party accountant would be strictly to determine whether the primary auditor complied with GAAS in performing the work and to determine, and possibly perform, the additional procedures needed to correct noted deficiencies. EIA, comments at 5.

[3] The interested copyright parties may, after consultation with each other, decide not to conduct a verification procedure. In that case, they will not select a verifying auditor, but will, instead, notify the filer, the primary auditor and the Register of Copyrights that they do not intend to proceed.

EIA opposes any regulation that would provide for or permit a verifying auditor to conduct a duplicative full scope audit or to have unfettered access to the books and records of a filer that has already been audited by a primary auditor. Such an approach, in EIA's view, would impose unreasonable burden and expense, and would be a prescription for misunderstanding, controversy, and the unanticipated disclosure of confidential information. Furthermore, such an approach would not provide additional assurance beyond the assurance provided by EIA's proposed procedure. EIA, comments at 6.

The Copyright Parties believe that the Copyright Office should allow for the possibility of a full scale audit without specific limitations on audit tests and procedures to be performed. The Copyright Parties assert that the verification procedure should include ''the examination of evidence supporting the amounts and disclosure in the Statement of Account, an assessment of the accounting principles used by the manufacturer or importer in preparing the statement, and an evaluation of the overall presentation of the statement.'' Copyright Parties, comments at 27.

The Copyright Parties state that the limited review of working papers proposed by EIA does not contribute to effective enforcement of royalty obligations under AHRA. Instead, they want the ability to use an independent verifying auditor to determine whether the Statement of Account fairly presents, in all material respects, the royalty obligations of a particular filer. Copyright Parties, reply at 18. However, the Copyright Parties supported a regulation that would promote initial reliance on the working papers and related documents generated in the course of the primary audit to avoid duplication of effort, and to concentrate the verifying auditor's focus on the additional work he or she considers necessary under the circumstances. Copyright Parties, surreply at 13–14.

AICPA commented that consideration should be given to using ''agreed-upon procedures'' which all users of the report would agree to so that the verifying auditor does not duplicate the effort of the first auditor. AICPA noted that ''agreed-upon procedures'' are generally less in scope than an audit under generally accepted auditing standards, and the verifying auditor would not express an opinion on the fair presentation of the information. He or she would report the procedures performed and any findings. Further, users of the report, namely, the Copyright Office and the interested copyright parties, must agree upon the procedures that the verifying auditor would perform. AICPA, comments at 4.

While disagreeing with the Copyright Parties about the wisdom of a full scale verifying audit, AICPA also did not believe that the suggested procedures and approach of the EIA were appropriate. AICPA argued that the procedures to be performed must be more than the EIA suggested review of the working papers of the initial audit. The procedures should be objective procedures that test the amounts reported by the manufacturer or importer. The EIA proposal would require the auditor to formulate an opinion that the audit was properly conducted based upon a review of the working papers. This proposal is more in the nature of a quality review of the primary auditor's work than an audit of the royalty schedule, and in AICPA's view, not an appropriate ''agreed-upon procedures'' engagement. AICPA, reply at 2.

AARC took a similar position to AICPA in finding problems with both EIA's and the Copyright Parties' positions. AARC commented that while it agrees with the EIA that a full scope audit by a verifying auditor may be inappropriate, AARC believes that the approach suggested by EIA does not go far enough. AARC argues that the interested copyright parties must have the ability to direct their own verifying auditor in the conduct of a verification procedure. At the same time, while AARC is generally in agreement with the intent of the approach suggested by the Copyright Parties, AARC believes the scope of verification sought in their initial comments may be unnecessarily broad in order to achieve the intended results.

AARC believes that what is more appropriate is a ''compliance'' type audit; a type customarily used within the music industry to determine the proper payment of music publishers and/or artist royalties. When preparing royalty accountings, the manufacturers and distributors will have to set up a system that will provide information to their accounting department. The basis of this information will be their manufacturing, inventory, sales and shipping records. AARC asserts that the verifying auditor retained by the interested copyright parties should be able, at minimum, to test these accounting records and the underlying documents. AARC, reply at 2–3.

With access to the documents described above, AARC does not believe it would be necessary for the verifying auditor to have access to the manufacturer's or importer's general ledgers as proposed by the Copyright Parties, so long as the primary auditor's opinion indicates that the royalty accountings tie into the general books of account. AARC, reply at 4.

## VII. Discussion of Scope of Verification

Clearly, the most contentious issue in this rulemaking is the very scope of the verification audit which, in turn dictates the need to access particular business records to perform the verification procedure. The Copyright Parties want the potential for a full scale audit. EIA wants the verifying auditor simply to review the primary auditor's work. AICPA recommends ''agreed-upon procedures,'' agreed to by the Copyright Parties and the verifying auditor which is something more than just a review of the primary auditor's work but something less than full access to all records. AARC recommends a ''compliance'' audit where the filer is told in advance what business records to segregate.

The Office has decided to adopt a procedure for these interim regulations whereby the verifying auditor first reviews the primary auditor's work papers. If, in the verifying auditor's opinion, according to generally accepted auditing standards (GAAS), he or she needs access to the business records of the filer, the verifying auditor, after consulting with the primary auditor, shall be able to have access to those records as well.[4]

The Office believes that two independent accountants—the verifying auditor and the primary auditor—acting in good faith, are the best judge of what additional information is needed from the filer.

However, we highlight this provision in our interim regulations as one in which we particularly solicit comments from the parties. If the parties believe that the question of the scope of the verification should not rest with the independent accountants, they should so notify the Office in their comments. Moreover, the Office asks the parties whether they could agree upon which business records the filer should make available, in addition to the primary auditor's work papers, that would assure the accuracy of the Annual Statement of Account but at the same time would not create an overly extensive demand on the filer.

[4] The consultation with the primary auditor is not intended to give the primary auditor any veto over the decision of the verifying auditor to require additional records. It is only intended as a means to get additional advice on what records may or may not be needed.

VIII. Independence of the Verifying Auditor

AICPA states that GAAS requires that a verifying auditor be independent. AICPA recommends that if there is a question about an auditor's independence, it should be referred to the AICPA Professional Ethics Division and/or the State Board of Accountancy. AICPA, comments at 3.

The Copyright Parties believe the Office should require that the verifying auditor be independent within the meaning of AICPA's Code of Professional Conduct. In addition, the Copyright Parties recommend that we establish a procedure to accept petitions from parties wishing to challenge the use of a particular auditor. Such petition should explain why the verifying auditor should not be used and should provide specific facts to support the petition. Where the Office considers that the petition raises a question as to whether the verifying auditor is independent, the matter should be referred to the proper professional authorities. Copyright Owners, comments at 17–19.

EIA believes that the Office need not become involved in the question of a verifying auditor's independence, but it opposes sending the question to the AICPA Professional Ethics Division and/or the appropriate State Board because ''(1) these bodies have not applied a financial dependence standard and (2) they apply the traditional independence standard most often in a disciplinary context, where generally the presumptions and burdens favor the accused accountant.'' EIA, reply at 13. It suggested that an independent arbitrating accountant, chosen by the primary auditor and the verifying auditor, should help determine the independence of the verifying auditor. EIA, comments at 30–32, reply at 13.

The Office agrees that it should not become involved in deciding whether a verifying auditor is independent, and any disputes involving the independence of an auditor should be referred to the AICPA or State Boards of Accountancy. EIA's opposition, notwithstanding, the Office considers that referring the matter to AICPA or State Boards is preferable to referring it to an independent arbitrating accountant. *See,* discussion at X, below. If there is a challenge to the verifying auditor's independence, the interim regulations nonetheless call for the verification procedure to continue while the question of the auditor's independence is being resolved.

The Office considered two specific proposals concerning a verifying auditor's independence, but ultimately decided not to adopt them in the interim regulations. They were that the auditing firm retained to perform the verification procedure does not receive more than 15% of its gross revenues from services performed for the interested copyright parties, and that the auditor is not performing the verification procedure for a contingent fee. These proposals were supported by EIA but opposed by AICPA. EIA, comments at Appendix 2, at 18; AICPA, reply at 5. The Office solicits comments on whether these two specific proposals should be added to the definition of an independent verifying auditor. The Office also is aware that its current regulations on the primary auditor found in § 201.28 do not discuss the primary auditor's independence beyond stating that the primary audit shall be performed according to GAAS. The Office solicits comments on whether any additional provisions should be adopted to assure the primary auditor's independence.

IX. Work Papers of the Verifying Auditor

Section 1011(e)(2) of S. 1623 provided that the certification and results of all verification procedures shall be filed with the Register of Copyrights. In our Notice we asked if we should require the filing of the verifying auditor's work papers along with the results of a verification procedure.

AICPA filed a strong objection to any requirement to file work papers in addition to the results of the verification procedure. It states that the auditor's report, not the work papers, provides the auditor's opinion as to the fairness of the presentation of figures on the Statement of Account and the primary auditor's report. The work papers are considered the personal property of the independent auditor. AICPA, comments at 4.

EIA believes that work papers will contain extremely confidential information and should not be filed in the Office. EIA, comments at 2.

The Copyright Parties believe that only the auditor's report must be filed with the Office. They propose that all work papers be deposited only if the verification procedure results in a dispute. Copyright Parties, comments at 24–25.

In our interim regulations, therefore, the auditor's report to the Copyright Office will contain only the auditor's conclusions. If the verifying auditor concludes that there was any failure of the primary auditor to conduct properly the primary audit or obtain a reliable result, or that there was any error in the Annual Statement of Account, the supporting documentation will be included in an appendix to the report and distributed to the interested copyright parties, the filer, and the primary auditor only. It will not be included in the report sent to the Copyright Office.

X. Disputes Regarding Conduct of Verification Procedure

AICPA had no comment on whether the Copyright Office has a role in the event there is a dispute in the conduct or the result of the verification procedure. It recommended requiring arbitration of disputes. AICPA, comment at 4. EIA said the Office should not be burdened with the task of resolving disputes. Disputes would best be handled between the primary auditor and the verifying auditor. If such discussions do not resolve the dispute, the auditors should mutually select a neutral arbitrating accountant who will examine all work papers and decide if additional procedures are required. EIA, comments at 22. The Copyright Parties also stated that ''there is no statutory role for the Office in resolving disputes arising from the conduct of a verification procedure or the primary audit.'' They said that, in practice, disputes will be resolved through negotiation. Copyright Parties, comments at 23.

From the Office's viewpoint, there are three key points in the verification procedure when a dispute could take place. One, the filer could refuse to produce business records the verifying auditor considers necessary. Two, the filer could object that the verifying auditor is not independent. Three, the verifying auditor could file a report that there was a failure of the primary auditor to conduct the primary audit properly or to obtain a reliable result, or there was an error in the Annual Statement of Account.

At this point, the Office has decided not to institute binding arbitration in these interim regulations. The Office solicits comments on how such disputes should be resolved. If the commentators believe binding arbitration should be established, the Office solicits comments on how it would work, and whether the Office has the authority to require it.

XI. Cost of Verification Procedure

Sec. 1011(f) of S. 1623 specified that in the case of a verification procedure that ''leads ultimately to recovery of an annual royalty payment of 5 percent or more of the annual payment made, the

importing or manufacturing party shall provide reimbursement of the reasonable cost'' of such procedure.

In all other cases, ''any recovery of royalty underpayments as a result of the audit shall be used first to provide reimbursement for the reasonable costs of such audit,'' and ''any remaining recovery shall be deposited with the Register.''

EIA did not object to the cost allocation scheme proposed in S. 1623, provided that the verification procedure is limited to an ''agreed-upon procedures'' audit and there is arbitration between the primary and verification auditors in case of dispute to avoid duplication of audit work. EIA, comments at 30, and Appendix 2, at 16. The Copyright Parties recommended that the interested copyright parties who initiate the engagement of a verifying auditor should bear the cost of the verification procedure, but such cost should be reimbursable under the system proposed in S. 1623. Copyright Parties, comments at 28. AICPA recommended that the cost of the verification procedure should be borne by the copyright party(s) that engage the verification auditor, but was silent on the 5% provision in S. 1623. AICPA, comments at 5.

The interim regulation is based upon the system detailed in S. 1623, described above, with which the Copyright Parties and EIA agree.

XII. Miscellaneous—Retention of Report; Use of the Word ''Verification''

AICPA had no comment on the length of time verification procedure reports should be retained by the Office. EIA and the Copyright Parties proposed that they be retained for three years. EIA, comments at 28; Copyright Parties, comments at 13. AICPA supported EIA's and the Copyright Parties' three-year proposal in its reply comments. AICPA, reply at 6. The Office has adopted the proposed three-year retention, but seeks more comments on how it should work. Should it apply equally to positive as well as negative verification procedure reports? Should it include follow-up reports if the filer and the verifying auditor come to subsequent agreements addressing the concerns of a negative report? May the Office, in its discretion, retain the report more than three years?

Last, AICPA commented that the word ''verification'' is a misnomer because it implies a full scale audit while the scope of the verifying auditor's work might be well less than that. AICPA recommends that the procedure to be followed by the verifying auditor be called a ''second audit'' or a ''special audit.'' We have chosen to call it a ''verification procedure,'' because the word ''verification'' was used in the AHRA, but we have given it its own special definition in § 201.30(b)(5), so that it will not carry the implication of a full scale audit.

List of Subjects in 37 CFR Part 201

Copyright; Digital audio recording products.

Interim Regulations

In consideration of the foregoing, the Copyright Office is amending part 201 of 37 CFR, chapter II in the manner set forth below:

## PART 201—GENERAL PROVISIONS [AMENDED]

1. The authority citation for part 201 is revised to read as follows:

Authority: 17 U.S.C. 702; 17 U.S.C. 1003.

2. Section 201.30 is added to read as follows:

### § 201.30 Verification of Statements of Account.

(a) *General.* This section prescribes rules pertaining to the verification of information contained in the Statements of Account by interested copyright parties pursuant to section 1003(c) of title 17 of the United States Code.

(b) *Definitions.*

(1) *Annual Statement of Account, generally accepted auditing standards (GAAS),* and *primary auditor* have the same meaning as the definition in § 201.28 of this part.

(2) *Filer* is a manufacturer or importer of digital devices or media who is required by 17 U.S.C. 1003 to file with the Copyright Office Quarterly and Annual Statements of Account and a primary auditor's report on the Annual Statement of Account.

(3) *Interested copyright party* has the same meaning as the definition in § 201.29 of this part.

(4) *Verifying auditor* is the person retained by interested copyright parties to perform a verification procedure. He or she is independent and qualified as defined in paragraphs (j)(2) and (j)(3) of this section.

(5) *Verification procedure* is the process followed by the verifying auditor to verify the information reported on an Annual Statement of Account.

(c) *Purpose of Verification.* The purpose of verification is to determine whether there was any failure of the primary auditor to conduct the primary audit properly or to obtain a reliable result, or whether there was any error in the Annual Statement of Account.

(d) *Timing of Verification Procedure.*

(1) *Requesting a verification procedure.* No sooner than three months nor later than three years after the filing deadline of the Annual Statement of Account to be verified, any interested copyright party shall notify the Register of Copyrights of its interest in instituting a verification procedure. Such notification of interest shall also be served at the same time on the filer and the primary auditor identified in the Annual Statement of Account. Such notification shall include the year of the Annual Statement of Account to be verified, the name of the filer, information on how other interested copyright parties may contact the party interested in the verification including name, address, telephone number, facsimile number and electronic mail address, if any, and a statement establishing the party filing the notification as an interested copyright party. The notification of interest may apply to more than one Annual Statement of Account and more than one filer.

(2) *Coordination and selection of verifying auditor.* The Copyright Office will publish in the Federal Register notice of having received a notification of interest to institute a verification procedure. Interested copyright parties have one month from the date of publication of the Federal Register notice to notify the party interested in instituting the verification procedure of their intent to join with it and to participate in the selection of the verifying auditor. Any dispute about the selection of the verifying auditor shall be resolved by the parties themselves.

(3) *Notification of the filer and primary auditor.* As soon as the verifying auditor has been selected, and in no case later than two months after the publication in the Federal Register of the notice described in paragraph (d)(2) of this section, the joint interested copyright parties shall notify the Register of Copyrights, the filer, and the primary auditor identified in the Annual Statement of Account to be verified, that they intend or do not intend to initiate a verification procedure.

(4) *Commencement of the verification procedure.* The verification procedure shall begin no sooner than one month after notice of intent to initiate a verification procedure was given to the filer and the primary auditor by the joint interested copyright parties. The joint interested copyright parties shall grant the filer or the primary auditor a postponement of the beginning of the verification procedure of up to one additional month if either one requests

it. Verification procedures shall be conducted at reasonable times during normal business hours.

(5) *Anti-duplication rules.* A filer shall be subject to no more than one verification procedure per calendar year. An Annual Statement of Account shall be subject to a verification procedure only once.

(e) *Scope of verification.* The verifying auditor shall limit his or her examination to verifying the information required in the Annual Statement of Account. To the extent possible, the verifying auditor shall inspect the information contained in the primary auditor's report and the primary auditor's working papers. If the verifying auditor believes that access to the records, files, or other materials in the control of the filer is required according to GAAS, he or she may, after consultation with the primary auditor, require the production of these documents as well. The verifying auditor and the primary auditor shall act in good faith using reasonable professional judgment, with the intention of reaching a reasonable accommodation as to the necessity and scope of examination of any additional documents, but the decision to require the production of additional documents is solely that of the verifying auditor.

(f) *Verification Report.* Upon concluding the verification procedure, the verifying auditor shall render a report enumerating in reasonable detail the procedures performed by the verifying auditor and his or her findings. Such findings shall state whether there was any failure of the primary auditor to conduct properly the primary audit or obtain a reliable result, and whether there was any error in the Annual Statement of Account, itemized by amount and by the filer's elected fiscal year. If there was such failure or error, the report shall specify all evidence from which the verifying auditor reached such conclusions. Such evidence shall be listed and identified in an appendix to the report in sufficient detail to enable a third party to reasonably understand or interpret the evidence on which the verifying auditor based his or her conclusion. If there was no such failure or error, the report shall so state.

(g) *Distribution of Report.* Copies of the verifying auditor's report shall be subject to the confidentiality provisions of § 201.29 and shall be distributed as follows:

(1) One copy, excluding the appendix, if applicable, shall be filed with the Register of Copyrights.

(2) One copy, with the appendix, if applicable, shall be submitted to each of the interested copyright parties who retained the services of the verifying auditor and who are authorized to receive such information according to § 201.29.

(3) One copy, with the appendix, if applicable, shall be submitted to the filer of the Annual Statement of Account.

(4) One copy, with the appendix, if applicable, shall be submitted to the primary auditor.

(h) *Retention of Report.* The Register of Copyrights will retain his or her copy of the verifying auditor's report for three years following the date the copy of the verifying auditor's report is filed.

(i) *Costs of Verification.* The joint interested copyright parties who requested the verification procedure shall pay the fees of the verifying auditor and the primary auditor for their work performed in connection with the verification procedure, except, if the verification procedure results in a judicial determination or the filer's agreement that royalty payments were understated on the Annual Statement of Account, then,

(1) if the amount is less than five percent (5%) of the amount stated on the Annual Statement of Account, that amount shall first be used to pay the fees of the verifying auditor and the primary auditor, and any remaining amount plus any applicable interest on the total amount shall be deposited, allocated by the filer's elected fiscal year, with the Register of Copyrights, or

(2) if the amount is equal to or greater than five percent (5%) of the amount stated on the Annual Statement of Account, the filer shall pay the fees of the verifying auditor and the primary auditor, and, in addition, shall deposit the amount found to be due plus any applicable interest on the total amount, allocated by the filer's elected fiscal year, with the Register of Copyrights.

(j) *Independence and qualifications of verifying auditor.*

(1) The verifying auditor shall be qualified and independent as defined in this section. If the filer has reason to believe that the verifying auditor is not qualified or independent, it shall raise the matter with the joint interested copyright parties before the commencement of the verification procedure, and if the matter is not resolved, it may raise the issue with the American Institute of Certified Public Accountants' Professional Ethics Division and/or the verifying auditor's State Board of Accountancy while the verification procedure is being performed.

(2) A verifying auditor shall be considered qualified if he or she is a certified public accountant or works under the supervision of a certified public accounting firm.

(3) A verifying auditor shall be considered independent if:

(i) he or she is independent as that term is used in the Code of Professional Conduct of the American Institute of Certified Public Accountants, including the Principles, Rules and Interpretations of such Code applicable generally to attest engagements (collectively, the ''AICPA Code''); and (ii) he or she is independent as that term is used in the Statements on Auditing Standards promulgated by the Auditing Standards Board of the AICPA and Interpretations thereof issued by the Auditing Standards Division of the AICPA.

Dated: June 6, 1996.

Marybeth Peters,

*Register of Copyrights.*

Approved by:

James H. Billington,

*The Librarian of Congress.*

[FR Doc. 96–15390 Filed 6–17–96; 8:45 am]

BILLING CODE 1410–30–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[AD–FRL–5521–5]**

**RIN 2060–AD98**

## National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) Operations

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

**ACTION:** Direct final rule.

**SUMMARY:** On December 15, 1995, the EPA issued national emission standards for hazardous air pollutants (NESHAP) under Section 112 of the Clean Air Act as amended in 1990 for shipbuilding and ship repair (surface coating) operations. The NESHAP requires existing and new major sources to control emissions using the maximum achievable control technology to control hazardous air pollutants. This action revises the compliance date for sources subject to this standard and revises the date for submittal of implementation plans. Specifically, this action extends the June 13, 1996 deadline for submittal of an implementation plan to December 16, 1996. The compliance date is extended from December 16, 1996 to December 16, 1997. This action is being taken because the EPA has learned that sufficient time was not provided to

prepare the implementation plans and establish the necessary inventory management systems to ensure compliance with the standard. This action is also being taken to improve coordination of compliance with the NESHAP with the anticipated implementation of the control techniques guidelines (CTG) requirements for shipbuilding and ship repair facilities.

This action also removes the requirement that implementation plans be approved by the EPA. This requirement is being removed because it was not EPA's intent for the implementation plan to be the mechanism for enforcing the rule.

**DATES:** The direct final rule will be effective August 19, 1996 unless significant, adverse comments are received by July 18, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments should be submitted to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–11, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mohamed Serageldin, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2379.

**SUPPLEMENTARY INFORMATION:**

*Regulated Entities.* The regulated category and entities affected by this action include:

| Category | Examples of regulated entities |
|---|---|
| Industry ..... | Facilities that build, repair, repaint, convert, or alter ships. The term ship means any marine or fresh-water vessel, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). **Note:** An offshore oil and gas drilling platform is not considered a ship for purposes of this regulation. |
| Federal Govt ... | Federal Agencies which undertake shipbuilding or repair operations (see above) such as the Navy and Coast guards. |

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 potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine wheher your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.782 of the regulation. 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.

Any significant and timely adverse comments received on any portion of this direct final rule will be addressed in a subsequent final rule based on the proposed rule contained in the Proposed Rules Section of this Federal Register that is identical to this direct final rule. If no significant and timely adverse comments are received on this direct final rule, then the direct final rule will become effective August 19, 1996 and no further action is contemplated on the parallel proposal published today.

## I. Basis for Changes to Rule

### *A. Compliance Date*

The EPA is extending the compliance date from December 16, 1996 to December 16, 1997 to allow time for sources to develop the necessary inventory management systems, administrative controls, and to allow coordination of compliance plans for this rule and the CTG, which is planned for publication in the near future. When the final NESHAP was issued, the EPA selected a one-year compliance period to allow time for sources to deplete existing inventories of coatings and to conduct compliance planning procedures. Since the final rule was issued on December 15, 1995, the EPA has learned that there are a number of companies subject to this rule that presently do not have inventory management systems necessary to ensure compliance, and that some facilities are relying on outside consultants to develop such systems. In such cases, at least one year is needed to establish the paint inventory management and administrative control system. Additionally, at the time the final NESHAP was issued, EPA expected to issue final guidance for the CTG for shipbuilding and ship repair (surface coating) operations in the near future. Issuance of this CTG has been delayed. Since control techniques for volatile organic compound emissions could affect the compliance approach selected for the NESHAP, the EPA believes that it is appropriate to extend the compliance date for the NESHAP to allow coordination with rules adopted by States to implement the CTG. Based on the anticipated schedule for issuance of the CTG, the EPA believes that extension of the compliance date to December 16, 1997 should provide sufficient time to allow coordination of compliance planning for both the NESHAP and any applicable State rules.

### *B. Implementation Plan*

The EPA is extending the June 13, 1996 deadline for submittal of implementation plans to December 16, 1996. The deadline for submitting these plans is being extended because the EPA has learned that sufficient time was not provided to prepare the implementation plans and establish the necessary paint inventory management and administrative control systems to ensure compliance with the standard. Because information available to the EPA during the development of the NESHAP suggested that most shipyards had some form of inventory management system, the EPA expected that 180 days should be sufficient to prepare the implementation plan. Due to information received from the industry since the final rule was issued, the EPA believes that one year is a more appropriate time-frame for selection of the compliance approach and development of the implementation plan. Therefore, this document revises the date for submittal of implementation plans to December 16, 1996.

This action also removes the requirement that implementation plans be approved by the EPA. This requirement is being eliminated since it was not the EPA's intent for the implementation plan to be the mechanism for enforcing the rule and, if the plans are subject to approval, some people might argue that was the role of the plan. The implementation plan will serve to provide guidance and assist in enforcement of the rule.

## II. Administrative Requirements

### *A. Paperwork Reduction Act*

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP should have no impact on the

information collection burden estimates made previously. The change to the implementation plan requirements merely extends the date for submission of plans from existing sources. These changes do not impose new requirements. Consequently, the ICR has not been revised.

*B. Executive Order 12866 Review*

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''not significant'' and therefore, subject to OMB review and the requirements of the executive order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in 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.

The Shipbuilding NESHAP promulgated on December 15, 1995 was determined to not be a ''significant regulatory action'' under Executive Order 12866. Therefore, a regulatory impact analysis was not prepared. The amendments issued today extend dates for submittal of implementation plans and the compliance date and remove the requirement for approval of implementation plans. These changes do not add any additional control requirements or costs. Therefore, this regulatory action does not affect the previous decision and is not considered to be significant.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared. Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*D. Submission to Congress and the General Accounting Office*

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

*E. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA 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. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to this action.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 7, 1996.

Carol M. Browner,

*Administrator.*

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

## PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

## Subpart II—National Emission Standards for Shipbuilding and Ship Repair (Surface Coating)

2. Section 63.784 is amended by revising paragraph (a) to read as follows:

**§ 63.784 Compliance dates.**

(a) Each owner or operator of an existing affected source shall comply within two years after the effective date of this subpart.

* * * * *

3. Section 63.787 is amended by revising paragraphs (b)(1)(ii) and (b)(4) and by removing and reserving paragraph (b)(2) to read as follows:

**§ 63.787 Notification requirements.**

* * * * *

(b) * * *

(1) * * *

(ii) Not later than one year after the effective date of this subpart, submit the implementation plan to the Administrator along with the notification required by § 63.9(b)(2) or (b)(5) of subpart A, as applicable.

(2) [Reserved]

* * * * *

(4) *Major sources that intend to become area sources by the compliance date.* Existing major sources that intend to become area sources by the December 16, 1997 compliance date may choose to submit, in lieu of the implementation plan required under paragraph (b)(1) of this section, a statement that, by the compliance date, the major source intends to obtain and comply with federally enforceable limits on their potential to emit which make the facility an area source.

* * * * *

[FR Doc. 96–15439 Filed 6–17–96; 8:45 am]

BILLING CODE 6560–50–P

---

## 40 CFR Part 63

**[AD–FRL–5520–5]**

**RIN 2060–AF33**

## Hazardous Air Pollutant List; Modification

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is amending the list of hazardous air pollutants in Clean Air Act Section 112(b)(1) by removing the compound caprolactam (CAS No. 105–60–2). This rulemaking was initiated in response to a petition to delete the substance caprolactam which was filed by AlliedSignal, Inc., BASF Corporation, and DSM Chemicals North

America under section 112(b)(3) of the Act. Based on the available information concerning the potential hazards of and projected exposures to caprolactam, EPA has made a determination pursuant to Clean Air Act Section 112(b)(3)(C) that there are adequate data on the health and environmental effects of caprolactam to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the compound may not be reasonably anticipated to cause adverse human health or environmental effects. Although EPA acknowledges that there are scientific uncertainties in its analysis of the potential effects of ambient caprolactam exposures, EPA does not regard any of these uncertainties to be sufficiently material to preclude this determination.

**DATES:** This final rule will be effective on June 18, 1996. Because this final rule is based on a determination of nationwide scope and effect, any petition for judicial review of this rule may be filed only in the United States Court of Appeals for the District of Columbia and must be filed no later than August 19, 1996.

**ADDRESSES:** The administrative record supporting this final rule is collected in Docket Number A–94–33. All documents in that docket, including a complete copy of the original petition, all comments on the proposed rule, and a transcript of the public hearing, may be examined between 8:00 A.M. and 4:30 P.M. on business days at the EPA Central Docket Section, Waterside Mall, 401 M St., SW, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** For specific information concerning this final rule, contact Dr. Nancy B. Pate, Office of Air Quality Planning and Standards (MD–12), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5347.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

### *A. The Delisting Process*

Section 112 of the Clean Air Act contains a mandate for EPA to evaluate and control emissions of hazardous air pollutants. Section 112(b)(1) includes an initial list of hazardous air pollutants that is composed of specific chemical compounds and compound classes to be used to identify source categories for which the EPA will subsequently promulgate emissions standards.

Clean Air Act Section 112(b)(2) requires EPA to make periodic revisions to the initial list of hazardous air pollutants set forth in Section 112(b)(1) and outlines criteria to be applied in deciding whether to add or delete particular substances. Section 112(b)(2) identifies pollutants that should be listed as:

> * * * pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise * * *

To assist EPA in making judgments about whether a pollutant causes an adverse environmental effect, Section 112(a)(7) defines an ''adverse environmental effect'' as:

> * * * any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

Section 112(b)(3) establishes general requirements for petitioning EPA to modify the hazardous air pollutant list by adding or deleting a substance. Although the Administrator may add or delete a substance on his own initiative, the burden is on a petitioner to include sufficient information to support the requested addition or deletion under the substantive criteria set forth in Sections 112(b)(3) (B) and (C). The Administrator must either grant or deny a petition within 18 months of receipt. If the Administrator decides to grant a petition, the Agency publishes a written explanation of the Administrator's decision, along with a proposed rule to add or delete the substance. If the Administrator decides to deny the petition, the Agency publishes a written explanation of the basis for denial. A decision to deny a petition is final Agency action subject to review in the D.C. Circuit Court of Appeals under Clean Air Act Section 307(b).

To promulgate a final rule deleting a substance from the hazardous air pollutant list, Section 112(b)(3)(C) provides that the Administrator must determine that:

> * * * there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

EPA will grant a petition to delete a substance, and publish a proposed rule to delete that substance, if it makes an initial determination that this criterion has been met. After affording an opportunity for comment and for a hearing, EPA will make a final determination whether the criterion has been met.

EPA does not interpret Section 112(b)(3)(C) to require absolute certainty that a pollutant will not cause adverse effects on human health or the environment before it may be deleted from the list. The use of the terms ''adequate'' and ''reasonably'' indicate that the Agency must weigh the potential uncertainties and their likely significance. Uncertainties concerning the risk of adverse health or environmental effects may be mitigated if EPA can determine that projected exposures are sufficiently low to provide reasonable assurance that such adverse effects will not occur. Similarly, uncertainties concerning the magnitude of projected exposures may be mitigated if EPA can determine that the levels which might cause adverse health or environmental effects are sufficiently high to provide reasonable assurance that exposures will not reach harmful levels. However, the burden remains on a petitioner to resolve any critical uncertainties associated with missing information. EPA will not grant a petition to delete a substance if there are major uncertainties which need to be addressed before EPA would have sufficient information to make the requisite determination.

### *B. The Present Petition and Rulemaking*

On July 19, 1993, EPA received a petition from AlliedSignal, Inc., BASF Corporation, and DSM Chemicals North America, Inc. (''petitioners'') to delete caprolactam (CAS No. 105–60–2) from the hazardous air pollutant list in Section 112(b)(1). Following receipt of the petition, EPA conducted a preliminary evaluation to determine whether the petition was complete according to Agency criteria. To be deemed complete, a petition must consider all available health and environmental effects data. A petition must also provide emissions data sufficient to assess peak and average emissions for each source, and must estimate the resultant exposures of people living in the vicinity of the source. In addition, a petition must address the environmental impacts associated with emissions to the ambient air and impacts associated with the subsequent cross-media transport of those emissions. EPA found the petition to delete caprolactam to be complete and published a notice of receipt and request for comments in the Federal

Register on August 26, 1993 (58 FR 45081).

After evaluating submissions received by EPA in response to the notice of receipt, which included concerns expressed by citizens concerning emissions of caprolactam by the AlliedSignal facility in Irmo, South Carolina, EPA entered into discussions with AlliedSignal to determine what could be done to address these concerns. On March 13, 1995, EPA executed two detailed emission reduction agreements with AlliedSignal concerning the Irmo manufacturing facility and another facility located in Chesterfield, Virginia, copies of which are included in the public docket for this rulemaking. Under these agreements, AlliedSignal is installing emission controls for caprolactam which EPA believes are equivalent to the controls which would have been required had EPA issued a standard to control these sources under Section 112. The agreed emission controls will be incorporated in federally enforceable operating permits for the affected facilities, and will be in place years earlier than controls would have otherwise been required. In addition, AlliedSignal has established a citizen advisory panel concerning the Irmo facility, which EPA is hopeful will improve communications with the community and provide citizens an ongoing role in implementation of the agreed emission reductions.

On September 8, 1995, based on a comprehensive review of the data provided in the petition and otherwise provided to EPA, the Agency made an initial determination that the statutory criterion for deletion of caprolactam from the hazardous air pollutant list had been met. EPA therefore granted the petition by AlliedSignal, Inc., BASF Corporation, and DSM Chemicals and issued a proposed rule to delist caprolactam. (60 FR 48081, September 18, 1995).

EPA received a total of 19 comments on the September 18, 1995 proposed rule. EPA subsequently granted a request by a citizen's group concerned about emissions from the AlliedSignal Irmo, SC facility to extend the comment period until November 2, 1995. (60 FR 58589, November 28, 1995). EPA conducted this delisting rulemaking pursuant to the procedures established by Clean Air Act Section 307(d). Accordingly, as provided by Section 307(d)(5), EPA held a public hearing concerning the proposed rule in Irmo, SC on December 7, 1995. A transcript of the hearing is included in the public docket for this rulemaking. Pursuant to Section 307(d)(5), EPA kept the record of this rulemaking open for thirty days after the December 7, 1995 hearing to receive rebuttal and supplementary information.

## II. Adverse Comments and EPA Responses

### *A. Overview*

Of the 19 written comments which were received concerning the proposed delisting of caprolactam, seven commenters supported and seven commenters opposed delisting. Other commenters expressed concerns regarding particular elements of the Agency's assessment, but did not expressly support or oppose the proposal. Many of the persons who made statements at the public hearing held on December 7, 1995 in Irmo, SC expressed opposition to the proposed delisting, in most cases because of a belief that emissions by AlliedSignal's Irmo facility were the cause of adverse health effects in their homes or community. Many of the commenters opposing the delisting of caprolactam were members or representatives of People United for a Responsible Environment (PURE), a citizen's group located in the Irmo-St. Andrews area of Columbia, SC.

EPA has considered carefully all of the comments both supporting and opposing the proposed delisting, focussing in particular on those comments which suggested potential deficiencies in the substantive rationale upon which EPA based its initial determination that the criterion in Clean Air Act Section 112(b)(3)(C) had been met. A summary of the comments and the EPA responses to them has been included in the docket for this proceeding. In this notice, EPA will discuss adverse comments which it received and its response to them.

### *B. Toxicity Data*

Opponents of delisting commented that EPA should place greater emphasis on the findings in several Eastern European studies, which reported adverse reproductive effects in animals and exposed workers following inhalation of caprolactam. Unfortunately, there are numerous methodologic problems with the manner in which the cited studies were performed and documented which severely limit their value for risk assessment. Well-designed, documented and conducted animal studies do indicate that the most sensitive chronic health effect endpoint associated with caprolactam exposure is reduced mean fetal body weight (noted in a rodent reproductive study). However, since the reported results in these Eastern European studies cannot be readily reconciled with subsequent studies, EPA does not believe that these studies warrant any change in its risk assessment for caprolactam.

Opponents of delisting also have argued that the available animal data on inhalation of caprolactam is inadequate to support the Agency's conclusions, and that EPA should wait for the results from the subchronic rat inhalation study of caprolactam which AlliedSignal is currently performing before taking final action in this rulemaking. EPA agrees that the available animal data on inhalation of caprolactam is very limited in comparison to the large number of studies of caprolactam ingestion. This is largely because the physical properties of the substance make it difficult to generate stable atmospheres of caprolactam at levels which would be toxicologically significant and to control for possible secondary exposure to caprolactam by the oral route. However, EPA believes that the commenters who assert that EPA should wait to take action until after the current subchronic inhalation study has been completed misunderstand the study's purpose and likely significance.

Based on the currently available human and animal data, the most sensitive effect of inhalation exposure to caprolactam is irritation of the eye, nose, and throat. In a limited but reliable occupational study of workers exposed to airborne caprolactam over nearly two decades, irritant effects in the nose and throat were observed in some workers at all levels above 46 mg/m$^3$, and no distress was noted among workers at concentrations ranging up to 32 mg/m$^3$. This approximate no observed effect level of 32 mg/m$^3$ for acute irritation by caprolactam in humans is consistent with one animal study, in which brief exposure to caprolactam levels up to 26 mg/m$^3$ did not elicit any of the physiologic responses typical of irritants.

EPA believes that projected exposures of the general population to a substance in the ambient air at concentrations which result in acute irritation can be an appropriate basis for inclusion of that substance on the list of hazardous air pollutants. However, in the case of caprolactam, the highest modeled one-hour caprolactam concentration near any facility based on reported emissions was approximately 1 mg/m$^3$, well below the lowest documented irritation level of 46 mg/m$^3$.

The target exposure levels in the subchronic inhalation study being conducted by AlliedSignal are 25, 75,

and 250 mg/m³. The new inhalation study will provide additional information on potential adverse effects on the respiratory tract, as well as any adverse systemic effects, associated with sustained inhalation of caprolactam. Although EPA is reluctant to make quantitative comparisons between the oral and inhalation routes, EPA has previously calculated that the oral NOAEL (No Observed Adverse Effect Level) for reproductive effects of 50 mg/kg/day would be approximately equivalent to 175 mg/m³, after adjusting for a human body weight of 70 kg, 100 percent absorption, and a human inhalation rate of 20 m³/day. EPA considers it probable that the new inhalation study will permit better quantification of the dose-response relationship for potential portal of entry effects, but it is less clear whether even the highest concentration achieved by the new study will be sufficient to cause any of the systemic effects observed in previous oral studies.

The purpose of the new inhalation study is to enable a more precise quantitative dose response assessment for the inhalation effects of caprolactam exposure. While the study may be quite useful in this respect, EPA considers it unlikely that the study will change the more general conclusions of the risk assessment on which this final rule is based. In other words, EPA does not consider the uncertainties the new study is designed to address to be material to the overall risk determination underlying today's action.

Even if the new study were to detect portal of entry effects in rats following repeated exposure at the lowest target concentration of 25 mg/m³, this would probably have greater significance in an occupational context than in assessing the risks associated with ambient exposures. The new study will expose animals to this concentration for 13 weeks. The maximum modeled ambient caprolactam concentration for a 24-hour period is 0.25 mg/m³, two orders of magnitude below the lowest target concentration in the new study. (The maximum modeled ambient concentration on an annual basis is 0.05 mg/m³.)

Given the animal and human data already available, EPA considers it quite improbable that the new study will detect adverse systemic effects at the lower exposure levels. However, in the event that such effects are observed, EPA will review today's action in light of such data.

EPA wishes to stress that its decision that there is no need to wait for submission of the new inhalation study is based on the Agency's conclusion that the present data are already adequate to support the requisite statutory determination. EPA does not agree with the argument made by AlliedSignal in its comments that previous EPA delisting actions under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) provide precedent that would enable EPA to proceed with delisting under Clean Air Act Section 112 when research which is clearly material to its risk assessment is still underway. Unlike Clean Air Act Section 112(b)(3)(C), which requires EPA to determine that currently available data are adequate to support a determination that a substance may not reasonably be expected to cause adverse effects, EPCRA Section 313(d)(3) provides that a chemical may be deleted if there is not sufficient evidence to establish that it causes certain adverse effects.

*C. Human Effects Information*

In comments submitted by PURE and statements by individual citizens at the public hearing, many commenters asserted their belief that there is a relation between various adverse human health effects and caprolactam emissions by the AlliedSignal Irmo facility. The effects described include headaches, allergies, sinus problems, respiratory disorders, multiple chemical sensitivity, chronic fatigue syndrome, various digestive disorders, neurologic disorders, and several types of cancer. Although reports of irritation of the upper respiratory tract are qualitatively similar to the effects observed at far higher concentrations in occupational studies, EPA is not aware of any evidence which would indicate a relation between the occurrence of these common disorders in the general population and caprolactam exposure. EPA is also unaware of any evidence which would support the claimed relationship between caprolactam exposure and the other specific diseases which were mentioned. In the absence of any reliable epidemiologic or clinical information, or any other collateral evidence which would suggest the biological plausibility of the described effects, EPA cannot justify affording any weight to such anecdotal evidence in its risk assessment.

The purported relationship between caprolactam exposure and the symptoms of multiple chemical sensitivity (MCS) requires separate discussion. There is at present no medical consensus concerning the definition or the nature of this disorder. EPA is aware that some individuals and their physicians report they are unusually sensitive to multiple chemicals to which the general population is commonly exposed without ill effect. One person who spoke at the public hearing asserted that she is so sensitive to chemicals that she cannot use a dishwashing machine in her home. While EPA recognizes the formidable challenges and problems which may be faced by such individuals as they attempt to function in modern industrial society, such unusual and extreme sensitivity is not among the effects that EPA was directed to consider in identifying and listing hazardous air pollutants.

EPA is aware that a number of individuals in the Irmo-St. Andrews area have firmly concluded that caprolactam is the cause of health problems which they or their families have experienced. EPA accepts the concern and personal sincerity of these individuals' beliefs, but is not aware of any scientific evidence which would support them. EPA acknowledges the disappointment its decision to delist will cause these individuals, but respectfully suggests that the substantive changes at the Irmo facility have more practical significance to them than the plausibility of the claimed effects. EPA has taken steps which assure that there will be Federally enforceable reductions of caprolactam emissions at the Irmo facility equivalent to those which would have been required had caprolactam remained on the list of hazardous air pollutants, and that such reductions will be in place years before they would otherwise have been required.

The Agency for Toxic Substances and Disease Registry (ATSDR) commented on the EPA discussion of an ATSDR report in the proposed rule. ATSDR noted that EPA had called the report a ''preliminary screening study,'' although the ATSDR reviewed only the available literature, environmental monitoring data, and written and verbal reports of health concerns from individuals, and no health screening was performed on individuals. ATSDR also noted that the proposed rule had misquoted the ATSDR report, and that its conclusions concerning the Irmo Facility should not be generalized or applied to other facilities.

The use by EPA of the term ''preliminary screening study'' was not intended to imply that any health screening had been performed by ATSDR, and EPA regrets any confusion this phrase may have caused. In its report, ATSDR did reach conclusions regarding the Irmo facility which are consistent with the EPA analysis, but the determination by EPA that the

statutory criterion for delisting has been met is not predicated on the ATSDR conclusions. As far as the quotation from the ATSDR report in the proposed rule, the omission of several words was inadvertent. The correct quotation is:

''* * * the concentration of hazardous substances found in ambient air sampling were not of health concern and *the community health concerns* were not plausibly related to the release of hazardous substances.'' (correction italicized)

Finally, although the determination by EPA that caprolactam meets the statutory criterion for delisting is generic in nature, EPA never intended to generalize the ATSDR findings to other facilities or the communities in which they are located.

One frequent comment by the residents in the Irmo-St. Andrews area was that EPA should study the residents of that area before proceeding to delist caprolactam. EPA has carefully evaluated the feasibility and scientific value of an epidemiologic study and has determined that it would neither be practical or informative. In its evaluation, EPA utilized five criteria for determining the feasibility of community environmental studies suggested by Bender, et al., in a 1990 article in the American Journal of Epidemiology. A memorandum summarizing this EPA evaluation has been included in the docket.

The EPA evaluation makes it clear that a meaningful study of persons exposed to caprolactam emissions from the Irmo facility cannot be conducted. Key problems with such a study include the selection of biologically plausible health effects in the exposed population, the identification and measurement of other factors which might contribute to these health effects, and the lack of adequate statistical power to detect differences between exposed and unexposed populations.

As noted above, it is difficult to identify the specific health effects which would be the focus of such a study. If there were an unusual cluster of a single rare disease in the community, a credible allegation of a potential relation between that disease and caprolactam exposure, and all persons with that disease from an identified population including exposed individuals could be examined, a case-control study might be practicable. However, none of these factors are present here.

A cohort study of an exposed population (such as students at a nearby elementary school) would also be impractical. The non-specific complaints in the upper respiratory tract which are most frequently asserted by residents to be potentially related to caprolactam exposure have a very high incidence in any population. Such upper respiratory complaints can be caused by other pollutants, allergens, and infectious agents, and it would be difficult if not impossible to adequately control for these confounding factors in the study and control populations. Finally, the size of any potentially exposed valid study population that could be identified would probably not be large enough to provide sufficient statistical power to detect significant differences even if they do exist.

EPA realizes that there is a perception by many concerned citizens that any hypothetical relation between actual exposures and actual health effects can be scientifically studied. Unfortunately, this is not the case. Given the currently available information and the analytic tools provided by current science, EPA sees little or no utility to an epidemiologic study of caprolactam exposure in the Irmo-St. Andrews area. This is similar to the conclusion reached by ATSDR in its report.

*D. Exposure Information*

One commenter stated that the exposure estimates by the petitioners and by EPA were incomplete because they did not consider caprolactam emissions from hot mix asphalt (HMA) plants. The commenter estimated that caprolactam emissions from individual HMA plants could exceed the major source threshold of 10 tons per year, and that total caprolactam emissions from such facilities could be as high as 18,000 tons per year. Caprolactam is an ingredient in liquid anti-stripping agents containing bis(hexamethylene)triamine (BHMT), which are used in some HMA plants.

Prior to submission of this comment, EPA was unaware of HMA plants as a potential source of caprolactam emissions. If the commenter's estimates of emissions from HMA plants were determined to be correct, it was clear that the failure of the petitioners to address such emissions in their petition had been a significant omission.

AlliedSignal investigated emissions of caprolactam from HMA plants and submitted comments summarizing its findings. Although the commenter had estimated based on a material safety data sheet for one anti-stripping agent that caprolactam levels in such products are 5%, the actual level of caprolactam found in this product by AlliedSignal was .38%. In nine such products tested by AlliedSignal, the average caprolactam level was .79%, and the highest level found was 1.8%. Based on other assumptions suggested by the original commenter, AlliedSignal estimated that worst-case emissions from an HMA plant using a liquid anti-stripping agent containing the maximum caprolactam level of 1.8% would be 3.6 tons per year. AlliedSignal noted that not all HMA plants use liquid anti-stripping agents, and not all such agents contain BHMT (and thus caprolactam). Based on estimates of the total quantity of liquid anti-stripping agents produced annually, and the percentage of such agents containing BHMT, AlliedSignal concluded that no more than 27 tons/year of caprolactam is emitted from all HMA plants.

EPA considers the estimates by AlliedSignal of caprolactam emissions by HMA plants to be reasonable based on the information provided. Based on these estimates, no single HMA plant would constitute a major source of caprolactam. Because the estimated emissions from plants in the HMA source category are lower than reported emissions from the other source categories evaluated in the original petition, EPA does not believe that emissions from such sources would affect its conclusion that the statutory criterion for delisting has been met.

Several commenters expressed doubt as to the reliability of the exposure modeling on which the caprolactam delisting petition and the EPA risk assessment are based. In general, EPA believes that the exposure models utilized by the petitioners produce conservative results. Although actual ambient monitoring data around facilities emitting caprolactam is very limited, AlliedSignal submitted information indicating that actual measurements of ambient caprolactam levels at a monitoring station near its Irmo facility operated by the State of South Carolina Department of Health and Environmental Control were generally less than the concentrations for that location which were predicted by modeling.

Several commenters expressed concern that the EPA conclusions regarding the adverse effects of current caprolactam emissions do not assure that new sources with greater caprolactam emissions than those identified in the petition will not emerge in the future. A related concern was that the agreements with AlliedSignal regarding control of caprolactam emissions at its manufacturing facilities will not affect emissions at future facilities.

EPA does not interpret Section 112(b)(3)(C) to require consideration of hypothetical emissions from facilities that might be constructed in the future.

The logical consequence of such an expansive construction would be that no substance could ever be delisted, due to the hypothetical possibility of some future facility with emissions large enough to cause adverse effects. In the event that some future facility has uncontrolled caprolactam emissions great enough to change the conclusions of the present EPA risk assessment, EPA can revisit its decision to delist caprolactam at that time.

EPA readily acknowledges that the agreements with AlliedSignal do not apply to other caprolactam emitting facilities, either those presently in existence or those which might be constructed in the future. Although EPA has been unable to establish any link between caprolactam emissions at the Irmo facility and health effects in that community, EPA negotiated an agreement with AlliedSignal concerning installation of additional emission controls in order to alleviate the stated concerns of the residents in that community. EPA also reached agreement with AlliedSignal concerning control of emissions at its Chesterfield, VA manufacturing facility because that facility had large uncontrolled caprolactam emissions analogous to those at the Irmo facility. While EPA does not consider the Federally enforceable reductions in caprolactam emissions at either of these facilities to be essential to meet the statutory criteria for delisting, these reductions do provide substantial additional assurance that adverse human health effects will not occur. Moreover, the agreed reductions will be in place well before any mandatory emission reductions which would have resulted from the continued listing of caprolactam as a hazardous air pollutant.

*E. Emission Reductions by AlliedSignal*

Several commenters from the Irmo-St. Andrews area expressed doubt concerning the enforceability of the caprolactam reductions at the Irmo facility which have been agreed to by AlliedSignal. Such comments are simply erroneous. AlliedSignal has unequivocally agreed that the key terms and conditions which assure such reductions will be incorporated into the Federally enforceable Title V operating permit for the Irmo facility. This is the same permit which would have been utilized to enforce any emission standard controlling caprolactam emissions from this facility adopted pursuant to Clean Air Act Section 112.

In its comments, PURE argued that EPA should not presume that the emission reductions to be achieved by AlliedSignal at the Irmo facility are equivalent to the reductions which would be required by a Maximum Achievable Control Technology (MACT) standard issued under Section 112, because EPA has not gone through the steps which would be necessary to determine what MACT would be. Since any MACT standard issued for the source category including the AlliedSignal Irmo facility would not be issued until years from now, EPA cannot say with precision what such a standard would ultimately require. However, EPA has determined that the emissions control technology being installed at the AlliedSignal Irmo and Chesterfield facilities is likely to perform at least as well as that which has been demonstrated at other well-controlled facilities.

EPA bases its conclusions concerning the effectiveness of emission controls being installed at the AlliedSignal facilities on the emission and production information contained in the petition and produced by the petitioners during the rulemaking, and on visits by EPA to several operating Nylon 6 production facilities, including the AlliedSignal Irmo facility and the BASF Clemson facility. (PURE representatives have cited BASF as a company which does a good job of controlling its caprolactam emissions.) EPA has evaluated each of six Nylon 6 production facilities to determine the ratio of the amount of caprolactam emitted to the amount of Nylon 6 fiber production. The ratio of emissions to production at the AlliedSignal Irmo and Chesterfield facilities after all required controls have been installed will be less than the present ratio of emissions to production at all other facilities except the BASF Anderson plant, which has lower emissions because it spins Nylon 6 fiber but receives polymerized caprolactam from another site. Although the analysis underlying a MACT standard would be more detailed, and would likely involve separate analysis of caprolactam emissions for polymerization, depolymerization, and spinning operations, EPA considers it improbable that a MACT standard based on presently demonstrated technologies would require greater control of caprolactam emissions at the AlliedSignal facilities than is required by the agreements AlliedSignal has executed.

Several commenters complained that the agreement between EPA and AlliedSignal does not adequately regulate emergency releases from the plant. Under general MACT provisions, releases during periods of upset and abnormal operation are not considered in determining compliance with MACT standards. Thus, the implicit assumption that a MACT standard would regulate emergency releases more stringently than the agreement is mistaken. In addition, the commenters appear to overestimate the significance of such releases. Figures provided by AlliedSignal indicate that additional caprolactam emissions associated with scheduled maintenance and unscheduled malfunctions of emission control equipment at the Irmo facility represent less than one percent of the total caprolactam emissions by that facility.

The agreement concerning the AlliedSignal Irmo facility does contain provisions which require expeditious reporting of any emission control equipment upset or malfunction, as well as any emergency releases, to the South Carolina Department of Health and Environmental Control. The agreement also requires prompt repair of any malfunctioning emission control equipment, and installation of pressure control devices on those emission points most susceptible to emergency releases.

*F. Delisting Criteria*

In its comments, PURE asserted that EPA is required to consider occupational exposures in deciding whether to delist caprolactam. EPA firmly disagrees with this comment. The language of Section 112(b)(3)(C) refers to ''emissions, ambient concentrations, bioaccumulation, or deposition of the substance.'' Nothing in this language suggests that EPA should consider worker exposures in its delisting assessment. Moreover, it would be illogical to assume that worker exposures should be considered in deciding whether to delist when continued listing would not itself lead to any requirement that occupational exposures be controlled.

In its comments, PURE also argued that the proposed delisting would be unlawful because it assumes future compliance by AlliedSignal with the agreed emission reductions, thereby circumventing the purposes of the Clean Air Act. It could be argued that consideration of future emission reductions in a decision to delist a substance from the list of hazardous air pollutants is a reasonable construction of Section 112(b)(3)(C) consistent with the purposes of the Clean Air Act, so long as such reductions will be as enforceable as those which might be required by a MACT standard and will be in place before any MACT standard could be issued. However, in this instance it was not necessary to resolve this question. EPA has determined that

the petitioners have satisfied the statutory criterion for delisting in Section 112(b)(3)(C) based on the emissions reported in the delisting petition. The agreements by AlliedSignal requiring enforceable reductions in caprolactam emissions at its facilities provide additional assurance that the agency's determination is correct, but are not an essential element in the risk assessment on which that determination is based.

## III. Final Rule

### *A. Rationale for Action*

The detailed factual rationale supporting the Agency's initial determination that the criterion in Clean Air Act Section 112(b)(3)(C) had been met is set forth in the proposed rule published in the Federal Register on September 18, 1995 (60 FR 48081). As is apparent from the discussion above, although EPA has done substantial additional analysis pursuant to the comments submitted during the subsequent rulemaking, none of those comments have caused EPA to revise the basic scientific analysis on which that initial determination was predicated. EPA hereby incorporates in its rationale for this final rule the substantive assessment of potential hazards, projected exposures, human risk, and environmental effects set forth in the proposed rule to delist caprolactam. Based on that assessment, the Agency's evaluation of the comments and additional information submitted during the rulemaking (as summarized above), and on the other materials which have been incorporated in the public docket for this rulemaking, EPA has made a determination that there is adequate data on the health and environmental effects of caprolactam to determine that emissions, ambient concentrations, bioaccumulation or deposition of caprolactam may not reasonably be anticipated to cause any adverse effects to human health or adverse environmental effects. On that basis, caprolactam is hereby deleted from the list of hazardous air pollutants set forth in Clean Air Act Section 112(b)(1). This deletion shall be final on the effective date of this rule.

### *B. Implementation*

Although EPA intends in the future to conduct a rulemaking to codify the hazardous air pollutant list set forth in Clean Air Act Section 112(b)(1) and to correct various technical errors in the statutory list which have been identified since 1990, the list is at present uncodified. Therefore, today's rule does not revise the text of any existing provision of the Code of Federal Regulations. However, on the effective date of this rule, caprolactam will be deleted for all purposes from the list set forth in Section 112(b)(1). To avoid confusion concerning the status of caprolactam, pending the rulemaking which will codify and correct the list set forth in Section 112(b)(1), EPA will add to the Code of Federal Regulations a brief provision confirming that caprolactam has been deleted from the list.

EPA included in the proposed rule to delist caprolactam a provision providing immediate relief, on an interim basis, for certain facilities which might otherwise have been required to apply for Title V operating permits based solely on the continued inclusion of caprolactam on the list of hazardous air pollutants. That provision suspended the listing of caprolactam, for the duration of this rulemaking, solely for the limited purpose of determining the applicability of Title V permitting requirements. The interim relief provided in the proposed rule is no longer necessary and will expire by its own terms on the effective date of this final rule.

### *C. Effective Date*

This final rule will be effective on June 18, 1996, the date it is published in the Federal Register. Although Section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that substantive rules must be published at least 30 days prior to their effective date, this requirement does not apply to this rule. First, this rule was promulgated pursuant to Clean Air Act Section 307(d), and that provision expressly states that the provisions of Section 553 do not apply to this action. Second, even under Section 553, the requirement that a rule be published 30 days prior to its effective date does not apply to a rule

> ''which grants or recognizes an exemption or relieves a restriction.''

### *D. Judicial Review*

This final rule deleting caprolactam from the list of hazardous air pollutants in Clean Air Act Section 112(b)(1) is based on a determination of nationwide scope and effect. A petition for judicial review of this final rule may be filed solely in the United States Court of Appeals for the District of Columbia. Any such petition for judicial review of this rule must be filed no later than August 19, 1996. In any resulting action, no objection can be made which was not raised with reasonable specificity during the period for public comment (including the public hearing).

## IV. Miscellaneous

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 57735, October 4, 1993), EPA must determine whether this rule is ''significant'' and therefore subject to review by the Office of Management and Budget under 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This action will not result in an annual effect on the economy of $100 million or another adverse economic impact, does not create a serious inconsistency or interfere with another agency's action, and does not materially alter the budgetary impacts of entitlement, grants, user fees, etc. While States may lose Title 5 permit fees as a direct result of this rule, the number of affected facilities is not believed to be significant. However, since this action is the Agency's first decision to modify the hazardous air pollutant list, EPA believes that it could be construed as raising novel legal or policy issues and has therefore submitted this rule for OMB review under Executive Order 12866.

### *B. Regulatory Flexibility Analysis*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. This rule will reduce regulatory burdens on small businesses which would otherwise be associated with retention of caprolactam on the list of hazardous air pollutants. EPA has determined that this rule will have no adverse effect on small businesses. Accordingly, this rule will not have ''a significant impact on a substantial number of small entities,'' as that phrase is utilized in Section 605(b) of the Regulatory Flexibility Act, as amended.

*C. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995, EPA must prepare a written statement to accompany any rules that have ''Federal mandates'' that may result in the expenditure by the private sector of $100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objective of such a rule and that is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising small governments that may be significantly and uniquely affected by the rule.

The Unfunded Mandates Act defines a ''Federal private sector mandate'' for regulatory purposes as one that, among other things, ''would impose an enforceable duty upon the private sector.'' This final rule to modify the hazardous air pollutant list to delete caprolactam is deregulatory in nature and does not impose any enforceable duties upon the private sector. Therefore, this rulemaking is not a ''Federal private sector mandat'' and is not subject to the requirements of Section 202 or Section 205 of the Unfunded Mandates Act. As to Section 203, EPA finds that small governments will not be significantly and uniquely affected by this rulemaking.

*D. Submission to Congress and the General Accounting Office*

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a ''major rule'' as defined by section 804(2) of the APA as amended.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances.

Dated: June 7, 1996.

Carol M. Browner,

*Administrator.*

40 CFR part 63 is amended as follows:

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

### Subpart C—[Amended]

2. Subpart C is amended by adding § 63.60 and adding and reserving §§ 63.61 through 63.69 to read as follows:

**§ 63.60 Deletion of caprolactam from the list of hazardous air pollutants.**

The substance caprolactam (CAS number 105602) is deleted from the list of hazardous air pollutants established by 42 U.S.C. 7412(b)(1).

**§§ 63.61–63.69 [Reserved]**

[FR Doc. 96–15445 Filed 6–17–96; 8:45 am]

BILLING CODE 6560–50–P

---

## DEPARTMENT OF ENERGY

## 48 CFR Parts 911, 952, and 970

**RIN 1991–AB27**

## Acquisition Regulation; Technical Amendments

**AGENCY:** Department of Energy.

**ACTION:** Correction to final rule.

**SUMMARY:** This notice corrects errors appearing in the final rule published at 61 FR 21975 on May 13, 1996. The rule made technical amendments to the Department of Energy Acquisition Regulation (DEAR) to conform to changes made in the Federal Acquisition Regulation (FAR) as a result of the Federal Acquisition Streamlining Act of 1994.

**EFFECTIVE DATE:** June 12, 1996.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Langston, Office of Policy (HR–51), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 586–8247.

**SUPPLEMENTARY INFORMATION:**

Need for Correction

As published, the rule contained errors which could be confusing to the reader and need correction.

Correction of Publication

Accordingly, the final rule published on May 13, 1996, which was the subject of FR Doc. 96–11918 is corrected as follows:

**911.600 [Corrected]**

1. At page 21976, in subpart 911.600, at the bottom of the center column, the reference to ''FAR subpart 911.6'' is corrected to read ''FAR subpart 11.6.''

**952.211 [Corrected]**

2. At page 21977, second column, insert amendment 18.d to read as follows:

18.d In newly redesignated sections 952.211–70, including its Alternate I, and 952.211–71, including its Alternate I, the date ''JUNE 1987'' following the clause heading is revised to read ''JUN 1996.'' In newly redesignated section 952.211–72, the date ''MAY 1987'' following the clause heading is revised to read ''JUN 1996.'' In newly redesignated 952.211–73, the date ''APR 1987'' following the clause heading is revised to read ''JUN 1996.''

**952.226 [Corrected]**

3. At page 21977, second column, insert amendment 19.a to read as follows:

19.a At sections 952.226–70, 952.226–71, 952.226–72, and 952.226–73, the date ''May 1995'' following the clause heading is revised to read ''JUN 1996.''

**952.250–70 [Corrected]**

4. At page 21977, second column, insert amendment 20.a to read as follows:

20.a At section 952.250–70, the date ''JAN 1992'' following the clause heading is revised to read ''JUN 1996.''

**970.5204–9 [Corrected]**

5. At page 21977, second column, insert amendment 23.a to read as follows:

23.a At section 970.5204–9, the date ''APR 1984'' following the clause heading is revised to read ''JUN 1996.''

6. At page 21977, third column, at 970.5204–9, the date ''APR 1996'' following the clause heading is corrected to read ''JUN 1996.''

**970.5204–13 [Corrected]**

7. At page 21977, third column, insert amendment 24.a to read as follows:

24.a At 970.5204–13, the date ''SEPT 1991'' following the clause heading is revised to read ''JUN 1996.''

**970.5204–14 [Corrected]**

8. At page 21978, first column, insert amendment 25.a to read as follows:

25.a At 970.5204–14, the date ''OCT 1990'' following the clause heading is revised to ''JUN 1996.''

**970.5204–44 [Corrected]**

9. At page 21978, first column, insert amendment 26.a to read as follows:

26.a At 970.5204–44, the date ''Oct 1995'' following the clause heading is revised to ''JUN 1996.''

Signed in Washington, D.C. on June 6, 1996.

Richard H. Hopf,

*Deputy Assistant Secretary for Procurement and Assistance Management.*

[FR Doc. 96–14895 Filed 6–17–96; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

## Research and Special Programs Administration

## 49 CFR Part 192

**[Docket PS–124; Amdt. 192–78]**

**RIN 2137–AC25**

## Regulatory Review; Gas Pipeline Safety Standards

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Correction of amendment number of final rule document.

**SUMMARY:** This action corrects the amendment number of the Final Rule document published in the Federal Register on Thursday, June 6, 1996 (61 FR 28770). In the document heading on page 28770, the amendment number ''Amdt. 192–76'' is changed to read ''Amdt. 192–78.'' The Final Rule makes miscellaneous changes to the gas pipeline safety standards to provide clarity, eliminate unnecessary or burdensome requirements, and foster economic growth.

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

**FOR FURTHER INFORMATION CONTACT:** Jenny Donohue, (202) 366–4046.

Issued in Washington D.C. on June 12, 1996.

Richard B. Felder,

*Associate Administrator for Pipeline Safety.*

[FR Doc. 96–15352 Filed 6–17–96; 8:45 am]

BILLING CODE 4910–60–P

## National Highway Traffic Safety Administration

## 49 CFR Part 571

**[Docket No. 74–09; Notice 46]**

**RIN 2127–AF02**

## Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

**ACTION:** Final rule; response to petitions for reconsideration; correction.

**SUMMARY:** This document responds to petitions for reconsideration of a July 1995 final rule that amended Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems* to add a greater array of sizes and weights of test dummies for use in Standard 213 compliance tests. This is the second of two documents responding to those petitions. An earlier document delayed the compliance date of the rule until September 1, 1996, for manufacturers of add-on (portable) child restraint systems.

Most of the amendments made by today's rule correct or clarify provisions of the July 1995 rule. The only substantive changes made by today's rule are to amend provisions in that standard to permit manufacturers to produce belt-positioning seats with a mass of up to 4.4 kg (rather than limit the mass to 4 kg), and to permit them to use the word ''mass'' in labeling child seats. Petitions for reconsideration of matters relating to other issues are denied.

**DATES:** This rule is effective July 18, 1996. The compliance date for the amendments made by this rule (i.e., the date on which manufacturers must begin complying with the amendments) is September 1, 1996. Beginning July 18, 1996, manufacturers may begin voluntarily complying with the amendments made by this rule.

Petitions for reconsideration of this rule must be received by August 2, 1996.

**ADDRESSES:** Petitions for reconsideration should refer to the docket and number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC, 20590.

**FOR FURTHER INFORMATION CONTACT:** For nonlegal issues: Dr. George Mouchahoir, Office of Vehicle Safety Standards (telephone 202–366–4919). For legal issues: Ms. Deirdre Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

Table of Contents

I. Introduction
II. Current requirements
III. Final Rule
IV. Petitions for Reconsideration
V. Issues
a. Mass Ranges
b. Ninety-fifth percentile child dummy
c. Weight and height should match
d. Test Principles
1. Speed Close to 30 mph
2. Representative Seat Assembly
3. Worst Case Testing
4. Testing ''New'' Restraints
e. Allowable Mass for Belt-Positioning Boosters
f. Knee Excursion
VI. Corrections
a. Metrication
b. Labeling
c. Dummy Positioning
d. Dummy Selection
VII. Compliance Date
VIII. Rulemaking Analyses and Notices
a. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures
b. Regulatory Flexibility Act
c. Executive Order 12612 (Federalism)
d. National Environmental Policy Act
e. Paperwork Reduction Act
f. Executive Order 12778 (Civil Justice Reform)

### I. Introduction

This document is the second of two documents responding to petitions for reconsideration of a final rule published July 6, 1995 (60 FR 35126), and corrected September 29, 1995 (60 FR 50477). It also responds to other requests for rulemaking. The final rule amended Federal Motor Vehicle Safety Standard No. 213, ''Child Restraint Systems'' (49 CFR 571.213), by adding a greater array of sizes and weights of test dummies to Standard 213 for use in compliance tests. The rule, completing a substantial upgrade of the standard long envisioned by the agency, also responded to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act (''ISTEA'')), which directed NHTSA to initiate rulemaking on child seat safety. The notice of proposed rulemaking (NPRM) for the rule was published March 16, 1994 (59 FR 12225).

On December 12, 1995 (60 FR 63651), NHTSA published the first document responding to petitions for reconsideration of the rule. In response to petitions from Cosco Inc. and Gerry Baby Products Company, two manufacturers of add-on child restraint systems, NHTSA extended the compliance date of the rule from January 3, 1996, to September 1, 1996. The agency extended the compliance date to provide manufacturers of add-on systems sufficient time to evaluate their products and make any necessary changes to them.

### II. Current Requirements

Standard 213 applies to any device, except Type I (lap) or Type II (lap/shoulder) seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children whose mass is 23 kilograms (kg) (50 pounds) or less. The standard evaluates the performance of child restraint systems in dynamic

tests under conditions simulating a frontal crash of an average automobile at 48 kilometers per hour (kph) (30 miles per hour (mph)).

The dynamic tests are conducted using a test dummy. Currently, Standard 213 (S7) specifies two different dummies for use in compliance testing. A dummy representing a 6-month-old child is used for testing a child restraint system that is recommended by its manufacturer for use by children in a mass range that includes children whose mass is 9 kg (weighing 20 pounds) or less. That dummy, which is uninstrumented, is specified in subpart D of 49 CFR part 572. A dummy whose mass is 15 kg (weighing 33 pounds), representing a 3-year-old child, is used for testing a child restraint system that is recommended for children whose mass is more than 9 kg (weighing more than 20 pounds). This dummy is instrumented with accelerometers for measuring accelerations in the head and chest during impacts, and is specified in 49 CFR part 572, subpart C.

The requirements to be met by a child restraint in the dynamic testing include maintaining its structural integrity, retaining portions of the dummy within specified excursion limits (limits on how far specified portions of the body may move forward), and in the case of the 3-year-old dummy, limiting the forces exerted on the head and chest of the dummy in the crash. These requirements reduce the likelihood that the child using a child seat will be injured by the collapse or disintegration of the seat, by contact with the interior of the vehicle, or by imposition of intolerable forces by the seat.

## III. Final Rule

The final rule that is the subject of today's document amended Standard 213 to add three dummies, representing a newborn infant, 9-month-old and 6-year-old child, for use in the future in compliance testing under the standard. The rule will remove the 6-month-old child dummy currently used, since the need for it was obviated by the addition of the new dummies.

In adopting the new dummies, the agency sought to better evaluate the ability of child restraint systems to restrain and protect the range of children recommended for those systems. As a result of the rule, child restraints will have to meet the performance requirements of the standard while tested with dummies more representative of the children for whom the restraints are recommended. As a result, the performance of child restraints will be more thoroughly evaluated. A dummy representing children at the lower end of the weight ranges recommended for a restraint will evaluate the ability of the restraint to restrain its occupant. A dummy at the higher end will evaluate the structural integrity of the restraint.

The rule adopted the following provisions specifying which of the new dummies NHTSA will use in the compliance testing of child restraint systems:

| If the range of children recommended by a child restraint's manufacturer includes any children in the following range, | The following dummy(ies) is(are) used in the compliance testing of that restraint |
|---|---|
| Birth to 5 kg (11 lb) or less | Newborn. |
| More than 5 kg to 10 kg (22 lb). | Newborn.<br>9-month-old (20 lb). |
| More than 10 kg to 18 kg (40 lb). | 9-month-old (20 lb).*<br>3-yr-old (33 lb). |
| More than 18 kg (40 lb) | 6-yr-old (47 lb). |

*This dummy is not to be used to test booster seats.

## IV. Petitions for Reconsideration

NHTSA received five petitions for reconsideration of the rule. One of these, from the Connecticut Attorney General's office, was untimely, and will be considered as a petition for rulemaking in accordance with § 553.35 of NHTSA's regulations. In addition, Mr. Louis F. Sokol, a metrication consultant, in a letter to the agency, pointed out minor errors relating to the use of SI measurements, and suggested use of a particular metric unit on child seat labels. That letter is also addressed in today's document.

### Discussion of Petitions

This section briefly discusses the issues raised by each of the petitions, except issues relating to an extension of the compliance date for the rule. The agency responded to those compliance date issues in the earlier Federal Register document.

Consumers Union (''CU'') petitioned for reconsideration of several aspects of the rule, including the mass/weight ranges and the specifications of which dummy or dummies will be used to test restraints in each mass/weight class. Consumers Union stated that the rule should not ''allow manufacturers to recommend any particular restraint system for children larger in weight than the weight for which the system is required to be tested by the standard.'' In addition, CU suggested changes to specific aspects of the dynamic test procedure.

The Connecticut Attorney General's office expressed concerns similar to CU's. This petitioner asked NHTSA to require that all tests of child restraint systems use a test dummy ''with a weight consistent with the maximum recommended weight for use in the car seat.'' Similar to CU, this petitioner stated that the rule does not ''guarantee'' that infant seats recommended for infants up to 22 lb are safe for children who weigh up to 22 lb.

Cosco, Inc. (''Cosco''), a manufacturer of add-on child restraints, raised several issues in its petition, the most significant of which related to one aspect of the mass ranges. Cosco wanted the 10 kg to 18 kg (22 lb to 40 lb) category to be changed so that the upper limit is 20 kg (44 lb). Cosco stated that restraints with a 43 lb maximum recommendation have been in the marketplace for years without evidence of a safety problem. The bulk of Cosco's other issues related to apparent errors or omissions in the rule.

Advocates for Highway and Auto Safety (''Advocates'') petitioned for reconsideration of an aspect of the mass ranges adopted by the rule. Advocates objected to the 18 kg (40 lb) dividing line between the third and fourth mass classes because there is no 18 kg test dummy. The petitioner stated that, without such a dummy, child restraints cannot be appropriately tested at 18 kg, which may be one extreme of a recommended mass range for a child restraint. In addition, Advocates objected to a discussion in the final rule relating to ''worst case'' testing.

Two petitioners, a child restraint manufacturer and a consortium of built-in restraint manufacturers, petitioned about certain specific performance requirements. Gerry Baby Products Company (''Gerry'') requested a change to the requirement limiting the force that may be imposed on a child by the vehicle lap belt used to anchor a child seat to the vehicle (S5.4.3.2). The rule prohibited any loads except those resulting from a child seat with a mass less than 4 kg. Gerry petitioned to raise the limit from 4 kg to 4.4 kg. The American Automobile Manufacturers Association (''AAMA'') petitioned to increase the knee excursion limit of 305 mm for built-in restraints (S5.1.3.1 (b)). AAMA stated that an allowance of 305 mm is too restrictive with respect to testing a booster seat with the 6-year-old dummy, and that until such time as an appropriate knee excursion limit can be developed for use with the dummy, no knee excursion limit should be in force.

V. Issues

Most of the amendments made by today's rule correct or clarify provisions of the July 1995 rule. The only substantive changes made by today's rule are to amend S5.4.3.2 to permit manufacturers to produce belt-positioning seats with a mass of up to 4.4 kg (rather than limit the mass to 4 kg), and to permit them to use the word ''mass'' in labeling child seats. Petitions for reconsideration of matters relating to other issues are denied.

*a. Mass Ranges*

Consumers Union (CU) petitioned for reconsideration of the provisions of the rule that specify which child test dummies are used to evaluate the performance of a particular child restraint system. CU stated that the standard should specify testing with ''a dummy representing the maximum weight of a child for whom the safety seat is designed.'' CU further stated that the standard should not permit manufacturers to recommend their restraints for any child weighing more than the heaviest test dummy used in the compliance testing of the product.

The main provisions with which CU is concerned are those that specify how to test a rear-facing seat and a convertible seat. The provisions for testing rear-facing seats specify that, if the range of children recommended by a child restraint's manufacturer includes any children of masses in a range of 5 kg to 10 kg (approximately 11 to 22 lb), the restraint is tested with both the newborn and 9-month-old (20 lb) dummies (S7.1(b)). CU believed that it is unsafe to permit manufacturers to label a rear-facing restraint as suitable for infants with masses up to 10 kg (22 lb), when the heaviest dummy used in testing the restraint weighs only 20 lb. CU described tests it conducted using the 20 lb 9-month-old dummy in infant seats that were generally labeled for children up to 20 lb.

> Two popular models, certified by the manufacturers as safe based on tests with a smaller, lighter six-month-old [17.5 pound] dummy, and labeled for use by children up to 20 pounds, performed poorly when tested with the 20-pound dummy. In one case, the Century 590, the product barely passed our tests when tested with a 17.5-pound dummy, but failed dramatically when tested with a 20-pound dummy. In the second case, involving the Evenflo On My Way 206, the product failed in the same manner mentioned in NHTSA's press release of July 25, 1995 (i.e., a crack in the shell) when tested with a 17.5 dummy, but failed in a dramatic fashion when tested with a 20-pound dummy.

CU was thus concerned that, under the July 1995 rule, a rear-facing child restraint could meet Standard 213's requirements when tested with the 9-month-old (20 lb) dummy, but may or may not perform adequately when restraining a 22 lb child, even though the restraint is recommended for children weighing up to 22 lb.

CU had similar concerns about convertible and toddler restraint systems. (Convertible restraints are adjustable so that in one adjustment position they can be used rear-facing by an infant or a very young child in the same manner as an infant-only seat and in another position, by a toddler who is forward-facing, i.e., restrained facing in the normal direction of travel of the vehicle.) The rule specifies that a restraint recommended for use by children of masses in a range from 10 kg to 18 kg (22 to 40 lb) is tested with the 9-month-old [1] and 3-year old (33 lb) dummies (S7.1(c)). CU stated that these restraints should not be permitted to be recommended for children weighing more than 33 lb:

> Because there is no standard 40-pound dummy available, we could test only with the 33-pound dummy. Hence, neither we nor the public nor NHTSA knows how these seats will perform with a child weighing between 33 and 40 pounds. In our view, this is an unacceptable situation for parents who are led by product labeling to believe that these seats will provide the necessary restraint in a crash.

After carefully reviewing CU's petition, NHTSA has determined that safety is best served by denying it.

The basis for the agency's decision to retain the 10 kg (22 lb) dividing line between the second and third weight ranges is grounded in the anatomical characteristics of infants and the corresponding real-world need to keep infants in rear-facing child restraints up through the end of their first year. As discussed below, adoption of CU's request could have the unintended and undesired effect of encouraging the premature transition of infants to front facing child restraints.

Infants have unique skeletal and muscular attributes. An article [2] by F. von Wimmersperg and Waldemar J. Czernakowski, ''The Safe Deceleration of Infants in Car Crashes,'' describes the biomechanical characteristics of infants, for consideration in developing adequate infant restraining devices:

> To facilitate the passage of the fetus through the birth canal, the mother and the fetus can deform during the slow, almost static loads of the birth process. This ability of the fetus to deform safely under slow loads is mortgaged by a high vulnerability to local, blunt dynamic loads by impact on the head or chest, or violent movements of the head by shaking or otherwise. * * * The infant is not just a scaled down older child. The anatomical differences are of such magnitude that engineering solutions adequate to decelerate older children can be expected to injure the infant.

''The Safe Deceleration of Infants in Car Crashes,'' Wimmersperg and Czernakowski, Proceedings of 20th STAPP Car Crash Conference, October 1976, pp. 545–585.

In addition to the undeveloped skeletal and muscular system of the infant, the size of the child's head and the stresses it produces on the neck make the infant extremely vulnerable to injury in frontal crashes. The head of a newborn represents one-third of the infant's total body weight. Unless properly supported, the head can produce a massive amount of force pulling on the undeveloped muscle system of an infant's neck in a crash.

Because of these anatomical features, child passenger safety experts have strongly recommended that infants should be positioned rear-facing in a vehicle. Infant restraints are designed to face the child rearward so that in a frontal crash, the forces are spread evenly across the infant's back and shoulders, the strongest part of the child's body. Further, the back of the head rests against the seating surface. In this way, severe neck injuries are prevented. Von Wimmersperg and Czernakowski state that ''Injuries of the (infant's) neck and of the brain can be prevented only when the head mass and the torso mass decelerate gradually and simultaneously, with a minimum of relative movement.'' [3] Kathleen Weber of the Child Passenger Protection Research Program of the University of Michigan Medical School (UM–CPP) found that stretching forces acting on the neck can be reduced by half when forward-facing child dummies are turned to face the rear. She found that, in the forward-facing position, the neck of a six-month-old child dummy was subjected to about 1200 N of force, or over fifty times the weight of the head pulling on the neck. In tests in which

[1] The 9-month-old dummy is not used to test booster seats.

[2] This article was part of a petition for rulemaking submitted to NHTSA in 1992 by Century Products Co. (docket PRM–213–22) concerning a requirement then in Standard 213 that infant seats not change adjustment position in dynamic testing (S5.1.1). See docket 74–09, notice 36.

[3] In their article, these authors discuss a new type of infant restraint, a swinging bed, which they believe transfers the load from a frontal impact over a large area of the infant and reduces the duration of maximal impact for each area element.

the dummy was restrained rear-facing, measured neck forces were less than half of the forward-facing values. ''Rear-Facing Restraint for Small Child Passengers,'' UMTRI Research Review, April–June 1995. Ms. Weber determined from her research that ''children are much less prone to serious neck injury in a rear-facing than a forward-facing child restraint, and that children should therefore be kept facing the rear of the vehicle *until they are at least one-year old*.'' *Id*., emphasis added. One-year is believed to be the earliest age at which a child should be turned to face forward because the infant's bones and muscular system take about eight to 12 months to ossify and develop to the point where it has outgrown the most serious vulnerability to local, blunt impacts on the head or chest, or violent movements of the head. Wimmersperg and Czernakowski, *id*.

While safety advocates recommend infants should be rear-facing until at least one year old, Standard 213's testing provisions inadvertently prevented manufacturers from recommending an upper weight limit that would enable children to stay rear-facing until one year of age. As noted in section II above, the standard specified that the 6-month-old child dummy is used for testing a child restraint system that is recommended by its manufacturer for use by children in a weight range that includes children weighing 20 lb or less. The 3-year-old child dummy is used for testing a child restraint system recommended for children weighing more than 20 lb. (The 20 lb weight corresponds to the average nine-month-old child.) Recommending any rear-facing restraint for the average 12-month-old (whose average weight is 22 lb) would necessitate recommending the restraint for children weighing in excess of 20 lb. A rear-facing restraint recommended for children weighing more than 20 lb had to be certified as meeting Standard 213 when tested with the 33 lb 3-year-old dummy.

Testing a rear-facing child restraint with the 3-year-old dummy was problematic. In an April 22, 1992 interpretation letter to Century Products, NHTSA determined that if a convertible restraint could not physically permit the 3-year-old dummy to be positioned for the dynamic test, the restraint could not be recommended by its manufacturer for use in the rear-facing position by children weighing more than 20 pounds. Moreover, since a rear-facing restraint recommended for a child weighing more than 20 lb must meet all performance criteria when tested with the 3-year-old dummy, most manufacturers will not certify their infant restraints to Standard 213. Rear-facing restraints typically have a seat back that is too low to enable the restraint to meet the standard's occupant head excursion requirement (S5.1.3.2) when tested with the 3-year-old dummy.

To enable manufacturers to recommend rear-facing restraints for infants up to 12 months in age without making it necessary to test those restraints with the 33 lb 3-year-old dummy, the July 1995 rule divided the weight ranges in such a manner that the 3-year-old dummy is used to test a restraint only if the restraint is recommended for use by a child weighing more than 22 lb. In the proposed rule, NHTSA proposed a dividing line of 20 lb, but raised it to 22 lb in the final rule in response to commenters who believed that the change would encourage manufacturers to recommend positioning an infant in a rear-facing position at least until the child is one year old. 60 FR at 35131, 35132. NHTSA concluded that safety would be served by better ensuring that infants ride rear-facing until their skeletal and muscular structure can develop to where they can more safely withstand crash forces in a forward-facing position.

While based on a desire to promote safety, CU's request to prohibit manufacturers from specifying their products for use by children exceeding the weight of the test dummy would have the opposite effect. Granting that request would not comport with real world needs of infants. As noted above, taking action that would have the effect of prohibiting rear-facing restraints from being recommended for children weighing more than 20 lb does not accord with safety data that indicate infants are safer riding rear-facing until at least 12 months old (i.e., until they reach 22 lb). It perpetuates a current ''impediment'' (Weber, *id*.) in Standard 213 that resulted in less than optimal, and possibly misleading, weight recommendations. Because 20 pounds is the weight of an average nine-month-old child, CU's approach would continue to limit weight recommendations in such a way as to possibly mislead consumers into thinking that an infant must be switched to face forward when the baby is only nine months old. This is likely to be before the infant's bones and muscular system have developed sufficiently to make seating the child in a forward facing position appropriate. Thus, CU's approach could have the unintended effect of detracting from the real-world safety needs of older infants (ages nine- to 12-months).

NHTSA notes that the potential adverse effect of CU's suggestion that the weights of the dummies used for Standard 213 compliance tests should determine the limits of the weight recommendations made by the manufacturers would have been even greater under Standard 213 prior to the July 1995 amendment. Under CU's approach and under that version of the Standard, infant restraint manufacturers would not have been allowed to recommend their restraints for children weighing more than the 17.5 lb (six-month-old) dummy. That limit would have pushed infants out of rear facing infant seats and into forward facing child restraints even more prematurely than under the July 1995 amendment.

The agency recognizes that, even with the new test dummies incorporated into Standard 213, it may be possible to gain still more safety benefits from making further changes to the standard. The more dummies that were added to the standard, the more likely it would be that there would be dummies that coincided more exactly with the lower and upper limits of the range of recommended weight and sizes of children for a particular child restraint.

A perfect standard might be one that incorporated test dummies representative of *all* children for whom a child restraint is recommended, including all children at the extremes of the recommended weight ranges. A perfect standard might be one that specified testing with ''a dummy representing the maximum weight of a child for whom the safety seat is designed,'' as CU suggested in its petition, assuming that dummies representing children of all types exist, and that the added costs and burdens of such testing could be justified by safety benefits. However, such dummies do not exist.

In addition, the agency believes such an approach is unnecessarily restrictive, given that there has been no showing that the wider array of dummies incorporated into Standard 213 by the July 1995 rule are insufficient surrogates for the children for whom the restraints are recommended. There is no question that Standard 213 could possibly more extensively evaluate a restraint's performance if it incorporated more test dummies representing more of the children for whom the restraint is designed. In that regard, NHTSA notes that it is considering incorporating a 12-month-old (22 lb) child test dummy into Standard 213 compliance testing, to make the evaluation of infant seats even more extensive. The agency is currently evaluating the 12-month-old CRABI dummy. However, the agency does not

believe that there is a safety problem that warrants prohibiting manufacturers from recommending infant seats for children up to a mass of 10 kg (22 lb) in the absence of such a dummy. NHTSA notes further that the test dummy that CU used to test infant seats, resulting in ''not acceptable'' performance ratings, was the 20 lb nine-month-old adopted by the July 1995 rule. Thus, CU's testing of infant seats was not more thorough than that which will be required by the July 1995 rule. After September 1, 1996, NHTSA will evaluate all infant seats using the same general methodology that CU used in its tests. Seats whose performance was found by CU to be ''not acceptable'' will need to be improved, to ensure that Standard 213's requirements will be met when NHTSA conducts its compliance tests.

CU's belief that the upper end of the recommended weight ranges for users of infant restraints should be limited to 20 lb is based on its concern that the restraint may fail when restraining a heavier child. NHTSA notes that there is no information showing that failures will occur above 20 lb, or the nature and magnitude of such failures. While NHTSA agrees that child restraints should be tested with a test dummy representative of the children for whom the restraint is recommended, the agency does not agree that the nine-month-old dummy inadequately demonstrates the suitability of a restraint for children weighing 20 to 22 lb.

In contrast to CU's supposition that infant restraints could fail when restraining children weighing 20 to 22 lb, there is a demonstrable need, discussed above, to keep infants rear-facing longer. Even if some restraints were to fail in some degree when restraining a child weighing 20 to 22 pounds, the safety impact of these failures—to a limited portion of the infant population—must be weighed against the impact of forcing all children to make a premature shift from the safer rear-facing position to forward-facing. On balance, the agency believes there is a net safety benefit from keeping infants rear-facing longer.

Accordingly, NHTSA is denying CU's request that the agency prohibit infant restraint manufacturers from recommending their restraints for children weighing more than 20 lb.

For related reasons, the agency is also denying CU's suggestion that convertible and toddler restraints should not be permitted to be recommended for children weighing more than 33 lb. CU's approach would have the effect of forcing toddlers out of child restraints specially designed for young children (typically 20 to 40 lb) and into restraints that may not be appropriate for them, i.e., booster seats or the vehicle's belt systems. It is hypothetically possible that a restraint that passes the Standard 213 criteria when tested with a 33-lb dummy could fail when restraining a child weighing 33 to 40 lb. However, on balance, that possibility of such a failure is outweighed by the safety risk of forcing children into restraints that might not be appropriate for them.

It is stressed that, even though Federal motor vehicle safety standards are *minimum* requirements, manufacturers of motor vehicles and child restraint systems generally aim at overdesigning their products to provide for higher performance to account for unforeseen uncertainties. Further, child restraints that are currently recommended for use up to 50 pounds are tested with just a three year (33 lb) dummy. More importantly, there are no data indicating a safety problem with these restraints when used to restrain children weighing 34 to 50 lb. This rule is a substantial improvement to current testing requirements in Standard 213. Prior to the amendment, only the 33 lb dummy was used to test restraints recommended for children from 20 to 50 lb. Under the amendment, the 33 lb dummy would be used to test restraints recommended for children weighing 22 to 40 lb, a much narrower range of weights.

Since the agency is denying the parts of CU's petition relating to the mass ranges, it is also denying the petition for rulemaking from the Attorney General's Office for Connecticut. This petitioner asked NHTSA to require ''that all tests for child restraint systems use a test dummy with a weight consistent with the maximum recommended weight for use in the car seat.'' The petition raised issues identical to those of CU. For the reasons discussed above, NHTSA has not found a reasonable possibility that the order requested by Connecticut will be issued at the conclusion of the appropriate proceeding. Accordingly, NHTSA denies the rulemaking petition.

Advocates for Highway and Auto Safety (''Advocates'') objected to the agency's drawing the line between the third and fourth mass classes using the 18 kg (40 lb) limit because there is no 18 kg test dummy. The petitioner believed that, without such a dummy, child restraints cannot be adequately tested at 18 kg, which may be one extreme of a recommended mass range. Advocates preferred the mass classes proposed by the NPRM. The NPRM proposed that restraints recommended for children having a mass from 4 kg to not more than 9 kg (weights of 9 to 20 lb) would be tested with the newborn and 9-month-old dummies. Restraints recommended for children with masses from 9 to not more than 13.5 kg (20 to 30 lb) were to be tested with the 9-month-old and 3-year-old dummies, and those recommended for children with masses greater than 13.5 kg were to be tested with the 3-year and 6-year-old dummies.

NHTSA is denying Advocates' request to return to the mass categories of the NPRM. As explained in the final rule, Cosco pointed out in its comment that the proposed mass classes could cause problems for convertible restraints. The agency quoted a comment from Cosco, which stated that:

> NHTSA's fourth category covers any car seats for children more than 30 pounds. This includes both convertible seats and auto boosters, and would force manufacturers to test convertible seats with the 6-year-old dummy, which weighs from 4 to 7 pounds more than the maximum weight recommended for these seats (40 to 43 pounds). The 6-year-old dummy is also 9″ taller than the 3-year-old dummy and would almost certainly exceed the head excursion limit. Since it is doubtful that convertible car seats could pass with the 6-year-old dummy, it is likely that manufacturers would be forced to put a maximum weight of 30 pounds on their convertible seats. The proposal as it stands would therefore regulate out of existence one of the most effective types of car seats available.

NHTSA concurred with Cosco's comment that convertible child restraints should not be tested with the six-year-old, 21.5 kg (47.3 lb) dummy (60 FR at 35132). Convertible restraints are typically recommended for children from newborn to 18 kg (40 lb). The six-year-old dummy is not representative of a child for whom the restraint is recommended. Further, according to Cosco, convertible restraints would have difficulty in meeting Standard 213's requirements when tested with the 6-year-old dummy. If the NPRM's mass ranges were adopted, manufacturers of convertible restraints would likely restrict use of their restraints to children with masses of less than 13.5 kg (30 lb), to avoid testing with the 6-year-old dummy. Since convertible restraints are generally considered effective at restraining children up to 18 kg (40 lb), such a restriction could likely result in parents moving their 30 lb toddlers into a booster seat or a vehicle belt system before booster seats or seat belts should be used by the younger child, assuming a restraint system is used at all after the convertible child restraint.

NHTSA recommends that children should be kept in a convertible restraint for as long as they will fit such a

restraint, usually until they reach about 40 lb or four years. A convertible seat, which has shoulder straps, provides greater protection for children less than 40 lb than a booster seat, especially in rollover and other non-frontal crashes. See NHTSA's ''Child Passenger Safety Resource Manual,'' March 1992. A convertible seat may provide greater protection than a vehicle's belt system, which may not properly fit a young child. To be used correctly, the lap belt must be snug across the child's hips and must not ride up across the stomach, and the shoulder belt must not cross the face or the front of the neck. As a result of Advocate's approach, young children could be moved out of convertible restraints into a booster seat or a vehicle belt system too early (e.g., at 30 lb), which could have an overall negative safety impact.

Given the above, Advocates has not provided sufficient reason for amending the mass ranges to return to those proposed in the NPRM. While under ideal circumstances, it might be desirable to have a 40 lb test dummy, such a dummy is unavailable. NHTSA has determined that, on balance, safety is better served with the mass ranges of the final rule, since it ensures the availability of convertible seats for toddlers in the 13.5 to 18 kg (30 to 40 lb) range.

Cosco wanted the 10 kg to 18 kg (22 lb to 40 lb) category to be changed so that its upper limit is 20 kg (44 lb), to avoid subjecting convertible restraints to tests with the 47 lb 6-year-old child dummy. Cosco said that convertible restraints recommended for use by children up to 43 lb have been in the marketplace for years, without evidence of a safety problem. Cosco stated that raising the limit to 20 kg would be consistent with the recommendations of ''many passenger safety advocates'' that consumers should be encouraged to keep children in convertible restraints for as long as possible. Cosco argued that the rule is inconsistent in that under it manufacturers may recommend a convertible restraint for children of heights up to 1100 mm, which is the 95th percentile for children in the 3.5- to 4.5-year age group, and the restraint will not be tested with the 6-year-old dummy, yet manufacturers that recommend a restraint for children weighing up to the 95th-percentile child (43.2 lb), subject their restraints to testing with the 6-year-old dummy.

NHTSA is denying Cosco's request to increase the upper limit to 20 kg (44 lb). The agency believes that a restraint that is recommended for use by children with a mass of up to 20 kg (44 lb) should be tested with the 6-year-old (47 lb) dummy, because the dummy is sufficiently representative of children at the upper end of the recommended range of users. NHTSA recognizes that, as a result of this decision, manufacturers, such as Cosco, will likely revise their recommendations downward, such that, convertible restraints will not be recommended for children with a mass of more than 18 kg (40 lb). The issue of the relative safety of placing children with a mass more than 18 kg (40 lb) in convertible restraints as opposed to booster seats or vehicle belt systems is not nearly so easily resolved as is the issue of whether to place the child under 18 kg in a convertible restraint or the issue of whether to place a child less than one year old in a rear-facing or a forward-facing restraint. NHTSA anticipates that manufacturers will be able to develop designs that would enable a convertible restraint to meet Standard 213's performance requirements when tested with the 6-year-old dummy, if such a restraint meets market demands. However, until a complying design is developed, the agency believes that a restraint that is recommended for a child with a mass of 18 to 20 kg (weight of 40 to 44 lb) should be tested with the 6-year-old (47-lb) dummy, to ensure that the restraint can maintain its structural integrity and properly retain a child in the upper recommended weight range.

The agency does not agree with Cosco's comment that Standard 213 is inconsistent in that it permits manufacturers to recommend a convertible restraint for a child as tall as a 95th-percentile three-year-old (height 1100 mm) without subjecting the seat to testing with the 6-year-old dummy. The agency did not intend to imply that manufacturers should label their restraints as suitable for a child in the 95th-percentile for height. The rule was intended to subject a child restraint to testing with an additional (larger) dummy if the manufacturer's recommended child height exceeds the height of the 95th percentile child. For example, a child restraint is to be tested with the 6-year-old dummy if its manufacturer recommended it for children taller than the 95th-percentile 3-year-old. The rule enabled NHTSA to use the manufacturer's height recommendations, in addition to the manufacturer's weight recommendation, to select the test dummies used in Standard 213's compliance test. If height were not a factor, it might be possible for a restraint to be tested with a dummy or dummies insufficiently representative of the range of children recommended for the restraint. This could occur if a manufacturer were to recommend inconsistent mass and height ranges. A manufacturer could create an inconsistency by recommending a height range that corresponds to children who are of greater mass than the masses expressly recommended by the manufacturer for the restraint. The rule used the 95th-percentile values to give manufacturers wide latitude in recommending the reasonable height ranges they think are appropriate for their restraints. 60 FR at 35134.

The agency does not believe the same wide latitude should be provided with regard to the mass recommendations. A dummy representing a 50th-percentile three-year-old child (33 lb), does not provide a full evaluation of the performance of a restraint when restraining a child of a mass of a 95th-percentile three-year-old (weighing 44 lb). NHTSA believes that if a manufacturer recommends its restraint for a child of a mass of a 95th-percentile three-year-old, the six-year-old child dummy (weighing 47 lb) better assesses the structural soundness of the seat and its ability to restrain children at the upper recommended mass range.

*b. Ninety-fifth Percentile Child Dummy*

CU raised another issue about the adequacy of the test dummy used to evaluate the performance of a rear-facing seat. In its petition, CU recognized that ''most child development and safety experts advise that infants should ride in a rear-facing position up to the age of about one year.'' CU believed that, in the case where a seat is recommended for a particular age of child (i.e., infants up to the age of one year), the dummy used to test the restraint should be one representing ''an above-average-sized'' child, i.e., a 95th-percentile one-year-old male child (weighing 26 lb), rather than a 50th percentile child. CU argued that by definition, half the children of a particular age weigh more than the median weight for that age. CU believed an above-average-sized dummy is needed to ensure that results apply to most children in the user population.

The agency is denying this request. As far as NHTSA is aware, manufacturers recommend their restraints for children based on the child's weight and height, as required by Standard 213's labeling provisions, rather than for a particular age of child (e.g., infants up to the age of one year). Thus, it does not appear the situation addressed by CU raises a safety problem.

Further, assuming there are restraints that are recommended for infants up to the age of one year, the agency does not

entirely agree with CU. The agency agrees with the implication, raised in CU's petition, that in an ideal world, dummies would exist representing every size of child from birth to 50 lb, in each age and weight group. If such dummies existed, a most complete evaluation of a child restraint might be (barring cost implications) to test all child restraints with all dummies representative of any child for whom the restraint is recommended. However, such dummies do not exist. While a 12-month-old dummy may have potential advantages over the nine-month-old in testing rear-facing restraints, the 12-month-old dummy is not available at this time. Rulemaking requiring rear-facing restraints to be tested with the nine-month-old should not be suspended pending assessment of the suitability and availability of the 12-month-old child dummy as a test device.

NHTSA also does not agree that a dummy representing a 95th-percentile one-year-old male child is preferable over one representing a 50th-percentile child. The latter dummy is more representative of the children for whom the restraint is recommended, and thus gives a better representation of the overall performance of the restraint. Also, it appears that CU is making its determination of ''adequate protection'' only in terms of whether a restraint is capable of maintaining its structural integrity in the dynamic test. The agency agrees that the structural integrity of a restraint is better evaluated using a larger dummy than a smaller one. However, the ability of the restraint to contain an occupant is more effectively evaluated using a smaller dummy than a larger one. Using a dummy representing a 95th-percentile dummy could thus result in trade-offs between measuring the structural integrity of a restraint and the potential for ejection.

*c. Weight and Height Should Match*

CU said that it observed inconsistencies in the height and weight limits specified on the labels for many safety seats. In particular, CU believed manufacturers are not ensuring that their height recommendations match the weight recommendations. CU said it noticed that some infant seats are labeled for use by infants weighing up to 20 lb and up to 26 inches in height. CU states:

Twenty pounds is the 50th-percentile weight of a nine-month-old, while 26 inches is the 50th-percentile height of a six-month-old. Since children may exceed the height limit in this example before they reach the weight limit, parents who rely on the weight limit may use the product in a manner contrary to labeled instructions.

The petitioner suggested that NHTSA require manufacturers to make recommendations for maximum height and weight that match both the height and weight of test dummies used in the tests on which the seat's certification was based.

To the extent that CU is requesting that manufacturers should be prohibited from labeling their seats for use by children with weights exceeding the weight of the test dummy used to test the seat, this issue was addressed under section a, above, and will not be repeated here. To the extent that the petitioner requests that NHTSA adopt a provision in Standard 213 that requires the height and weight recommendations to ''match,'' NHTSA denies this request. The agency has not observed the labeling practices reported by CU. To the extent such practices have occurred, NHTSA does not believe they are widespread, or in need of the requirement suggested by CU. However, the agency will continue to monitor labeling practices.

*d. Test Principles*

The effect of specifying the additional test dummies in Standard 213 compliance testing is to require child restraints to meet the standard's performance criteria when restraining the new dummies. CU, Advocates and Cosco had questions about the agency's method of testing child restraints to the standard's dynamic performance requirements.

1. Speed Close to 30 MPH

CU raised an issue about the test speeds used to test add-on child restraints. Under Standard 213, add-on systems are compliance tested in sled tests that simulate frontal barrier impacts. Standard 213 specifies that the sled test for add-on child restraint systems is at a velocity change of 48 km/h (30 mph) ''with the acceleration of the test platform entirely within the curve shown in Figure 2'' of the standard. S6.1.1(b)(1).[4] In its petition for reconsideration, CU said that, based on its review of NHTSA compliance reports, NHTSA routinely conducts the compliance test at speeds in a range from 27.6 mph to 28.7 mph. * * * (NHTSA's) compliance procedures, as spelled out in its Laboratory Procedure For Child Restraint System Testing (April 1981), permit impact speeds ranging from 27 mph to 30 mph. Hence, the current compliance program is significantly less demanding than the standard it professes to enforce. * * * Throughout our testing, we specified 30 mph as the target impact speed, and the lab was able to control the speed of the test sleds within ±.3 m.p.h. Based on our experience, therefore, we recommend that the certification and compliance procedures specify a test speed ranging from 29.7 to 30.3 mph.

CU is correct that NHTSA's Laboratory Procedure for Standard 213 compliance tests specifies that add-on restraints are tested at a velocity change of 27 to 30 mph. Test speeds are permitted to fall below 30 mph primarily because of the limit, also specified in Standard 213 as a dynamic test condition, that ''the acceleration of the test platform (must be) entirely within the curve shown in Figure 2'' of the standard. The velocity at which the sled test is conducted controls whether the acceleration of the sled is within the curve depicted in Figure 2. In order to ensure that no portion of the acceleration curve is outside of the curve shown in Figure 2, NHTSA must adjust the velocity downward. Similarly, the test speed is carefully monitored, and adjusted slightly downward, to ensure that 30 mph is not exceeded. Contrary to CU's view, the agency believes it must ''err'' on the side of slightly reducing the test speeds to preserve the integrity of the compliance test. The agency must ensure that its compliance test data can withstand legal challenge. Exceeding the test conditions subjects the agency to claims that NHTSA conducted a more demanding test than that required in the standard. Thus, exceeding the test conditions at best would complicate enforcement efforts; worse, it could undermine the validity of the test. For these reasons, NHTSA concludes that, given the conditions in Standard 213 for the dynamic sled test, its test procedures should not be changed at this time.

NHTSA is, however, undertaking an effort to evaluate Standard 213's test procedures and conditions, and will consider whether the provision limiting the acceleration of the test platform to the curve of Figure 2 should be revised. Such an evaluation could result in an upward adjustment of the test velocities specified in the laboratory procedures. In the meantime, NHTSA stresses that Standard 213 specifies a velocity change of 30 mph that manufacturers should achieve, at a minimum, when designing and manufacturing child restraint systems.

[4] The 48 km/h test is specified for ''Test Configuration I,'' which all applies to all child restraints. ''Test Configuration II'' is an additional 32 km/h (20 mph) misuse test for certain restraints.

2. Representative Seat Assembly

NHTSA's compliance procedures specify that the test device for testing add-on child restraints is a ''standard seat assembly consisting of a simulated vehicle bench seat.'' (S6.1.1(a)(1), July 1995 rule.) CU stated that the seat assembly is of a design representative of those used in vehicles of the early 1970's, and is not representative of current vehicle seat designs. While acknowledging ''We (CU) have no data demonstrating what differences in test results or actual use performance this difference might have,'' CU believed the assembly should be updated.

NHTSA agrees that the standard seat assembly should be representative of current vehicle seats, particularly if features of the assembly significantly affect the outcome of compliance tests conducted on it. Modifying the standard seat assembly could also be desirable for other reasons, such as possible cost reductions due to not having to change the flexible pin in the seat hinges of the standard seat assembly after each test. The agency is reviewing these issues in an on-going feasibility study at NHTSA's Vehicle Research and Test Center. The results will help NHTSA decide whether it needs to upgrade the seat assembly.

3. Worst Case Testing

Advocates objected to the agency's discussion of ''worst case'' testing in the final rule (60 FR at 35133). The discussion responded to some commenters who generally believed that adopting the new dummies would result in unnecessary cost increases. They argued that testing a rear-facing seat with the infant dummy, and a forward-facing restraint (other than a booster seat) with the nine-month-old dummy would serve no useful purpose since the commenters believed there is no question that the restraints will pass the Standard 213 performance criteria using the dummies. The agency disagreed that no useful purpose is served by subjecting child restraints to tests with the array of dummies. NHTSA stated that, when child restraints are tested with only one dummy to represent a wide range of children, there is a risk that a restraint could be designed to perform adequately using the dummy, but could perform inadequately in restraining children at the extremes of the recommended weight ranges.

The agency further stated:

It should be noted that this rule does not require manufacturers to test with all the specified dummies. A manufacturer may believe that testing with only the largest of a set of specified dummies represents ''worst case'' testing, and that there is no need to test its restraints with the smaller dummies. That is, a manufacturer may determine that a child restraint meeting Standard 213's performance criteria when tested under worst case conditions will likely meet those criteria when tested under less severe conditions. A manufacturer that tests its child restraint for certification purposes could limit its testing cost by deciding to test only a worst case scenario, i.e., testing under the most austere or unfavorable conditions and circumstances specified in the standard.[5] In the event that the agency found an apparent noncompliance, such as an ejection, using one of the smaller dummies, the manufacturer would have to demonstrate that it was reasonable for it to conclude that testing with the large dummy represented the worst case scenario. *Id*.

Advocates believed that this discussion meant that ''NHTSA has decided to permit manufacturers to avoid testing child restraints with all applicable test dummies.'' Advocates requested that NHTSA ''rescind permitting certification testing based on 'worst case' tests conducted only with the largest test dummy for the specified weight range.''

NHTSA believes this comment reflects a misunderstanding of the compliance test procedures set forth in the FMVSSs. The July 1995 rule, which adopted the new test dummies into Standard 213, enabled NHTSA to test child restraints using the new dummies. As a result of the rule, manufacturers must ensure that their restraints will meet the requirements of Standard 213 when tested in the manner specified in the standard. The rule did not require manufacturers to use the new test dummies. None of the safety standards require manufacturers to test in a particular manner; manufacturers are not required to conduct any testing whatsoever before certifying that their products comply with Standard 213. If manufacturers choose to conduct testing in accordance with the compliance test procedures, they are free to simulate any or all parts of the test procedures.

Thus, NHTSA's statements about worst case testing did not affect any responsibilities of manufacturers to test and certify their products. It did not ''permit'' manufacturers to certify their restraints using only the heavier of two test dummies; there never was a requirement that both dummies be used. Instead, the statement bore on whether the rule necessarily increased testing costs for manufacturers. NHTSA sought to explain that a manufacturer may choose to use only one of two test dummies to test its restraint, provided that the manufacturer exercises ''due care'' in making its certifications, as provided in section 30115 of 49 U.S.C. Chapter 301 (formerly the National Traffic and Motor Vehicle Safety Act). Whether a manufacturer has exercised due care in using only one of two dummies is an issue that bears on NHTSA's consideration of the appropriateness of a civil penalty for a noncompliance. A manufacturer that can show that it exercised due care in making its certification would still be subject to the statutory obligation to recall and remedy its restraints that do not conform to the requirements of Standard 213. This same obligation would apply even if the manufacturer had conducted full compliance testing and used all the dummies specified for a given mass/weight range.

4. Testing ''New'' Restraints

Cosco objected to an amendment concerning the condition of the child restraints that NHTSA will obtain for compliance testing. At one time, Standard 213 specified in its test procedure that the compliance test is conducted by, first, attaching a ''new'' child restraint on the standard seat assembly used to test child restraints. In amending this provision, NHTSA removed the reference to a ''new'' seat, and revised it to simply describe the child restraint test specimen as ''the'' restraint. Cosco was alarmed by this change, believing that it allowed NHTSA to conduct compliance testing with ''used seats, in any condition of wear, possibly with missing or damaged components,'' or with seats that have been in accidents.

The amendment that is the cause of Cosco's concern (removal of ''new'') was made in a final rule that was published in 1994. 59 FR 37167, July 21, 1994. Amendments made by that rule cannot be reconsidered at this time through petitions for reconsideration. However, NHTSA will address Cosco's concern, because it reflects a fundamental misunderstanding of NHTSA's authority.

NHTSA can only test new products for compliance with the FMVSSs. The agency lacks the authority to conduct compliance tests on any used,

[5] Relying on worst case testing as a basis for a manufacturer's certification is commonplace among manufacturers. For example, Standard 208, ''Occupant Crash Protection,'' requires injury criteria to be met with the test vehicle traveling forward at any speed ''up to and including 30 mph'' into a fixed barrier ''that is perpendicular to the line of travel of the vehicle, or at any angle up to 30 degrees in either direction from the perpendicular'' (S5.1). Manufacturers typically test a vehicle at 30 mph into a perpendicular barrier since that is the worst case test. The manufacturers believe that if the vehicle passes that worst case test, it is reasonable to conclude it will pass less severe tests (e.g., at lower speeds into angled barriers). (Footnote 3 in text.)

previously-owned product, including a child seat, because under section 30112 of 49 U.S.C. Chapter 301, manufacturers are not responsible for ensuring the continued compliance of their products ''after the first purchase * * * in good faith other than for resale.'' Since NHTSA cannot require a used child seat to meet Standard 213, the agency does not test them for compliance. Thus, the word ''new'' was removed as unnecessary.

*e. Allowable Mass for Belt-Positioning Boosters*

In response to Gerry Baby Products, this rule amends the requirement of S5.4.3.2 that limits the force that may be imposed on a child by a belt used to attach a child seat to a vehicle. This rule prohibits any loads except those resulting from a child seat with a mass less than 4.4 kg. The current exclusion is for child seats with a mass less than 4 kg.

Prior to the July 1995 amendment, S5.4.3.2 specified that for add-on child restraints (another provision specifies comparable requirements for built-in restraints),

> Each belt that is part of the child restraint system and that is designed to restrain a child using the system and to attach the system to the vehicle shall, when tested in accordance with [the dynamic test of] S6.1, impose no loads on the child that result from the mass of the system, or * * * (from) the mass of the seat back of the standard seat assembly * * *.

The NPRM preceding the July rule (March 1994) proposed to expand S5.4.3.2 to also apply it to each Type I and the lap portion of a Type II vehicle belt that is used to attach the child seat to the vehicle. These belts, which anchor the child seat to the vehicle, function to absorb the forces of the crash into the frame of the vehicle. NHTSA proposed that these belts not be permitted to transfer those crash forces to the occupant child.

However, comments to the NPRM indicated that the proposed amendment of S5.4.3.2 would prohibit belt-positioning seats with a back, since the mass of those systems contributes to the loading of the vehicle seat belt on the restrained child during a crash. The agency did not intend that effect, nor did NHTSA believe that there is a sufficient safety problem to warrant prohibiting current designs of belt-positioning seats with backs. Yet, at the same time, NHTSA believed that limits should be established to keep in check the potential for injury due to overloading a child occupant, such as from a massive child seat back.

The agency adopted an approach suggested by some commenters. Century and the University of Michigan Child Passenger Program (UM–CPP) suggested retaining the proposal but excluding from the requirement any restraint with a mass of less than 4 kg (8.8 lb). These commenters indicated the 4 kg limit is consistent with requirements in Europe and the current U.S. market. NHTSA agreed to this approach, since there have been no data showing that a child seat with a mass less than 4 kg imposes harmful loads on a child.

Gerry petitioned for reconsideration of the 4 kg limit. Gerry pointed out that the agency's belief that all the belt-positioning seats in the U.S. market have a mass less than 4 kg was incorrect. Gerry said that its Model 631 and 632 BeltRight and Evolution Booster seats were shipped in March and April 1995, respectively. According to the petitioner, these seats have a mass of up to 4.4 kg. In an October 13, 1995 addendum to its petition for reconsideration, Gerry stated that it has received no report from the field ''indicating directly or indirectly that any problems or injuries were associated with loads being placed on the child by the booster seats.''

In view of Gerry's submission, NHTSA's decision to limit the exclusion to 4 kg was based on erroneous information. NHTSA was not aware of Gerry's Model 631 and 632 booster seats, and did not realize that there were belt-positioning boosters with a mass greater than 4 kg. Gerry stated that its field experience indicates that its booster seats, with a mass up to 4.4 kg, do not appear to be imposing unsafe loads on the child occupant. Based on the above, the 4 kg limit excluding seats from S5.4.3.2 is increased to 4.4 kg.

*f. Knee Excursion*

This document denies the request of the AAMA to increase the knee excursion limit of 305 mm for built-in restraints (S5.1.3.1 (b)), or in the alternative, remove the limit until such time as another knee excursion limit can be developed.

AAMA's request relates to an amendment NHTSA adopted to clarify Standard 213's knee excursion requirements. Prior to the amendment, the excursion requirement for built-in child restraints (S5.1.3.1(b)) prohibited the dummy's knee pivot from passing through a plane that is a specified distance ''forward of the hinge point of the specific vehicle seat into which the system is built.'' Chrysler suggested (docket 74–09–N24–001) that NHTSA amend the reference point because the ''hinge point of the specific vehicle seat'' cannot be readily determined for most vehicle seats. This is because most vehicle seats into which a built-in child restraint is fabricated do not have hinges for their backs, or are configured so that the hinge point is not easily seen during dynamic testing.

NHTSA proposed to address this concern by referencing the H-point on the seat. The H-point is located at approximately the same location as the ''hinge point'' on a vehicle seat. The H-point of a specific vehicle seating position is determined by using equipment and procedures specified in the Society of Automotive Engineers (SAE) recommended practice SAE J826 (May 1987), ''Devices for Use in Defining and Measuring Vehicle Seating Accommodation.'' The H-point is identified either during the seat's design by means of a two-dimensional drafting template, or after the vehicle is completely manufactured, by means of a three-dimensional device. However, comments on this proposal expressed concern that using the H-point as a reference still results in ambiguity in the test procedure, since the H-point varies from vehicle to vehicle, and is not easily seen during dynamic testing.

Commenters suggested that, instead of using the H-point, the agency should adopt Transport Canada's approach to measuring knee excursion for built-in restraints. That approach limits the forward knee movement to a maximum of 305 mm (12 inches) at any time during the test from the initial knee position of the dummy.

NHTSA agreed to base the knee excursion limit for built-in seats on the approach of Transport Canada. Thus, the agency adopted a requirement that limited maximum knee translation in terms of the initial position of the knee itself. Knee excursion is measured using a point on the ''knee pivot'' that is easily defined on the test dummy. The knee pivot point is easily observed during the dynamic test. The rule limited the longitudinal horizontal movement of the knee pivot point, from the initial position of the knee pivot, to a maximum of 305 mm (12 inches). The 12 inch value is equivalent to the level of performance currently required by Standard 213 (i.e., 914 mm (36 inches) measured from the hinge point of the seat assembly).

AAMA petitioned for an increase in the allowance of 305 mm, when testing a built-in booster seat with the 6-year-old dummy. AAMA believed Transport Canada's knee excursion limits, on which the adopted provisions were based, apply only to built-in conventional child seats, and not to ''booster seats which would be tested

with the six-year-old dummy.'' AAMA believed ''an allowance greater than 305 mm would appear to be required for the heavier six-year-old dummy.''

NHTSA is denying AAMA's request because the requested change does not appear warranted. The petitioner submitted no information to support its request. For built-in restraints, knee excursion is measured relative to the knee pivot on the test dummy. Thus, the 6-year-old dummy's knees are allowed to move horizontally the same distance, relative to the dummy, as the three-year-old dummy. Also, when measured from a point fixed on the built-in child seat in which the dummy is seated, the 6-year-old dummy is already permitted two additional inches of forward excursion than the limit for the three-year-old dummy. This is because the 6-year-old dummy's upper legs are two inches longer than those of the three-year-old dummy. AAMA has not demonstrated a need to increase the knee excursion limit for child booster seats tested with the 6-year-old dummy.

## VI. Corrections

### *a. Metrication*

Cosco pointed out several errors or omissions in the rule. One error concerned metrication, with regard to Standard 213's limits on head excursion (S5.1.3.1(a)). Prior to the amendment, Standard 213 specified a head excursion limit of 32 inches, as measured from a point on the standard seat assembly. The rule converted this limit to 810 mm. Cosco said that in converting to the metric system, the rule changed the head excursion requirement for add-on restraints from 32 inches to 31.89 inches, and thus made the requirement more stringent. In answer to this comment, NHTSA did not intend to reduce allowable head excursion. Thus, S5.1.3.1(a) will be corrected to specify a head excursion limit of 813 mm. Mr. Louis Sokol suggested editorial corrections to various references to centigrade. NHTSA has made these corrections to S6.1.1(d), S9.2 and S9.3.

### *b. Labeling*

Cosco petitioned for NHTSA to reconsider various aspects of the labeling requirements adopted by the rule. The rule required manufacturers to use both English and metric units in their child seat labels, pertaining to the size of child for whom the restraint is recommended. Cosco suggested deleting the word ''mass'' before the metric unit, believing that this is unnecessary and will confuse consumers. NHTSA agrees the word ''mass'' is not necessary and will not require its use, although manufacturers may use the word if they wish. Mr. Sokol was concerned that the rule did not specify whether manufacturers should specify their height recommendations in millimeters or centimeters, and suggested centimeters be used as more ''user friendly.'' NHTSA is not specifying which unit should be used, but is allowing manufacturers to use any metric unit they feel is appropriate for the recommended height limits for their restraints. Cosco also suggested that the references to height on the child seat label include ''between'' and ''less,'' as is currently required by Standard 213. This rule retains those words.

### *c. Dummy Positioning*

Another error that Cosco identified relates to the provisions for positioning the test dummies in a child seat in preparation for dynamic testing. Cosco said that, unlike current specifications that provide for the lowering of the 3-year-old dummy's arms and legs, the rule did not specify a similar provision for positioning the dummies used to test forward-facing child restraints. This rule corrects the oversight by adding a provision that provides for the rotating downwards of the dummies' arms and legs, when testing forward-facing child restraint systems. S10.2.1(c)(1)(ii), S10.2.2(d). This rule also corrects the procedure for positioning the test dummies in testing rear-facing child restraints (S10.2.1(c)(2) in the July 1995 rule). Paragraph S10.2.1(c)(2) should specify rotating just the dummy's arms, and not the legs. In addition, this rule clarifies the description of the sequence of events preparing for the dynamic test (S6.1.2).

### *d. Dummy Selection*

In both the preamble for the final rule and the June 1995 Final Regulatory Evaluation for the rule (entry number 001 in docket 74–09–N42), NHTSA indicated that if the range of children recommended by a child restraint's manufacturer includes any children with a mass more than 18 kg (40 lb), or a height of more than 1100 mm, the 6-year-old dummy will be used in the compliance testing of that restraint. (60 FR at 35133, 35134) However, the regulatory text implementing these provisions (S7.1(d)) inadvertently specified that the 3-year-old (33 lb) dummy will also be used to test these restraints. This error in S7.1(d) is corrected today.

## VII. Compliance Date

The compliance date for this rule (the date on which manufacturers must begin complying with the amendments) is September 1, 1996. This date is the same compliance date as for the July 1995 final rule which today's rule amends. It is in the public interest for the compliance dates to be the same because most of the amendments made by today's rule correct or clarify provisions of the July 1995 rule. The only substantive changes made by today's rule are to amend S5.4.3.2 to permit manufacturers to produce belt-positioning seats with a mass of up to 4.4 kg (rather than limit the mass to 4 kg), and to provide them the optional use of the word ''mass'' in labeling child seats. This rule does not impose new requirements on manufacturers.

NHTSA is providing manufacturers the option of voluntarily complying with the amendments made by today's rule before September 1, 1996. Manufacturers may comply with today's amendments beginning 30 days after the date of publication of this rule without violating any provision in Standard 213 or 49 U.S.C. 30101 *et seq.* This accords with an earlier decision by NHTSA to permit manufacturers the option of voluntarily complying with the requirements adopted by the July 1995 final rule before the September 1 mandatory compliance date. Since January 3, 1996, manufacturers could choose to voluntarily meet the requirements of the July 1995 rule in lieu of the current requirements in Standard 213. (See NHTSA's clarification of compliance date, 61 FR 4938, February 9, 1996.)

## VII. Rulemaking Analyses and Notices

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

This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' The agency has considered the impacts of this rulemaking action and has determined that this action is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are so minimal that preparation of a full preliminary regulatory evaluation is not warranted. The agency believes that manufacturers will be minimally affected by this rulemaking because the main substantive change it makes to the July 1995 final rule is to amend S5.4.3.2. That change, in effect, permits belt-positioning seats to have a mass of up to 4.4 kg, rather than limit the mass to 4 kg. The agency believes the effect of this is minimal because there appears to be only one manufacturer, Gerry Baby

Products, that is affected by this change. Further, the amendment will affect just one product made by Gerry. Gerry manufactures different types of child restraint systems, only one of which is the belt-positioning booster. The agency thus concludes that this rule will have a minimal effect on the manufacture of child restraints generally, including Gerry's restraints.

*b. Regulatory Flexibility Act*

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. The agency knows of 13 manufacturers of child restraints, seven of which NHTSA considers to be small businesses (including Kolcraft, which with an estimated 500 employees, is on the borderline of being a small business). This number does not constitute a substantial number of small entities. Regardless of this number, NHTSA does not believe this rule will have a significant impact on small businesses, since the only substantive amendment made by this rule is to permit belt-positioning seats to have a mass of up to 4.4 kg, rather than limit the mass to 4 kg. The effect of this is minimal because to the agency's knowledge, there is only one manufacturer that is affected by this change. Further, the amendment will affect just one product made by that manufacturer. Since the amendment is permissive in nature, there are no costs associated with it. This rule clarifies labeling requirements and slightly revises the wording of the labels. Manufacturers will incur some costs in changing the labels on their child seats, but because the wording changes are minimal, those costs should be negligible. Accordingly, the agency has not prepared a regulatory flexibility analysis.

*c. Executive Order 12612 (Federalism)*

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

*d. National Environmental Policy Act*

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

*e. Paperwork Reduction Act*

This final rule includes new ''collections of information'' as that term is defined by the Office of Management and Budget (OMB). For Standard 213, OMB has previously approved a collection of information (OMB Control Number 2127–0511 ''Child Restraint Systems—49 CFR 571.213'') for use through August 31, 1996. NHTSA is preparing a request for an extension of this collection of information approval for an additional three years, and will include in the request, an estimate of the new collection of information burden resulting from this final rule. In the near future, NHTSA expects to issue a Federal Register document asking for public comment on the request for extension of OMB Control Number 2127–0511.

Pursuant to the Paperwork Reduction Act of 1995 and OMB's regulations at 5 CFR section 1320.5(b)(2), NHTSA informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. The currently valid OMB control number is displayed above and in NHTSA's regulations at 49 CFR Part 509, *OMB Control Numbers for Information Collection Requirements*.

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

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.213 is amended by—

a. revising S5.1.3.1(a), the introductory paragraph of S5.4.3.2, S5.5.2(f), S5.5.5(f), S6.1.1(d), S6.1.2(b) through (f), removing S6.1.2(g), revising S7.1(d), S9.2, S9.3, S10.2.1(c)(1), S10.2.1(c)(2),

b. adding S10.2.2(d), to read as follows:

**§ 571.213 Standard No. 213, Child Restraint Systems.**

* * * * *

S5.1.3.1 * * *

(a) In the case of an add-on child restraint system, no portion of the test dummy's head shall pass through a vertical, transverse plane that is 813 mm forward of point Z on the standard seat assembly, measured along the center SORL (as illustrated in figure 1B), and neither knee pivot point shall pass through a vertical, transverse plane that is 915 mm forward of point Z on the standard seat assembly, measured along the center SORL.

* * * * *

S5.4.3.2 *Direct restraint.* Except for a child restraint system whose mass is less than 4.4 kg, each belt that is part of a child restraint system and that is designed to restrain a child using the system and to attach the system to the vehicle, and each Type I and lap portion of a Type II vehicle belt that is used to attach the system to the vehicle shall, when tested in accordance with S6.1, impose no loads on the child that result from the mass of the system, or

* * * * *

S5.5.2 * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum mass and height of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg:

(1) This infant restraint is designed for use by children who weigh _____ pounds (_____ kg) or less and whose height is (*insert values in English and metric units; use of word ''mass'' in label is optional*) or less; or

(2) This child restraint is designed for use only by children who weigh between _____ and _____ pounds (*insert appropriate metric*

*values; use of word ''mass'' is optional*) and whose height is (*insert appropriate values in English and metric units*) or less and who are capable of sitting upright alone; or

(3) This child restraint is designed for use only by children who weigh between _____ and _____ pounds (*insert appropriate metric values; use of word ''mass'' is optional*) and whose height is between _____ and _____ inches (*insert appropriate values in English and metric units*).

* * * * *

S5.5.5 * * *

(f) One of the following statements, inserting the manufacturer's recommendations for the maximum mass and height of children who can safely occupy the system, except that booster seats shall not be recommended for children whose masses are less than 13.6 kg:

(1) This infant restraint is designed for use by children who weigh _____ pounds (_____ kg) or less and whose height is (*insert values in English and metric units; use of word ''mass'' in label is optional*); or

(2) This child restraint is designed for use only by children who weigh between _____ and_____ pounds (*insert appropriate metric values; use of word ''mass'' is optional*) and whose height is (*insert appropriate values in English and metric units*) or less and who are capable of sitting upright alone; or

(3) This child restraint is designed for use only by children who weigh between _____ and _____ pounds (*insert appropriate metric values; use of word ''mass'' is optional*) and whose height is between _____ and _____ inches (*insert appropriate values in English and metric units*).

* * * * *

S6.1.1 * * *

(d) Performance tests under S6.1 are conducted at any ambient temperature from 19 °C to 26 °C and at any relative humidity from 10 percent to 70 percent.

* * * * *

S6.1.2 * * *

(b) Select any dummy specified in S7 for testing systems for use by children of the heights and weights for which the system is recommended in accordance with S5.5. The dummy is assembled, clothed and prepared as specified in S7 and S9 and Part 572 of this chapter, as appropriate.

(c) Place the dummy in the child restraint. Position it, and attach the child restraint belts, if appropriate, as specified in S10.

(d) Belt adjustment.

(1) *Add-on systems other than belt-positioning seats.*

(i) If appropriate, shoulder and pelvic belts that directly restrain the dummy shall be adjusted as follows: Tighten the belts until a 9 N force applied (as illustrated in figure 5) to the webbing at the top of each dummy shoulder and to the pelvic webbing 50 mm on either side of the torso midsagittal plane pulls the webbing 7 mm from the dummy.

(ii) All Type I belt systems used to attach an add-on child restraint system to the standard seat assembly, and any provided additional anchorage belt (tether), are tightened to a tension of not less than 53.5 N and not more than 67 N, as measured by a load cell used on the webbing portion of the belt.

(2) *Add-on belt-positioning seats.*

(i) The lap portion of Type II belt systems used to attach the child restraint to the standard seat assembly is tightened to a tension of not less than 53.5 N and not more than 67 N, as measured by a load cell used on the webbing portion of the belt.

(ii) The shoulder portion of Type II belt systems used to restrain the dummy is tightened to a tension of not less than 9 N and not more than 18 N, as measured by a load cell used on the webbing portion of the belt.

(3) *Built-in child restraint systems.*

(i) The lap portion of Type II belt systems used to secure a dummy to the built-in child restraint system is tightened to a tension of not less than 53.5 N and not more than 67 N, as measured by a load cell used on the webbing portion of the belt.

(ii) The shoulder portion of Type II belt systems used to secure a child is tightened to a tension of not less than 9 N and not more than 18 N, as measured by a load cell used on the webbing portion of the belt.

(iii) If provided, and if appropriate to attach the child restraint belts under S10, shoulder (other than the shoulder portion of a Type II vehicle belt system) and pelvic belts that directly restrain the dummy shall be adjusted as follows: Tighten the belts until a 9 N force applied (as illustrated in figure 5) to the webbing at the top of each dummy shoulder and to the pelvic webbing 50 mm on either side of the torso midsagittal plane pulls the webbing 7 mm from the dummy.

(e) Accelerate the test platform to simulate frontal impact in accordance with Test Configuration I or II, as appropriate.

(f) Determine conformance with the requirements in S5.1.

S7.1 * * *

(d) A child restraint that is recommended by its manufacturer in accordance with S5.5 for use either by children in a specified mass range that includes any children having a mass greater than 18 kg, or by children in a specified height range that includes any children whose height is greater than 1100 mm, is tested with a 6-year-old child dummy conforming to part 572 subpart I.

* * * * *

S9.2 *Preparing clothing.* Clothing other than the shoes is machined-washed in 71 °C to 82 °C and machine-dried at 49 °C to 60 °C for 30 minutes.

S9.3 *Preparing dummies.* Before being used in testing under this standard, dummies must be conditioned at any ambient temperature from 19 °C to 25.5 °C and at any relative humidity from 10 percent to 70 percent for at least 4 hours.

S10.2.1 * * *

(c)(1)(i) When testing forward-facing child restraint systems, extend the arms of the 9-month-old test dummy as far as possible in the upward vertical direction. Extend the legs of the 9-month-old dummy as far as possible in the forward horizontal direction, with the dummy feet perpendicular to the centerline of the lower legs. Using a flat square surface with an area of 2,580 square mm, apply a force of 178 N, perpendicular to:

(A) The plane of the back of the standard seat assembly, in the case of an add-on system, or

(B) The back of the vehicle seat in the specific vehicle shell or the specific vehicle, in the case of a built-in system, first against the dummy crotch and then at the dummy thorax in the midsagittal plane of the dummy. For a child restraint system with a fixed or movable surface described in S5.2.2.2, which is being tested under the conditions of test configuration II, do not attach any of the child restraint belts unless they are an integral part of the fixed or movable surface. For all other child restraint systems and for a child restraint system with a fixed or movable surface which is being tested under the conditions of test configuration I, attach all appropriate child restraint belts and tighten them as specified in S6.1.2. Attach all appropriate vehicle belts and tighten them as specified in S6.1.2. Position each movable surface in accordance with the instructions that the manufacturer provided under S5.6.1 or S5.6.2.

(ii) After the steps specified in paragraph (c)(1)(i) of this section, rotate each dummy limb downwards in the plane parallel to the dummy's

midsagittal plane until the limb contacts a surface of the child restraint system or the standard seat assembly, in the case of an add-on system, or the specific vehicle shell or specific vehicle, in the case of a built-in system, as appropriate. Position the limbs, if necessary, so that limb placement does not inhibit torso or head movement in tests conducted under S6.

(2) When testing rear-facing child restraints, position the newborn and 9-month-old dummy arms vertically upwards and then rotate each arm downward toward the dummy's lower body until the arm contacts a surface of the child restraint system or the standard seat assembly in the case of an add-on child restraint system, or the specific vehicle shell or the specific vehicle, in the case of a built-in child restraint system. Ensure that no arm is restrained from movement in other than the downward direction, by any part of the system or the belts used to anchor the system to the standard seat assembly, the specific shell, or the specific vehicle.

S10.2.2 * * *

(d) After the steps specified in paragraph (c) of this section, rotate each dummy limb downwards in the plane parallel to the dummy's midsagittal plane until the limb contacts a surface of the child restraint system or the standard seat assembly, in the case of an add-on system, or the specific vehicle shell or specific vehicle, in the case of a built-in system, as appropriate. Position the limbs, if necessary, so that limb placement does not inhibit torso or head movement in tests conducted under S6.

Issued on June 13, 1996.

Ricardo Martinez,

*Administrator.*

[FR Doc. 96–15456 Filed 6–17–96; 8:45 am]

BILLING CODE 4910–59–P

# Proposed Rules

Federal Register
Vol. 61, No. 118
Tuesday, June 18, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 34

**[Docket No. PRM–34–5]**

### Amersham Corporation, Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Amersham Corporation. The petition has been docketed by the Commission and assigned Docket No. PRM–34–5. The petitioner requests that the NRC amend its regulations by removing the reference to ''associated equipment'' from the radiography equipment regulations. The petitioner believes that this amendment would clarify the licensing reviews of sealed sources and radiographic exposure devices to meet the applicable requirements.

**DATES:** Submit comments by September 3, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to those comments received on or before this date.

**ADDRESSES:** For a copy of this petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Services Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see ''Electronic Access'' under the Supplementary Information section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Don Nellis, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6257, or Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7163 or Toll Free: 800–368–5642, or E-mail MTL@NRC.GOV.

**SUPPLEMENTARY INFORMATION:**

Background

The NRC received a petition for rulemaking dated March 28, 1996, submitted by Amersham Corporation. The petition was docketed as PRM–34–5 on April 8, 1996. The petitioner requests that the NRC amend its regulations governing performance requirements for radiography equipment in 10 CFR Part 34.

Petitioner's Request

Amersham Corporation requests that the NRC amend its regulations to remove reference to ''associated equipment'' from § 34.20 so that continued inspection and enforcement of the rule would be performed on the basis of source and device reviews only. The petitioner believes that the current good operating history and safety record of the associated equipment, when it is used and maintained properly, supports this action. The petitioner further requests that § 34.28 be amended to reflect appropriate inspection and maintenance requirements for all of the radiography equipment, including associated equipment.

Discussion of the Petition

The petitioner believes that the current regulations for radiography equipment standards are not clearly defined; thereby resulting in confusion and noncompliance on the part of the users. The petitioner believes that interpretation of the regulation by the NRC has led to an undocumented requirement for reviews of the associated equipment used by the radiography industry in addition to the reviews of sealed sources and radiographic exposure devices. The petitioner states that the NRC has expanded its reviews to cover associated equipment without any formal rulemaking taking place, even though § 32.210 applies to the evaluation of sealed sources and devices and not to other equipment. The petitioner asserts that because of the undocumented definition that ''associated equipment'' is anything that comes into direct contact with the source, the rule in being interpreted and implemented inconsistently.

The petitioner states that ANSI N432, the standard referenced in Part 34, was originally written as guidance for manufacturers on the design and manufacture of standard radiography equipment. Amersham Corporation, a member of the ANSI committee, recently discussed the original intent of this standard with other committee members who agreed the original intent was to serve as guidance for good manufacturing practices and not as a regulatory approval checklist. When the NRC included the standard in Part 34, the industry did not foresee that regulatory approval would cover associated equipment in detail.

NRC requested that Amersham's associated equipment (standard controls and guide tubes) be approved under the affected device registrations, specifically listed on the device sheet by model number. The petitioner states that it realized later that the inclusion of the associated equipment in the regulations placed unexpected restrictions on manufacturers and users.

The petitioner understands that Agreement States do not require that the associated equipment be listed and approved on the device registration sheet as part of the radiography system for the other manufacturers. The petitioner believes that this raises several issues, in addition to putting it at a significant competitive disadvantage. The petitioner indicates that this inconsistency highlights the confusion in the way the rule is being interpreted and implemented for associated equipment. The petitioner states that it adds confusion on the part of users too, concerning regulatory compliance, when similar items are treated in different ways depending on the manufacturer's licensing body.

The petitioner also claims that there is another undocumented requirement that users or manufactures cannot perform their own certification of associated equipment. The current

version of § 34.20 only requires that the equipment meet ANSI N432; it does not state that regulatory approvals are needed to comply with this regulation.

The petitioner believes that these interpretations are a broad stretch of the original intent of Part 34. The petitioner states that if these are the NRC's formal interpretations of the provisions, they should be submitted as a proposed rule change because they are significantly more restrictive than the current wording of § 34.20 allows and constitute a substantial change in what was the standard practice for sealed source and device reviews.

The petitioner states that since the effective date of the amendments to § 34.20, it has recognized the negative impact in the following areas:

*Increased exposures.* The petitioner states that because collimators are not being used currently in many of the applications in which they were used before the regulation became effective, there are increased exposures to personnel. Most collimators have not been approved by the NRC or an Agreement State to meet Part 34 because the industry was not aware that the NRC would require testing, a full safety review, and regulatory approval to gain Part 34 endorsement for these parts. Therefore, no approvals were sought before the regulation's effective date. The petitioner asserts that some users are shut down because they are authorized only to conduct radiography with collimators, and approved collimators are not available. In other cases, to keep exposures as low as reasonable achievable (ALARA) as is also required by NRC regulations, users are continuing to work with unapproved collimators. The petitioner asserts that there have been no significant safety problems with the use of collimators in the past.

*Economic considerations.* The petitioner states that a manufacturer or user in an NRC state must pay a substantial fee to get approvals for the associated equipment. In addition to the fees, some users are purchasing testing equipment or hiring professional engineers to prove a piece of equipment that has been in use for the last twenty years can now be deemed safe after it has been reviewed by the NRC. The petitioner states that fees, the cost of new equipment, and inconsistent interpretations and subsequent enforcement, puts NRC licensees at a competitive economic disadvantage because Agreement states do not require Part 34 compliance for the associated equipment.

*Enforcement.* The petitioner asserts significant differences exist in the level of enforcement implemented by the various Agreement States and different NRC regions. Some users have been required to go to extraordinary measures to prove a piece of equipment meets Part 34 requirements; in other cases the regulatory authority is not concerned about the associated equipment. The petitioner notes that because the inspection guidelines for inspecting against the new rule have not been documented, demonstrating compliance is very difficult.

*Inability to perform required work.* The petitioner states that some licensees require specialized equipment to perform radiography, such as J-tubes, jet engine probes, and other rigid source stops. Under the current interpretation of § 34.20, all specialized equipment must be approved. No user or manufacturer fully understood that all associated equipment, including the specialized equipment, was covered by the rule; therefore, no approvals were sought. Manufacturers believed only a listing of models or a generic description of the specialized equipment would be needed to get Part 34 endorsement.

## Reasons for the Petition

The petitioner states that the associated equipment currently in use has a good operational safety history. To prevent licensees from using unacceptable equipment, the petitioner believes they should be required to certify that any equipment used in conjunction with a source or device be able to withstand the environment and use that is expected, using the ANSI N432 standard as a baseline.

The petitioner believes ANSI N432 should be used as guidance for the associated equipment not as a regulatory approval checklist. Considering all the years of manufacturing experience and that none of the associated equipment is deemed critical to safety, there is no need to perform an additional outside review. The petitioner believes that the manufacturer should be allowed to self-certify that the associated equipment is fit for use, whether the certification is based on testing in accordance with ANSI, relying on a good operational history, or comparing it to a similar component.

The petitioner notes that there are some specific applications and environments in which the ANSI requirements cannot be physically met, but the part is still fit for use. The petitioner believes that it is important that fitness for use be considered regardless of the ANSI standard because it will result in a safer product being used.

The petitioner states that the regulatory review adds considerable costs to the user and the manufacturer, without increased safety to the user or the general public. Regulatory review will not result in the manufacturer changing the design or method of manufacture for the associated equipment that has been used successfully from an operational and safety standpoint for the last 40 years.

The petitioner believes very strongly in the importance of proper inspection and maintenance of all the equipment. The petitioner recognizes that 75 percent of customer complaints or problems were the result of inadequate maintenance, improper use, or damage. The petitioner states that the majority of problems that have occurred in the field could have been prevented by requiring that proper inspection and maintenance be performed and that defective equipment be taken out of use. The petitioner has not seen many problems as a result of basic design or construction of the equipment.

## Conclusion

The petitioner believes that ANSI N432 is the appropriate reference for equipment requirements; however, it disagrees with the current NRC interpretation that associated equipment requires a regulatory review. The petitioner requests that the NRC clarify its interpretation. If the definition of a sealed source and device in § 32.210 is being expanded to cover the associated equipment, the petitioner believes it must go through a rulemaking change before it becomes a requirement. Because the current interpretation is having a significant economic impact on the entire industry, causing some programs to shut down until it is resolved, the petitioner requests that the NRC temporarily rescind this requirement until it can be clarified.

## Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on this petition also are available for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll-free number 800–303–9672. Communication software

parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using the ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''rules menu'' option from the ''NRC main menu.'' Users will find the ''FedWorld On-line User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld also can be accessed by a direct-dial telephone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC on-line main menu. The NRC on-line area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC on-line main menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploading files is not allowed; you will only see a list of files without descriptions (normal gopher look). An index file listing all files within a subdirectory and descriptions of those files, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the Worldwide Web, like FTP, that mode only provides access for downloading files and does not display the NRC rules menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555–0001, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Single copies of this petition may be obtained by written request or telefax ((#01) 415–5144) from: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, Mail stop T6–D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Certain documents related to this petition, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this petition as indicated above.

Dated at Rockville, Maryland, this 12th day of June, 1996.

For the Nuclear Regulatory Commission.

John C. Hoyle,

*Secretary of the Commission.*

[FR Doc. 96–15395 Filed 6–17–96; 8:45 am]

**BILLING CODE 7590–01–P**

---

## 10 CFR Parts 150 and 170

**RIN 3150–AF49**

## Recognition of Agreement State Licenses in Areas Under Exclusive Federal Jurisdiction Within an Agreement State

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to clarify that Agreement State licensees can seek reciprocal recognition of their license from the NRC when they are working within areas of exclusive Federal jurisdiction in Agreement States. The proposed amendments would also clarify NRC regulatory requirements for reciprocity and the appropriate fees and filing procedures applicable to Agreement State licensees operating under reciprocity.

**DATES:** The comment period expires September 3, 1996. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Certain documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents may also be viewed and downloaded electronically via the Electronic Bulletin Board established by NRC for this rulemaking as discussed under Electronic Access in the Supplementary Information Section.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1623, e-mail HHN@nrc.gov or Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6196, e-mail MFH@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

Currently, subject to certain restrictions, any person who holds a specific license from an Agreement State may conduct activities permitted by that license in non-Agreement States and offshore waters using an NRC general license. The general license is granted under the authority contained in 10 CFR 150.20, ''Recognition of Agreement State Licenses.'' To meet the requirements of § 150.20, licensees must submit an NRC Form 241 at least 3 days before engaging in the activities (subject to some exceptions as noted in § 150.20). If an Agreement State licensee does not qualify for a general license under § 150.20, the licensee must apply for and obtain a specific license to work in areas of NRC jurisdiction.

### Need for Proposed Regulatory Action

The NRC believes that there are several problems with the current regulations in § 150.20 that necessitate a rulemaking. First, the current regulation does not include provisions to allow Agreement State licensees to qualify for an NRC general license when operating in areas of exclusive Federal jurisdiction within Agreement States. Second, there has been some confusion regarding the NRC regulations applicable to Agreement State licensees operating in areas of NRC jurisdiction pursuant to § 150.20. Third, § 150.20 does not reference the appropriate fee requirements applicable to Agreement State licensees who file an NRC Form 241. Finally, there has been some confusion regarding the filing procedures for an NRC Form 241.

## Proposed Regulatory Action

### *Exclusive Federal Jurisdiction*

The current wording of § 150.20 has created confusion for Agreement State licensees operating in areas of exclusive Federal jurisdiction within Agreement States. An area of exclusive Federal jurisdiction is an area over which the Federal Government exercises legal control without interference from the jurisdiction and administration of State law. Areas of exclusive Federal jurisdiction exist in both Agreement and non-Agreement States. Because the Federal Government has sole authority over areas of exclusive Federal jurisdiction in Agreement States, the NRC has jurisdiction over Atomic Energy Act activities conducted in those areas. The notification procedures (use of an NRC Form 241) regarding general licenses for Agreement State licensees seeking to operate in areas of NRC jurisdiction (i.e., non-Agreement States and offshore waters) are in § 150.20.

There is, however, no specific provision in § 150.20 to indicate that the NRC may grant reciprocity to Agreement State licensees to conduct activities in areas of exclusive Federal jurisdiction within an Agreement State. The current regulation only authorizes a general license for activities conducted in non-Agreement States, whether or not in an area of exclusive Federal jurisdiction within that non-Agreement State, and offshore waters. Despite the omission in the regulation, the NRC staff, under current practice, permits an Agreement State licensee to operate in an area of exclusive Federal jurisdiction within the Agreement State if the licensee submits an acceptable NRC Form 241.

The lack of a specific reference to areas of exclusive Federal jurisdiction has caused confusion for licensees, Agreement States, and, occasionally, the NRC staff in interpreting the coverage of the reciprocity provisions in § 150.20. To alleviate these concerns, this rulemaking would amend § 150.20 to provide a specific reference to areas of exclusive Federal jurisdiction.

### *Regulatory Requirements Applicable to § 150.20 Licensees*

The specific references to other NRC regulatory requirements in § 150.20 also constitute a source of confusion. According to § 150.20(b), persons operating under the general license must comply with a variety of specific NRC regulatory requirements. However, § 150.20 does not specifically reference all NRC regulations that are applicable to materials licensees. To alleviate any potential confusion, the new § 150.20 would indicate clearly that licensees operating pursuant to the rule's provisions must comply with all NRC regulations applicable to materials licensees.

This amendment would be consistent with the original intent of the rule. When originally issued in 1962 (27 FR 1351, February 14, 1962), § 150.20 required Agreement State licensees to comply with ''the appropriate provisions of 10 CFR parts 20, 30, 31, 40, and 70'' of the Commission's regulations. The rule required compliance with all NRC regulations applicable to NRC materials licensees at that time. In 1965, many of the requirements in 10 CFR part 30 were relocated to newly created regulatory provisions in 10 CFR parts 32, 33, 34, 35, and 36 (30 FR 8185, June 26, 1965). A conforming amendment to § 150.20 was not made in response to this change. Since 1965, specific requirements have been added to § 150.20 that may have created the impression that certain NRC requirements otherwise applicable to materials licensees are not applicable to general licensees under § 150.20. This is not the case. It is NRC's position that Agreement State licensees operating in areas of NRC jurisdiction pursuant to § 150.20 must comply with those regulations applicable to NRC licensees. This proposed amendment would clarify the applicable requirements.

### *Fees Imposed on Agreement State Licensees Operating Under Reciprocity*

The proposed amendment would add appropriate references to § 150.20 regarding the relevant fee requirements in 10 CFR part 170. The fee schedule in 10 CFR part 170 was updated to indicate that there will be a charge for licensee revisions to an NRC Form 241 in addition to the initial filing fee. A clarification to an NRC Form 241 does not require a fee. Specific definitions for a revision versus a clarification will be provided in the instructions to the NRC Form 241.

In addition, this proposed amendment would involve a minor conforming change to the schedule for materials fees in § 170.31, ''Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections, and Import and Export Licenses,'' to clarify that the fee requirement applies to activities conducted under reciprocity pursuant to § 150.20 regardless of the location of the activities.

### *Filing Procedures*

The proposed amendment would also clarify the procedures for filing an NRC Form 241 for reciprocity described in § 150.20(b). The clarifications include identifying what needs to be submitted, specifying the procedure to use when an emergency filing is necessary, making revisions to the initial filing, and for radiography licensees, emphasizing the need for a transportation quality assurance program. These clarifications will not impose any additional requirements on the Agreement State licensee.

## Compatibility of Agreement State Regulations

The provisions in § 150.20 would continue to be a Division 1 matter of compatibility. The Commission is currently developing implementing procedures for a new Adequacy and Compatibility Policy that was approved by the Commission on June 29, 1995. The Commission expects that the approach to these matters in the new procedures will be consistent with the approach discussed here.

## Electronic Access

Comments may be submitted electronically, in either ASCII text or WordPerfect format (version 5.1 or later), by calling the NRC Electronic Bulletin Board (BBS) on FedWorld. The bulletin board may be accessed using a personal computer, a modem, and one of the commonly available communications software packages, or directly via Internet. Background documents on the rulemaking are also available, as practical, for downloading and viewing on the bulletin board.

If using a personal computer and modem, the NRC rulemaking subsystem on FedWorld can be accessed directly by dialing the toll free number (800) 303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC rulemaking subsystem can then be accessed by selecting the ''Rules Menu'' option from the ''NRC Main Menu.'' Users will find the ''FedWorld Online User's Guides'' particularly helpful. Many NRC subsystems and data bases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, (703) 321–3339, or by using Telnet via Internet: fedworld.gov. If using (703) 321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory Information Mall.'' At that point, a menu will be

displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you may return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems, but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules Menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is available. There is a 15-minute time limit for FTP access.

Although FedWorld also can be accessed through the World Wide Web, like FTP, that mode only provides access for downloading files and does not display the NRC Rules Menu.

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555–0001, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Environmental Impact: Categorical Exclusion

The Commission has determined that this proposed regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paper Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0032.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Regulatory Analysis

This rulemaking would not impose any new requirements or additional costs to licensees because the rulemaking would codify current practice that allows Agreement State licensees to work under an NRC general license. Because the rulemaking would improve the clarity and consistency of the NRC's regulations, it could benefit Agreement State licensees operating in areas of exclusive Federal jurisdiction.

Implementation of this rule should result in a minor reduction in NRC resources (estimated to be one-sixth of a staff year per year) continually being expended to explain our fee schedule and to clarify for licensees and Agreement States the conditions under which an Agreement State licensee can operate within an area of exclusive Federal jurisdiction. Because NRC resources to amend § 150.20 are estimated to be about one-half of a staff year, this is a cost effective one-time use of resources. This constitutes the regulatory analysis for this proposed rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities.

The rulemaking would not impose any new requirements or additional costs to licensees because the rulemaking would codify current practice that allows Agreement State licensees to work under an NRC general license. Because this proposed rulemaking would improve the clarity and consistency of NRC's regulations, it could benefit Agreement State licensees operating in areas of exclusive Federal jurisdiction.

Any small entity subject to this regulation which determines that, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates the following:

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee.

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities.

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulations were modified as suggested by the licensee.

(d) How the proposed regulation, as modified, would more closely equalize the impact of regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

(e) How the proposed regulation, as modified, would still adequately protect public health and safety.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule, and therefore, a backfit analysis is not required, because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

*10 CFR Part 150*

Criminal penalties, Hazardous materials transportation, Intergovernmental relations, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

*10 CFR Part 170*

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 150 and 170.

## PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

1. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84, 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42

U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

2. Section 150.20 is amended by revising paragraphs (a), the introductory text of (b), (b)(1), and the introductory text of (c), redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(4) through (b)(6), revising redesignated paragraphs (b)(4) and (b)(5), and adding new paragraphs (b)(2) and (b)(3) to read as follows:

**§ 150.20 Recognition of Agreement State licenses.**

(a)(1) Provided that the provisions of paragraph (b) of this section have been met, any person who holds a specific license from an Agreement State, where the licensee maintains an office for directing the licensed activity and retaining radiation safety records, is granted a general license to conduct the same activity in—

(i) Non-Agreement States;

(ii) Areas of exclusive Federal jurisdiction within Agreement States; and

(iii) Offshore waters.

(2) The provisions of paragraph (a)(1) of this section do not apply if the specific Agreement State license limits the authorized activity to a specific installation or location.

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State, an area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to all the provisions of the Act, now or hereafter in effect, and to all valid rules, regulations and orders of the Commission including the provisions of §§ 30.7 (a) through (f), 30.9, 30.10, 30.14(d), 30.34, 30.41, 30.51 to 30.63, inclusive, of part 30 of this chapter; §§ 40.7 (a) through (f), 40.9, 40.10, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of part 40 of this chapter; §§ 70.7 (a) through (f), 70.9, 70.10, 70.32, 70.42, 70.51 to 70.56, inclusive, 70.60 to 70.62, inclusive, and to the provisions of 10 CFR parts 19, 20, and 71 and subpart B of part 34, §§ 39.15 and 39.31 through 39.77, inclusive, of part 39 of this chapter. In addition, any person engaging in activities in non-Agreement States, areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters under the general licenses provided in this section:

(1) Except as specified in paragraph (c) of this section, shall, at least 3 days before engaging in each such activity for the first time in a calendar year, file an NRC Form 241, ''Report of Proposed Activities in Non-Agreement States,'' 4 copies of its Agreement State specific license, and the appropriate fee as prescribed in § 170.31 of this chapter with the Regional Administrator of the U.S. Nuclear Regulatory Commission Regional Office listed on the NRC Form 241 and in appendix D of part 20 of this chapter for the Region in which the Agreement State that issued the license is located. If an acceptable method for filing 3 days before engaging in activities under reciprocity is not available to the licensee, because of an emergency or other reasons, the Regional Administrator may waive the 3-day time requirement provided the Agreement State licensee informs the Region by telephone, facsimile, an NRC Form 241, or letter of initial activities or revisions to the information submitted on the initial NRC Form 241, receives oral or written authorization for the activity from the Region, and files an NRC Form 241, 4 copies of the Agreement State license, and the fee payment within 3 days after the notification.

(2) Licensees that seek changes in work locations, radioactive material, or work activities different from the information contained on the initial NRC Form 241 must file an amended NRC Form 241 or letter and the appropriate fee as prescribed in § 170.31 of this chapter with the Regional Administrator.

(3) Licensees engaging in radiography activities must comply with § 71.12 of this chapter, including quality assurance program requirements for transportation.

(4) Shall not, in any non-Agreement State, area of exclusive Federal jurisdiction within an Agreement State, or in offshore waters, transfer or dispose of radioactive material possessed or used under the general licenses provided in this section, except by transfer to a person

(i) Specifically licensed by the Commission to receive such material, or

(ii) Exempt from the requirements for a license for such material under § 30.14 of this chapter;

(5) Shall not, under the general license concerning activities in non-Agreement States or in areas of exclusive Federal jurisdiction within Agreement States, possess or use radioactive materials, or engage in the activities authorized in paragraph (a) of this section, for more than 180 days in any calendar year, except that the general license in paragraph (a) of this section concerning activities in offshore waters authorizes that person to possess or use radioactive materials, or engage in the activities authorized, for an unlimited period of time.

* * * * *

(c) A person engaging in activities in offshore waters under the general license provided for that purpose in paragraph (a) of this section need not file an NRC Form 241 with the Commission under paragraph (b)(1) of this section, provided, that:

* * * * *

## PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

3. The authority citation for part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec 205, Pub. L. 101–576, 104 Stat 2842, (31 U.S.C. 902).

4. Section 170.31 is amended by revising the introductory text of Category 16 of the Schedule of Materials Fees to read as follows:

**§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.**

* * * * *

16. Reciprocity:

Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20:

* * * * *

Dated at Rockville, MD, this 7th day of June, 1996.

For the Nuclear Regulatory Commission.

James M. Taylor,

*Executive Director for Operations.*

[FR Doc. 96–15402 Filed 6–17–96; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 96–ASW–08]**

## Proposed Revision of Class E Airspace; Carlisle, AR

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the Class E airspace extending upward from 700 feet above ground level (AGL)

at Carlisle, AR. A new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 09 at Carlisle Municipal Airport has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS SIAP to RWY 09 at Carlisle, AR.

**DATES:** Comments must be received on or before August 19, 1996.

**ADDRESSES:** Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–08, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

**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:**

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–08.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace, controlled airspace extending upward from 700 feet AGL, at Carlisle Municipal Airport, Carlisle, AR. A new GPS SIAP to RWY 09 has made this proposal necessary. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the GPS SIAP to Rwy 09 at Carlisle, AR.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas extending upward from 700 feet or more above ground level 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 would be published subsequently in the order.

The FAA has determined that this proposed 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, when promulgated, will not have a significant 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 AR E5 Carlisle, AR [Revised]

Carlisle Municipal Airport, AR
(Lat. 34°48′29″ N., long. 91°42′43″ N.)

That airspace extending upward from 700 feet above the surface within a 7 mile radius of Carlisle Municipal Airport.

* * * * *

Issued in Fort Worth, TX on June 11, 1996.

Albert L. Viselli,

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

[FR Doc. 96–15419 Filed 6–17–96; 8:45 am]

BILLING CODE 4910–13–M

---

## 14 CFR Part 71

**[Airspace Docket No. 96–ASW–11]**

## Proposed Establishment of Class E Airspace: Manila, AR

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Manila Municipal Airport, Manila, AR. The development of a Nondirectional Radio Beacon (NDB)

standard instrument approach procedure (SIAP) to Runway (RWY) 18 has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the NDB SIAP to RWY 18 at Manila Municipal Airport, Manila, AR.

**DATES:** Comments must be received on or before August 19, 1996.

**ADDRESSES:** Send comments on the proposal in triplicate to Manager, Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 96–ASW–11, Fort Worth, TX 76193–0530. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX.

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

**SUPPLEMENTARY INFORMATION:**

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard containing the following statement: ''Comments to Airspace Docket No. 96–ASW–11.'' The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E Airspace, controlled airspace extending upward from 700 feet AGL at Manila Municipal Airport, Manila, AR. The development of a NDB SIAP to RWY 18 has made this proposal necessary. Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB SIAP to RWY 18 at Manila Municipal Airport, Manila, AR. The coordinates for this airspace docket are based on North American Datum 83.

Designated Class E airspace areas extending upward from 700 feet or more above ground level 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 would be published subsequently in the order.

The FAA has determined that this proposed 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, when promulgated, will not have a significant 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).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 AR E5 Manila, AR [New]

Manila, Manila Municipal Airport
(Lat. 35°53′35″ N., long. 90°09′17″ W.)
Manila NDB
(Lat. 35°53′28″ N., long. 90°09′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Manila Municipal Airport, and within 2.5 miles each side of the 007° bearing from the Manila NDB extending from the 6.3-mile radius to 6.9 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on June 11, 1996.

Albert L. Viselli,

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

[FR Doc. 96–15418 Filed 6–12–96; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[CO–9–96]**

**RIN 1545–AU16**

## Section 1059 Extraordinary Dividends

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

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations relating to certain distributions made by corporations to certain corporate shareholders. The proposed regulations are necessary to clarify that certain distributions in redemption of stock are treated as extraordinary dividends notwithstanding provisions that otherwise might exempt the distributions from extraordinary dividend treatment. Corporations that receive a distribution in redemption of stock may be affected if the redemption is either part of a partial liquidation of the redeeming corporation or is not pro rata as to all shareholders. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written comments and outlines of topics to be discussed at the public hearing scheduled for Wednesday, October 2, 1996, must be received by September 16, 1996.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (CO–9–96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (CO–9–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. The public hearing will be held in room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the hearing, Mike Slaughter, Regulations Unit, Assistant Chief Counsel (Corporate), at (202) 622–7190 (not a toll-free number). Concerning the proposed regulations, Richard K. Passales at (202) 622–7530 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the extraordinary dividend provisions under section 1059 of the Internal Revenue Code. Section 1059 was added by the Deficit Reduction Act of 1984, Public Law 98–369. One of the purposes of section 1059 is to prevent a corporate shareholder from creating an artificial loss on stock. See General Explanation of the Revenue Provisions of the Deficit Reduction Act of 1984.

Section 1059(a) generally requires a corporation that receives an extraordinary dividend on stock it has not held for at least two years before the dividend announcement date to reduce its basis (but not below zero) immediately before any sale or disposition of the stock by the nontaxed portion of the dividend (generally, the amount of the dividends received deduction). If the nontaxed portion of the dividend exceeds basis, the excess generally is treated as additional gain recognized when the stock is sold. Section 1059(c) generally defines an extraordinary dividend as a dividend that equals or exceeds the threshold percentage of the taxpayer's adjusted basis in such stock.

Sections 1059(d)(6), (e)(1), and (e)(2) were enacted as part of the Tax Reform Act of 1986. Each of those sections affects the definition of extraordinary dividends contained in section 1059(c). Section 1059(d)(6) generally excludes an extraordinary dividend from section 1059(a) treatment if the distributee is an original shareholder of the distributing corporation and the earnings and profits from which the dividend is paid are attributable solely to the original shareholder. Section 1059(e)(2) generally excludes a dividend from extraordinary dividend treatment if it is a ''qualifying dividend.'' A dividend generally is a qualifying dividend if the distributee and distributing corporations are affiliated at the time of the distribution and the distribution is out of affiliated year earnings and profits. Both sections 1059(d)(6) and (e)(2) contemplate that the distribution that otherwise would be an extraordinary dividend subject to section 1059(a) is derived from earnings and profits accumulated while the distributee corporation is a shareholder of the distributing corporation. Generally, a corporate shareholder's ability to create an artificial loss is reduced if all of the distributing corporation's earnings and profits are accumulated while the distributee corporation is a shareholder of the distributing corporation.

Section 1059(e)(1) expands the scope of the extraordinary dividend definition in section 1059(c) by disregarding the holding period and threshold rules for certain distributions. Generally, section 1059(e)(1) provides that a non pro rata redemption or a partial liquidation that is treated as a dividend under section 301 is an extraordinary dividend to which section 1059(a) applies without regard to the threshold percentage or the period the taxpayer held such stock. See General Explanation of the Tax Reform Act of 1986, Joint Committee on Taxation, 100th Cong., 1st Sess. (May 4, 1987).

These regulations address the question of whether section 1059(d)(6) or (e)(2) applies to a distribution otherwise treated as an extraordinary dividend under section 1059(e)(1). The IRS and Treasury Department believe that applying those provisions to section 1059(e)(1) is inconsistent with the purpose of section 1059 and may create inappropriate consequences, such as basis shifting that eliminates gain or creates an artificial loss.

Accordingly, these regulations clarify that neither section 1059(d)(6) nor section 1059(e)(2) applies to a distribution treated as an extraordinary dividend under section 1059(e)(1). In finalizing these regulations, the IRS and Treasury Department will consider comments that illustrate distributions described in section 1059(e)(1) to which the application of section 1059(d)(6) or (e)(2) is appropriate or to which section 1059(e)(1) otherwise should not apply.

These regulations also address the question of whether an exchange treated as a dividend under section 356(a)(2) is subject to section 1059(e)(1). These regulations clarify that for purposes of section 1059(e)(1), an exchange under section 356(a)(1) is treated as a redemption and, to the extent any amount is treated as a dividend under section 356(a)(2), it is treated as a dividend under section 301.

### Explanation of Provisions

Proposed § 1.1059(e)–1(a) provides that neither section 1059(d)(6) nor section 1059(e)(2) will prevent any distribution treated as an extraordinary dividend under section 1059(e)(1) from being treated as an extraordinary dividend. For example, if a redemption of stock is not pro rata as to all shareholders, any amount treated as a dividend under section 301 is treated as an extraordinary dividend regardless of whether the dividend is a qualifying dividend.

Proposed § 1.1059(e)–1(b) provides that for purposes of section 1059(e)(1), an exchange under section 356(a)(1) is treated as a redemption and, to the extent any amount is treated as a dividend under section 356(a)(2), it is treated as a dividend under section 301.

Proposed Effective Date

These regulations are proposed to apply to distributions announced on or after June 17, 1996.

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 regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled at 10 a.m. on Wednesday, October 2, 1996, room 3313, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more that 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 by September 16, 1996, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 16, 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 Richard K. Passales, Office of Assistant Chief Counsel (Corporate), IRS. 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 1.1059(e)–1 also issued under 26 U.S.C. 1059(e)(1) and (e)(2). * * *

Par. 2. Section 1.1059(e)–1 is added to read as follows:

**§ 1.1059(e)–1 Non pro rata redemptions.**

(a) *In general.* Section 1059(d)(6) (exception where stock held during entire existence of corporation) and section 1059(e)(2) (qualifying dividends) do not apply to a distribution treated as an extraordinary dividend under section 1059(e)(1). For example, if a redemption of stock is not pro rata as to all shareholders, any amount treated as a dividend under section 301 is treated as an extraordinary dividend regardless of whether the dividend is a qualifying dividend.

(b) *Reorganizations.* For purposes of section 1059(e)(1), an exchange under section 356(a)(1) is treated as a redemption and, to the extent any amount is treated as a dividend under section 356(a)(2), it is treated as a dividend under section 301.

(c) *Effective date.* This section applies to distributions announced (within the meaning of section 1059(d)(5)) on or after June 17, 1996.

Margaret Milner Richardson,

*Commissioner of Internal Revenue.*

[FR Doc. 96–15454 Filed 6–17–96; 8:45 am]

BILLING CODE 4830–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[AD–FRL–5521–6]**

**RIN 2060–AD98**

## National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) Operations

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

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to revise the compliance date for the ''National Emission Standards For Hazardous Air Pollutants For Shipbuilding and Ship Repair (Surface Coating) Operations'' to December 16, 1997. This action also proposes to extend the June 13, 1996 deadline for submittal of implementation plans to December 16, 1996, and to remove the requirement for approval of implementation plans by the EPA. Because the revisions primarily change the date for submittal of an implementation plan and extend the compliance date to allow better coordination with the control techniques guidelines (CTG) that EPA plans to publish in the near future, the EPA does not anticipate receiving adverse comments. Consequently, the revisions are also being issued as a direct final rule in the final rules section of this Federal Register. If no significant and timely adverse comments are received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

**DATES:** *Comments.* Comments must be received on or before July 18, 1996, unless a hearing is requested by June 28, 1996. If a hearing is requested, written comments must be received by August 2, 1996.

*Public Hearing.* Anyone requesting a public hearing must contact the EPA no later than June 28, 1996. If a hearing is held, it will take place on July 3, 1996, beginning at 10:00 a.m.

**ADDRESSES:** *Comments.* Comments should be submitted to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–92–11 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

*Public Hearing.* If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Mrs. Janet Eck, U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–7946.

*Docket.* Docket No. A–92–11, containing the supporting information for the original NESHAP and this action, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, first floor, 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mohamed Serageldin, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2379.

**SUPPLEMENTARY INFORMATION:**

*Regulated Entities.* The regulated category and entities affected by this action include:

| Category | Examples of regulated entities |
|---|---|
| Industry ..... | Facilities that build, repair, repaint, convert, or alter ships. The term ship means any marine or fresh-water vessel, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). **Note:** An offshore oil and gas drilling platform is not considered a ship for purposes of this regulation. |
| Federal Govt ... | Federal Agencies which undertake shipbuilding or repair operations (see above) such as the Navy and Coast guards. |

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 potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.782 of the regulation. 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.

If no significant and timely adverse comments are 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 and timely adverse comments are received, the direct final rule will be withdrawn and all public comments received will be considered prior to promulgation of the final rule. Because the EPA 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 provisions, see the information provided in the direct final rule in the final rules section of this Federal Register.

## Administrative Requirements

### *A. Paperwork Reduction Act*

The information collection requirements of the previously promulgated NESHAP were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1414.02) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's changes to the NESHAP should have no impact on the information collection burden estimates made previously. The changes to the implementation plan submittal date and the compliance date do not impose new requirements. Consequently, the ICR has not been revised.

### *B. Executive Order 12866 Review*

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is ''significant'' and therefore, subject to OMB review and the requirements of the executive order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in 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.

The Shipbuilding NESHAP promulgated on December 15, 1995 was not considered ''significant'' under Executive Order 12866 and a regulatory impact analysis (RIA) was not prepared. Today's proposed revisions do not add any additional control or recordkeeping requirements. Therefore, this action is not considered to affect the decision whether this rule is significant.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

### *D. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA 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. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Reform Act do not apply to this action.

## List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: June 7, 1996.

Carol M. Browner,

*Administrator.*

[FR Doc. 96–15440 Filed 6–17–96; 8:45 am]

BILLING CODE 6560–50–P

---

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 36 and 69

**[CC Docket 96–45; DA–96–936]**

## Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The purpose of the notice is to inform the general public of a meeting that will be held by the Federal-State Joint Board on universal service.

**DATES:** The Federal-State Joint Board in CC Docket 96–45 will hold an Open Meeting on Wednesday, June 19, 1996 at 9:00 a.m.

**ADDRESSES:** in Room 856 at 1919 M Street, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Irene Flannery, Accounting and Audits Division, Common Carrier Bureau, at (202) 418–0844.

**SUPPLEMENTARY INFORMATION:** At the meeting, the Federal-State Joint Board will hear from two panels of experts addressing universal service issues set forth in Section 254 of the Telecommunications Act. In addition, the Federal-State Joint Board will consider whether to extend the two-year indexed cap on the rate at which the Universal Service Fund may grow.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96–15339 Filed 6–12–96; 4:23 pm]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Parts 571 and 581

**[Docket No. 96–65; Notice 1]**

### Federal Motor Vehicle Safety Standards Bumper Standard

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of public meetings; request for comments.

**SUMMARY:** This document announces public meetings to be held in Palm Desert, California, and Washington, DC, at which NHTSA will seek information on the appropriate classification and safety regulations for golf carts and other small, light-weight vehicles that are capable of being driven on the public roads. This document also invites written comments on these subjects.

**DATES:** The public meeting in Palm Desert, California, will be held on Thursday, July 18, 1996, at 1:00 p.m. The public meeting in Washington, DC, will be held at 9:00 a.m. on Thursday, July 25, 1996. An agenda for each meeting will be made based on the number of persons wishing to make oral presentations and will be available on the day of the meeting. Those wishing to make oral presentations at each meeting should contact Z. Taylor Vinson, at the address or telephone number listed below, by the close of business July 11, 1996.

**ADDRESSES:** *Public Meetings:* The first public meeting will be held at the City of Palm Desert Council Chambers, 73510 Fred Waring Drive, Palm Desert, California. The second public meeting will be held at DOT headquarters, Nassif Building, Room 6200, 400 Seventh Street, SW., Washington, D.C. *Written Comments:* Written comments may be submitted at any time before or after the meetings, but not later than August 8, 1996. They should be sent to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street, SW., Washington, DC 20590, ATTN: Docket No. 96–65; Notice 1.

**FOR FURTHER INFORMATION CONTACT:** Z. Taylor Vinson, Office of Chief Counsel, NHTSA, Room 5219, 400 7th Street, SW., Washington, DC 20590 (telephone 202–366–5263).

**SUPPLEMENTARY INFORMATION:**

I. Introduction

As discussed below in more detail, vehicles such as golf carts have not been regulated by NHTSA because they were not being used on the public roads. Even where a vehicle is being used on the roads, NHTSA has not regulated it if it was configured differently from passenger cars or light trucks, and if it had a top speed of 20 mph or less. However, the agency has become aware that the use and design of some of these vehicles are evolving in previously unanticipated ways. Although golf carts have traditionally been limited in their operations to golf courses, a number of states have taken legislative actions that permit the use of golf carts on the public roads at speeds up to 25 mph. In addition, there appears to be a growing interest worldwide in small vehicles of somewhat unusual configurations that are capable of exceeding 20 mph, and that are intended for on-road use as city or commuter cars. While some new golf cart-like vehicles do not really resemble very small passenger cars, neither do they resemble the traditional golf cart.

The agency therefore deems it timely to review its historical position in light of this evolving situation. To aid it in its review, NHTSA has decided to hold two public meetings to receive the comments of local elected and law enforcement officials, manufacturers, individual citizens who use these vehicles, public interest groups, and other interested persons on safety and regulatory issues affecting golf carts and other light-weight limited-speed vehicles.

II. Legal Considerations

*A. Federal Law*

Title 49 U.S.C. Chapter 301 grants NHTSA regulatory authority over ''motor vehicles.'' All ''motor vehicles'' are subject to the Federal motor vehicle safety standards promulgated by NHTSA pursuant to 49 U.S.C. 30111, and to the notification and remedy provisions of 49 U.S.C. 30118–30121. A ''motor vehicle'' is a vehicle ''manufactured primarily for use on the public streets, roads, and highways'' (Sec. 30102(a)(6)). The agency's interpretations of this term have centered around the meaning of the word ''primarily.'' The agency has generally interpreted the term to mean that a significant portion of a vehicle's use must be on the public roads in order for the vehicle to be considered to be a motor vehicle.

NHTSA's principal interpretation of Sec. 30102(a)(6) dates from 1969, and addressed the status of mini-bikes. NHTSA said that the capability of a vehicle to be operated on the public roads would be an important criterion in determining whether it was a ''motor vehicle'', but that test would not be reached if there is clear evidence as a practical matter that the vehicle was not being used on the public roads. In NHTSA's view, ''in the case of self-propelled riding mowers, golf carts, and many other similar self-propelled vehicles, such clear evidence exists.'' Thus, the agency declined to regulate golf carts.

Without such clear evidence, NHTSA said that it would initially defer to the manufacturer's judgment that a vehicle was not a ''motor vehicle'' unless ''a substantial portion of the consuming public'' was operating the vehicle on the public roads. In borderline cases, NHTSA set forth criteria it would employ in determining whether a particular vehicle is a ''motor vehicle.'' Noting the comparative rarity of mini-bike use on public streets, and that the registration of mini-bikes for use on public streets was precluded by laws of most jurisdictions unless they were equipped with Standard No. 108-type lighting devices, NHTSA said it would not consider mini-bikes to be ''motor vehicles'' if their manufacturers:

(1) Do not equip them with devices and accessories that render them lawful for use and registration for use on public highways under state and local laws;

(2) Do not otherwise participate or assist in making the vehicles lawful for operation on public roads (as by

furnishing certificates of origin or other title document, unless those documents contain a statement that the vehicle was not manufactured for use on public streets, roads, or highways);

(3) Do not advertise or promote them as vehicles suitable for use on public roads;

(4) Do not generally market them through retail dealers of motor vehicles; and

(5) Affix to the mini-bikes a notice stating in substance that the vehicles were not manufactured for use on public streets, roads, or highways and warning operators against such use.

The agency's interpretations since 1969 have added new elements to the mini-bike criteria for determining whether vehicles capable of on-road use are ''motor vehicles.'' The most important exclude motorized equipment that have ''abnormal'' configurations and a top speed of 20 miles per hour or less. As an example, NHTSA informed ''trans2 Corporation'' in 1994 that its ''low-speed electric vehicle'' intended for use in residential communities, university campuses, and industrial complexes was not a ''motor vehicle'' because it had a top speed of 20 mph and unusual body features that made it readily distinguishable from ''motor vehicles.'' These features included an oval-shaped passenger compartment, taillamps built into headrests, and a configuration the approximate size and height of a golf cart.

On the other hand, in 1995, NHTSA informed Goodlife Motors Corporation that its ''super golf car'' was a motor vehicle because it had a top speed of 29 mph and its configuration resembled that of a prototype Volkswagen passenger car. NHTSA is aware that several companies want to manufacture small commuter-type battery-powered vehicles which they call ''Neighborhood Electric Vehicles'' (''NEV'') whose configuration may or may not be abnormal, and whose top speed may be as much as 35 mph. This type of vehicle, too, is a ''motor vehicle'' under NHTSA's existing interpretations. As such, it must comply with all applicable Federal motor vehicle safety standards adopted by NHTSA. Moreover, pursuant to 49 U.S.C. 30103(b)(1), states may not prescribe any non-identical standards that are applicable to an aspect of performance covered by the NHTSA standards.

*B. State Laws*

1. California

a. Definitions of ''motor vehicle'' and ''golf cart''

Since 1959, the California Vehicle Code (''CVC'') has defined a motor vehicle as any ''vehicle which is self-propelled'' (CVC Sec. 415). California defines a golf cart as ''a motor vehicle having not less than three wheels in contact with the ground, having an unladen weight less than 1,300 pounds which is designed to be and is operated at not more than 25 miles per hour and designed to carry golf equipment and not more than two persons, including the driver'' (CVC Sec. 345).

b. 1994 Cal SB 2610 and 1995 Cal AB 110

In 1992, California amended its Streets and Highway Code (''CSHC'') to establish a Golf Cart Transportation Pilot Program for the City of Palm Desert (CSHC Secs. 1930–37). The 1992 law was replaced in 1994 by SB 2610 which added Chapter 6, CHSC, to establish a ''Golf Cart Transportation Plan'' applicable to Palm Desert and the City of Roseville.

The 1994 provision, Chapter 6, was amended in 1995 by AB 110 to apply to any city or county in California. Chapter 6 as amended by AB 110 allows local jurisdictions to establish a Golf Cart Transportation Plan area in which golf carts are permitted to operate on ''golf cart lanes'', defined as ''roadways . . . shared with pedestrians, bicyclists, and other motorists in the plan area'' (CSHC 1951). Each plan must include minimum design criteria for safety features on golf carts. Only seat belts and covered passenger compartments are specifically required, but other safety features mentioned in the law that a plan ''may include'' are headlamps, turn signals, mirrors, stop lamps, and windshields.

A plan under the California law must also include a permit process for golf carts to ensure that they meet the minimum design criteria, and minimum safety criteria for golf cart operators. At a minimum, an operator must have a valid California driver's license and carry a minimum amount of insurance.

In addition, the law requires Golf Cart Transportation Plans to allow only carts equipped with the requisite safety equipment to be operated on ''separated golf cart lanes'' identified in the Plan. Lane striping on the pavement surface is apparently sufficient for a lane to qualify as a ''separated golf cart lane.'' Even though these are separated lanes, they are not ''dedicated'' ones. In addition to golf carts operating at speeds up to 25 mph, ''other motorists'' (which NHTSA assumes to be operators of conventional vehicular traffic such as cars, trucks, and buses) may also operate at speeds up to 25 mph in these lanes.

In summary, through its Vehicle Code and Streets and Highway Code, California now has in place a regulatory scheme under which golf carts may use ''separated'', limited-speed portions of the public roads at speeds up to 25 mph when equipped with the safety features required by local authorities. Thus, unless NHTSA modifies its existing interpretation, golf carts or other vehicles designed for use in such jurisdictions that are capable of operating at speeds above 20 mph are ''motor vehicles'', subject to the Federal motor vehicle safety standards. Moreover, under 49 U.S.C. 30103(b), Federal standards would preempt the local requirements referred to in the California statutes.

2. Legislation in Other States

In Arizona, Senate Bill 1298 was enacted in 1996. It permits NEVs to be operated at speeds up to 25 mph on public roads with posted speeds of not more than 35-mph. The law does not require either that separated lanes be created or that the NEVs be operated in those lanes only. Florida House Bill 1329, which has passed both Houses of the Florida Legislature, would also permit increased use of golf carts on public roads.

III. Expression of Support by State Officials and Others

NHTSA has received letters from several elected officials in California asking the agency to support the concept of golf cart transportation plans and the use of NEVs at speeds up to 25 mph on public roads. The California officials who seek NHTSA's support for the plans have represented that they have not identified any incidents involving golf carts to justify safety concerns. NHTSA's public meeting in Palm Desert will provide a forum for the expression of views by local officials responsible for the implementation of golf cart transportation plans and enforcement of traffic and safety laws, as well as by citizens who use golf carts or NEVs pursuant to such plans. The meeting will also allow officials from NHTSA and other interested Federal agencies to examine at first hand the practical details of an operating golf cart transportation plan, such as infrastructure requirements and traffic flow.

IV. Market Forces

Another purpose for the public meetings will be for NHTSA to achieve a better understanding of the market and the vehicles that may emerge to serve the consumer preferences reflected in the legislative developments in California, Arizona, and Florida.

At least one specialty manufacturer, Bombardier, Inc. (Bombardier) has informed NHTSA that it would like to enter the market for a ''new and growing segment of the transportation fleet: low-powered electric vehicles.'' It has developed an NEV with a top speed of 25 mph for this market, and believes that its vehicle

> will provide a low cost, low speed, zero emissions mode of localized transportation to meet the special needs of retirees, older Americans and others living in gated communities for travel within their community or for limited activities such as local golfing and other recreation-related or short distance trips.

According to Bombardier, municipal governments endorse the concept as a way of helping them meet Clean Air Act mandates for National Ambient Air Quality Standards by eliminating the polluting effects of short distance automobile trips.

Bombardier has asked NHTSA for an interpretation that the NEV it wishes to manufacture and market in these communities is not a ''motor vehicle'' for purposes of the Federal motor vehicle safety standards. NHTSA will address this and other issues relating to the appropriate regulatory treatment of golf carts and other small low-speed vehicles after considering the oral presentations and comments made in response to this notice.

V. Comments

It is in the context discussed above that NHTSA will reexamine its current interpretation of ''motor vehicle'' to determine the reasonable and appropriate treatment under Federal law of golf carts, NEVs, and other low-speed vehicles. NHTSA invites interested persons to present facts and legal arguments directed to the issues on which NHTSA seeks information.

The agency seeks information on the following topics:

1. Current and anticipated state and municipal regulations, including infrastructure requirements, relating to the use of public roads by golf carts or NEVs at speeds between 20 and 35 mph.

2. The text of any existing or proposed state or local safety standards applicable to golf carts, NEVs, and other low-speed vehicles.

3. The views of owners and users of golf carts, NEVs, and other low-speed vehicles.

4. Any data relating to on-road safety of golf carts, NEVs, and other low-speed vehicles.

5. The views of law enforcement, safety, and health officials concerning the on-road use of golf carts, NEVs, or other low-speed at various speeds.

6. The views of manufacturers of golf carts, NEVs, and other low-speed vehicles as to the burdens of compliance with Federal motor vehicle safety standards and other regulations.

7. The views of commenters as to safety and bumper standards that would be reasonable, practicable, and appropriate for golf carts, NEVs, and other low-speed vehicles.

8. The views of state and local officials as to Federal regulation of golf carts, NEVs, and other low-speed vehicles.

9. The views of other affected associations, advocacy groups, business entities, and individuals.

Written statements should be as specific as possible and provide the best available supporting information. Suggestions should be accompanied by a rationale for the suggested action and a forecast of the expected consequences of that action.

VI. Procedural Matters

The agency intends to conduct the meetings informally so as to allow for maximum participation by all who attend. Interested persons may ask questions or provide comments during any period after a person has completed his or her presentation if there is sufficient time available, as determined by the presiding official. If time permits, persons who did not ask prior to the meeting for an opportunity to speak, but would like to make a statement, will be afforded an opportunity to do so, at the discretion of the presiding official.

Those speaking at the public meeting should limit their presentations to 20 minutes. If the presentation will include slides, motion pictures, or other visual aids, please so inform the contact person identified above so that the proper equipment may be made available. Presenters are asked to submit at least one copy of their presentation to the presiding official for inclusion in the public record.

A schedule of participants making oral presentations will be available in the designated meeting room before the beginning of the meeting. NHTSA will place a copy of any written statement in Docket No. 96–65; Notice 1. The public may inspect the Docket for comments and statements which may be received before or after the meeting. A verbatim transcript of the meeting will be prepared and also placed in the NHTSA docket as soon as possible after the meeting.

Attendance at the meeting is not a prerequisite for the submission of written comments. NHTSA invites written comments from all interested parties. It is requested but not required that 10 copies be submitted.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, Room 5219, at the street address given above, and copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512.)

All comments received before the close of business on August 8, 1996, will be considered in formulating a decision on the issues raised. After the closing date, NHTSA will continue to file relevant comments and information in the docket as it becomes available. It is therefore recommended that interested persons continue to examine the docket for new material.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

[Docket No. 96–65, No. 1]

Issued: June 12, 1996.

Barry Felrice,

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 96–15332 Filed 6–14–96; 9:42 am]

BILLING CODE 4910–59–P

# Notices

Federal Register
Vol. 61, No. 118
Tuesday, June 18, 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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. PY–96–003]**

### Pasteurized Shell Eggs (Pasteurized In-Shell Eggs)

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The purpose of this notice is to inform interested persons that the official USDA grade standards for shell eggs cannot be used to grade pasteurized shell eggs (in-shell eggs). Pasteurized shell eggs are eggs of the domesticated chicken which have been subjected to a pasteurization process approved by the Food and Drug Administration (FDA).

**DATES:** Comments should be submitted on or before August 19, 1996.

**ADDRESSES:** Written comments may be sent to Douglas C. Bailey, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 3944–South, Washington, DC 20900–6456. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday, except holidays. State that your comments refer to Docket No. PY–96–003.

**FOR FURTHER INFORMATION CONTACT:** Rex A. Barnes, Acting Chief, Grading Branch, Poultry Division, 202–720–3271.

**SUPPLEMENTARY INFORMATION:**

Background

The Agricultural Marketing Act of 1946, as amended (AMA) (7 U.S.C. 1621 *et seq.*), authorizes the Secretary of Agriculture to set standards for agricultural products and, on a voluntary basis, inspect and certify conformity of agricultural products to such standards to assist in their orderly marketing.

The voluntary shell egg grading program administered under the AMA provides interested parties the ability to request from the U.S. Department of Agriculture (USDA) that their products be graded in accordance with the regulations which authorize the grading activities and the standards which provide a uniform language used to describe an agricultural commodity in the marketplace.

Grade Standards and Request for Information

Grade standards currently applicable to shell eggs are not appropriate for grading pasteurized shell eggs due to changes the shell eggs undergo during the pasteurization process. AMS would consider developing grade standards for pasteurized shell eggs when a need for such standards has been demonstrated.

All interested parties are invited to comment on the need for pasteurized shell egg standards and to recommend grade standards which would accurately describe the quality characteristics of pasteurized shell eggs.

Authority: 7 U.S.C. 1621 *et seq.*

Dated: June 12, 1996.

Lon Hatamiya,

*Administrator.*

[FR Doc. 96–15362 Filed 6–18–96; 8:45 am]

**BILLING CODE 3410–02–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting Cancellation 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 which was to have convened at 6:00 p.m. and adjourned at 9:00 p.m. on Thursday, June 27, 1996, at the Radisson Hotel, 808 South 20th, Birmingham, Alabama, has been canceled.

The original notice for the meeting was announced in the Federal Register on June 6, 1996, FR Doc. 96–14211, 61 FR 28837.

Persons desiring additional information should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414).

Dated at Washington, DC, June 12, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96–15394 Filed 6–17–96; 8:45 am]

**BILLING CODE 6335–01–P**

### Agenda and Notice of Public Meeting of the Delaware 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 Delaware Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 1:00 p.m. on Thursday, July 11, 1996, at the J.C. Boggs Federal Office Building, Room 5207, 844 King Street, Wilmington, Delaware 19801. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 7, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96–15427 Filed 6–17–96; 8:45 am]

**BILLING CODE 6335–01–P**

### Agenda and Notice of Public Meeting of the Hawaii 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 Hawaii Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:30 p.m. on Wednesday, July 31, 1996, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii 96814. The purpose of the meeting is to review current civil rights developments in the State and plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Oswald Stender, 808–523–6203, 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, June 7, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96–15428 Filed 6–17–96; 8:45 am]

**BILLING CODE 6335–01–P**

## Agenda and Notice of Public Meeting of the New Jersey 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 New Jersey Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on Monday, July 1, 1996, at the New Jersey State House, Room 319, West State Street, Trenton, New Jersey 08625. The purpose of the meeting is to plan future program activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 7, 1996.

Carol-Lee Hurley,

*Chief, Regional Programs Coordination Unit.*

[FR Doc. 96–15429 Filed 6–17–96; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–098]**

## Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On March 8, 1996, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France (61 FR 9425). The review covers Rhone Poulenc Chimie de Base (Rhone Poulenc), a manufacturer/exporter of ASM, and shipments of this merchandise to the United States during the period from January 1, 1994 through December 31, 1994. The Department gave interested parties an opportunity to comment on our preliminary results. No comments were received. Therefore, the final results are the same as the preliminary results.

**EFFECTIVE DATE:** June 18, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mark Ross or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230; telephone: (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

### Background

The Department initiated the January 1, 1994 through December 31, 1994 administrative review for Rhone Poulenc on February 15, 1995 (60 FR 8629) at the request of the petitioner, the PQ Corporation. On March 8, 1996, the Department issued the preliminary results for this administrative review (61 FR 9425).

### Scope of Review

Imports covered by the review are shipments of ASM, a crystallized silicate ($Na_2 SiO_3$) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under Harmonized Tariff Schedules (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

### Final Results of Review

The Department gave interested parties an opportunity to comment on its preliminary results. The Department did not receive any comments. Accordingly, for reasons discussed in the preliminary results, the Department has, pursuant to section 776 of the Act, used facts available. As discussed in the preliminary results, the Department used as facts available the 60-percent margin calculated in the original less-than-fair-value (LTFV) investigation using information provided by Rhone Poulenc. For a discussion of the reasons for application of facts available, see *Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 9425 (March 8, 1995).

The Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Rhone Poulenc will be 60 percent; (2) for companies not covered in this review, but covered in previous reviews or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original investigation, the

cash deposit rate will be 60 percent, the ''All Others'' rate established in the LTFV investigation (45 FR 77498, November 24, 1980).

These deposit requirements will remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: June 11, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–15461 Filed 6–17–96; 8:45 am]

**BILLING CODE 3510–DS–P**

---

**[A–427–098]**

## Anhydrous Sodium Metasilicate From France; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France in response to a request by the petitioner, the PQ Corporation. This review covers Rhone Poulenc Chime de Base (Rhone Poulenc), a manufacturer/exporter of ASM, and shipments of this merchandise to the United States during the period from January 1, 1995 through December 31, 1995.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** June 18, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mark Ross or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

### Background

The Department published in the Federal Register on January 26, 1996 (61 FR 2488) a ''Notice of Opportunity to Request Administrative Review'' of the antidumping duty order on ASM from France (46 FR 1667, January 7, 1981). On January 29, 1996, the petitioner requested an administrative review of Rhone Poulenc, a manufacturer/exporter of ASM. The Department initiated the review on February 20, 1996 (61 FR 6347). The Department is now conducting this review in accordance with section 751 of the Act.

### Scope of the Review

Imports covered by the review are shipments of ASM, a crystallized silicate ($Na_2$ $SiO_3$) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under Harmonized Tariff Schedules (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

### Use of Facts Otherwise Available

The Department preliminarily determines, in accordance with section 776(a) of the Act, that the use of facts available is appropriate for Rhone Poulenc because it did not respond to the antidumping questionnaire. The Department sent Rhone Poulenc a questionnaire on February 28, 1996 with a deadline of April 25, 1996 for providing information necessary to conduct a review of any shipments that the firm may have made to the United States during the period of review. Rhone Poulenc failed to provide the information that has been requested by the administering authority. Therefore, pursuant to section 776(a) of the Act, the Department must base its determination on the facts available. Furthermore, because Rhone Poulenc failed to cooperate by not responding to the questionnaire, it is appropriate to use an inference adverse to the interests of Rhone Poulenc in selecting from the facts available, in accordance with section 776(b) of the Act.

Section 776(b) authorizes the Department to use an inference adverse to the interests of that respondent in choosing the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Because information from prior proceedings constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (see *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996),

where the Department disregarded the highest margin as adverse BIA because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

In this case, the Department has preliminarily determined to assign to Rhone Poulenc a margin of 60 percent, the margin calculated in the original less-than-fair-value (LTFV) investigation using information provided by Rhone Poulenc (see *Anhydrous Sodium Metasilicate from France; Final Determination of Sales at Less Than Fair Value*, 45 FR 77498 (November 24, 1980)). There is no evidence of circumstances indicating that this margin is not appropriate.

Preliminary Results of the Review

As a result of this review, the Department preliminarily determines that a margin of 60 percent exists for Rhone Poulenc for the January 1, 1995 through December 31, 1995 period.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of these administrative reviews for all shipments of ASM from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Rhone Poulenc will the rate established in the final results of this review; (2) for companies not covered in this review, but covered in previous reviews or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original LTFV investigation, the cash deposit rate will be 60 percent, the ''All Others'' rate established in the LTFV investigation (45 FR 77498, November 24, 1980).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This 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 353.22.

Dated: June 11, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–15464 Filed 6–17–96; 8:45 am]

BILLING CODE 3510–DS–P

---

**[A–412–602]**

## Certain Forged Steel Crankshafts From the United Kingdom; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain forged steel crankshafts from the United Kingdom. This review covers one producer/exporter of this merchandise to the United States for the review period September 1, 1993 through August 31, 1994.

We have preliminarily determined that sales have been made below the foreign market value (FMV).

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** June 18, 1996.

**FOR FURTHER INFORMATION CONTACT:** J. David Dirstine or Lyn Johnson, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On September 2, 1994, the Department published in the Federal Register a notice of ''Opportunity to Request Administrative Review'' (59 FR 45664) of the antidumping duty order on certain forged steel crankshafts from the United Kingdom. We received a request from UES Ltd.-Forgings Division (UEF) to review its sales to the United States. On October 13, 1994, in accordance with 19 CFR 353.22(c) (1994), we initiated an administrative review of this order for UES Ltd.-Forgings Division covering the period September 1, 1993 through August 31, 1994 (59 FR 51939).

The Department has now conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are certain forged steel crankshafts. The term ''crankshafts,'' as used in this review, includes forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. These products are currently classifiable under item numbers 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule (HTS). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this review. The HTS item numbers are

provided for convenience and Customs purposes. The written description remains dispositive.

Such or Similar Merchandise

In determining similar merchandise comparisons pursuant to section 771(18) of the Act, we considered the following physical characteristics, which appear in order of importance: (1) twisted vs. untwisted; (2) number of throws; (3) forging method; (4) engine type; (5) number of bearings; (6) number of flanges; and (7) number of counterweights. We applied weight separately based on a range of plus or minus 20 percent of the weight of the U.S. model. If there were two or more potential home market matches after applying each of the matching criteria, including the 20-percent weight range, we chose the home market model that was closest in weight to the U.S. model. Our reasons for applying weight as we did are outlined in the *Notice of Final Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts from the United Kingdom*, 60 FR 52150, 52151–152 (October 5, 1995).

United States Price

In calculating U.S. price (USP), we used purchase price as defined in section 772 of the Tariff Act, because all sales to the first unrelated purchaser took place prior to importation into the U.S. We calculated purchase price based on the packed, c.i.f. price to the first unrelated purchaser in the United States.

We made deductions, where appropriate, for ocean freight (which includes foreign inland freight), U.S. duties, marine insurance and U.S. brokerage and handling expenses in accordance with section 772(d)(2) of the Act.

Foreign Market Value

Section 733(a)(1)(A) of the Tariff Act requires the Department to compare sales in the United States with home market sales of such or similar merchandise made in the ordinary course of trade if the home market is viable. Pursuant to section 773(a)(1)(B) of the Act, we determined that the home market is viable, and it is therefore an appropriate basis for calculating FMV.

Where we used home market sales for comparisons, we calculated FMV based on packed, ex-factory or delivered prices to customers in the United Kingdom. We made deductions, where appropriate, for rebates. We also adjusted for home market movement charges.

Because all price-to-price comparisons involved purchase price sales, we also made circumstance-of-sale (COS) adjustments, where appropriate, for differences in credit expenses, warranty expenses, customer-requested tooling expenses, and post-sale warehousing expenses in accordance with 19 CFR 353.56(a). UEF did not claim home market packing expenses since subject merchandise is loaded into bins as part of the production process with no packing material expenses incurred. In accordance with section 773(a)(1) of the Act, we then added U.S. packing costs to all home market prices.

For certain U.S. products, we found no home market product comparisons after applying the model-matching methodology, the 90/60-day contemporaneity test, and the difference-in-merchandise test. For these products, we based FMV on constructed value (CV) in accordance with section 773(e) of the Tariff Act. We calculated CV based on the sum of the respondent's submitted cost of materials, fabrication, selling, general and administrative (SG&A) expenses, U.S. packing and profit. In accordance with sections 773(e)(1)(B) (i) and (ii) of the Act, we included the actual general expenses calculated which exceeded the statutory minimum (ten percent of the cost of manufacturing (COM)). We used the statutory minimum profit, eight percent of the sum of COM and general expenses, because the actual profit amount was less than the statutory minimum.

We made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. These adjustments were made for differences in credit expenses, warranties, and warehousing.

On February 10, 1995, the petitioner, the Krupp Gerlach Company (KGC) submitted an allegation that UES Ltd.-Forgings Division (UEF) sold unmachined subject merchandise in its home market at less than its cost of production (COP) during the period of review. After analyzing the allegation, the Department determined, on January 18, 1996 (see memo to file), that reasonable grounds did not exist to believe or suspect that home market sales were made below COP, as required to initiate a COP investigation under 773(b) of the Act. Therefore, we did not initiate an investigation of sales made below COP for this review period.

Preliminary Results of Review

As a result of our comparison of USP with FMV, we preliminarily determine the following weighted-average margin for the period September 1, 1993 through August 31, 1994:

*Producer/Exporter:* UEF.

*Margin (Percent):* .52.

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties are invited to comment on these preliminary results and may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held 7 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 353.38(e). The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in the case or briefs.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be that established in the final results of this administrative review (except that no deposit will be required if the margin is zero or *de minimis, i.e.,* less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 6.55 percent, the adjusted ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall

remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations (19 CFR 353.22(c)(5)).

Dated: June 10, 1996.

Robert S. LaRussa,

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 96–15460 Filed 6–17–96; 8:45 am]

**BILLING CODE 3510–DS–P**

---

## Minority Business Development Agency

## Notice; Solicitation of Business Development Center Applications for CHICAGO I and CHICAGO II

**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 19, 1996.

**PRE-APPLICATION CONFERENCE:** A pre-application conference will be held. For the exact date, time, and location, contact the Chicago Regional Office at (312) 353–0182.

Proper identification is required for entrance into any Federal building.

**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.

**SUPPLEMENTARY INFORMATION:** The following are MBDCs for which applications are solicited:

1. *MBDC Application:* Chicago I.

*Metropolitan Area Serviced:* Chicago, Illinois.

*Award Number:* 05–10–96001–01.

*For Further Information and an Application Package, Contact:* David Vega, Regional Director, at (312) 353–0182.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 31, 1997, is estimated at $460,834. The total Federal amount is $276,500 and is composed of $269,756 plus the Audit Fee amount of $6,744. The application must include a minimum cost share of 40%, $184,334 in non-federal (cost-sharing) contributions for a total project cost of $460,834.

2. *MBDC Application:* Chicago II.

*Metropolitan Area Serviced:* Chicago, Illinois.

*Award Number:* 05–10–96003–01.

*For Further Information and an Application Package, Contact:* David Vega, Regional Director, at (312) 353–0182.

Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from October 1, 1996 to October 31, 1997, is estimated at $460,834. The total Federal amount is $276,500 and is composed of $269,756 plus the Audit Fee amount of $6,744. The application must include a minimum cost share of 40%, $184,334 in non-federal (cost-sharing) contributions for a total project cost of $460,834.

### Standard Paragraphs

The following information and requirements are applicable to the listed MBDCs: Chicago I and Chicago II.

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 13, 1996.

Donald L. Powers,

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 96–15433 Filed 6–17–96; 8:45 am]

BILLING CODE 3510–21–P

## Business Development Center Applications: Chicago

**AGENCY:** Minority Business Development Agency.

**ACTION:** Cancellation.

**SUMMARY:** The Minority Business Development Agency (MBDA) is cancelling the announcement to solicit competitive applications under its Minority Business Development Center (MBDC) Program to operate the Chicago, Illinois MBDC. This solicitation was originally published in the Federal Register, Wednesday, June 12, 1996, Vol. 61, No. 114, page 29735.

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: June 13, 1996.

Donald L. Powers,

*Federal Register Liaison Officer, Minority Business Development Agency.*

[FR Doc. 96–15434 Filed 6–17–96; 8:45 am]

**BILLING CODE 3510–21–M**

## National Institute of Standards and Technology

## National Fire Codes: Request for Proposals for Revision of Standards

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of request for proposals.

**SUMMARY:** The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards.

The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

**DATES:** Interested persons may submit proposals on or before the dates listed with the standards.

**ADDRESSES:** Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

**FOR FURTHER INFORMATION CONTACT:** Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

**SUPPLEMENTARY INFORMATION:**

### Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

### Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 PM local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of their disposition by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Authority: 15 U.S.C. 272.

Dated: June 10, 1996.

Samuel Kramer,

*Associate Director.*

| NFPA No. | Title | Proposal closing date |
|---|---|---|
| NFPA 10–1994 | Standard for Portable Fire Extinguishers | 7/19/96 |
| NFPA 17–1994 | Standard for Dry Chemical Extinguishing Systems | 7/19/96 |
| NFPA 17A–1994 | Standard for Wet Chemical Extinguishing Systems | 7/19/96 |
| NFPA 25–1995 | Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems | 7/19/96 |
| NFPA 30B–1994 | Code for the Manufacture and Storage of Aerosol Products | 8/1/96 |
| NFPA 33–1995 | Standard for Spray Application Using Flammable and Combustible Materials | 8/1/97 |
| NFPA 34–1995 | Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids | 8/1/97 |
| NFPA 35–1995 | Standard for the Manufacture of Organic Coatings | 12/31/96 |
| NFPA 37–1994 | Standard for the Installation and Use of Stationary Combustion Engines and Gas Turbines | 7/19/96 |
| NFPA 43D–1994 | Code for the Storage of Pesticides | 1/17/97 |
| NFPA 58–1995 | Standard for the Storage and Handling of Liquefied Petroleum Gases | 8/1/96 |
| NFPA 59–1995 | Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants | 8/1/96 |
| NFPA 65–1993 | Standard for the Processing and Finishing of Aluminum | 1/17/97 |
| NFPA 68–1994 | Guide for Venting of Deflagrations | 7/19/96 |
| NFPA 70–1996 | National Electrical Code | 11/8/96 |
| NFPA 70B–1994 | Recommended Practice for Electrical Equipment Maintenance | 1/17/97 |
| NFPA 77–1993 | Recommended Practice on Static Electricity | 8/1/96 |
| NFPA 80–1995 | Standard for Fire Doors and Fire Windows | 1/17/98 |
| NFPA 91–1995 | Standard for Exhaust Systems for Air Conveying of Materials | 7/19/96 |
| NFPA 105–1993 | Recommended Practice for the Installation of Smoke-Control Door Assemblies | 1/17/97 |
| NFPA 160–P * | Standard for the Use of Flame Special Effects before a Proximate Audience | 7/19/96 |
| NFPA 220–1995 | Standard on Types of Building Construction | 1/2/98 |
| NFPA 260–1994 | Standard Methods of Tests and Classification System for Cigarette Ignition Resistance of Components of Upholstered Furniture. | 1/17/97 |
| NFPA 261–1994 | Standard Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smoldering Cigarettes. | 1/17/97 |
| NFPA 262–1994 | Standard Method of Test for Fire and Smoke Characteristics of Wires and Cables | 1/17/97 |
| NFPA 263–1994 | Standard Method of Test for Heat and Visible Smoke Release Rates for Materials and Products | 1/17/97 |

| NFPA No. | Title | Proposal closing date |
|---|---|---|
| NFPA 264–1995 | Standard Method of Test for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter (Will be renumbered NFPA 271). | 1/17/97 |
| NFPA 264A–1994 | Standard Method of Test for Heat Release Rates for Upholstered Furniture Components or Composites and Mattresses Using an Oxygen Consumption Calorimeter (Will be renumbered NFPA 272). | 1/17/97 |
| NFPA 265–1994 | Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of Textile Wall Coverings. | 7/19/96 |
| NFPA 266–1994 | Standard Method of Test for Fire Characteristics of Upholstered Furniture Exposed to Flaming Ignition Source. | 7/19/96 |
| NFPA 267–1994 | Standard Method of Test for Fire Characteristics of Mattresses and Bedding Assemblies Exposed to Flaming Ignition Source. | 7/19/96 |
| NFPA 270–P* | Standard Test Method for Determination of Specific Optical Density of Smoke | 7/19/96 |
| NFPA 273–P* | Standard Method of Test on Determining Degrees of Combustibility of Building Materials | 7/19/96 |
| NFPA 297–1995 | Guide on Principles and Practices for Communications Systems | 1/17/97 |
| NFPA 302–1994 | Fire Protection Standard for Pleasure and Commercial Motor Craft | 1/17/97 |
| NFPA 326–1993 | Standard Procedures for the Safe Entry of Underground Storage Tanks | 1/17/98 |
| NFPA 327–1993 | Standard Procedures for Cleaning or Safeguarding Small Tanks and Containers Without Entry | 1/17/97 |
| NFPA 328–1992 | Recommended Practice for the Control of Flammable and Combustible Liquids and Gases in Manholes, Sewers, and Similar Underground Structures. | 1/17/97 |
| NFPA 329–1992 | Recommended Practice for Handling Underground Releases of Flammable and Combustible Liquids | 1/17/97 |
| NFPA 430–1995 | Code for the Storage of Liquid and Solid Oxidizers | 1/17/97 |
| NFPA 480–1993 | Standard for the Storage, Handling and Processing of Magnesium Solids and Powders | 1/17/97 |
| NFPA 490–1993 | Code for the Storage of Ammonium Nitrate | 1/17/97 |
| NFPA 496–1993 | Standard for Purged and Pressurized Enclosures for Electrical Equipment | 1/17/97 |
| NFPA 512–1994 | Standard for Truck Fire Protection | 1/17/97 |
| NFPA 513–1994 | Standard for Motor Freight Terminals | 1/17/97 |
| NFPA 651–1993 | Standard for the Manufacture of Aluminum Powder | 1/17/97 |
| NFPA 655–1993 | Standard for Prevention of Sulfur Fires and Explosions | 1/17/97 |
| NFPA 664–1993 | Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities | 1/17/97 |
| NFPA 720–P* | Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment | 7/19/96 |
| NFPA 721–P* | Recommended Practice for the Installation of Fuel Gas Warning Equipment | 7/19/96 |
| NFPA 801–1995 | Standard for Facilities Handling Radioactive Materials | 7/19/96 |
| NFPA 802–1993 | Recommended Practice for Fire Protection for Nuclear Research and Production Reactors | 7/19/96 |
| NFPA 803–1993 | Standard for Fire Protection for Light Water Nuclear Power Plants | 7/19/96 |
| NFPA 921–1995 | Guide for Fire and Explosion Investigations | 7/19/96 |
| NFPA 1002–1993 | Standard for Fire Department Vehicle Driver/Operator Professional Qualifications | 1/17/97 |
| NFPA 1031–1993 | Standard for Professional Qualifications for Fire Inspector | 1/17/97 |
| NFPA 1033–1993 | Standard for Professional Qualifications for Fire Investigator | 1/17/97 |
| NFPA 1035–1993 | Standard for Professional Qualifications for Public Fire and Life Safety Educator | 1/17/97 |
| NFPA 1124–1995 | Code for the Manufacture, Transportation, and Storage of Fireworks | 1/17/97 |
| NFPA 1201–1994 | Standard for Developing Fire Protection Services for the Public (Will be renumbered NFPA 1200) | 7/19/96 |
| NFPA 1221–1994 | Standard for the Installation, Maintenance, and Use of Public Fire Service Communication Systems | 1/17/97 |
| NFPA 1420–1993 | Recommended Practice for Pre-Incident Planning for Warehouse Ouccupancies | 1/17/97 |
| NFPA 1452–1993 | Guide for Training Fire Service Personnel to Make Dwelling Fire Safety Surveys | 7/19/96 |
| NFPA 1583–P* | Recommended Practice for Fire Fighter Physical Performance Assessment | 12/2/96 |
| NFPA 1921–1993 | Standard for Fire Department Portable Pumping Units | 10/1/96 |
| NFPA 1936–P* | Standard on Hydraulic Rescue Tools | 10/1/96 |
| NFPA 1941–P* | Standard on Marine Fire Fighting Vessels | 10/1/96 |
| NFPA 1962–1993 | Standard for the Care, Use and Service Testing of Fire Hose, Including Couplings and Nozzles | 8/1/96 |
| NFPA 1964–1993 | Standard for Spray Nozzles (Shutoff and Tip) | 8/1/96 |
| NFPA 1976–1992 | Standard on Protective Clothing for Proximity Fire Fighting | 10/1/96 |
| NFPA 1977–1993 | Standard on Protective Clothing and Equipment for Wildland Fire Fighting | 8/30/96 |
| NFPA 1982–1993 | Standard on Personal Alert Safety Systems (PASS) for Fire Fighters | 7/5/96 |
| NFPA 8505–1992 | Recommended Practice for Stoker Operation | 7/19/96 |
| NFPA 8506–1995 | Standard on Heat Recovery Steam Generators | 1/17/97 |

*Proposed NEW drafts are available from the NFPA Standards Administration Department, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 96–15386 Filed 6–17–96; 8:45 am]

BILLING CODE 3510–13–M

## National Fire Codes: Request for Comment on NFPA Technical Committee Reports

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of request for comments.

**SUMMARY:** The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees. The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1997 Annual Meeting.

The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

**DATES:** Thirty-six reports are published in the 1997 Annual Meeting Report on Proposals and will be available on August 2, 1996. Comments received on or before October 11, 1996 will be

considered by the respective NFPA Committees before final action is taken on the proposals.

**ADDRESSES:** The 1997 Annual Meeting Report on Proposals is available from NFPA, Publications Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Comments on the technical reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

**FOR FURTHER INFORMATION CONTACT:** Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

**SUPPLEMENTARY INFORMATION:**

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Report on Proposals.

Request for Comments

Interested persons may participate in revision of these technical reports by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. 9101, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Report on Proposals. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before October 11, 1996 for the 1997 Annual Meeting Report on Proposals, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the 1997 Annual Meeting Report on Comments by March 28, 1997, prior to the Annual Meeting.

A copy of the Report on Comments will be sent automatically to each commenter. Action on the reports of the Technical Committees (adoption or rejection) will be taken at the Annual Meeting, May 19–22, in Los Angeles, California, by NFPA members.

Authority: 15 U.S.C. 272.

Dated: June 10, 1996.

Samuel Kramer,

*Associate Director.*

1997 ANNUAL MEETING—REPORT ON PROPOSALS

[P=Partial revision; W=Withdrawal; R=Reconfirmation N=New; C=Complete revision]

| Doc. No. | Title | Action |
|---|---|---|
| NFPA 11–1994 | Standard for Low-Expansion Foam | P |
| NFPA 12A–1992 | Standard on Halon 1301 Fire Extinguishing Systems | P |
| NFPA 40–1994 | Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film | P |
| NFPA 40E–1993 | Code for the Storage of Pyroxylin Plastic (Will be renumbered NFPA 42) | P |
| NFPA 43B–1993 | Code for the Storage of Organic Peroxide Formulations | P |
| NFPA 79–1994 | Electrical Standard for Industrial Machinery | P |
| NFPA 88B–1991 | Standard for Repair Garages | P |
| NFPA 130–1995 | Standard for Fixed Guideway Transit Systems | P |
| NFPA 204M–1991 | Guide for Smoke and Heat Venting (Will be renumbered NFPA 204) | C |
| NFPA 221–1994 | Standard for Fire Walls and Fire Barrier Walls | P |
| NFPA 299–1991 | Standard for Protection of Life and Property from Wildfire | C |
| NFPA 306–1993 | Standard for the Control of Gas Hazards on Vessels | P |
| NFPA 491M–1991 | Manual of Hazardous Chemical Reactions (Will be renumbered NFPA 491) | P |
| NFPA 497A–1992 | Recommended Practice for Classification of Class I Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas (Will be renumbered NFPA 497). | C |
| NFPA 497B–1991 | Recommended Practice for the Classification of Class II Hazardous (Classified) Locations for Electrical Installations in Chemical Process Areas (Combine & Redesignate NFPA 497B, and Class II material of NFPA 497M into NFPA 499). | W |
| NFPA 497M–1991 | Manual for Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified) Locations (Combine & Redesignate NFPA 497B, and Class II material of NFPA 497M into NFPA 499). | W |
| NFPA 501–P* | Manufactured Housing Standard | N |
| NFPA 501A–1992 | Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities | R |
| NFPA 654–1994 | Standard for the Prevention of Fire and Dust Explosions in the Chemical, Dye, Pharmaceutical, and Plastics Industries. | C |
| NFPA 705–1993 | Recommended Practice for a Field Flame Test for Textiles and Films | P |
| NFPA 780–1995 | Standard for the Installation of Lightning Protection Systems | P |
| NFPA 910–1991 | Recommended Practice for the Protection of Libraries and Library Collections (Combine & Redesignate NFPA 901, NFPA 911, and NFPA 912 into NFPA 909. | W |
| NFPA 911–1991 | Recommended Practice for the Protection of Museums and Museum Collections (Combine & Redesignate NFPA 901, NFPA 911, and NFPA 912 into NFPA 909). | W |
| NFPA 912–1993 | Recommended Practice for Fire Protection in Places of Worship (Combine & Redesignate NFPA 901, NFPA 911, and NFPA 912 into NFPA 909). | W |
| NFPA 1001–1992 | Standard for Fire Fighter Professional Qualifications | P |
| NFPA 1021–1992 | Standard for Fire Officer Professional Qualifications | C |
| NFPA 1122–1994 | Code for Model Rocketry | P |
| NFPA 1500–1992 | Standard on Fire Department Occupational Safety and Health Program | C |
| NFPA 1521–1992 | Standard for Fire Department Safety Officer | C |
| NFPA 1582–1992 | Standard on Medical Requirements for Fire Fighters | C |
| NFPA 1911–1991 | Standard for Service Tests of Pumps on Fire Department Appartus | C |
| NFPA 1914–1991 | Standard for Testing Fire Department Aerial Device | P |

1997 ANNUAL MEETING—REPORT ON PROPOSALS—Continued

[P=Partial revision; W=Withdrawal; R=Reconfirmation N=New; C=Complete revision]

| Doc. No. | Title | Action |
|---|---|---|
| NFPA 1981–1992 | Standard on Open-Circuit Self-Contained Breathing Appartus for Fire Fighters | C |
| NFPA 1999–1992 | Standard on Protective Clothing For Emergency Medical Operations | C |
| NFPA 8501–1992 | Standard for Single Burner Boiler Operation | P |
| NFPA 8503–1992 | Standard for Pulverized Fuel Systems | P |

[FR Doc. 96–15391 Filed 6–17–96; 8:45 am]

BILLING CODE 3510–13–M

## COMMODITY FUTURES TRADING COMMISSION

### Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in Futures and Futures Options on Oriented Strand Board

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

**SUMMARY:** The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in futures and futures options on Oriented Strand Board. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** Comments must be received on or before July 18, 1996.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Reference should be made to the CME Oriented Strand Board futures and option applications.

**FOR FURTHER INFORMATION CONTACT:** Please contact John Forkkio of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, Washington, DC, 20581, telephone 202–418–5281.

**SUPPLEMENTARY INFORMATION:** Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street Washington, D.C. 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5097.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on June 12, 1996.

Blake Imel,

*Acting Director.*

[FR Doc. 96–15459 Filed 6–17–96; 8:45 am]

BILLING CODE 6351–01–P

### Interactive Symposium on Internal Controls and Risk Management Practices

This is to give notice that the Acting Chairman of the Commodity Futures Trading Commission will conduct a public meeting on Monday, June 24, 1996 from 9:00 a.m. to 6:00 p.m. in the first floor hearing room of the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC. 20581.

The purpose of the meeting is to discuss current risk management strategies and the usefulness of existing resources with a diverse group of industry experts, market users, regulators and academics, toward the goal of identifying areas where consumer and financial professional awareness of available techniques can be enhanced by educational outreach efforts of regulators and the private sector.

The agenda is as follows:

Interactive Symposium

What Users, Brokers and Dealers in Financial Instruments Should Know About Risk Management Practices and Internal Controls and the Role of Regulators and Self-Regulators in Assuring Maintenance of Adequate Risk Management Practices and Internal Controls

I. Dialogue—Risk Management and Internal Controls Concerns From the Perspective of an FCM/Dealer and a Counterparty

II. Counterpoint: Evaluating Risk Management and Internal Control Systems—What Do Users Need From Audit Reports

III. End-Users' Perspectives on Risk Management and Internal Controls: The Points of View of the Board of Directors and Management

IV. Free for All: What Can and Should Regulatory and Self-Regulatory Authorities be Doing With Respect to Risk Management Strategies and Internal Controls: [Chairs from prior panels, invited representatives from certain SROs and regulators and other interested parties]

The meeting is open to the public. However , there is limited seating available. For further information, please contact Mr. Jordan C. Klear, Division of Trading and Markets, at (202) 418–5485, if you wish to attend. The Acting Chairman of the Commodity Futures Trading Commission, John E. Tull, Jr., is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business.

Issued in Washington, D.C. on June 13, 1996.

Alan L. Seifert,

*Deputy Director, Division of Trading & Markets.*

[FR Doc. 96–15458 Filed 6–17–96; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Chemical Agent Demilitarization Facility; Construction and Operation; Umatilla Depot Activity, OR

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of Availability.

**SUMMARY:** This announces the Notice of Availability of the Final Environmental Impact Statement (FEIS) on the construction and operation of the proposed chemical agent demilitarization facility at the Umatilla Depot Activity, Oregon. The proposed facility will be used to demilitarize all stockpiled chemical agents and munitions currently stored at the Umatilla Depot Activity. The FEIS examines the potential impacts of on-site incineration, alternative sites within Umatilla Depot Activity and the ''no action'' alternative. The ''no action'' alternative is considered to be a deferral of demilitarization with continued storage of agents and munitions at the Umatilla Depot Activity.

**SUPPLEMENTARY INFORMATION:** In its Record of Decision (53 FR 5816, February 26, 1988) for the Final Programmatic Environmental Impact Statement on the Chemical Stockpile Disposal Program (CSDP), the Department of the Army selected on-site disposal by incineration at all eight chemical munition storage sites within the continental United States as the method by which it will destroy its lethal chemical stockpile. On February 6, 1989, the Department of the Army published a Notice of Intent (54 FR 5646) which announced that, pursuant to the National Environmental Policy Act and implementing regulations, it would prepare a draft site-specific EIS for the Umatilla chemical munitions disposal facility. In 1991, the Department of the Army prepared a Draft EIS to assess the site-specific health and environmental impacts of on-site incineration of chemical agents and munitions stored at the Umatilla Depot Activity. In late 1991, preparation of draft and final EIS's was halted pending the outcome of a National Research Council (NRC) study of alternative technologies for the destruction of chemical agents and munitions and the Army's review of that study. The alternative technology studies by both the NRC and the Army have been completed and preparation of EIS's has been restarted. A Notice of Availability was published on January 26, 1996 (61 FR 2508) which provided notice that the revised Draft EIS was available for public comment. Comments from the revised DEIS have been considered and responses are included in this Final EIS. After a 30-day waiting period, the Army will publish a Record of Decision. Copies of the Final EIS may be obtained by writing to the following address: Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–ME, Aberdeen Proving Ground, Maryland 21010–5401.

**ADDITIONAL INFORMATION:** The Environmental Protection Agency will also publish a Notice of Availability for the Final EIS in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Above address, or Ms. Suzanne Fournier at (410) 671–1093.

Raymond J. Fatz,

*Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).*

[FR Doc. 96–15453 Filed 6–17–96; 8:45 am]

BILLING CODE 3710–08–M

### Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Projects and Activities Associated With Future Programs at Yuma Proving Ground

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** In accordance with Public Law 91–190, the National Environmental Policy Act of 1969, the Draft Environmental Impact Statement (DEIS) being prepared to evaluate environmental implications of future decisions regarding operation of Yuma Proving Ground. The DEIS will focus on impacts of planned future activities at Yuma Proving Ground, development alternatives for the installation Master Plan, development potential of the installation in terms of environmental carrying capacity, and specific concerns regarding risk. Issues to be considered in the proposed action include acceptance of those new programs projected for the installation, modernization or removal of outdated facilities, and improvements to infrastructure, utilities and service necessary to accommodate the new missions and changes in existing test and evaluation missions. All missions on the installation will be considered. The Army will conduct a scoping workshop (exact date, time, and location to be determined) prior to preparing the Environmental Impact Statement. The first step will be to determine the appropriate scope of issues, activities and alternatives to be addressed. Among the anticipated areas to be evaluated are public health risks and public safety, noise, shock and vibration, water quality, air quality, hazardous material management and disposal, biological resources including threatened and endangered species, social and economic effects, and historical and archaeological resources. Agencies having regulatory interest and special expertise will be asked to participate in the scoping process.

**DATES:** Written public comments and suggestions can be submitted by no later than July 18, 1996.

**ADDRESSES:** Commander, U.S. Army Yuma Proving Ground, ATTN: STEYP–ES–C (Junior D. Kerns), Yuma, Arizona 85365–9107.

**FOR FURTHER INFORMATION CONTACT:** Mr. Junior D. Kerns, (520) 328–2148.

Raymond J. Fatz,

*Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).*

[FR Doc. 96–15371 Filed 6–17–96; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF ENERGY

### Notice of Wetlands Involvement for Effluent Reduction at Los Alamos National Laboratory

**AGENCY:** Los Alamos Area Office, DOE.

**ACTION:** Notice of wetlands involvement.

**SUMMARY:** DOE is proposing to reduce or eliminate the discharge of industrial and sanitary wastewater from 29 outfalls at Los Alamos National Laboratory (LANL), Los Alamos County, New Mexico. These measures are necessary to comply with federal and state water quality standards and directives issued by the Environmental Protection Agency (EPA). The measures would consist of both rerouting and connecting wastewater discharges to an existing treatment facility and installing recirculation systems. Remaining discharges would be primarily from stormwater runoff. The objective of the proposed action is to insure that wastewater discharges are environmentally safe. The elimination of wastewater would reduce or terminate flows to approximately 25 wetlands that have likely been created

as a consequence of these long-term discharges.

**DATES:** Comments must be submitted on or before July 3, 1996.

**ADDRESSES:** Comments should be addressed to: Elizabeth Withers, NEPA Compliance Officer, Office of Environment and Projects, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544, (505) 667–8690.

**FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT:** Ken Zamora, Project Manager, Office of Environment and Projects, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544, (505) 665–5047.

**FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT:** Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:**

1. Project Description

DOE proposes to implement measures to reduce or eliminate the discharge of industrial and sanitary wastewater from 29 outfalls at various facilities at LANL, Los Alamos County, New Mexico. These measures are being taken as an integral part of an overall program of corrective action to insure that wastewater discharges are environmentally safe. Action is needed to comply with federal and state water quality standards and directives issued by EPA. Corrective measures would consist of both rerouting and connecting discharges to the existing sanitary wastewater treatment system and installing recirculation systems at the source of the wastewater. Only one of the corrective actions would involve construction work outside of a building. This action would consist of the excavation of a 82-foot-long trench in a non-wetland area. No construction would occur within a wetland. Remaining discharges would come primarily from stormwater runoff.

2. Wetlands

The long-term discharge of wastewater has likely contributed to the development of small wetlands at several facilities. These wetlands have developed below outfalls and at various downstream locations in the receiving stream channel. Other facilities discharging wastewater have outfalls that are not thought to be associated with wetlands, and others have had outfalls associated with wetlands but no longer discharge wastewater to support them because of program changes. Currently, 33 wetlands supported by wastewater discharges remain at various locations at LANL. A small number of naturally occurring wetlands are also present. These wastewater and natural wetlands provide habitat for a diversity of wildlife on both a local and area-wide scale.

Reduction or cessation of wastewater flows at 29 outfalls would likely result in the gradual reversion of wetland plant communities at 25 wetlands to plant communities adapted to drier conditions, with a resulting change in animal use. Some wetland communities could persist. Wetlands associated with the wastewater treatment facility receiving rerouted wastewater may experience a modest increase in size.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR 1022), DOE will prepare a wetlands assessment for this proposed action. The wetlands assessment will be included as an integral part of the EA that will be prepared for this proposal in complying with NEPA.

Issued in Albuquerque, New Mexico on June 4, 1996.

Elizabeth Withers,

*NEPA Compliance Officer, Los Alamos Area Office, Department of Energy.*

[FR Doc. 96–15438 Filed 6–17–96; 8:45 am]

**BILLING CODE 6450–01–P**

---

## Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**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), Oak Ridge Reservation.

**DATES:** Wednesday, July 10, 1996: 6 pm–9 pm.

**ADDRESSES:** Oak Ridge Inn (formerly Holiday Inn), 420 South Illinois Avenue, Oak Ridge, TN.

**FOR FURTHER INFORMATION CONTACT:** Sandy Perkins, Site-Specific Advisory Board Coordinator, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–1590.

**SUPPLEMENTARY INFORMATION:** Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

*July Meeting Topics*

This meeting will involve a panel discussion among representatives from the U.S. Environmental Protection Agency, Tennessee Department of Environment and Conservation, and the U.S. Department of Energy on the implications of the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, and its implementation in the Environmental Management Program at the Oak Ridge Reservation.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Sandy Perkins at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5 pm on Monday, Wednesday, and Friday; 8:30 am and 7 pm on Tuesday and Thursday; and 9 am and 1 pm on Saturday, or by writing to Sandy Perkins, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–1590.

Issued at Washington, DC on June 12, 1996.

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 96–15443 Filed 6–17–96; 8:45 am]

**BILLING CODE 6450–01–P**

## Office of Energy Research

### Fusion Energy Sciences Advisory Committee; Open Meeting

**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 given of a meeting of the Fusion Energy Sciences Advisory Committee.

**DATES:** Tuesday, July 16, 1996, 9:00 a.m. to 5:00 p.m.; Wednesday, July 17, 1996, 9:00 a.m. to 5:00 p.m.; and Thursday, July 18, 1996, 9:00 a.m. to 12:30 p.m.

**ADDRESSES:** Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

**FOR FURTHER INFORMATION CONTACT:** Albert L. Opdenaker, III, Executive Assistant Office of Fusion Energy Sciences, GTN, U.S. Department of Energy, Washington, DC 20585, Telephone: 301–903–4941.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* The Committee will discuss alternative fusion concepts and inertial fusion energy and will present the Committee report on major fusion facilities.

*Tentative Agenda:*

*Tuesday-Thursday, July 16–18, 1996:*

—DOE Perspective on the Future of the Fusion Program
—Highlights of Scientific Issues Subcommittee:
Finding and Recommendations on Major Facilities
—Scientific Issues Subcommittee Discussion of:
Alternatives
Inertial Fusion Energy
—Discussions of Possible New Charges
—Public Comments (10 minute rule)

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Albert Opdenaker at the address or telephone number listed above. Requests to make oral statements must be received 5 days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, I–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 12, 1996.

Rachel M. Samuel,

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 96–15442 Filed 6–17–96; 8:45 am]

BILLING CODE 6450–01–P

### Notice of Presolicitation Conference for Acquisition of Transportation Services

**AGENCY:** Office of Civilian Radioactive Waste Management, Department of Energy.

**ACTION:** Notice of Presolicitation Conference.

**SUMMARY:** The Office of Civilian Radioactive Waste Management (OCRWM) issued a request for Expression of Interest (EOI) and Comments in the May 24, 1996 Commerce Business Daily (CBD) (PSA–1602, page 48) and in the May 28, 1996 Federal Register (FR) (Vol. 61103 page 26508) regarding its planned acquisition of services for transportation of spent nuclear fuel and other associated activities. These notices provided general information related to the scope of services sought by OCRWM, contract type, contract term, schedule, and requested comments on six issues. OCRWM now desires to hold a presolicitation conference as a follow-on to the EOI Notice where input on technical and contractual issues can be obtained. The presolicitation conference is a preliminary step in the acquisition process that may or may not result in an actual Request for Proposal (RFP) at a later date.

**DATE AND LOCATION:** The presolicitation conference will be held on Tuesday, July 9, 1996, from 9:00 a.m. to 4:00 p.m. in the main auditorium of the Forrestal Building, Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Individuals are requested to preregister by contacting Corinne Macaluso, Environmental and Operational Activities Division, at (202) 586–2837 or by fax at (202)586–1047. Attendance at the presolicitation conference will be limited to four individuals per firm. Individuals can also register the day of the conference, in which case registration and badging will begin at 8:00 a.m.

**SUPPLEMENTAL INFORMATION:** Information contained in the May 1996 CBD and FR announcements can be obtained through the OCRWM Home Page located on the World Wide Web. The address for the OCRWM Home Page is HTTP://www.rw.doe.gov/. For individuals without access to the World Wide Web, the information can be obtained by faxing a request to Michelle Miskinis, Contracting Officer, U.S. Department of Energy, at (202) 634–4419.

The documents currently planned for distribution prior to the presolicitation conference are the draft Statement of Work and draft Waste Acceptance, Transportation and Storage Concept of Operations. It is anticipated that these documents will be available in electronic format, via the OCRWM Home Page, and hardcopy, by June 18, 1996. As previously noted, individuals without World Wide Web access can request a copy by submitting a fax to Michelle Miskinis. It is requested that participants review these documents prior to attending the conference. Copies will also be available in the auditorium on the day of the conference.

Technical and contracting Personnel will also be available at the presolicitation conference to present requirements, receive industry input and answer clarifying questions. The tentative agenda for the conference is included at the end of this notice. In order to allow appropriate time in the agenda for participant comments on issue, please mail or fax your comments on the draft Statement of Work to Michelle Miskinis, by July 3, 1996. Written comments, as well as verbal comments, will also be accepted on the day of the conference. Additional written comments will be accepted no later than fourteen days after the conference date.

Tentative Agenda

Registration, Welcome and Introduction, Overview of Market Driven Approach, Mission Functional Groups, Functional Responsibilities, Functional Interfaces, Contract Structure, Summary of Draft Statement of Work, Performance-Based Equipment Requirements, Institutional Interfaces, Contract Business Arrangements, General Comments from industry.

*Point of Contact*

For additional information concerning this notice, contact Ms. Michelle Miskinis, Contacting Officer, (DOE/HR 561.21), at (202) 634–4413, or Ms. Beth Tomasoni, Contracting Officer, (DOE/HR 561.21), at (202) 634–4408, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585. Fax (202) 634–4419.

This notice should not be construed (1) as a commitment by the Department

to enter into any agreement with any entity submitting comments in response to this Notice, (2) as a commitment to issue any RFP concerning the subject of this Notice, or (3) as a request for proposals.

Issued in Washington, DC June 11, 1996.

Arnold A. Gjerstad,

*Acting for Acting Associate Deputy Assistant Secretary for Headquarters Procurement Operations.*

[FR Doc. 96–15441 Filed 6–17–96; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket No. RP96–273–000]**

### Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1996.

Take notice that on June 7, 1996, Colorado Interstate Gas Company (CIG) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 237, with a requested effective date of August 1, 1996.

CIG states that the purpose of the filing is to revise Section 1.52 of the General Terms and Conditions of the Tariff. The proposed revision is based solely on an index change in the Inside FERC Gas Market Report publication.

CIG states that copies of the filing have been served on CIG's Jurisdictional Customers and appropriate State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, DC 20426, in accordance with the Section 385.214 or 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary*

[FR Doc. 96–15355 Filed 6–17–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. PR96–10–000]**

### Dow Intrastate Gas Company; Notice of Petition for Rate Approval

June 12, 1996.

Take notice that on May 31, 1996, Dow Intrastate Gas Company (DIGCO) filed, pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.0913 per MMBtu, plus 0.3% in-kind fuel reimbursement, for interruptible transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). DIGCO's mailing address is 21145 Highway 1, Plaquemine, LA 70764.

DIGCO's petition states it is an intrastate pipeline within the meaning of section 2(16) of the NGPA. DIGCO provides interruptible transportation service pursuant to Section 311(a)(2) of the NGPA through its facilities located in Calcasieu, Jefferson Davis, Cameron, Vermilion, Lafayette, St. Martin, Iberville, and West Baton Rouge Parishes, Louisiana. This petition is intended to establish a new system-wide maximum transportation rate for section 311(a)(2) service, and is filed pursuant to the terms of the Stipulation and Agreement of Settlement approved January 19, 1994, in Docket No. PR93–12–000, which required DIGCO to file an application on or before June 1, 1996, to justify its current rate or to establish a new system-wide rate. DIGCO proposes an effective date of June 1, 1996.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All motions must be filed with the Secretary of the Commission on or before June 27, 1996. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–15356 Filed 6–17–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP94–120–015]**

### Koch Gateway Pipeline Company; Notice of Compliance Filing

June 12, 1996.

Take notice that on June 7, 1996, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective June 1, 1996:

Substitute Second Revised Sheet No. 4000

Koch states that the purpose of this filing is to comply with the Commission's electronic filing requirements and revise a previously filed sheet to reflect compliance with Order No. 582.

Koch states that copies of the filing will be served upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with 18 CFR 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. 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. 96–15357 Filed 6–17–96; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP96–272–000]**

### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 12, 1996.

Take notice that on June 7, 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 sheets proposed to be effective July 7, 1996:

First Revised Sheet No. 108
Second Revised Sheet No. 123
First Revised Sheet No. 131
Third Revised Sheet No. 139
Third Revised Sheet No. 140
Second Revised Sheet No. 146
Third Revised Sheet No. 147
Second Revised Sheet No. 252
First Revised Sheet No. 261
Third Revised Sheet No. 287
First Revised Sheet No. 299

Northern states that the above sheets are being filed to give Northern the ability to negotiate rates as contemplated by the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking Methodologies, issued January 31, 1996.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such petitions or 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. 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 inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–15358 Filed 6–17–96, 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket No. MG88–47–009]**

## Texas Gas Transmission Corporation; Notice of Filing

June 12, 1996.

Take notice that on June 5, 1996, Texas Gas Transmission Corporation (Texas Gas) submitted revised standards of conduct under Order Nos. 497 *et al.*[1] and Order Nos. 566 *et seq.*[2]

Texas Gas states that the revisions reflect changes to its list of marketing affiliates and revisions concerning its shared facilities. Texas Gas states that copies of this filing have been mailed to all parties on the service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before June 27, 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. 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. 96–15359 Filed 6–17–96; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket Nos. GT96–48–001 and GT96–63–001]**

## Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

June 12, 1996.

Take notice that on June 4, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Commission an amendment of a refund report in accordance with Section 3 of Transco's Rate Schedule GSS.

Transco states that on May 13, 1996, it refunded $290,545.53 to its LSS and GSS customers. The refund was due Transco's customers from a CNG Transmission Corporation refund in Docket Nos. RP94–96 and RP94–213 (consolidated) for the period July 1, 1994 through December 31, 1995. On May 29, 1996, Transco states that it paid interest of $2,609.87 on the GSS portion of this refund. Therefore, the amended refund paid on May 29, 1996, is $293,155.40.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed on or before June 18, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the 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. 96–15360 Filed 6–17–96; 8:45 am]

BILLING CODE 6717–01–M

---

**[Docket Nos. CP94–29–000, and CP94–29–001, CP94–29–002]**

## Paiute Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Paiute Expansion II Project

June 12, 1996.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Paiute Pipeline Company (Paiute) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the Paiute Expansion II Project facilities including:

- Construction of 19.6 miles of new pipeline;
- Relocation of the South Tahoe Pressure Limiting Station;
- Installation of pressure-regulating equipment at the California Check Meter; and
- Modification of the Wadsworth Junction Pressure Limiting Station.

The purpose of the proposed facilities would be to provide Southwest Gas Corporation (Southwest), a local distribution company operating in Nevada and California, with additional gas to expand service on the north shore of Lake Tahoe in California and provide new natural gas service to the Truckee, California, area.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2–A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

---

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. Preambles ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993), Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

A limited number of copies of the EA are available from: Ms. Lauren O'Donnell, Environmental Project Manager, Environmental Review and Compliance Branch I, Office of Pipeline Regulation, PR–11.1, 888 First Street, N.E., Washington, DC 20426, (202) 208–0325.

Any person wishing to comment on the EA may do so. Written comments must reference Docket Nos. CP94–29–000, −001, and −002 and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Comments should be filed as soon as possible, but must be received no later than July 12, 1996, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Lauren O' Donnell, Environmental Project Manager, PR–11.1 at the above address.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about this project is available from Ms. Lauren O'Donnell.

Lois D. Cashell,

*Secretary.*

[FR Doc. 96–15354 Filed 6–17–96; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5522–4]**

## Agency Information Collection Activities Under OMB Review

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before July 18, 1996.

**FOR FURTHER INFORMATION OR A COPY CALL:** Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0998.05.

**SUPPLEMENTARY INFORMATION:**

*Title:* NSPS for Synthetic Organic Chemical Manufacturing Industry (SOCMI), Air Oxidation Unit Processes and Distillation Operations (Subparts III and NNN) OMB Control No. 2060–0197; EPA ICR No. 998.05. This is a request for an extension of a currently approved collection.

*Abstract:* This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60.610, Subpart III, Standards of Performance for VOC Emissions from SOCMI Air Oxidation Unit Processes and 40 CFR Part 60.660, Subpart NNN, Standards of Performance for VOC from SOCMI Distillation Operations. This information is used by the Agency to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the sources' ability to meet the requirements of the standard and to note the operation conditions under which compliance was achieved.

In the Administrator's judgment, VOC emissions from SOCMI air oxidation unit processes and distillation operations cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on 03/26/96 (FR 13183).

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 62 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Owners and operators of air oxidation processes or distillation operations.

*Estimated No. of Respondents:* 1491.

*Estimated Total Annual Burden on Respondents:* 185,853 hours.

*Frequency of Collection:* Semiannual.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0998.05 and OMB Control No. 2060–0197 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street SW., Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: June 12, 1996.

Joseph Retzer,

*Director, Regulatory Information Division.*

[FR Doc. 96–15446 Filed 6–17–96; 8:45 am]

**BILLING CODE 6560–50–M**

---

**[FRL–5520–9]**

## Determination Pursuant to the Clean Water Act; Lower St. Croix River in Minnesota and Wisconsin

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

**ACTION:** Notice of determination.

**SUMMARY:** Today's notice announces that, by letter dated April 5, 1995, the United States Environmental Protection Agency (U.S. EPA) determined that there is a reasonable availability of adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels on the Lower St. Croix River in the States of Minnesota and Wisconsin.

**DATES:** Pursuant to 40 CFR 23.2, USEPA's April 5, 1996, determination was considered issued for purposes of judicial review at 1:00 p.m. Eastern time on April 19, 1996.

**FOR FURTHER INFORMATION CONTACT:** Irvin J. Dzikowski (WN–16J), Water Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6100.

**SUPPLEMENTARY INFORMATION:** On January 26, 1996, the States of Minnesota and Wisconsin jointly submitted an ''Application for Designation of a No Discharge Area on the Lower St. Croix National Scenic Riverway.'' In their application, the States requested that U.S. EPA make a determination, pursuant to Section 312(f)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1322(f)(3), and 40 CFR 140.4(a) that there is a reasonable availability of adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels on the Lower St. Croix River in the States of Minnesota and Wisconsin. On March 28, 1996, the States supplemented their application with a ''Greater Protection and Enhancement Certification.'' U.S. EPA made the requested determination on April 5, 1996. U.S. EPA is publishing this notice to notify the public that, in light of this determination, the States of Minnesota and Wisconsin have authority pursuant to Section 312(f)(3) of the CWA and 40 CFR 140.4(a), to completely prohibit the discharge from all vessels of any sewage, whether treated or not, into the portions of the Lower St. Croix River located in their states.

Dated: June 3, 1996.

David A. Ullrich,

*Acting Regional Administrator.*

[FR Doc. 96–15283 Filed 6–17–96; 8:45 am]

**BILLING CODE 6560–50–P**

---

**[FRL–5522–5]**

## Technical Workshop Report on WTI Incinerator Risk Issues

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of workshop report.

**SUMMARY:** EPA is announcing the availability of the ''Report on the U.S. EPA Technical Workshop on WTI Incinerator Risk Assessment Issues.'' This is a workshop report for the scientific peer review of a draft risk assessment, prepared by EPA Region V, for the Waste Technologies Industries (WTI) hazardous waste incinerator in East Liverpool, Ohio. The report contains the peer review panel's recommendations and premeeting comments addressing various aspects of the draft risk assessment. The peer review was conducted by scientists from outside EPA. The workshop was held in Washington, DC, at the Holiday Inn Georgetown on January 11, 1996.

**ADDRESSES:** Interested parties can obtain a single copy of the workshop report by contacting: The Office of Research and Development (ORD) Publications Office, Technology Transfer Division, National Risk Management Research Laboratory, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569–7562; facsimile (513) 569–7566. Please provide your name and mailing address, and request the document by the title and EPA document number (EPA/630/R–96/001). There will be a limited number of paper copies available from the above source. Requests will be filled on a first-come-first-served basis. After the supply is exhausted, copies of the workshop report can be purchased from the National Technical Information Service (NTIS) by calling (703) 487–4650 or sending a facsimile to (703) 321–8547. The NTIS order number for this document is PB96–177763.

**FOR FURTHER INFORMATION CONTACT:** William Wood, Risk Assessment Forum (8103), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC, 20460, Telephone (202) 260–6743.

**SUPPLEMENTARY INFORMATION:** Previously, several preliminary risk assessments were conducted by EPA's Region V, working with the Office of Solid Waste and Emergency Response and the Office of Research and Development, concerning the WTI incinerator. To prepare for a final, detailed risk assessment the EPA decided, in July 1993, that the Agency would arrange independent scientific peer reviews of both the project plan and the draft risk assessment. The first peer review was held in December 1993 (59 FR 60628–60629, 17 Nov. 1993) and concerned the EPA Region V draft project plan for the risk assessment. For this first workshop, EPA convened a peer review panel of 13 independent scientists from the fields of toxicology, environmental fate and transport, combustion engineering, atmospheric modeling, and exposure assessment. The comments and recommendations provided during this workshop are published in ''Report on the Technical Workshop on WTI Incinerator Risk Issues'' (EPA/630/R–94/001). This document is available from the ORD Publications Office (Phone 513–569–7562). Major recommendations from this workshop included: (1) using additional incinerator performance test data; (2) refining computer models used to simulate airborne dispersions; (3) conducting a screening level ecological risk assessment; and (4) performing an evaluation of accident scenarios.

For the EPA Region V draft risk assessment review, a second workshop was held on January 11, 1996 (60 FR 61552–61553, 30 Nov. 1995). This meeting was originally planned for two days but was compressed due to severe weather conditions. For this workshop, EPA convened many of the original panelists, and six additional experts in the areas of ecological risk assessment and accident analysis. These scientists focused on the scientific data, methods, and analyses, along with the assumptions and uncertainties that are associated with the risk estimates at the site. The comments and recommendations provided during this workshop are presented in the report entitled ''Report on the U.S. EPA Technical Workshop on WTI Incinerator Risk Assessment Issues'' (EPA/630/R–96/001). EPA Region V will consider the workshop recommendations presented in this report in completing the risk assessment.

Dated: June 6, 1996.

Robert J. Huggett,

*Assistant Administrator for Research and Development.*

[FR Doc. 96–15447 Filed 6–17–96; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1117–DR]**

### Kentucky; 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 Kentucky (FEMA–1117–DR), dated June 1, 1996, and related determinations.

**EFFECTIVE DATE:** June 1, 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 June 1, 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 Kentucky, resulting from severe storms, flooding and tornadoes on May 28, 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 Kentucky.

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 Laura Buchbinder 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 Kentucky to have been affected adversely by this declared major disaster:

Bullitt and Spencer Counties for Individual Assistance, Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

*Director.*

[FR Doc. 96–15413 Filed 6–17–96; 8:45 am]

BILLING CODE 6718–02–P

**[FEMA–1116–DR]**

### Minnesota; 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 Minnesota (FEMA–1116–DR), dated June 1, 1996, and related determinations.

**EFFECTIVE DATE:** June 1, 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 June 1, 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 Minnesota, resulting from flooding on March 14, 1996, and continuing, 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 Minnesota.

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. 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 Gary Pierson 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 Minnesota to have been affected adversely by this declared major disaster:

Beltrami, Big Stone, Kittson, Koochiching, Marshall, Norman, Pennington, Polk, Red Lake, Roseau and Traverse Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

*Director.*

[FR Doc. 96–15410 Filed 6–17–96; 8:45 am]

BILLING CODE 6718–02–P

**[FEMA–1118–DR]**

### North Dakota; 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 North Dakota (FEMA–1118–DR), dated June 5, 1996, and related determinations.

**EFFECTIVE DATE:** June 7, 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 North Dakota, 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 June 5, 1996:

Burleigh, Grant, Morton and Sargent Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

*Associate Director, Response and Recovery Directorate.*

[FR Doc. 96–15411 Filed 6–17–96; 8:45 am]

BILLING CODE 6718–02–P

**[FEMA–1115–DR]**

## West Virginia; 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 West Virginia (FEMA–1115–DR), dated May 23, 1996, and related determinations.

**EFFECTIVE DATE:** June 4, 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 West Virginia, 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 23, 1996:

Harrison County for Public Assistance (already designated for Individual Assistance and Hazard Mitigation Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

*Associate Director, Response and Recovery Directorate.*

[FR Doc. 96–15412 Filed 6–17–96; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL RESERVE SYSTEM

## Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 2, 1996.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

*1. Louis Lee Madetzke*, Bloomington, Minnesota; to acquire an additional 3.26 percent, for a total of 26.02 percent, of the voting shares of North State Bancshares, Inc., Bloomington Minnesota, and thereby indirectly acquire Prime Security Bank, Karlstad, Minnesota.

Board of Governors of the Federal Reserve System, June 12, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96–15369 Filed 6–17–96; 8:45 am]

**BILLING CODE 6210–01–F**

## Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 12, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. PCB Bancorp, Inc.*, Johnson City, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of People's Community Bank, Johnson City, Tennessee.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. River Valley Bancorp*, Madison, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens National Bank of Madison, Madison, Indiana.

In connection with this application, Notificant also has applied to acquire Madison First Federal Savings and Loan Association, Madison, Indiana, and thereby engage in the operation of a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

In addition, Notificant will also engage in lending, pursuant to § 225.25(b)(1) of the Board's Regulation Y. Notificant is making a loan to its ESOP in connection with the ESOP's purchase of notificant stock.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

*1. Dartmouth Capital Group, Inc., and Dartmouth Capital Group, L.P.*, both of Encinitas, California; to acquire 48 percent of SC Acquisition Corp., Huntington Beach, California. which will acquire 100 percent of Commerce Security Bank, Sacramento, California, and SDN Bancorp, Encinitas, California. SC Acquisition Corp., has applied to become a bank holding company by acquiring Commerce Security Bank and SDN Bancorp, and its subsidiaries, Liberty National Bank, Huntington Beach, California, and San Dieguito National Bank, Encinitas, California.

*2. WKS, Inc.*, Fresno, California; to become a bank holding company by acquiring 81.2 percent of the voting shares of Sierra Thrift, Fresno, California, upon its conversion to a state chartered commercial bank to be known as Murphy Bank, Fresno, California.

Board of Governors of the Federal Reserve System, June 12, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96–15370 Filed 6–17–96; 8:45 am]

**BILLING CODE 6210–01–F**

## Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

*1. Keystone Financial Inc.*, Harrisburg, Pennsylvania; to engage *de novo* through its subsidiary, Martindale Andres & Company, West Conshohocken, Pennsylvania, in the provision of investment advisory services to a mutual fund, pursuant to § 225.25(b)(4)(ii) of the Board's Regulation Y.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Synovus Bancshares, Inc., and TB&C Bancshares, Inc.*, both of Columbus, Georgia, to acquire Canterbury Trust Company, Birmingham, Alabama, and thereby engage in the provision of trust services, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

*1. Clay Bancshares, Inc.*, Flora, Illinois; to engage *de novo* through its subsidiary, Clay Finance Co., Inc., Flora, Illinois, in consumer finance activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y, and to act as agent for insurance directly related to extensions of credit, pursuant to § 225.25(b)(8)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 12, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96–15368 Filed 6–17–96; 8:45 am]

**BILLING CODE 6210–91–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. CB–96–1]**

### Abandoned Infants Assistance and Temporary Child Care for Children With Disabilities and Crisis Nursuries Programs; Availability of Financial Assistance and Requests for Applications

**AGENCY:** Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

**ACTION:** Announcement of the availability of financial assistance and request for applications to support demonstration projects under the Abandoned Infants Assistance Act, as amended, Pub. L. 102–236 (42 U.S.C. 670 note) and the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended, Pub. L. 102–295 (42 U.S.C. 5117a, 5117b, 5117c).

**SUMMARY:** The Children's Bureau (CB) within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of fiscal year 1996 funds for competing new discretionary grants under the Abandoned Infants Assistance (AIA) Program and the Temporary Child Care for Children with Disabilities and Crisis Nurseries (RC/CN) Program.

Funds from the AIA Program are designed to provide community-based, comprehensive services to abandoned infants and infants at risk of abandonment and their families.

Funds from the RC/CN Program are designed to support demonstration projects to provide temporary child care for children with disabilities and children with chronic illnesses and crisis nurseries for abuse and neglected children and children at risk of abuse and neglect.

This announcement contains forms and instructions for submitting an application.

The closing date and time for RECEIPT of applications is 4:30 p.m., eastern time zone, on August 19, 1996. Applications MUST BE RECEIVED BY 4:30 p.m. on that day. Applications received after 4:30 p.m. on that day will be classified as late. Postmarks and other similar documents DO NOT establish receipt of an application. Detailed application submission instructions including the addresses where applications must be received are found in Part III of this announcement.

**ADDRESSES:** Mail applications to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447, ATTN: _____ (Reference announcement number and priority area.)

Hand deliver applications during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date to: Administration for Children and Families, Division of Discretionary Grants, 6th Floor, ACF Guard Station, 901 D Street, SW., Washington, DC 20447, ATTN: _____.

**FOR FURTHER INFORMATION CONTACT:** The ACYF Operations Center, Technical Assistance Team at 1–800–351–2293, is available to answer questions regarding application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions.

**SUPPLEMENTARY INFORMATION:** This program announcement consists of three parts. Part I provides information on the Children's Bureau and general information on the application procedures. Part II describes the review process, additional requirements for the grant applications, the criteria for the review and evaluation of applications, and the programmatic priorities for which applications are being requested. Part III provides information and instructions for the development and submission of applications.

The forms to be used for submitting an application follow Part III. Please copy as single-sided forms and use in submitting an application under this announcement. No additional application materials are available or needed to submit an application.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

## Part I—General Information

### *A. Background*

The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth, works with States and local communities to develop services which support and strengthen family life, seeks out joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents.

The concerns of ACYF extend to all children from birth through adolescence. Many of the programs administered by the agency focus on children from low-income families; children and youth in need of foster care, adoption or other child welfare services; preschool children; children with disabilities; abused and neglected children; runaway and homeless youth; and children from American Indian and migrant families.

Within ACYF, the Children's Bureau plans, manages, coordinates and supports child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services State Grants Program, the Child Welfare Services Research, Demonstration and Training Programs, the Independent Living Initiatives Program, the Adoption Opportunities Program, the Temporary Child Care for Children With Disabilities and Crisis Nurseries Program, the Abandoned Infants Assistance Program, the Child Care and Development Block Grant Program, the State Dependent Care Planning and Development Program and the Family Preservation and Family Support Program.

The Children's Bureau programs are designed to promote the welfare of all children, including disabled, homeless, dependent, abused or neglected children and their families. The programs aid in preventing and remedying the neglect, abuse and exploitation of children. The programs also encourage the strengthening of the family unit to help alleviate the unnecessary separation of children from their families and reunify families, where possible, when separation has occurred.

### *B. Statutory Authorities Covered Under This Announcement*

The Abandoned Infants Assistance Act of 1988, as amended, Public Law 102–236, 42 U.S.C. 670. CFDA: 93.551.

Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended, Public Law 102–295, 42 U.S.C. 5117a, 5117b, 5117c. CFDA: 93–656.

## Part II. The Review Process and Priority Areas

### *A. Eligible Applicants*

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Because eligibility varies depending on statutory provisions, it is critical that the ''Eligible Applicants'' section of each priority area be reviewed carefully.

Before review, each application will be screened for applicant organization eligibility as specified under the selected priority area. Applicants from ineligible organizations will not be considered or reviewed in the competition, and the applicants will be so informed.

Only agencies and organizations, not individuals, are eligible to apply under this Announcement. All applications developed jointly by more than one agency or organization, must identify only one lead organization and official applicant. Participating agencies and organizations can be included as co-participants, subgrantees or subcontractors. For-profit organizations are eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all priority areas.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the current valid IRS tax exemption certification, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

### *B. Review Process and Funding Decisions*

Timely applications received by the deadline date which are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons outside the Federal government, will use the appropriate evaluation criteria listed later in this section to review and score the applications. The results of this review are a primary factor in making funding decisions.

The ACYF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is in the best interest of the Federal government or the applicants. ACYF may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACYF in making funding decisions.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ACYF may also take into account the need to avoid unnecessary duplication of effort.

### *C. Evaluation Criteria*

A panel of at least three reviewers (primarily experts from outside the Federal government) will review the applications. To facilitate this review, applicants should ensure that they address each minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement. Applicants should be advised that they have the option to omit, from application copies which will be made available to non-Federal reviewers, the specific salary rates or amounts for individuals identified in the application budget. However, salary information must be made available in the copy maintained in the official grants file.

The reviewers will determine the strengths and weaknesses of each application using the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight.

All applications will be evaluated against the following criteria.

(1) Objective and Need for Assistance (20 points). The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

(2) Approach (35 points). The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. The Approach section should include a listing of the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when appropriate, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

(3) Results or Benefits Expected (20 points). The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

(4) Staff Background and Organization Experience (25 points). The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer the project. The application describes the relationships between the proposed project and other work planned, anticipated or underway by the applicant with Federal assistance.

*D. Structure of Priority Area Descriptions*

Each priority area description is composed of the following sections:

Eligible Applicants: This section specifies the type of organization eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.

Purpose: This section presents the basic focus and/or broad goal(s) of the priority area.

Background Information: This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACYF and/or others, and State model are noted, where applicable.

Minimum Requirements for Project Design: This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.

Project Duration: This section specifies the maximum allowable length of time for the project period and refers to the amount of time for which Federal funding is available.

Federal Share of Project Cost: This section specifies the maximum amount of Federal support for the project for the first budget year.

Matching Requirement: This section specifies the minimum non-Federal contribution, either through cash or in-kind match, required in relation to the maximum Federal funds requested for the project. Grantees must provide a share of the total approved project cost. (For the Abandoned Infants Assistance Program, a grantee must propose at least a 10 percent match of the total approved project cost; for the Temporary Child Care for Children with Disabilities and Crisis Nurseries Program, a grantee must propose at least a 25 percent match of the total approved project cost.) The total approved project cost is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet the match requirements through cash contributions. Therefore, an AIA project requesting $450,000 in Federal funds per budget period must include a match of at least $50,000 (10 percent of the total approved project cost per budget year). For a RC/CN program requesting $200,000 in Federal funds per budget period must include a match of at least $66,667 per budget year (25 percent of the total approved project cost per budget year.)

Anticipated Number of Projects To Be Funded: This section specifies the number of projects that ACYF anticipates it will fund under the priority area.

Please note that applications that do not comply with the specific priority area requirements in the section on ''Eligible Applicants'' will not be reviewed. Applicants should also note that non-responsiveness to the section ''Minimum Requirements for the Project Design'' will result in a low evaluation score by the reviewers. Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description scores lower than one more clearly focused on, and directly responsive to, that specific priority area.

*E. Available Funds*

The ACYF intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 1996, subject to the availability of funds. The size of the actual awards will vary.

Each priority area description includes information on the maximum Federal share of the project costs and

the anticipated number of projects to be funded.

The term ''budget period'' refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term ''project period'' refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so. However, if the proposed match exceeds the minimum requirement, the grantee must meet its proposed level of match support before the end of the project period. Applicants should propose only that non-Federal share they can realistically provide since any unmatched Federal funds will be disallowed by ACF.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon satisfactory performance by the grantee, availability of funds from future appropriations and a determination that continued funding is in the best interest of the Government.

*F. Grantee Share of Project Costs*

Grantees must provide a share of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For the Abandoned Infants Assistance Program, a grantee must propose at least a 10-percent match of the total cost of the project; for the Temporary Child Care for Children with Disabilities and Crisis Nurseries Program, a grantee must propose at least a 25-percent match of the total cost of the project. If approved for funding, grantee will be held accountable for commitments of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

*G. Priority Areas Included in This Announcement:*

1.01a— Abandoned Infants Assistance Renewal Service Demonstration Projects

1.01b—Abandoned Infants Assistance New Start Comprehensive Service Demonstration Projects

2.01a—Temporary Child Care for Children with Disabilities and Chronically Ill Children

2.01b—Crisis Nurseries

*H. Priority Area Descriptions and Requirements*

Abandoned Infants Assistance Program Service Demonstration Projects (Priority Areas 1.01a and 1.01b)

*Availability and Allocation of Funds.* Total combined funding for Priority Areas 1.01a and 1.01b for fiscal year (FY) 1996 competitive grants under section 101 of the Act (42 U.S.C. 670 note), is approximately $6 million.

The Administration for Children and Families proposes to award four to eight grants in each of the two priority areas (1.01a and 1.01b) in varying amounts up to $450,000 per budget year. Applications under this announcement will be considered for:

- Previous Service Demonstration Projects—to provide support for the comprehensive service programs initially funded in FY 1990 and 1992 by requiring documentation of continuing need for the project; to propose ways of improving service provision to meet the needs of abandoned infants and young children or those who are at risk of abandonment and their families; and to propose methods to continue the program evaluation, including proposed outcome measures, and summary evaluative data on the current program. Applicants applying under this priority area should be advised this is a competitive funding process and that applications approved for funding will be given a new grant number. Further, existing award activities cannot overlap with the new grant's project period; and finally, funds from the currently existing grants cannot be expended for new grant activities.
- New Start Service Demonstration Projects—to establish a comprehensive services program in jurisdictions not already served by the Abandoned Infants Assistance Program to meet the needs of abandoned infants and young children, or those who are at risk of abandonment and their families; and to conduct a formative evaluation for Years I and II; and to collect information on client outcomes in Years III and IV.

All applicants funded under Priority Areas 1.01a and 1.10b will be required to provide information for special studies or evaluations funded by the Administration on Children, Youth and Families (ACYF).

All applicants funded under this announcement will be required to have a key person from the project staff and the evaluator attend a grantees' meeting held annually in Washington, D.C.

The training and technical assistance services of the National Abandoned Infants Assistance Resource Center are available to all applicants funded under this announcement. All applicants are also required to provide assurances that they will comply with fiscal and program reporting requirements. These required assurances are listed later in this program announcement.

The agency receiving the grant must assume fiscal and administrative responsibilities for the use of grant funds. The role of cooperating agencies must be explicit and supported by letters of specified commitment to the project. Prescribed support letters will not be considered responsive. Also, each application must include as a specific goal the development of strategies to coordinate and make optimal use of all relevant private, Federal, State and local resources to establish and maintain services beyond the life of the grant.

*Background Information.* Public Law (Pub. L.) 102–236, the Abandoned Infants Assistance Act Amendments of 1991 (the Act), amended Pub. L. 100–505, the Abandoned Infants Act of 1988 and was signed into law December 12, 1991. The purposes of the Act are to establish a program of demonstration projects to prevent the abandonment in hospitals of infants and young children, particularly those who have been perinatally exposed to a dangerous drug and those with the human immunodeficiency virus (HIV) or who have been perinatally exposed to the virus; to identify and address the needs of those infants and children who are, or might be, abandoned; to develop a program of comprehensive services for these children and members of the biological family (see Definitions) for any condition that increases the probability of abandonment of an infant or young child, including, but not limited to, foster family care services, case management services, family support services, parenting skills, in-home support services, respite and crisis intervention services, counseling services and group residential home services; and to recruit and train health and social services personnel, foster care families, and residential care providers to meet the needs of abandoned children and infants and children who are at risk of abandonment. The legislation also allows for the provision of technical assistance and training programs to support the planning, development and operation of the service demonstration projects.

Definitions: The legislation provides definitions for three terms, i.e., ''abandoned infants and young children,'' ''dangerous drug,'' and ''natural family.'' The term ''abandoned infants and young children'' retains the definition stated in the original legislation (Pub. L. 100–505) and means infants and young children who are medically cleared for discharge from acute-care hospital settings, but who remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives. The terms ''dangerous drug'' and ''natural family'' were defined under Pub. L. 102–236. The term ''dangerous drug'' means a controlled substance as defined in section 102 of the Controlled Substances Act. Although Pub. L. 102–236 uses the term ''natural family,'' the Administration on Children, Youth and Families prefers the term biological family. Therefore, the term biological parents/family/mother/father will be used for the remainder of the grant announcement. The term biological family shall be broadly interpreted to include biological parents, grandparents, family members, guardians, children residing in the household and individuals residing in the household on a continuing basis who are in a care-giving situation with respect to infants and young children covered under this Act. (42 U.S.C. 670 note, title I, section 103.)

*Statement of the Problem*. Concern continues to grow about the numbers of infants and young children infected with HIV/AIDS and/or exposed to drugs during prenatal development. Also, there is concern about an increase in the number of women who are using illegal drugs during pregnancy with possible adverse consequences for their children.

In recent years, the link between female intravenous drug users, the HIV perinatal transmission rate and the subsequent development of the acquired immune deficiency syndrome (AIDS) in young children has presented an enormous challenge to pediatric health care workers. According to the most recent Centers for Disease Control (CDC) data, there are 6,611 AIDS-infected children under 13 years of age. That number has more than doubled since 1992 and the problem is expected to grow.

In 1995, 977 new cases of pediatric AIDS were reported. While 70% of AIDS cases among children have been reported from a relatively small number of States and territories—New York, Florida, New Jersey, Pennsylvania, Texas, California and Puerto Rico—HIV infection affects children in nearly all parts of the country. Cases of pediatric AIDS have been reported from 48 States. (CDC HIV/AIDS Surveillance Report, January, 1996; AIA Factsheet, January, 1996). Women are the fastest growing population in the AIDS epidemic. In 1992, AIDS was the fourth leading cause of death for women of child-bearing age, 25–44 years up from fifth in 1990 and eighth in 1987. Major studies of congenital HIV infection indicate that perinatal transmission rates range between 14 and 40 percent. While new treatments have improved the likelihood of children being born without the virus, an unfortunate consequence of this is that more children born to HIV/AIDS infected women will be orphaned. This potential increase of orphaned children will have an impact on the child welfare services system. (CDC; AIA Factsheet, 1996).

The problem of AIDS is closely connected with perinatal substance abuse. Fetal exposure to HIV/AIDS is linked to maternal drug use. Mothers are most commonly infected with HIV through their own drug use or sexual relations with an IV drug user. The National Pregnancy and Health Survey (National Institute on Drug Abuse) reported that approximately six percent of the four million women who gave birth in 1992 used illicit drugs, 19 percent drank alcohol and 20 percent smoked cigarettes during pregnancy. About one-third of the illicit drug users also smoked and/or drank alcohol during pregnancy.

The risk factors for women delivering a drug-exposed infant include poverty, little education, poor nutrition, little or no prenatal care, a history of sexual and/or physical abuse and being over 25, unmarried, uninsured, on Medicaid and having other children. Similar characteristics exist for women at risk of AIDS/HIV. They are economically and socially disadvantaged; are primarily women of color; lack access to adequate medical care; use drugs, alcohol and tobacco; and are at risk for sexually transmitted diseases. Many of these women are not even aware they are infected with HIV until they give birth and their babies test positive. (AIA Factsheet, 1996)

The characteristics of women who abandon or who are risk of abandoning their children are similar. These women are often struggling with: poverty, homelessness, physically, sexually and emotionally disruptive relationships; HIV infection; mental illness and drug addiction. Researchers have reported that the average age of these mothers is 27 years old; the average number of pregnancies is four; 64 percent of the mothers receive no prenatal care; and 27 percent are incarcerated during their pregnancies. Many mothers have other children in out-of-home care; have very little, if any, social supports; delivered their newborns alone; and are homeless. Additionally 45 percent of the mothers have not graduated from high school; 62 percent receive income assistance; and 80 percent use multiple drugs. (Barth et al., 1996)

HIV infection is relatively prevalent in the abandoned infants population. As many as eight percent of infants abandoned in hospitals are reported to be HIV infected as compared with approximately .04 percent of all infants in the United States who are infected each year. Due to inconsistent testing and confidentiality laws, this number may underestimate the magnitude of the problem. (James Bell Associates, 1993)

Substance abuse has also been indicated as a significant factor in cases of infants abandoned in hospitals. Approximately 80 percent of these babies are prenatally exposed to illicit drugs as compared with between five and approximately 11 percent of all babies born in the United States. About one-third of the illicit drug users smoked tobacco and/or drank alcohol during pregnancy. (James Bell Associates, 1993)

Children who are HIV positive or have AIDS are frequently ill and require intensive and specialized care. The delivery of services to these children is often complicated because the children and their families live in communities that lack the necessary resources or because caregivers have difficulty accessing needed services. (Barth et al., 1996) Further complicating the situation is the fact that all of these children have mothers who are HIV positive, and most of the mothers are drug-abusers who themselves need medical, social and other supportive services. Returning care to the mother may not be an option, since the mother may be too ill herself to care for the child.

The children living with an HIV/AIDS infected parent in many ways require as complex a range of services as the infected individual. To date, little attention has been focused on this issue. According to the best estimates provided by researchers thus far, the number of such children at risk of being orphaned by the AIDS/HIV epidemic may reach anywhere from 80,000–125,000 by the year 2000. (Levine, 1992) It is vital that communities, in general, and child welfare services, in particular, begin to address the issues of permanency planning for this vulnerable population. The magnitude of the problem and the need for appropriate planning and services to address this need have only recently

been understood. Due to the episodic nature of the disease, parents and primary caregivers will experience a direct impact on the continuity of care that they must provide for their children. The children who will be or are orphaned by AIDS/HIV need social services, psychological and emotional support, medical care and the stability of a permanent home/caregiver. (Polineni, 1995)

Although many of these services still need to be developed in communities, some States have taken steps to address permanency for these children. Several States have enacted Standby Guardianship Laws to allow parents to provide for the provisional care of their child and address the needs of both the child and the family. The laws are designed to be flexible to meet the parents' needs and may be implemented at any designated time including a period of illness, hospitalization or death. Ways to provide needed services and to eliminate the barriers to implementing permanency for this population need to be continually explored. (Polineni, 1995)

Some children exposed to drugs, and those who acquire AIDS, pose challenging medical and behavioral problems. Their neurological deficits and developmental delays can prove very trying for caregivers. Biological and foster parents, relatives, adoptive parents and other caretakers often need special training and supportive services to help them meet the children's needs and to provide respite for the caretakers themselves.

Achieving permanency for such children is typically slow and complex. Some parents may be motivated to keep the child, but not to change their behaviors; other parents may be motivated to change their behaviors, but are incapable of accessing the appropriate services on their own or of maintaining improved behaviors in their current environment. The assistance required to address the service needs of the parent may be fragmented among many different agencies. Some services may not be readily available. Some, such as drug treatment, may not be readily available for pregnant women. Some services may not be culturally sensitive, and others may not be entirely appropriate to the client's needs.

If permanency is to be achieved early in the life of the developing child, intensive efforts must be made with the family to determine its suitability to care for the child. If that is not possible, steps must be taken toward constructive long-term solutions to provide permanency for the child. Toward these ends, systematic action must be taken to obtain and deliver a comprehensive set of services to the biological and/or foster or adoptive family and the child.

A number of discretionary programs within ACYF and throughout the Department of Health and Human Services fund projects which are related to the issues addressed by this announcement. A brief description of these programs with the name of a contact person is attached in Appendix IV. Prospective applicants for Priority Areas 1.01a and 1.01b must, if applicable, include these existing programs in the service network proposed and provide a description of the proposed networking activities.

*Emphasis on Coordination.* All New Start Service Demonstration Project applicants should utilize an existing consortium or develop a consortium or other coordinating entity for the purpose of carrying out the project funded under this announcement. The consortium may include public health, child welfare, substance abuse treatment and other relevant human services agencies. To the extent possible, applicants are encouraged to formalize working relationships with the police and courts; mental health, developmental disabilities, Head Start, and special education providers, community-based maternal and child health programs; and community parent education and parent support programs, including in-home visiting, respite care and housing assistance in the community. Plans for coordinating joint medical-social service case management, outstationing child welfare staff at hospitals where large numbers of at-risk infants are being delivered, or other methods to be used to bring about comprehensive service delivery should be described in the application and supported by documentation.

All currently funded grantees seeking new grant funding should continue to use their existing consortia. These grantees shall: (1) describe ways in which the consortium can be expanded, if possible, or changed, if necessary; and (2) demonstrate how the consortium has improved communication and working relationships between and among community agencies in coordinating services for this target population.

1.01a. Previous Service Demonstration Projects

Eligible Applicants: The 15 comprehensive service demonstration grantees initially funded in fiscal year 1990 and the four service demonstrations funded initially in FY 1992.

Fifteen service demonstration projects initially funded in FY 1990 under Section 101, Pub. L. 100–505 and four service demonstrations projects initially funded in FY 1992 under Pub. L. 102–236 are eligible for new grants under this priority area. Applicants must show progress and accomplishments to date on the original goals and objectives of their current grant.

Minimum Requirements for Project Design: Applications submitted under this priority area are to include approaches/strategies to organize, make accessible and implement a comprehensive set of services to:

- Prevent the abandonment of infants and young children, including the provision of services to members of the biological family to address any condition that increases the probability of abandonment of an infant or young child;
- Prevent the subsequent abandonment of infants and young children when they return to their homes;
- Assist abandoned infants and young children to reside with their biological families, relatives or foster and adoptive families, as appropriate, and to include the provision of respite care as needed. Short-term, transitional residential care services for small groups of infants or young children may be provided. For these services, however, it must be shown that the placements are necessary because a sufficient number of families cannot be recruited and trained to provide foster family care for abandoned infants and young children in the community or that such placements are in the best interests of the child. Proposals including residential care services will be considered only if that component is part of and integral to a larger system of services directed toward achieving permanency for the children; and only if the residential services are designed to be transitional (i.e., three to six months) to a permanent placement. The proposal may not include the costs of construction or other major structural changes for facilities.

Previous grantees must include an outcome analysis of prior evaluation(s).

Applicants are encouraged to revise or to expand their goals and objectives based on a review of the development and implementation of the program. The review should include an assessment of the effectiveness of the approaches and intervention strategies initially proposed. If revised approaches were used, they should also be assessed for their effectiveness. This process should also include an assessment of problems in program implementation and a

discussion of the proposed improved strategies to address those barriers.

In developing a broad and comprehensive approach, potential grantees should consider the wide range of assistance needed by the target population including parenting skills; supportive, therapeutic services; housing and transportation; health care and drug and alcohol treatment. Infants exposed to drugs and AIDS/HIV often need specialized health care and therapeutic intervention to assist them in their physical and cognitive development.

Section 101 (a)(8) of Pub. L. 102–236 requires projects to demonstrate methods through model programs of providing health, education and social services at a single site in a geographic area in which a significant number of infants and young children affected by drugs and HIV/AIDS reside. To the extent possible, applicants should develop a program of service delivery that provides these services at a single site. If not, provide an explanation how these services will be readily accessible to the client families.

Based on several years of experience in implementing services programs targeted for families at risk of abandonment, there are several strategies/approaches that can be considered successful in working with the target population. Potential applicants are encouraged to consider these strategies in the proposed program implementation. They include:

- Interagency Collaboration—Services to the target population need to be comprehensive and seamless and require more resources than any single agency can provide. Interagency collaboration coordinates service development and funding between multiple agencies serving the same population.
- Intervention Teams—These teams bring together professionals from a variety of disciplines in the planning and delivery of services. An interdisciplinary team provides a variety of service perspectives and a more holistic assessment of needs and a more complete treatment plan.
- Peer Services—Peer staff have backgrounds and experiences similar to the clients and serve as a bridge between the client and professional worlds. Peer staff are more accessible and less threatening to the clients and can establish more trusting and more supportive relationships.
- Home-based Services—Educational, supportive and therapeutic services are provided in the client's home and can improve client assessment and service provision by giving a fuller understanding of the client's circumstances. Further, lack of transportation and child care create serious barriers to agency-based services.
- Culturally Appropriate and Women-focused Services—This emphasis enables the services to be provided in an environment that acknowledges, reflects and respects the cultural and ethnic influences of the client population and recognizes the needs that particularly affect women.
- Coordinated Medical and Social Service Case Management—These case management services aid in the timely discharge of infants and reduce medically unnecessary hospital days and expedite hospital discharges to the most family-like settings.
- Legal, Policy and Program Development—These services provide permanency for HIV-affected children and to help keep children orphaned by AIDS from entering the child welfare system.

Other strategies/approaches potential applicants are encouraged to consider are options regarding family mediation and voluntary relinquishment. These techniques are useful in establishing permanency for children after it has been decided that targeted infants and children cannot return home.

- Family Mediation—This is a voluntary, non-coercive negotiation process facilitated by a neutral, third-party. The goal of mediation is to encourage birth parent(s), extended relatives and foster/adoptive parents to cooperate in making decision that reflect the best interests of the child. Mediation empowers the biological parent(s) and recognizes the need of the child to maintain family ties.
- Relinquishment—This is a voluntary process of transferring parental rights to an authorized child welfare agency and is usually a front-end approach that occurs prior to court involvement.

The application must include an assurance of a third party evaluation of the project. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the application. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that it is a regulatory requirement to encourage maximum free and open competition, using the applicant's own procurement policies and procedures. The application must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source procurements must be fully justified in the application. For those applicants who plan to continue the services of their current third party evaluator, the applicant must include in the application a sole source justification for review, by the program office and the Division of Discretionary Grants, ACF.

The evaluation component of the application should include methods of collecting descriptive data on the characteristics of the clients served and the services provided; and measures of client outcomes. In developing the evaluation component, applicants are required to collect outcome data on the following:

- Substance abuse treatment and recovery;
- Target infant/child characteristics, including gestational age, birth weight, HIV status at birth/15 months, drug screen results;
- Target infant/child placement status—at program intake, 12 months after enrollment in the program and at termination;
- Client termination—child placement status at 12 months after leaving the program.

Additionally, the applicants are required to collect data on the following outcomes. Applicants are strongly encouraged, although not required to use the suggested data collection instruments indicated:

- Child development and well-being at program intake and 12 months after enrollment. Data should also be collected on child injuries, hospitalizations or death following case openings. Suggested instruments include: Bayley Scale of Infant Development; Brazelton Neonatal Behavioral Assessment Scale; Denver Developmental Screening Test; Infant Behavior Questionnaire; and Child Well-Being Scales.
- Client satisfaction at three, six, twelve months and termination. Suggested instruments include: Client Feedback and Customer Satisfaction Survey.

In addition to the required data elements, applicants are encouraged, but not required to collect data on the following elements. Suggested data collection instruments are also included:

- Parenting skills—Suggested instruments: Parental Outcomes Interview; Knowledge of Chid Development Questionnaire;

• Parent (caregiver) child interaction—Suggested instruments: Parental Outcomes Involvement Scale; Parent-Child Early Relational Assessment; and

• Cost Benefit—Discussion of a how the project reduces the financial burden on community services, e.g., reduction in the number of days of hospitalization.

Successful applicants will be asked to submit descriptive data on the clients served and the services provided annually to the National AIA Resource Center. Timeframes for the submission of data on outcome measures will be negotiated within six months after grant award.

Applicants are required to have, at a minimum, a key staff person from the project and the evaluator will attend the annual 2–3 day grantees' meeting in Washington, D.C. The applicant is further required to participate in any evaluation effort supported by ACYF.

Project Duration: The length of the renewal project period for the competing service demonstration grantees may not exceed 48 months.

Federal Share of Project Costs: Grant amounts will vary and range up to $450,000 for each of four years. The dollar amount requested must be fully justified and documented. The justification can include various community-specific factors related to substance abuse and perinatal exposure to drugs or HIV. For example, the applicant might include information on the rate of illegal drug use by women of child-bearing age; the rate of HIV positive women giving birth; the number of known drug users; the rate or number of infants who have a positive toxicology screen. The size of a prior grant award is not, in and of itself, adequate justification to request the same amount under this announcement.

Renewal applicants must commit no less that 10% of the total approved project cost for the evaluation component. For example, a $450,000 grant award with a $50,000 match should commit no less than $50,000 annually to the evaluation effort or a total of no less than $200,000 during the entire project period.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $1,800,000 in Federal funds for all four project years (based on an award of $450,000 per budget year), must include a match of at least $200,000 (10 percent of total approved project costs, i.e., $50,000 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that four to eight projects will be funded.

Length of Proposal: The length of the proposal is limited to 75 pages, including all preprinted pages, and budget narrative, but exclusive of appendices.

1.01b. New Start Comprehensive Service Demonstration Projects

Eligible Applicants: Any State, local public or nonprofit agency or organization including accredited colleges and universities. Applicants in jurisdictions in which there currently does not exist a program funded under the Abandoned Infants Assistance Program will be considered under this priority area. Applicants from localities in which projects are currently operating (see Appendix A) will not be considered as the purpose of this priority area is to establish comprehensive service projects in new localities. Exceptions to this may be considered for large metropolitan areas, that is, cities with a population over 1,000,000.

Minimum Requirements for Project Design: Under this priority area applications will be considered which are designed to organize, make accessible, and implement a comprehensive set of services to:

• Prevent the abandonment in hospitals of infants and young children, including the provision of services to members of the biological family for any condition that increases the probability of abandonment of an infant or young child;

• Prevent the subsequent abandonment of infants and young children after they have returned home with their parent(s);

• Assist abandoned infants and children to reside with their biological families, relatives or foster and adoptive families, as appropriate, including the use of respite care programs. Short-term, transitional residential care services for small groups of infants or young children may be provided. For these services, however, it must be shown that a sufficient number of families cannot be recruited and trained to provide foster care for abandoned infants or young children in the community, or that such placements are in the best interests of the child. Proposals which include residential care services will be considered only if that component is part of and integral to a larger system of services directed toward achieving permanency for the children; and only if the residential services are designed to be transitional (i.e., three to six months) to a permanent placement. These applications may not include the costs of construction or other major structural changes for facilities.

In order to assure that consideration is given to the widest range of possible interests for program development, applicants must consider the broad range of possible circumstances confronting at-risk parents in the target community, including the following:

• Before pregnancy: educational services on family planning, pre-conception counseling and prenatal care, emphasizing the dangers of substance abuse, and other issues related to the prevention of abandonment;

• During pregnancy: sensitizing all programs in the community to the importance of recognizing drug abuse during pregnancy and providing voluntary services as often as possible;

• Pregnant women in trouble where drug use is a factor: women who are arrested, victims of domestic violence, or reported to protective services for child maltreatment need special attention;

• Women from high drug use areas seeking prenatal care, or entering a hospital for delivery;

• Parents of infants who must remain in the hospital for any medical reasons related to HIV or possible drug involvement; or

• Families with drug exposed infants and young children in need of support programs.

Applicants for a comprehensive service project under this priority may include training activities as a part of the project.

In developing a broad and comprehensive approach, potential grantees should consider the wide range of assistance needed by the target population including, parenting and supportive, therapeutic services; housing and transportation; health care and drug and alcohol treatment. Infants exposed to drugs and AIDS/HIV often need specialized health care and therapeutic intervention to assist them in their physical and cognitive development.

Section 101 (a)(8) of Pub. L. 102–236 requires projects to demonstrate methods through model programs of providing health, education and social services at a single site in a geographic area in which a significant number of infants and young children affected by drugs or HIV/AIDS reside. To the extent possible, applicants should consider the possibility of providing these services at

a single site. If not, provide an explanation how these services will be accessible to the clients.

Based on several years of experience in implementing services programs targeted for families at risk of abandonment, there are several strategies/approaches that can be considered successful in working with the target population. Potential applicants are encouraged to consider these strategies in the proposed program implementation. They include:

- Interagency Collaboration—Services to the target population need to be comprehensive and seamless and require more resources than any single agency can provide. Interagency collaboration coordinates service development and funding between multiple agencies serving the some population.
- Intervention Teams—These teams bring together professionals from a variety of disciplines in the planning and delivery of services. An interdisciplinary team provides a variety of service perspectives and a more holistic assessment of needs and a more complete treatment plan.
- Peer Services—Peer staff have backgrounds and experiences similar to the clients and serve as a bridge between the client and professional worlds. Peer staff are more accessible and less threatening to the clients and can establish more trusting and more supportive relationships.
- Home-based Services—Educational, supportive and therapeutic services are provided in the client's home and can improve client assessment and service provision by giving a fuller understanding of the client's circumstances. Further, lack of transportation and child care create serious barriers to agency-based services.
- Culturally Appropriate and Women-focused Services—This emphasis enables the services to be provided in an environment that acknowledges, reflects and respects the cultural and ethnic influences of the client population and recognizes the needs that particularly affect women.
- Coordinated Medical and Social Service Case Management—These case management services aid in the timely discharge of infants and reduce medically unnecessary hospital days and expedite hospital discharges to the most family-like settings.
- Legal, Policy and Program Development—These services provide permanency for HIV-affected children and to help keep children orphaned by AIDS from entering the child welfare system.

Other strategies/approaches potential applicants are encouraged to consider are options regarding family mediation and voluntary relinquishment. These techniques are useful in establishing permanency for children after it has been decided that targeted infants and children cannot return home.

- Family Mediation—This is a voluntary, non-coercive negotiation process facilitated by a neutral, third-party. The goal of mediation is to encourage birth parent(s), extended relatives and foster/adoptive parents to cooperate in making decisions that reflect the best interests of the child. Mediation empowers the biological parent(s) and recognizes the need of a the child to maintain family ties.
- Relinquishment—This is a voluntary process of transferring parental rights to an authorized child welfare agency and is usually a front-end approach that occurs prior to court involvement.

Each service demonstration project must propose to carry out a third-party evaluation as an integral part of the demonstration effort. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the application. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that ACF encourages maximum free and open competition, using the applicant's own procurement policies and procedures. The application must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source requests must be fully justified in the application.

Applicants under this priority area should consider a tiered evaluation plan: (1) to collect formative evaluation data and (2) to collect data on outcome measures as the information becomes available. The application should address both aspects even though process data may be the only reportable data available during Years I and II of the project. The evaluation component of the application should include methods of collecting descriptive data on the characteristics of the clients served and the services provided. This evaluation should be designed to collect systematic data to answer questions such as the following: What are the characteristics of families who abandon children? What are the service needs of children/mothers/fathers/families of drug exposed infants? Of HIV positive infants? What are the barriers to comprehensive case management and to the coordination of service delivery? What changes have been most helpful in improving the delivery of services? What changes/improvements have there been in the child's well-being and/or child's development? What changes have there been in the family's stability and ability to function? What are the permanency outcomes for children?

In developing the outcome measures component of the evaluation, applicants be required to collect outcome data on the following:

- Substance abuse treatment and recovery;
- Target infant/child characteristics, including gestational age, birth weight, HIV status at birth/15 months, drug screen results;
- Target infant/child placement status—at program intake, 12 months after enrollment in the program and at termination;
- Client termination—child placement status at 12 months after leaving the program.

Additionally, the applicants will be required to collect data on the following outcomes. Applicants are strongly encouraged, although not required to use the suggested data collection instruments indicated:

- Child development and well-being at program intake and 12 months after enrollment. Data should also be collected on child injuries, hospitalizations or death following case openings. Suggested instruments include: Bayley Scale of Infant Development; Brazelton Neonatal Behavioral Assessment Scale; Denver Developmental Screening Test; Infant Behavior Questionnaire; and Child Well-Being Scales.
- Client satisfaction at three, six, twelve months and termination. Suggested instruments include: Client Feedback and Customer Satisfaction Survey.

In addition to the required data elements, applicants are encouraged, but not required to collect data on the following elements. Suggested data collection instruments are also included:

- Parenting skills—Suggested instruments: Parental Outcomes Interview; Knowledge of Child Development Questionnaire;
- Parent (caregiver) child interaction—Suggested instruments: Parental Outcomes Involvement Scale; Parent-Child Early Relational Assessment; and
- Cost Benefit—Discussion of how the project reduces the financial burden

on community services, e.g., reduction in the number of days of hospitalization.

Successful applicants will be required to submit descriptive data on the clients served and the services provided annually to the National AIA Resource Center. Timeframes for the submission of data on outcome measures will be negotiated within six months after grant award.

Applicants are required to have, at a minimum, a key staff person from the project and the evaluator will attend the annual 2–3 day grantees' meeting in Washington, D.C. The applicant is further required to participate in any evaluation effort supported by ACYF.

Project Duration: The project period may not exceed 48 months.

Federal Share of Project Costs: The maximum Federal share is $450,000 per budget year. However, applicants are strongly encouraged to construct the budget request judiciously. Factors to be considered include the population of the area to be served; the extent of maternal substance abuse in the target area; the number of drug-exposed infants; the number of women with AIDS or women who are HIV positive in the target area; the number of reports/referrals to social service agencies of babies born with illegal substances in their system. For example, a city which currently receives a $450,000 grant per budget year under this legislation has the following profile: a population of 2–3 million; 20 percent of newborns have been pre-natally exposed to drugs; 2,000 reported allegations of child maltreatment involving infants in substance-abusing families are received annually; approximately 350–375 women with AIDS living in the jurisdiction; an estimated 2,500–3,000 HIV positive women and between 700–800 HIV positive children; and an annual projected number of 500 children born who are HIV-positive. Each applicant should compare statistics from its area to the example city and develop its budget request accordingly. This profile does not necessarily exclude an application from a jurisdiction of smaller size receiving the maximum Federal amount. However, an applicant from a smaller-sized jurisdiction must provide adequate justification that the community's experience with drug exposed and/or HIV-positive infants is severe enough to warrant the maximum Federal amount.

Applicants under this priority area must commit no less than five percent of the total project cost for the evaluation component. For example, a $450,000 grant award with a $50,000 match should commit no less than $25,000 annually to the evaluation effort or no less than a total of $100,000 during the project period. Applicants are encouraged to increase the financial commitment to evaluation in Year III and IV.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting a total of $1,800,000 in Federal funds for all four project years (based on an award of $450,000 per budget year), must include a match of at least $200,000 (10 percent of total approved project costs, i.e., $50,000 per budget period).

Anticipated Number of Projects to be Funded: It is anticipated that four to eight projects will be funded.

Length of Proposal: The length of the proposal is limited to 75 pages, including all preprinted pages, and budget narrative, but exclusive of appendices.

## Temporary Child Care for Children With Disabilities and Crisis Nurseries Program

The Temporary Child Care for Children With Disabilities and Crisis Nurseries Program provides demonstration grants to States to assist private and public agencies in developing temporary child care (respite care) for children with disabilities and crisis nurseries for children at risk of child abuse and neglect.

*Purpose.* To support States in their efforts to assist private and public agencies in developing two types of services:

- In-home or out-of-home temporary non-medical child care (respite care) for children with disabilities and children with chronic or terminal illnesses, including children with AIDS or AIDS-related conditions (priority area 2.01a); and,
- Crisis nurseries for abused and neglected children, children at risk of abuse and neglect, or children in families receiving protective services (priority area 2.01b).

Special attention should be paid in both priority areas to the needs of drug-affected infants.

*Eligible Applicants.* Only State agencies designated by the Governor of the State to carry out programs funded under the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended (42 U.S.C. 5117 et seq.) are eligible to apply. Other State agencies carrying out similar programs but not designated by the Governor of the State are ineligible.

States which have never been awarded funds under the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act of 1986, as amended are encouraged to apply.

States, including those currently receiving financial assistance under these programs, may apply under each priority area described below. A separate application, however, must be submitted under each priority area. Only one application per State may be submitted under each priority area. Applications must clearly indicate whether they are being submitted under 2.01a, Temporary Child Care for Children With Disabilities and Chronically Ill Children, or 2.01b, Crisis Nurseries.

### *42 U.S.C. Section 5117a: Temporary Child Care for Children With Disabilities and Chronically Ill Children (Priority Area 2.01a)*

#### Background

The Act authorizes temporary child care programs for children with disabilities and requires applicants seeking temporary child care funds to define disabilities using the definition in the Individuals with Disabilities Education Act:

* * * The term children with disabilities means children—(A)(i) with mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, need special education and related services.

(B) The term ''children with disabilities'' for children aged 3 to 5, inclusive, may at a State's discretion, include children—(i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and,

(ii) who, by reason thereof; need special education and related services * * * (Public Law 102–119)

The purpose of establishing a temporary child care program (also known as respite care) for children with disabilities or who are chronically or terminally ill is to alleviate social, economic, and financial stress among the families of such children. Such care provides the families or primary

caregivers with periods of temporary relief from the pressures of the demanding child care routine, thus preventing severe family stress.

The following components may be included in respite care projects:

- 24-hour services;
- Access to primary medical services;
- Referral to counseling/therapy services;
- Staff training, including child abuse/neglect reporting responsibilities;
- Public awareness programs; and
- Collaborative efforts involving this project in the state's strategic plan and implementation of family support and family preservation services.

*42 U.S.C. Section 5117b: Crisis Nurseries (Priority Area 2.01b)*

Background

A crisis nursery is defined in section 42 U.S.C. Section 5117c(d) to mean a center providing temporary emergency services and care for children. Crisis nurseries are child care facilities which protect children by providing a safe environment at a time when the chances of neglect or abuse in the home are increased.

The programs offer parents the option of ''time out'' as a preventive measure in reducing the incidence of child maltreatment. They are designed to: (1) develop a safe environment as a resource for children at risk of abuse; (2) deliver non-punitive, non-threatening services as a resource to caregivers of at-risk children; and (3) utilize existing community-based services to further diminish the potential for the maltreatment of children in families experiencing crisis. Services funded under 42 U.S.C. Section 5117b must be provided without fee and may be provided for a maximum of 30 days in any year. Crisis nurseries must also provide referral to support services.

The following components may be included in crisis nursery projects:

- 24-hour services;
- Referral to counseling/therapy services, including out-of-home placement (when appropriate);
- Access to primary medical services;
- Staff training, including child abuse/neglect reporting responsibilities;
- Public awareness programs;
- Community-based efforts to improve the well-being of children and families; and
- Collaborative efforts involving this project in the state's strategic plan and implementation of family support and family preservation services.

*Minimum Requirements for Project Design*

In order to successfully compete under one or both of these priority areas the following items must be included in the proposal. The applicant should:

- Provide a letter addressed to the Commissioner, Administration on Children, Youth and Families, and signed by the Governor which certifies that the State agency applying for funding is the State agency designated to carry out programs funded under 42 U.S.C. Sections 5117a and 5117b of the Temporary Child Care for Children With Disabilities and Crisis Nurseries Act.
- Provide a budget which contains an estimate of the proposed costs of developing, implementing, and evaluating the program.
- Provide documentation of the State's commitment to develop a State plan for coordination among agencies carrying out programs and activities provided by the State pursuant to a temporary child care grant under 42 U.S.C. Section 5117a. Documentation of formalized coordinated efforts with other agencies should also be provided. (Section 5117c(a)(1)(A)(v))
- Describe collaborative efforts with programs funded through the Child Care and Development Block Grant.
- Describe collaborative efforts with other family preservation and/or support programs including how the project(s) funded under this program will be family-centered and incorporated into the integrated service system planned under the Family Preservation and Family Support program authorized in Title IV–B, Subpart 2 of the Social Security Act.
- Describe collaborative efforts with other private and public agencies or organizations in providing services to developmentally disabled children and their families.
- Describe the proposed State program to assist private and public agencies or organizations in providing in-home or out-of-home temporary, non-medical care to children with disabilities and children with chronic or terminal illnesses, including drug-related conditions and children with AIDS or AIDS-related conditions, or crisis nurseries for abused and neglected children.

(1) If the State has previously received an award under this statute, describe the types of services being provided and the geographical sites served utilizing these funds.

(2) If the funds being requested would be used to enhance services previously or currently supported under this statute, substantial detailed documentation must be provided on the increased need for services such as the existence of waiting lists or an increase in the population of the geographical area.

(3) If the funds being requested would be used to expand services to geographical sites not previously or currently supported under this statute, describe the process that was used or will be used to select the sites. Particularly encouraged are sites which would serve homeless families, families living in public housing projects, American Indian communities, other minority families, or families with teenaged parents.

- Describe how the funds awarded will impact on past, current and future services and detail the mechanisms for measuring the proposed outcomes to be derived with these funds.
- Describe the services to be provided, the agencies and organizations that would provide the services and the criteria that would be employed in the selection of children and families for participation in the project. (42 U.S.C. Section 5117c(a)(1)(A)(i))
- Describe State plans for the submission of an annual report to the Secretary evaluating the programs that are funded, including information on costs, number of participants, impact on family stability, incidence of child abuse and neglect and such other information as the Secretary may require. Describe fully how this requirement would be met and specifically describe how the data required to conduct this evaluation and to generate the information would be collected. (42 U.S.C. Section 5117c(c))
- Describe a plan for dissemination of the results of the programs and projects funded under the Act. (42 U.S.C. Section 5117c(a)(1)(A)(iii))
- Discuss plans for continuation of the program after the federally funded project period has ended.
- Provide assurances and adequate budget funds to enable at least one key person from the State agency and one key person from each service provider site receiving funds from the grant to attend an annual three day conference in Washington, D.C.
- Provide assurances that travel to these conferences would not be subject to any limitations on travel which may be imposed by the State on its employees.
- Provide the following assurances as required by statute:

(1) That not more than 5 percent of the funds made available under each section of the Act would be used for State administrative costs.

(2) That projects funded by the State would be of sufficient size, scope and quality to achieve the objectives of the program.

(3) That, in the distribution of funds under the Temporary Child Care program, the State would give priority consideration to agencies and organizations which have experience in working with disabled, terminally ill, and chronically ill children and their families and which serve communities which demonstrate the greatest need for such services.

(4) That, in the distribution of funds under the Crisis Nurseries program, the State would give priority consideration to agencies and organizations with experience in working with abused or neglected children and their families; in working with children at high risk of abuse and neglect and their families; and in serving communities which demonstrate the greatest need for such services.

(5) That Federal funds made available under these programs would be used to supplement and, to the extent practicable, increase the amount of State and local funds available for these purposes, and in no case supplant such State or local funds.

(6) That the State would use the definition of children with disabilities found in Public Law 102–119, the Individuals with Disabilities Education Act, in implementing programs under the Temporary Child Care program.

(7) That all agencies and organizations funded under the Temporary Child Care for Children with Disabilities program would provide child care only on a sliding fee scale with hourly and daily rates.

(8) That the services provided under the Crisis Nurseries program would be provided without fee and for a maximum of 30 days in any year.

*Availability and Allocation of Funds*

The Administration for Children, Youth and Families proposes to award approximately 12 new grants (6 in priority area 2.01a and 6 in priority area 2.01b), in fiscal year 1996 in varying amounts up to $200,000 for the first 12 month budget period. Awards for subsequent budget periods may be granted in amounts up to and/or exceeding $200,000 should such funds become available.

Applications for continuation grants funded under this program beyond the first year's budget period, but within the total project period, will be entertained in subsequent years on a non-competitive basis, subject to a determination that continued funding would be in the best interest of the Federal government and the availability of funds.

In addition, non-competitive funding for subsequent years will be based on a program staff review of project status and performance, and evidence that the program is part of an integrated system of services described in an approved State plan as mandated by Title IV–B, Subpart 2, of the Social Security Act, pursuant to the Family Preservation and Family Support program.

*Federal Share of Project Costs*

The Federal share may not exceed $200,000 for the first 12 month budget period. The Federal share for a 3-year project period is anticipated at approximately $600,000.

The term ''budget period'' refers to the interval of time (usually 12 months) into which a multi-year period of assistance (project period) is divided for budgetary and funding purposes. The term ''project period'' refers to the total time a project is approved for support, including any extensions.

*Matching or Cost Sharing Requirements*

The applicant must provide at least 25 percent of the total approved project. The total approved project cost is the sum of the ACYF share and the non-Federal share. The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

To determine the correct proportions of Federal and non-Federal share required under this priority area you should:

Divide your proposed ACYF Federal share by 3. Example: $50,000 (Federal) divided by 3 equals $16,667 (non-Federal). $50,000 plus $16,667 equals $66,667 which is the total approved project cost.

Non-Federal share contributions may exceed the minimum specified when the applicant is able to do so. An applicant should ensure the availability of any amount proposed as match prior to including it in the budget. The non-Federal share must be met by a grantee during the life of the project. Otherwise, ACF will disallow any unmatched Federal funds.

*Project Duration*

The length of the project may not exceed 36 months.

*Length of Proposal*

The length of the proposal is limited to 60 pages, including all preprinted forms and appendices. Refer to part II for more information regarding proposal requirements and limitations.

Part III. Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided along with a checklist for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part II.

*A. Required Notification of the State Single Point of Contact*

The Abandoned Infants Program and Temporary Child Care for Children with Disabilities and Crisis Nurseries Program are covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of January, 1996, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by Federally-recognized Indian Tribes need take no action in regard to E.O. 12372: Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Virginia, Washington, American Samoa, and Palau.

All remaining jurisdictions participate in the Executive Order process and have established State Single Point of Contact (SPOCs). Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective application and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the review process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8 (a) (2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate'' or ''explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW, Mail Stop 6C–462, Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Appendix B of this announcement.

*B. Deadline for Submission of Applications*

The closing time and date for the receipt of applications is 4:30 p.m. (Eastern Time Zone) on [insert 60 days after publication in the Federal Register]. Applications MUST BE RECEIVED by 4:30 p.m. on that day. Applications received after 4:30 p.m. will be classified as late.

*Deadline:* Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW, Mail Stop 6C–462, Washington, DC 20447, Attention: _____ (Reference Announcement Number and Priority Area). Applicants are responsible for mailing applications well in advance, when using the mail services, to ensure that the applications are received on or before the deadline time and date.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m. at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, D.C. 20024 between Monday and Friday (excluding Federal Holidays). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

*Late Applications:* Applications which do not meet the criteria stated above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

*Extension of Deadlines:* ACF may be extended the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mail. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

*C. Instructions for Preparing the Application and Completing Application Forms*

The SF 424, 424A, 424B, and certifications have been reprinted for your convenience in preparing the application. See Appendix A. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the Federal Register announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet. Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted under only one priority area.

Item 1. Type of submission—Preprinted on the form.

Item 2. Date Submitted and Applicant Identifier—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. Date Received By State—State use only (if applicable).

Item 4. Date Received by Federal Agency—Leave blank.

Item 5. Applicant Information Legal Name—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, as assigned *only* by the DHHS Central Registry System. EIN prefixes and suffixes assigned by agencies other than DHHS are not valid at DHHS/ACF.

Item 7. Type of Applicant—Self-explanatory.

Item 8. Type of Application—Preprinted on the form.

Item 9. Name of Federal Agency—Preprinted on the form.

Item 10. Catalog of Federal Domestic Assistance Number and Title—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. Descriptive Title of Applicant's Project—Enter the project title and the priority area number in parenthesis after the project title. The title is generally short and is descriptive of the project.

Item 12. Areas Affected by Project—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. Proposed Project—Enter the desired start date for the project and projected completion date.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional District where the applicant's principal office is located and the number of the Congressional district (s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

Items 15. Estimated Funding Levels In completing 15a through 15f, the dollar amounts entered should reflect, for a 12 month budget period, the total amount requested. If the proposed project period exceeds 17 months, enter only those

dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Item 15 b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable.

Items 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. Is Application Subject to Review By State Executive Order 12372 Process? Enter Yes and the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided at the end of Part III. The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. Is Application Subject to Review By State Executive Order 12372 process? No.—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. Is the Applicant Delinquent on any Federal Debt?—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18 a–c. Typed Name of Authorized Representative, Title, Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. Date Signed—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs. This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering the first year budget period.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers the first year budget period if the proposed project period exceeds 12 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total cost of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. Equipment is defined as an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes of (b) $5,000.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) Procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, other.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup

documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurement that will exceed $5,000 (non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

Note: Previous or past experience with a contractor is not sufficient justification for sole source.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

Justification: Specify the costs included.

Total Direct Charge—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Generally, this line should be used when the applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with DHHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

Justification: Enclose a copy of the indirect cost rate agreement.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled Totals. In-kind contributions are defined in 45 CFR, Part 74.51 and 45 CFR Part 92.3, as property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs, Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 12 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column (b) First. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) Second. Column (d) would be used in the case of a 48 month project. Column (e) would not apply.

Section F—Other Budget Information.

Direct Charges—Line 21, Not applicable.

Indirect Charges—Line 22, Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 12 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description. Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval for specific types of funded projects.

4. Program Narrative Statement. The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II.

The narrative should provide information concerning how the application meets the evaluation criteria using the following headings:

(a) Objectives and Need for Assistance;

(b) Results and Benefits Expected;

(c) Approach; and

(d) Staff Background and Organization's Experience.

The narrative should be typed double-spaced on a single-side of an 8 ½'' x 11'' plain white paper, with 1'' margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with Objectives and Need for Assistance as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should meet criteria set forth in each Priority Area. A page is a single side of an 8 ½ X 11'' sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the page limit criteria. If the applicant chooses to submit printed materials, the applicant must provide a duplicate or a copy of each printed document with each copy of the application submitted. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement. The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part IV—Assurances/Certifications. Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements, (2) Debarment and Other Responsibilities; and (3) Pro-Children Act of 1994 (Certification Regarding Environmental Tobacco Smoke) Copies of the assurances/certifications are reprinted at the end of this announcement in (See Appendix) and should be reproduced, as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities and Environmental Tobacco Smoke certifications.

A signature on the application constitutes an assurance that the applicant will comply with the pertinent Departmental regulations contained in 45 CFR Part 74.

6a. Part IV—Statutory Assurances

Applicants seeking funding under the Abandoned Infants Assistance Act, Pub. L. 102–236, are required to meet the following assurances. Any assistance needed to comply with these requirements should be discussed with the local public child welfare agency. The following assurances are required under sections 101(b)(c) and (d) of Pub. L. 102–236:

(1) That the applicant give priority to abandoned infants and young children (a) who are infected with the human immunodeficiency virus or who have been perinatally exposed to the virus: or (b) who have been perinatally exposed to a dangerous drug.

(2) That, if the applicant expends the grant to carry out any program of providing care to infants and young children in foster homes or in other nonmedical residential settings away from their parents, the applicant will ensure that (a) a case plan of the type described in paragraph (1) of section 475 of the Social Security Act is developed for each such infants and young child (to the extent that such infant and young child in not otherwise covered by such a plan); and (b) the program includes a case review system of the type described in paragraph (5) of such section (covering each such infants and young child who is not otherwise subject to such a system).

(3) That funds provided under section 101 (a) shall be used only as fied in the application approved by the Secretary (section 101(d)(1)(A)).

(4) That fiscal control and fund accounting procedures will be established as may be necessary to ensure proper disbursement and accounting of Federal funds paid to the applicant under this announcement (section 101(d)(1)(B)).

(5) That reports to the Secretary will be made annually on the utilization, cost and outcomes of activities conducted and service furnished under this grant (section 101(d)(1)(C)).

(6) If during the majority of the 180-day period preceding the data of the enactment of this Act, the applicant has carried out any program with respect to the care of abandoned infants and young children, the applicant must certify that funds provided under the grant will be expended only for the purpose of expanding such service (section 101(d)(1)(D)).

*D. Checklist for a Complete Application*

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two copies. (Please note that applicants have the option to omit from the copies for non-Federal reviewers specific salary rates for individuals identified in the application.) Applications for different priority areas are packaged separately;

—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);

—Application length does not exceed 60 pages, unless otherwise specified in the priority area description. A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–88);

—A completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424;

—Budget Information-Non-Construction Programs (SF 424A, REV 4–88);

—Budget justification for Section B-Budget Categories;

—Table of Contents;

—Letter from the Internal Revenue Service to prove non-profit status, if necessary;

—Copy of the applicant's approved indirect cost rate agreement, if appropriate;

—Project summary description and listing of key words;

—Program Narrative Statement (See Part III, Section C);

—Organizational capability statement, including an organization chart;

—Any appendices/attachments;

—Assurances-Non-Construction Programs (Standard Form 424B, REV 4–88);

—Certification Regarding Lobbying;

—Certification of Protection of Human Subjects, if necessary; and

—Certification Regarding Environmental Tobacco Smoke (Pro-Children Act Certification).

*E. The Application Package*

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Do not include a self-addressed, stamped acknowledgement card. All applicants will be notified automatically about the receipt of their application. If acknowledgement of receipt of your application is not received within eight weeks after the deadline dates, please notify the ACYF Operations Center by telephone at 1–800–351–2293.

Dated: June 11, 1996.

James A. Harrell,

*Deputy Commissioner, Administration on Children, Youth and Families.*

## References

*AIA Factsheet,* Number 2, November, 1995. *Perinatal Substance Exposure.* National Abandoned Infants Assistance Resource Center. University of California at Berkeley.

*AIA Factsheet,* Number 3, January, 1996. *Women and Children with HIV/AIDS.* National Abandoned Infants Assistance Resource Center. University of California at Berkeley.

Barth, R., Goldberg, S., Pietrzak, J., Price, A., and Parker, T. (1995) *Abandoned Infants Assistance Programs: Providing Innovative Responses on Behalf of Infants and Children.* National Abandoned Infants Assistance Resource Center, University of California at Berkeley.

Department of Health and Human Services (1995). Centers for Disease Control. *HIV/AIDS Surveillance Report,* Washington, D.C.

James Bell Associates (1993). *Report to the Congress: National Estimates on the Number of Boarder Babies, the Cost of Their Care, and the Number of Abandoned Infants.* Washington, D.C.: U. S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau.

Levine. C., and Stein, G. (1994) *Orphans of the HIV Epidemic.* The Orphan Project. New York, New York.

Polineni, Kavita. *Permanency Planning for Children and Youth at Risk of Being Orphaned by AIDS.* (1995 unpublished). John Hopkins University. Baltimore, Maryland.

## Appendix A—Currently Funded Abandoned Infants Service Demonstration Projects

Georgia Department of Human Resources, Division of Family and Children Services, 878 Peachtree Street, Suite 417, Atlanta, Georgia 30309

Hahnemann University, Broad and Vine Streets, Mail Stop 404, Philadelphia, Pennsylvania 19102

Children's Mercy Hospital, 24th at Gillham Road, Kansas City, Missouri 64108

Ken-Crest Centers, Children and Family Services, 3132 Midvale Avenue, Philadelphia, Pennsylvania 19129

New York State Department, of Social Services, Division of Family and Children Services, 40 N. Pearl Street Albany, New York 12243 (Project site: Brooklyn, NY)

Leake & Watts Children's Home, Specialized Foster Home Program, 487 S. Broadway, 2nd Floor, Yonkers, New York 10705

Yale University, School of Medicine, Child Study Center, 333 Cedar Street, New Haven, Connecticut 06510

University of New Mexico, School of Medicine, 915 Camino de Salud, N.E., Albuquerque, New Mexico 87131

Operation PAR, Inc., McCormick Center, 10901–C Roosevelt Blvd., #1000, St. Petersburg, Florida 33716

San Joaquin County, Department of Health Care Services, 500 West Hospital Road, French Camp, California 95231

Protestant Community Centers, Inc., 19 James Street, Newark, New Jersey 07102

Children's AIDS Network Designed for Interfaith Involvement (CANDII), Suite F–116, 222 West 21st Street, Norfolk, Virginia 23517

Kansas Children's Service League, P.O. Box 517, Wichita, Kansas 67201

Bienvenidos Children's Center, 421 South Glendora Avenue, West Covina, California 91790

Society for Seamen's Children, 25 Hyatt Street, 5th Floor, Staten Island, New York 10301

Texas Department of Protective and Regulatory Services, Protective Services for Children, P.O. Box 149030, Austin, Texas 78714–9030 (Project sites: Dallas and Fort Worth, Texas)

Florida International University, Institute for Children and Families at Risk, Department of Social Work, North Miami Campus, Miami, Florida 33181

Foundation for Children with AIDS, Inc., 1800 Columbus Avenue, Roxbury, Massachusetts 02119

Mount St. Joseph-St. Elizabeth, 100 Masonic Avenue, San Francisco, California 94118–4494

Maryland State Department of Human Resources, 311 West Saratoga Street, Room 931, Baltimore, Maryland 21201

Illinois State Department of Children and Family Services, 406 East Monroe Street, Springfield, Illinois 62701 (Project site: Chicago, IL)

Children's Hospital, 219 Bryant Street, Buffalo, New York 14222

New Jersey State Department of Human Services, 50 East State Street, CN 717, Trenton, New Jersey 08625 (Project site: Jersey City, NJ)

Delaware Department of Health and Social Services, Division of Alcoholism, Drug Abuse and Mental Health, 1901 No. DuPont Highway, New Castle, Delaware 19720

Massachusetts State Department of Public Health, Division of Perinatal and Child Health, 150 Tremont Street, 4th Floor, Boston, Massachusetts 02111 (Project sites: New Bedford and Springfield, MA)

Child & Family Services of Knox County, 114 Dameron Avenue, Knoxville, Tennessee 37917

Orange County Social Services Agency, 1055 N. Main Street, Suite 600, Santa Ana, California 927021

Tarzana Treatment Center, 18646 Oxnard Street, Tarzana, California 91356–1486

Children's Institute International, 711 S. New Hampshire Avenue, Los Angeles, California 90005

Children's Hospital of New Orleans, 200 Henry Clay Avenue, New Orleans, Louisiana 70118

The Center for Drug-Free Living, Inc., 100 W. Columbia Street, Orlando, Florida 32806

BILLING CODE 4184–01–P

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):**

☐☐ – ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐ . ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(cities, counties, states, etc.)*:

**13. PROPOSED PROJECT:**

| Start Date | Ending Date |
|---|---|
| | |

**14. CONGRESSIONAL DISTRICTS OF:**

| a. Applicant | b. Project |
|---|---|
| | |

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED**

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

BILLING CODE 4184–01–C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entrv

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.
—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. if both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. to be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

**BILLING CODE 4184–01–M**

OMB Approval No. 0348-0044

# BUDGET INFORMATION — Non-Construction Programs

**SECTION A – BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

**SECTION B – BUDGET CATEGORIES**

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

Authorized for Local Reproduction

Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |

23. Remarks

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

BILLING CODE 4184-01-C

Instructions for the SF–424F

*General Instructions*

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Line a–k of Section B.

*Section A. Budget Summary*

Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

*Section B. Budget Categories*

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtrace this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

*Section C. Non-Federal-Resources*

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

*Section D. Forecasted Cash Needs*

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

*Section E. Budget Estimates of Federal Funds Needed for Balance of the Project*

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

*Section F. Other Budget Information*

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your protect or program. If you have questions, please contract 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 requirement of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplaints 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

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief 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 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for 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 or records, making false statements, or receiving stolen property.

(c) Are not presently indicted 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 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions'' provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Cover Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier

participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled ''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.

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for impatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for children's services and that all subgrantees shall certify accordingly.

Certification Regarding Lobbying

*Certification for Contracts, Grants, Loans, and Cooperative Agreements*

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) 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 awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) 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 contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

*State for Loan Guarantee and Loan Insurance*

The undersigned states, to the best of his or her knowledge and belief, that:

If any 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 commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

_____

Date

**BILLING CODE 4184–01–M**

# 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:**
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

**2. Status of Federal Action:**
☐ a. bid/offer/application
b. initial award
c. post-award

**3. Report Type:**
☐ a. initial filing
b. material change
**For Material Change Only:**
year _____ quarter _____
date of last report _____

**4. Name and Address of Reporting Entity:**
☐ Prime ☐ Subawardee
Tier _____, *if known*:

**Congressional District,** *if known*:

**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:**

**Congressional District,** *if known*:

**6. Federal Department/Agency:**

**7. Federal Program Name/Description:**

CFDA Number, *if applicable*: _____

**8. Federal Action Number,** *if known*:

**9. Award Amount,** *if known*:
$

**10. a. Name and Address of Lobbying Entity**
*(if individual, last name, first name, MI)*:

**b. Individuals Performing Services** *(including address if different from No. 10a)*
*(last name, first name, MI)*:

*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*

**11. Amount of Payment** *(check all that apply)*:
$ _____ ☐ actual ☐ planned

**12. Form of Payment** *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

**13. Type of Payment** *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

**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:** _____
**Print Name:** _____
**Title:** _____
**Telephone No.:** _____ **Date:** _____

**Federal Use Only:**

**Authorized for Local Reproduction**
**Standard Form - LLL**

## U.S. Department of Health and Human Services

## Certification Regarding Drug-Free Workplace Requirements

## Grantees Other Than Individuals

**By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.**

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

**"Controlled substance"** means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

**"Conviction"** means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

**"Criminal drug statute"** means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

**"Employee"** means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**The grantee 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 ongoing 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 ten 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 every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. 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).

**The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):**

**Place of Performance (Street address, City, County, State, ZIP Code)**_____

*Check* ___ *if there are workplaces on file that are not identified here.*

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

**DGMO Form#2 Revised May 1990**

BILLING CODE 4184–01–C

Appendix B—OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315, FAX: (602) 280–1305.

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206.

Alabama

Jon C. Strickland, Alabama Department of Economic and Community Affairs, Planning and Economic Development Division, 401 Adams Avenue, Montgomery, Alabama 36103–5690, Telephone: (205) 242–5483, FAX: (205) 242–5515.

California

Grants Coordinator, Office of Planning & Research, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone (916) 323–7480, FAX: (916) 323–3018.

Delaware

Francine Booth, State Single Point of Contact Executive Department, Thomas Collins Building, P.O. Box 1401, Dover, Delaware 19903, Telephone: (302) 739–3326, FAX; (302) 739–5661.

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Mgmt. & Dev., 717 14th Street, N.W.—Suite 500, Washington, D.C. 20005, Telephone: (202) 727–6554, FAX: (202) 727–1617.

Florida

Florida State Clearinghouse, Department of Community Affairs, 2740 Centerview Drive, Tallahassee, Florida 32399–2100, Telephone: (904) 922–5438, FAX: (904) 487–2899.

Georgia

Tom L. Reid, III, Administrator, Georgia State Clearinghouse, 254 Washington Street, S.W.—Room 401J, Atlanta, Georgia 30334, Telephone: (404) 656–3855 or (404) 656–3829, FAX: (404) 656–7938.

Illinois

Barbara Beard, State Single Point of Contact, Department of Commerce and Community Affairs, 620 East Adams, Springfield, Illinois 62701, Telephone: (217) 782–1671, FAX: (217) 534–1627.

Indiana

Amy Brewer, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone: (317) 232–5619, FAX: (317) 233–3323.

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4859.

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601–8204, Telephone: (502) 573–2382, FAX: (502) 573–2512.

Maine

Joyce Benson, State Planning Office, State House Station #38, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489.

Maryland

William G. Carroll, Manager, State Clearinghouse for Intergovernmental Assistance, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2365, Staff Contact: Linda Janey, Telephone: (410) 225–4490, FAX: (410) 225–4480.

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 1900 Edison Plaza, 660 Plaza Drive, Detroit, Michigan 48226, Telephone: (313) 961–4266.

Mississippi

Cathy Malette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3807, Telephone: (601) 359–6762, FAX: (601) 359–6764.

Missouri

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Room 760, Truman Building, Jefferson City, Missouri 65102, Telephone: (314) 751–4834, FAX: (314) 751–7819.

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–4065, FAX: (702) 687–3983.

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728.

New Jersey

Gregory W. Adkins, Assistant Commissioner, New Jersey Department of Community Affairs.

Please direct all correspondence and question about intergovernmental review to: Andrew J. Jaskolka, State Review Process, Intergovernmental Review Unit CN 800, Room 813A, Trenton, New Jersey 08625–0800, Telephone: (609) 292–9025, FAX: (609) 633–2132.

New Mexico

Robert Peters, State Budget Division, Room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–3640.

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone: (518) 474–1605.

North Carolina

Chrys Baggett, Director, N.C. State Clearinghouse, Office of the Secretary of Admin., 116 West Jones Street, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571.

North Dakota

North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone: (701) 224–2094, FAX: (701) 224–2308.

Ohio

Larry Weaver, State Single Point of Contact, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411.

Please direct correspondence and questions about intergovernmental review to: Linda Wise, Telephone: (614) 466–0698, FAX: (614) 466–5400.

Rhode Island

Daniel W. Varin, Associate Director, Department of Administration/Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 277–2656, FAX: (401) 277–2083.

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning.

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street—Room 477, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0385.

Texas

Tom Adams, Governor's Office, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 463–1771, FAX: (512) 463–1880.

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116, State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547.

Vermont

Nancy McAvoy, State Single Point of Contact, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05609, Telephone: (802) 828–3326, FAX: (802) 828–3339.

West Virginia

Fred Cutlip, Director, Community Development Division, W. Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, FAX: (304) 558–3248.

Wisconsin

Martha Kerner, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–2125, FAX: (608) 267–6931.

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone: (307) 777–7574, FAX: (307) 638–8967.

*Territories*

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825.

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444; (809) 723–6190, FAX: (809) 724–3270; (809) 724–3103.

North Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, North Mariana Islands 96950.

Virgin Islands

Jose George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802.

Please direct all questions and correspondence about intergovernmental review to: Linda Clarke, Telephone: (809) 774–0750, FAX: (809) 776–0069.

[FR Doc. 96–15321 Filed 6–17–96; 8:45 am]

**BILLING CODE 4184–01–P**

---

## Centers for Disease Control and Prevention

**[Announcement Number 625]**

## FY 1996 Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for a cooperative agreement program for epidemiologic and behavioral research studies of AIDS and HIV infection. These include studies to examine factors related to disease progression of HIV infection in women, mother-to-child HIV transmission, sexual and needleborne transmission of HIV among drug users, and the spread of HIV infection in rural and small cities in the United States. The study of these research areas as they pertain to racial and ethnic minority populations (defined as Black, Hispanic, Asian and Pacific Islander, and American Indian) is encouraged because minorities constitute over 50% of all reported cases of AIDS and approximately 76% of all women and children with AIDS.

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 HIV Infection. (To order a copy of ''Healthy People 2000,'' see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**.)

### Authority

This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a) and 247b(k)(2)], as amended. Applicable program regulations are set forth in 42 CFR Part 52, entitled ''Grants for Research Projects.''

### Smoke-Free Workplace

CDC strongly encourages all cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. 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. This is consistent with the PHS mission to protect and advance the physical and mental health of American people.

### Eligible Applicants

Eligible applicants include all public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, and 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- or women-owned businesses are eligible to apply.

Note: Organizations described in section 501(c)(4) of the Internal Revenue Code of 1986 that engage in lobbying are not eligible to receive Federal grant/cooperative agreement funds.

### Availability of Funds

Approximately $6,900,000 will be available in FY 1996 to fund approximately 16 awards. It is expected that the average new award will be approximately $300,000 and that the average continuation award will be $500,000, ranging from $100,000 to $1,000,000. It is expected that approximately 3 new and 13 competing renewal awards will be made and that awards will begin on or about September 30, 1996. Awards will be funded for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory programmatic progress and the availability of funds.

### Purpose

The purpose of these awards is to help support researchers in the conduct of HIV-related epidemiologic and behavioral research studies. These include studies to examine factors related to disease progression of HIV infection in women, mother-to-child HIV transmission, sexual and needleborne transmission of HIV among drug users, and the spread of HIV infection in small cities and rural areas in the United States. The study of these research areas as they pertain to minority populations are of special interest.

### Research Issues

Four research issues of programmatic interest to the health care community and to CDC for FY 1996 are listed below and are considered of significant importance in gaining a greater understanding of the epidemiology of AIDS and HIV infection. However, applications submitted by organizations that examine additional important HIV-related epidemiologic research issues will also be accepted and considered for funding.

Applicants addressing the same research issue should be willing to participate in collaborative studies with other CDC-sponsored researchers, including the use of common data collection instruments, specimen collection protocols, and data management procedures. Applicants are required to identify their proposed research issue on line 1 of the face page of the application if the PHS–398 is used, or Block 11 of the face page if the PHS–5161–1 is used (for more information on the forms to use, see the section **APPLICATION SUBMISSION AND DEADLINE**).

*1. Studies of HIV Disease Progression in Women*

Studies should be designed to identify, enroll, and prospectively follow women who are HIV-infected and demographically similar women who are not HIV-infected but who have demonstrable risk for HIV infection so that the biologic, behavioral, and psychosocial determinants and correlates of HIV disease progression

and other health outcomes can be assessed. Preference will be given to sites (1) where at least 200 HIV-infected and 100 HIV-uninfected women are already being systematically followed, (2) at which behavioral scientists are part of the research team, and (3) at which the applicant or its documented collaborative partners have the ability to perform virologic and immunologic assays. Applicants must demonstrate that they can provide adequate rates of follow-up, including collection of laboratory specimens, tracking and abstraction of medical records, and determination of causes of deaths. Applicants must be willing to participate in collaborative studies with other CDC-sponsored women's HIV disease progression projects, including the use of common data collection instruments, specimen collection protocols, and data management procedures. Applicants must demonstrate cost-efficient local data management and statistical capability.

*2. Mother-to-Child HIV Transmission Studies*

Studies should be designed to identify HIV-infected women during pregnancy or at delivery and enroll the women and their infants in a prospective follow-up study to examine factors related to mother-to-child HIV transmission, early diagnosis of infant infection, and disease progression in children. Studies designed to examine the effect of interventions such as zidovudine use to prevent mother-to-child HIV transmission are of particular interest. Preference will be given to applicants with studies in which mother-infant pairs are already being systematically identified and followed, and which have the ability to perform virologic and immunologic assays. Applicants must demonstrate that they can provide adequate rates of follow-up of both mothers and infants, including collection of laboratory specimens at periodic intervals (particularly within the first 48 hours of birth and during the first 6 months of life), and long-term follow-up of infants, including those placed in foster care. Applicants must be willing to participate in collaborative studies with other CDC-sponsored mother-to-child HIV transmission projects, including use of common data collection instruments and study design where warranted. Applicants must demonstrate cost-efficient data management, laboratory testing, and statistical capability or provide explicit plans for data management by CDC or an outside group. Applicants must demonstrate the ability to enroll and follow at least 30 HIV-positive mother-infant pairs per year.

*3. Sexual and Needleborne Transmission of HIV Among Drug Users*

Study proposals are solicited that address HIV infection in young drug-abusing populations that are recruited on the street and not routinely seen in clinics, hospitals, or similar institutional settings. The purpose of such studies will be to address issues important to the sexual, needleborne, and injection paraphernalia related transmission of HIV and settings that may contribute to HIV infection among drug users who are not seen in the usual medical and drug-treatment facilities. Preference will be given to projects that involve community outreach to enroll recently initiated drug users for interview and examination and that focus on inner-city or rural areas where drug use among young adults is prevalent.

Examples of worthwhile proposals are HIV seroincidence cohorts that describe initiating practices of injection and risks for young adults; current sources, acquisition, and cleaning and disposal of needles and syringes; issues of violence as they relate to drug use and the impact on individual, family and community; social networks including contacts and community dynamics that affect HIV incidence. Other related aspects of incidence and management of infectious complications of drug use, including skin and respiratory infections that could be altered by HIV immune suppression, and their possible impact on the progression of HIV infection. Applicants should demonstrate their ability to access young injection drug-using populations not currently in drug treatment, interview and examine them in a confidential manner, and provide or link study participants to appropriate medical, drug-treatment and other services. Applicants for studies of these difficult-to-reach populations should demonstrate their ability to provide new insights into the epidemiology of HIV infection in injecting drug users and not duplicate other projects; possess cost-effective data management and statistical capabilities, or provide specific plans for management of data; and participate collaboratively in a multisite study with other researchers in the development, implementation, and analysis of data from the proposed study.

*4. HIV Infection in Small Cities and Rural Areas*

Studies should be designed to identify, interview, and learn more about HIV-infected persons who live in rural and small cities (small cities and rural areas outside metropolitan statistical areas of more than 500,000) such as their (1) modes of exposure to HIV, (2) substance abuse, (3) travel/migration patterns, (4) health care seeking behaviors, (5) barriers to care, and (6) sexually transmitted diseases. Preference will be given to studies that address the following questions. What specific behaviors (e.g., sexual and substance abuse) are related to infection of persons residing in these areas? Did persons from these areas become infected in their current areas of residence or during travel or residences in large metropolitan areas? What are the barriers to care specific to HIV-infected persons living in small cities and rural areas? What health care sites (e.g., STD and family planning clinics) did the patient visit during and before the estimated time period of infection, and what HIV prevention messages and services were offered and received?

Applicants must demonstrate the ability to enroll and follow at least 50 HIV-infected patients residing in small cities and rural areas. Applicants must be willing to participate collaboratively in a multi-site study with other researchers in the development, implementation, and analysis of data from the proposed study. Applicants are expected to determine proper distribution of participants by sex, race, and ethnicity for their topic of study and to state clearly in the application the composition of the proposed study population. If women, racial, or ethnic minorities are not included in the proposed study, applicants must justify their exclusion.

Program Requirements

Under this cooperative agreement program, CDC will assist the researcher in conducting the epidemiologic research of AIDS and HIV infection described in the **PURPOSE** section of this announcement.

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities listed under subparagraph 1., below, and CDC shall be responsible for the activities listed under subparagraph 2., below:

*1. Recipient Activities*

Applicants addressing the same research issue must be willing to participate in collaborative studies with other CDC-sponsored researchers, including the use of common data collection instruments, specimen collection protocols, and data management procedures.

a. Meet with other funded grantees and develop the research study protocol and the interview instrument.

b. Identify, recruit, obtain informed consent from, and enroll an adequate number of study participants as determined by the study protocol and the program requirements.

c. Continue to follow study participants as determined by the study protocol.

d. Establish procedures to maintain the rights and confidentiality of all study participants.

e. Perform laboratory tests (when appropriate) and data analysis as determined in the study protocol.

f. Collaborate and share data and specimens (when appropriate) with other collaborators to answer specific research questions.

g. Conduct data analysis with all collaborators as well as present research findings subject to the provisions of the following section, CDC Activities.

*2. CDC Activities*

a. Provide technical assistance in the design and conduct of the research.

b. Provide technical guidance in the development of study protocols, consent forms and questionnaires.

c. Assist in designing a data management system.

d. Perform selected laboratory tests.

e. Coordinate research activities among the different sites.

f. Participate in the analysis of research information and the presentation of research findings.

Evaluation Criteria

All applications will be reviewed according to the same criteria; however, applicants will be ranked on a scale of 200 maximum points according to the four research issues listed above and a fifth category for all other HIV-related epidemiologic studies. All applicants must state which research category they are addressing. Applications should demonstrate the applicant's ability to address the research problem in a collaborative manner with CDC. Applications will be reviewed and evaluated based on the evidence submitted, which specifically describes the applicant's abilities to meet the following criteria:

1. The inclusion of a detailed review of the scientific literature pertinent to the study being proposed and specific research questions or hypotheses that will guide the research; (25 points)

2. The originality and need for the proposed research, the extent to which it does not replicate past or present research efforts, and how findings will be used to guide prevention and control efforts; (25 points)

3. The quality of the plans to develop and implement the study describing how study participants (including racial and ethnic minority populations) will be identified, enrolled, tested and followed; (25 points)

4. The ability to enroll and follow an adequate number of eligible study participants to ensure proper conduct of the study. This includes demonstration of the availability of HIV-infected potential study participants and the experience of the investigator in enrolling and following such persons in a culturally and linguistically appropriate manner; 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; (25 points)

5. The applicant's understanding of the research objectives and the ability, willingness, and need to collaborate with CDC and researchers from other study sites in study design and analysis, including use of common forms, and sharing of specimens (when appropriate) and data; (25 points)

6. The applicant's current experience in AIDS and HIV epidemiologic or behavioral research and how it will be applied to achieving the objectives of the study (letters of support from cooperating organizations that demonstrate the nature and extent of such cooperation should be included); (20 points)

7. The comprehensiveness of the plan to protect the rights and confidentiality of all participants; (20 points)

8. Availability of qualified and experienced personnel with realistic and sufficient percentage-time commitments; clarity of the described duties and responsibilities of project personnel; adequacy of the facilities, equipment, and plans for the administration of the project, including project oversight and data management; (20 points)

9. A comprehensive schedule for accomplishing the activities of the research and an evaluation plan that identifies methods and instruments for evaluating progress in designing and implementing the research objectives. (15 points)

10. *Other* (Not Scored).

(1) *Budget*

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable. All budget categories should be itemized.

(2) *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: (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 (ORG) 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.

Funding Preferences

Priority will be given to competing continuation applications from satisfactorily performing projects over applications for projects not already receiving support under the program. Projects will be awarded so that the composite of projects represents the geographic and demographic characteristics of the HIV-infected population.

Executive Order 12372 Review

Applications are not subject to review under 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 is 93.943, Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups.

Other Requirements

*1. Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*2. Human Subjects*

This program involves research on human subjects. Therefore, all applicants 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 that the project or activity 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 with or support the research. If any American Indian community is involved, its tribal government must also approve that portion of the project applicable to it.

*3. HIV/AIDS Requirements*

Recipients must comply with the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (June 1992) (a copy is in the application kit). To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a State or local health department. The names of the review panel members must be listed on the Assurance of Compliance form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

*4. Patient Care*

Applicants should provide assurance that all HIV-infected patients enrolled in their studies will be linked to an appropriate local HIV care system that can address their specific needs such as medical care, counseling, social services, and therapy. Details of the HIV care system should be provided, describing how patients will be linked to the system. Funds will not be made available to support the provision of direct care for study participants.

*5. Women, Racial and Ethnic Minorities*

It is the policy of the CDC to ensure that individuals of both sexes and the various 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. 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, Friday, September 15, 1995, pages 47947–47951 (a copy is included in the application kit).

Application Submission and Deadline

The original and five copies of the completed application packet PHS 398 (Revised 5/95, OMB No. 0925–0001) must be submitted to Van Malone, Grants Management Officer (ATTN: Kevin Moore), Grants Management Branch, Procurement and Grants Office (625), Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Mail Stop E–15, Atlanta, Georgia 30305, on or before August 2, 1996. States and local governments may use Form PHS–5161–1 (Revised 7/92, OMB No. 0937–0189); however, Form PHS–398 is preferred. If using Form PHS–5161–1, submit an original and two copies to the address stated above.

*1. Deadline*

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the stated 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 accepted as proof of timely mailing.)

*2. Late Applications*

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 applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Kevin Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 320, Mail Stop E–15, Atlanta, Georgia 30305, telephone (404) 842–6550, E-mail address kgm1@opspgo1.em.cdc.gov. The announcement will be available on one of two Internet sites on the publication date: CDC's home page at http://www.cdc.gov, or at the Government Printing Office home page (including free access to the Federal Register) at http://www.access.gpo.gov.

Programmatic technical assistance may be obtained from Jeff Efird, Division of HIV/AIDS Prevention, National Center for HIV, STD, TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mail Stop E–45, Atlanta, Georgia 30333, telephone (404) 639–6130. Eligible applicants are encouraged to call before developing and submitting their application. Please refer to Announcement Number 625 when requesting information.

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 from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: June 11, 1996.

Joseph R. Carter,

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–15379 Filed 6–17–96; 8:45 am]

BILLING CODE 4163–18–P

**[Announcement Number 620]**

## Prevention of the Complications of Hemophilia through Hemophilia Treatment Centers

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for a cooperative agreement program to prevent the complications of congenital bleeding disorders, particularly hemophilia A and B (henceforth referred to as hemophilia).

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 Diabetes and Chronic Disabling Conditions. (For ordering a copy of Healthy People 2000, see the Section Where to Obtain Additional Information.)

### Authority

This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act, as amended [42 U.S.C. 241(a) and 247b(k)(2)]. Applicable program regulations are found in 42 CFR Part 51b—Project Grants for Preventive Health Services.

### Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote 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

Assistance will be provided only to comprehensive hemophilia treatment centers (HTCs), defined as public or private entities that provide: 1) regional services to support hemophilia comprehensive treatment centers or 2) diagnostic and treatment services to persons with hemophilia and other congenital blood disorders. This definition of HTCs is currently used by the Health Resources and Services Administration (HRSA) to fund a grant program for comprehensive hemophilia treatment centers for the provision of prevention and care services to persons with hemophilia and other congenital bleeding disorders. The definition is also used by HRSA to determine eligibility of HTCs to receive Public Health Pricing under the Veterans Health Care Act.

Because of the degree of specialization required in the treatment of hemophilia, competition is limited to HTCs as defined above.

This project requires experience in providing comprehensive outreach, diagnostic, treatment, and preventive services to patients with hemophilia which can only be provided by HTCs.

One award per region will be made to support the core HTC and other contracting or collaborating HTCs in the region. For the purposes of these awards, regional breakdowns are as follows: Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Region II: New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands; Region III: Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia; Region IV-North: Kentucky, North Carolina, South Carolina, and Tennessee; Region IV-South: Alabama, Florida, Georgia, and Mississippi; Region V-East: Indiana, Michigan, and Ohio; Region V-West: Illinois, Minnesota, North Dakota, South Dakota, and Wisconsin; Region VI: Arkansas, Louisiana, Oklahoma, and Texas; Region VII: Iowa, Kansas, Missouri, and Nebraska; Region VIII: Arizona, Colorado, Montana, New Mexico, Utah, and Wyoming; Region IX: California, Hawaii, Nevada, American Samoa, Northern Mariana Islands and Guam; Region X: Alaska, Idaho, Oregon, and Washington.

### Availability of Funds

Approximately $5,700,000 is available in FY 1996 to fund approximately 12 awards. It is expected that the awards will range from $200,000 to $750,000. One award will be made for each of the following Regions: I, II, III, VI, VII, VIII, IX, and X; two awards will be made for each Region IV and V. It is expected that the awards 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 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory programmatic progress and the availability of funds.

### Purpose

The purpose of the hemophilia complications prevention cooperative agreement program is to assist recipients in (1) providing comprehensive prevention services to persons with hemophilia or related disorders to prevent the complications of their bleeding disorder, (2) developing a prevention evaluation network to assess the efficacy of these prevention services and make refinements as necessary, and (3) building their capacity to serve as public health prevention centers in the hemophilia community.

### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. below, and CDC will be responsible for conducting activities under B. below:

*A. Recipient Activities*

1. Implement and evaluate prevention interventions directed at attaining specific outcomes of reduced complications.

a. Implement mechanisms for clinical outcomes evaluation including evaluation of prevention strategies.

b. Work collaboratively with specified sites to collect standardized clinical outcomes data.

c. Develop appropriate management and evaluation systems to ensure that other HTCs within the region implement the activities of this program appropriately and use clinical outcomes data collection instruments.

d. Analyze, present, and publish local, State, or regional hemophilia prevention outcomes.

e. Develop and maintain strict policies on protecting the confidentiality of persons with hemophilia, and ensure the security of databases and other records through controlled access to areas with confidential information, database password protection, locking file cabinets, and other security features.

f. Recipients are encouraged to propose and conduct longitudinal clinical prevention studies of persons with hemophilia-related complications.

2. Prioritize targets for interventions, including, but not limited to, prevention of joint disease in persons with hemophilia and prevention of infections due to unsafe blood and blood products or unsafe practices related to treatment of persons with hemophilia.

3. Implement intervention strategies for reducing complications of hemophilia.

a. Implement prevention guidelines as they are developed and as appropriate for providing proper prevention services to persons with hemophilia. Develop mechanisms for appropriate delivery of prevention protocols, messages, and materials to persons with hemophilia and their family members (consumers of hemophilia care and prevention services, or consumers).

b. Make available appropriate training resources and opportunities, including attending local, regional, or national trainings as necessary.

c. Provide persons with hemophilia and their family members with appropriate and up-to-date prevention messages and notice of training opportunities. Prevention messages include those directed at preventing transmission of HIV from infected persons with hemophilia to their sexual partners, offspring, or other contacts, as well as preventing other complications of hemophilia such as joint disease and viral diseases.

(1) Utilize these consumers as possible in delivering prevention messages through mechanisms of peer-led prevention education, outreach, and support.

(2) Review home infusion, home safety, and infection control practices with each patient and/or family as applicable at least yearly at comprehensive clinic visit or every other year for patients on biennial comprehensive visit schedules.

d. Establish mechanism for consumer input and involvement in planning, implementing, and assessing HTC prevention activities. Work collaboratively and regularly with local hemophilia consumer organization or ad hoc consumer consultation committee to solicit this input.

e. Work collaboratively with other HTCs in the region to effectively disseminate information to HTC personnel and clients.

4. Advise CDC of any patients who have become newly infected with HIV or hepatitis A, B, or C viruses (HAV, HBV, or HCV), potentially as a result of contaminated clotting factor concentrates.

a. Collect sera and/or cells from patients with hemophilia and ship these to a central, specified laboratory for testing and reporting results. This central laboratory will be determined through a contract with CDC.

5. Serve as liaison with all HTCs in the defined region, their clients, the Hemophilia Program at the Maternal and Child Health Bureau, and CDC. As a liaison be responsible for coordination of activities of the region, including contracting or collaborating HTCs. Those responsibilities should include:

a. Coordinate prevention and programmatic activities of HTCs in region and promote collaboration of HTCs within the region;

b. Promote collaboration of HTCs with their local consumer organization or ad hoc consumer consultation committee;

c. Coordinate technical assistance to HTCs, including conducting program assessments, site visits, and necessary implementation of findings. Coordinate CDC consultation when necessary;

d. Coordinate assessments of training needs of HTC personnel and clients and work with CDC and designated training center as necessary to assist HTC personnel and clients in locating appropriate resources to meet defined training needs. These designated training centers will be determined by contract with CDC.

e. Coordinate development of HTC program plans, goals and objectives, and progress tracking and reporting for HTCs in the region; and

f. Coordinate, annually or bi-annually, and with CDC participation, a regional meeting for HTCs and consumer organizations or ad hoc consumer consultation committees in the region for the purposes of information sharing and program planning. Regional meetings may be joint with other regions with similar needs.

*B. CDC Activities*

1. Assist in setting priority areas for prevention of complications of hemophilia as a collaborative effort with the participating HTCs. Provide consultation, scientific and technical assistance in planning, implementing, and evaluating activities to prevent the complications of hemophilia. This assistance includes the development of standard instruments to evaluate prevention protocols and accompanying software.

2. Assist hemophilia programs in the implementation of prevention guidelines developed through a collaborative effort.

3. Provide programmatic coordination of prevention protocol development, including evaluation of the effectiveness of prevention protocols and other studies to determine the efficacy of the guidelines.

4. Assist in the analysis and reporting of aggregate clinical outcomes data collected from funded programs; coordinate and consolidate the transfer of tabulated data, analyses, and conclusions among recipients.

5. Provide or locate necessary follow-up and technical assistance to implement any noted changes or recommendations resulting from programmatic evaluations or assessments.

6. Collaborate with HTCs and appropriate State or local health departments to investigate any suspect HIV, HAV, HBV, HCV or parvovirus seroconversions that are reported by HTCs.

7. Provide technical assistance to coordinate routine annual testing of patient samples for HAV, HBV, HCV, and parvovirus and reporting of results back to HTC. Provide technical assistance to designated laboratory for permanent storage of blood samples. These laboratories will be determined by contract with CDC.

8. Collaborate with the National Hemophilia Foundation and other consumer organizations to provide appropriate mechanisms of consumer involvement in program activities as required in Recipient Activity number 3.

9. Participate in regional meetings of HTCs and consumer organizations.

10. Collaborate with Regional Coordinators, HTC personnel, consumers, and designated training centers to provide appropriate training resources to providers and consumers.

11. Disseminate current information related to the development, implementation, and evaluation of these regional programs to the funded HTCs and the public as necessary and as requested.

Evaluation Criteria

All applications will be reviewed and evaluated according to the following criteria: (Total 100 points).

*A. Capacity (30 Points Maximum)*

1. The capacity of the applicant to access persons with hemophilia in the region to provide prevention services. The applicant must demonstrate the ability to work cooperatively with all HTCs in the region when the funds are awarded. This is regardless of whether other HTCs in the defined region submit an application to be the coordinating HTC for the region. The capacity to access the hemophilia community is measured by (a) the extent that this proposal incorporates shared responsibility between participating HTCs to serve the patients in the defined catchment area, and (b) the extent to which this collaboration is evidenced by included letters of support from contracting or voluntary collaborating HTCs. (15 points)

2. The scope and magnitude of previous experiences in treatment of hemophilia, in prevention of disease complications, in hemophilia-related epidemiologic or clinical studies, and in management and coordination of a regional network of HTCs. (7 points)

3. The allocation of time, number, and qualifications of proposed staff to meet stated objectives and goals; and, the availability of facilities to be used during the project period. (8 points)

*B. Goals and Objectives (15 Points Maximum)*

The extent to which the applicant's proposed goals and objectives meet the required activities specified under ''A. Recipient Activities,'' part 1. *Required activities for all recipients* in the Program Requirements section of this announcement, and are measurable, specific, time-phased, and realistic. (15 points)

*C. Methods and Activities (50 Points Maximum)*

1. The quality of the applicant's plan for conducting program activities and the extent to which prevention methods proposed are: (a) Appropriate to accomplish stated goals and objectives, and (b) feasible within programmatic and fiscal restrictions. (14 points)

2. The extent to which the proposal incorporates gathering and using input from persons with hemophilia, their family members, and local consumer organizations; and the applicant's willingness to cooperate with consumers in the development and implementation of prevention services. (18 points)

3. The applicant's willingness to cooperate with CDC and other funded applicants to (a) collect a unified set of clinical outcomes data, as defined by CDC, to assess the efficacy of prevention activities, and (b) develop and implement prevention protocols and guidelines. (18 points)

*D. Program Management and Evaluation (5 Points Maximum)*

The extent to which management systems, including the types, frequency, and methods of evaluation, are used to assure appropriate implementation of the activities of this program, including implementation of program activities in contracting and voluntary collaborating HTCs; and, assurance that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. (5 points)

*E. Budget*

The extent to which the budget is reasonable and consistent with the intended use of the cooperative agreement funds. (not scored)

*F. 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: (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. (Not scored)

Funding Preference

In order to maximize the utility of a service provision infrastructure, one award will be made per region (two awards for Regions IV and V) and funding preference will take into consideration geographic location.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants 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. 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 have any State process recommendations on applications submitted to CDC, they should reference this announcement number (620) and forward recommendations to Sharron Orum, 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–18, Atlanta, Georgia 30305. The due date for State process recommendations is 30 days after the application deadline date for new awards (the appropriation for these awards was received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day State recommendation process within FY 1996). CDC does not guarantee to ''accommodate or explain'' State 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 Impact 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;

(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 Single Point of Contact (SPOC) or directly from the applicant.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283, Centers for Disease Control and Prevention (CDC)—Investigations and Technical Assistance.

Other Requirements

*Paperwork Reduction Act*

Projects that involve collection of information from 10 or more individuals and funded by cooperative agreements will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects Requirement

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 which demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing evidence of this assurance in accordance with the appropriate guidelines and forms provided in the application kit.

All information obtained in connection with this program shall not, without such individual's consent, be disclosed except as may be necessary to provide services to him or her or as may be required by a law of a State or political subdivision of a State. Information derived from any such

program may be disclosed: (1) In summary, statistical, or other form, or (2) for clinical or research proposed, but only if the identity of the individuals under such program is not disclosed.

*HIV/AIDS Requirements*

Recipients must comply with the document entitled ''Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions'' (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the content guidelines. The names of the review panel members must be listed on the Assurance of Compliance form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved, this includes conference agendas.

*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, dated Friday, September 15, 1995.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB number 0937–0189) must be submitted to Sharron Orum, 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–18, Atlanta, Georgia 30305, on or before August 5, 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

A complete program description and information on application procedures are contained in the application package.

Business management technical assistance may be obtained from Locke Thompson, 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–18, Atlanta, Georgia 30305, (404) 842–6595; or by Internet or CDC WONDER electronic mail at: lxt1@opspgo1.em.cdc.gov. Programmatic technical assistance may be obtained from Sarah Wiley, MPH, Hematologic Diseases Branch, Division of AIDS, STD, and TB Laboratory Research, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–64, Atlanta, Georgia 30333, telephone (404) 639–4026; or by Internet or CDC WONDER electronic mail at: sed5@ciddas1.em.cdc.gov.

Please refer to Announcement Number 620 when requesting information and submitting an application.

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.

There may be delays in mail delivery and difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics. Therefore, CDC suggests using Internet, following all instructions in this announcement and leaving messages on the contact person's voice mail for more timely responses to any questions.

Dated: June 11, 1996.

Joseph R. Carter,

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–15381 Filed 6–17–96; 8:45 am]

BILLING CODE 4163–18–P

---

**[Announcement 630]**

## Formative Behavioral Intervention Research on the Prevention of Sexual Transmission of HIV by HIV-Seropositive Men

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for a cooperative agreement program for the prevention of the sexual transmission of HIV by men who have tested positive for HIV infection.

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 Human Immunodeficiency Virus (HIV) Infection. (For ordering a copy of ''Healthy People 2000,'' see the section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under Sections 301 and 317(k)(2), of the Public Health Service Act (42 U.S.C. 241 and 247b(k)(2)) as amended.

Smoke-Free Workplace

CDC strongly encourages all recipients to provide a smoke-free workplace and to 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, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutes, hospitals, other public and private organizations, State and local health departments or their bona fide agents or instrumentalities, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations, and small, minority or women-owned businesses are eligible to apply.

Availability of Funds

Approximately $750,000 is available in FY 1996 to fund approximately three awards. It is expected that the average award will be $250,000, ranging from $225,000 to $275,000. Awards are expected to begin on or about September 30, 1996, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may vary and are 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 announcement is to stimulate formative research on behavioral intervention strategies to further reduce HIV transmission by men who know that they are HIV-seropositive. Funding under this cooperative agreement will support the collection of qualitative and quantitative data in the development and evaluation of pilot behavioral intervention programs for HIV-seropositive men. These intervention activities should be designed to motivate and support HIV-seropositive men in sustaining sexual practices that reduce the risk and prevent HIV transmission to seronegative partners.

It is expected that cooperative agreement recipients will conduct the formative research according to a common protocol that will be developed collaboratively with other cooperative agreement recipients including CDC. The intervention, or its core elements, will be piloted and evaluated on a limited basis during the award period. The ultimate goal of this formative research is the identification of potential intervention strategies for HIV-seropositive men that are appropriate for implementation in community settings (e.g., local health departments, community-based organizations, health maintenance organizations) and that merit further evaluation to determine their effectiveness in sustaining reduced-risk sexual practices.

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 will be responsible for the activities listed under B. (CDC Activities).

*A. Recipient Activities*

1. Collaborate with other recipients to refine research and intervention protocols and data collection instruments.
2. Establish procedures to maintain the rights and confidentiality of all study participants, including review of research activities by applicant's and CDC's Internal Review Board (IRB).
3. Identify, recruit, obtain informed consent, and enroll an adequate number of research participants according to procedures specified in the study protocol.
4. Conduct interviews and other assessments according to the research protocol.
5. Summarize data and conduct analyses for the recipient's own site.
6. Establish a standardized format for data entry to facilitate cross-site analyses.
7. Collaborate with other recipients in the preparation and dissemination of research findings in peer-reviewed journals and at professional meetings.

*B. CDC Activities*

1. Host a meeting(s) of the award recipients to plan key aspects of the research program. CDC will convene additional meetings as needed.
2. Act as mediator on the recipients' collaborative design of this research, including data collection protocols and instruments, and intervention protocols.
3. Monitor, coordinate, and evaluate scientific and operational conduct and accomplishments of this research project in order to keep all recipients on track with the common protocols and their timelines.
4. Coordinate cross-site data aggregation and the analysis of aggregate data.
5. Participate in the preparation of study findings for publication and presentation.
6. Conduct site visits to assess program progress and mutually solve problems, as needed.

Evaluation Criteria

Applications that meet the eligibility requirements will be reviewed and evaluated according to the following criteria:

1. Familiarity with and access to HIV-seropositive men (20 points).

a. Extent of applicant's knowledge of issues faced by HIV-seropositive men and experience in working with this population;

b. Existence of linkages to facilitate recruitment from and referral to programs providing services for HIV-seropositive men and;

c. Feasibility of plans to involve HIV positive men, their advocates, or service providers in the development of research and intervention activities.

(1) 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.

(2) The proposed plan for the inclusion of racial and ethnic minority populations for appropriate representation.

(3) The proposed justification when representation is limited or absent.

2. Formative research plan (25 points).

a. Quality of the proposed formative research plan, including research questions, methodology, sampling strategies, data summary methods, and procedures for obtaining subjects' consent and protecting their confidentiality and;

b. Thoroughness of description of proposed study group(s).

3. Intervention research plan (20 points).

a. Quality, feasibility, and theoretical bases of the suggested behavioral intervention;

b. Appropriateness of the suggested research design, including recruitment and randomization of subjects, process and outcome measures, schedule for data collection;

c. Adequacy of methods for obtaining informed consent, maintaining participant confidentiality, and addressing any potential ethical issues associated with the suggested research strategy and;

d. A statement as to whether the design of the study is adequate to measure racial and ethnic differences when warranted.

4. Research and intervention capability (25 points).

a. Ability of the applicant to perform the technical aspects of the project as reflected in the training, research, and behavioral intervention experience of the applicant's staff;

b. Applicant's expertise in the application of qualitative and quantitative data collection methods used in behavioral science and;

c. Quality and outcomes of applicant's previous HIV intervention and research efforts.

5. Staffing, facilities, and time line (10 points).

a. Availability of qualified and experienced personnel with sufficient time dedicated to the proposed project. Presence of behavioral scientists in key leadership positions on the project;

b. Clarity of the described duties and responsibilities of project personnel;

c. Stated agreement to work collaboratively with CDC and other cooperative agreement recipients in developing common research, intervention, and evaluation protocols and to disseminate study findings;

d. Adequacy of the facilities, equipment, data management resources, and systems for ensuring data security and;

e. Specificity and reasonableness of time line.

6. Budget (not scored).

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of the funds.

## Funding Priorities

This announcement is for formative research proposals that lead to the development of innovative pilot programs for reducing HIV transmission by men who know they are HIV positive. Priority will be given to projects that focus on reducing the sexual risk of HIV transmission by HIV-seropositive men who are (1) men who have sex with men (regardless of sexual identity) or (2) male injecting drug users. Involvement of HIV-seropositive men, their advocates, or service providers in the design of research and intervention activities is required. Based upon available funding, applications will be accepted for behavioral intervention studies targeting other high-risk populations that have not been adequately addressed.

Interested persons are invited to comment on the proposed funding priorities. All comments received on or before July 24, 1996, will be considered before the final funding priority is established. If the funding priorities should change as a result of any comments received, a revised Announcement will be published in the Federal Register prior to the final selection of awards.

Written comments should be addressed to: Van Malone, 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 E15, Atlanta, GA 30305.

## Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 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 Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. 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 have any State process recommendations on applications submitted to CDC, they should send them to Van Malone, 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 E15, Atlanta, GA 30305, no later than 30 days after the application deadline (the appropriation for this financial assistance program was received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60-day State recommendation process period). The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date.

Indian tribes are strongly encouraged to request tribal government review of the proposed application. If tribal governments have any tribal process recommendations on applications submitted to the CDC, they should forward them to Van Malone, 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 E15, Atlanta, GA 30305. This should be done no later than 30 days after the application deadline date. The granting agency does not guarantee to ''accommodate or explain'' for 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 department 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 Impact Statement'' (PHSIS), not 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 Single Point of Contact (SPOC) or directly from the applicant.

## Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.941.

## Other Requirements

### *Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

### *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 that the project will be subject to initial and continuing review by an appropriate institutional review committees. 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 and form provided in the application kit.

*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 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 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, dated Friday, September 15, 1995.

*HIV/AIDS Requirements*

Recipients must comply with the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (June 1992), a copy of which is included in the application kit. At least one member of the program review panel must be an employee (or designated representative) of the health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance for CDC 0.1113, which is also included in the application kit. The recipient must submit, as an attachment to the quarterly summaries, the program review panel's report that all material have been reviewed and approved.

Application Submission and Deadlines

*1. Preapplication Letter of Intent*

A non-binding letter of intent-to-apply is required from potential applicants. An original and two copies of the letter should be submitted to the Grants Management Branch, CDC (see ''Applications'' for the address). It should be postmarked no later than July 24, 1996. The letter should identify the announcement number, name of principal investigator, and specify the activity(ies) 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.

*2. Applications*

An original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Van Malone, 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- 15, Atlanta, GA 30305, on or before August 19, 1996.

*3. Deadlines*

A. Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. 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 the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. Applications that do not meet the criteria in 3.A.1. or 3.A.2. 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 Announcment 630. You will receive a complete program description, 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 Adrienne Brown, 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–15, Atlanta, GA 30305, telephone (404) 842–6634, email: <asm1@opspgo1.em.cdc.gov>. Programmatic technical assistance may be obtained from Robert Kohmescher, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–44, Atlanta, GA 30333, telephone (404) 639–8302, email: <rnk1@cidhiv2.em.cdc.gov>.

Please refer to Announcement 630 when requesting information and submitting an application.

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.

Internet Home Page

The announcement will be available on one of two Internet sites on the publication date: CDC's home page at <http://www.cdc.gov>, or at the Government Printing Office home page (including free access to the Federal Register) at <http://www.access.gpo.gov.>.

There may be delays in mail delivery and difficulty in reaching the CDC Atlanta offices during the 1996 Summer Olympics. Therefore, CDC suggests using Internet, following all instructions in this announcement and leaving messages on the contact person's voice mail for more timely responses to any questions.

Dated: June 11, 1996.

Joseph R. Carter,

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–15382 Filed 6–17–96; 8:45 am]

**BILLING CODE 4163–18–P**

---

**[Announcement 637]**

## Grant for Injury Control Training and Demonstration Center

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1996 for a Grant for an Injury Control Training and Demonstration Center. CDC is committed to achieving the health promotion and disease prevention objectives described in ''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 Unintentional Injuries. (For ordering a copy of ''Healthy People 2000,'' see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

## Authority

This program is authorized under Sections 301 and 391 of the Public Health Service Act (42 U.S.C. 241 and 280b), as amended. Program regulations are set forth in Title 42 of the Code of Federal Regulations, Part 52.

## Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

## Eligible Applicants

Applications may be submitted by public and private, nonprofit 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.

APPLICATIONS THAT FAIL TO COMPLY WITH THE FOLLOWING REQUIREMENT WILL BE CONSIDERED NON-RESPONSIVE, AND WILL BE RETURNED: Applicants must demonstrate that they will carry out the activities of this grant in a State that is predominately comprised of economically depressed rural communities where a relatively large portion of the work force is engaged in underground mining, family farming and other rural occupations.

Note: Eligible applicants may enter into contracts and consortia agreements and understandings, as necessary, to meet the requirements of the program and to strengthen the overall application. The intent to use such mechanisms must be stated in the application and the nature and scope of work of these mechanisms require the approval of CDC.

## Availability of Funds

Approximately $1,350,000 is available in FY 1996 to support both direct and indirect costs for one injury control training and demonstration center. 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. Funding estimates may vary and are subject to change. Continuation of funding for future years will be made on the basis of satisfactory progress, including the achievement of milestones towards development of the training, research and services components of the center, and the availability of funds. Funding for the second and third year of the project is expected to be approximately $1,000,000 for each year.

Note: At the request of the applicant, Federal personnel may be assigned to a project area in lieu of a portion of the financial assistance.

## Purpose

The purpose of this grant program is to provide support for an injury control training and demonstration center in a State predominately comprised of economically depressed rural communities where a relatively large portion of the work force is engaged in underground mining, family farming and other rural occupations.

## Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the following:

1. Maintain a level 1 trauma center that has established linkages with isolated, rural hospitals that provide medical care services in communities where economic conditions are depressed and where many residents work in occupations, including underground mining and family farming that have an increased risk for severe injuries.
2. Provide a full-time director/coordinator at the level 1 trauma center with authority and responsibility to carry out the requirements of the program.
3. Provide qualified staff, other resources, and knowledge to implement the components of the program.
4. Provide a state-of-the-art telecommunications system with 24 hour capability.
5. Maintain an applied research program in rural trauma care and EMS systems to enhance and extend prevention, acute care and rehabilitation services.
6. Maintain training and continuing education programs for emergency physicians, surgeons, trauma nurses, physician assistants, and prehospital personnel.
7. Maintain a population-based trauma registry with uniform case criteria and data elements, to be used for trauma care assessment and injury surveillance.
8. Maintain an effective, well-defined working relationships with regional and State health agencies that have responsibility for EMS and trauma care services.
9. Provide a plan to ensure continuation of the injury control training and demonstration center beyond expiration of grant support.

## Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The applicant's understanding of the problem of addressing rural trauma care issues. Applicants must demonstrate that this grant will be carried out in a State that is predominately comprised of economically depressed rural communities where a relatively large portion of the work force is engaged in underground mining, family farming and other rural occupations. Applicants must demonstrate a history of addressing the special needs of trauma victims engaged in these occupations (15%).
2. Technical merit, comprehensiveness, and the ability to maintain a balance of activities associated with an injury control training and demonstration center as outlined in this announcement, including summary descriptions (i.e., goals and objectives, rationale, methods, and potential outcomes) of all projects proposed for applied research, training and continuing education, injury surveillance, and injury prevention and intervention activities.

The degree to which applicants have 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. (30%)

3. Training and experience of the proposed program director(s) and staff. The program director(s) must have an appropriate medical training in the field of rural trauma care and technical expertise in medical supervision and trauma patient management. The program director(s) must also provide assurances of major time commitment to the program (20%).

4. Appropriateness of facilities, telecommunication systems, and linkages with isolated rural community hospitals as described in this announcement. Applicants must demonstrate that they have operated a statewide computerized rural emergency department-based injury surveillance system, and that this system has been used for resource planning, and quality assurance. Also, applicants must demonstrate that this surveillance system is currently linked with other sources of injury data, such as inpatient hospital data, emergency medical services data, and highway crash data (20%).

5. Proposed implementation plan with milestones and schedule for initiating and accomplishing the major activities of the grant (15%).

6. Budget: The budget will be evaluated to the extent that it is reasonable, clearly explained, adequately justified, sufficient for the proposed project activities, and consistent with the intended use of funds. (not scored)

7. Human Subjects Review: Whether or not exempt from the Department of Health and Human Subjects (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, 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. (not scored)

## Executive Order 12372 Review

Applications are not subject to review by Executive order 12372.

## 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 is 93.136.

## Other Requirements

### *Human Subjects*

If the proposed project includes research on human subjects, applicants must comply with the DHHS Regulations, 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. 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.

### *Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and are funded by the grant will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This project received OMB approval June 1995. The OMB number is 0920–0364 and expires June 1998.

### *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, dated Friday, September 15, 1995.

## Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Joanne A. Wojcik, 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, Georgia 30305 on or before August 13, 1996.

### *1. Deadlines*

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 the 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. 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 information call (404) 332–4561. You will be asked to leave your name, address and telephone number and will need to refer to Announcement 637. You will receive a complete program description, information on application procedures and application forms. The announcement is also available through the CDC home page on the Internet. The address for the CDC home page is http://www.cdc.gov.

If you have questions after reviewing the contents of all documents, business management assistance may be obtained from Joanne A. Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 E. Paces Ferry Road, NE., Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6535, or INTERNET address jcw6@opspgo1.em.cdc.gov.

Scientific or technical assistance may be obtained from Daniel A. Pollock, M.D., Division of Acute Care, Rehabilitation Research, and Disability Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–41, Atlanta, Georgia 30341–3724, telephone (770) 488–4031.

Programmatic technical assistance may be obtained from Paul Burlack,

Division of Acute Care, Rehabilitation Research, and Disability Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–41, Atlanta, Georgia 30341–3724, telephone (770) 488–4031.

Please refer to Announcement Number 637 when requesting information and submitting an application.

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, telephone (202) 512–1800.

Atlanta, Georgia will be the host of the 1996 Summer Olympics Games (July 19 through August 4, 1996). As a result of this event, it is likely that the Procurement and Grants Office (PGO) may experience delays in the receipt of both regular and overnight mail deliveries. Contacting PGO employees during this timeframe may also be hindered due to the possible telephone disruptions.

Dated: June 11, 1996.

Joseph R. Carter.

*Acting Associate Director for Management and Operations Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–15376 Filed 6–17–96; 8:45 am]

**BILLING CODE 4163–18–P**

---

**[Announcement 622]**

## Improving Effectiveness of Tuberculosis Prevention and Control Programs in Developing Countries

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1996 funds for a grant to provide education, and technical assistance to improve the quality, efficiency, and effectiveness of programs for the prevention and control of tuberculosis (TB) in the developing countries of Central America (Mexico) and Southeast Asia (Vietnam and the Philippines), whose TB situation is of strategic interest to the United States.

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 Immunization and Infectious Diseases. (To order a copy of ''Healthy People 2000,'' see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

### Authority

This program is authorized under Section 317E of the Public Health Service Act (42 U.S.C. 247b–6) as amended.

### Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

### Eligible Applicant

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, and colleges; and 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. Applicants must be able to:

1. Demonstrate that their membership is comprised of a wide variety of members from governmental and non-governmental organizations, and individual members that can ensure the success of the activities specified under this program announcement;

2. Document a membership of at least 1,000 persons, including members from each country whose TB situation is of strategic interest to the United States, i.e., Mexico, Vietnam and the Philippines; and

3. Demonstrate experience in providing ongoing technical assistance and practical training for TB programs in a number of countries in the developing world.

### Availability of Funds

Approximately $100,000 is available in FY 1996 to fund one award. The award is anticipated to begin on or about September 1, 1996, for a 12-month budget period within a three-year project period. The funding estimate 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 grant is to support and maintain collaborative relationships with organizations to provide TB education, technical assistance and other TB information to TB program managers and non-governmental organizations in developing countries. By providing TB education, information and technical assistance, the management of TB control programs in developing countries will be improved and the global control effort will be enhanced as well as providing additional potential impact on the TB problem in the U.S.

### Program Requirements

1. Identify and assess the TB-related public health infrastructure, TB informational needs, and training needs of health care providers and TB control program personnel in developing countries contributing to the U.S. immigrant population, and especially in Mexico, Vietnam, and the Philippines.

2. Facilitate the incorporation of epidemiologic principles in TB national prevention and control programs and expedite the dissemination of epidemiologic findings in order to improve these programs.

3. Encourage collaboration between TB control programs in the Unites States that have a high prevalence of TB among the foreign born and developing countries in their TB control efforts.

4. Identify and propose project activities in response to findings in 1 through 3 above. These activities may include training courses, support of regional and international meetings designed to improve information transfer on a regional or international basis, and epidemiologic studies that can be used to improve the diagnosis and treatment of TB and improve TB control in developing countries contributing to the U.S. immigrant population, and especially in Mexico, Vietnam, and the Philippines.

### Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria. (100 total points maximum)

1. Extent to which the applicant understands the requirements, problems, objectives, complexities, and interactions required of this project (10 Points);

2. Degree to which the proposed epidemiologic studies are realistic and relevant to the purpose of this project (10 Points);

3. Degree to which the proposed programmatic plans are clearly stated, realistic, time phased, and related to the purpose of this project (20 Points);

4. Adequacy of the plans for administering the project. In addition, 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. Specifically the following items will be addressed (30 Points):

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The appropriateness of the proposed justification when representation is limited or absent.

c. Whether the design of the study is adequate to measure differences when warranted.

d. Whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Extent to which the professional personnel involved proposed to be involved in this project are qualified, including evidence of past achievements appropriate to this project. (30 points)

6. Other—Not scored.

*Budget*

Consideration will be given to the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

*Human Subjects*

Procedures adequate for the protection of human subjects must be documented: (1) Protections appear adequate and no comments or concerns are raised, or (2) protections appear adequate, but comments are made regarding the protocol, or (3) protections appear inadequate and the Objective Review Group (ORG) 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 resulting in unacceptability of the entire application.

Executive Order 12372

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 is 93.947, TB Demonstration, Research, Public and Professional Education Projects.

Other Requirements

*Confidentiality:* Applicants must have in place systems to ensure the confidentiality of all patient records.

*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. Assurances must be provided to demonstrate that 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 the 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 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. 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, Friday, September 15, 1995, pages 47947–47951 (a copy is included in the application kit).

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Van Malone, 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–15, Atlanta, GA 30305, on or before July 29, 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 committee. (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 that do not meet the criteria in 1.(a) or 1.(b) 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

Questions on application procedures and the application package, and business management technical assistance may be obtained from Juanita Dangerfield, 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–15, Atlanta, GA 30305, telephone (404) 842–6577, fax: (404) 842–6513, or Internet address: jdd2@opspgo1.em.cdc.gov.

Programmatic technical assistance may be obtained from: Harry Stern, Division of Tuberculosis Elimination, National Center for STD, HIV, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–10, Atlanta, GA 30333, telephone (404) 639–8120.

Please refer to Announcement Number 622 when requesting information or submitting an application.

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.

Atlanta, Georgia will be the host of the 1996 Summer Olympics Games (July 19 through August 4, 1996). As a result of this event, it is likely that the Procurement and Grants Office (PGO) may experience delays in the receipt of

both regular and overnight mail deliveries. Contacting PGO employees during this time frame may also be hindered due to the possible telephone disruptions.

To the extent authorized, please consider the use of voice mail, e-mail, and facsimile transmissions to the maximum extent practicable. Please do not fax lengthy documents, or grant applications.

This announcement will be available on one of two Internet sites on the publication date: CDC's home page at http://www.cdc.gov, or at the Government Printing Office home page (including free access to the Federal Register) at http://www.access.gpo.gov.

Dated: June 11, 1996.

Joseph R. Carter,

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 96–15375 Filed 6–17–96; 8:45 am]

**BILLING CODE 4163–18–P**

## National Institutes of Health

## Licensing Opportunity and/or Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Novel Heparin-Binding Peptides

**AGENCY:** National Institutes of Health, Public Health Services, DHHS.

**ACTION:** Notice.

**SUMMARY:** The National Institutes of Health is seeking licensees and/or CRADA partners for the further development, evaluation, and commercialization of novel heparin-binding peptides. The inventions claimed in the patent applications referenced below are available for either exclusive or non-exclusive licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under a CRADA for clinical and research applications described below in Supplementary Information.

Heparin- and Sulfatide-Binding Peptides From the Type I Repeats of Human Thrombospondin and Conjugates Thereof

DD Roberts, PJ Browning, J Bryant, JK Inman, HC Krutzsch, N Guo (NCI)

Serial No. 08/487,568, filed 07 Jun 95, which is a CIP of

Serial No. 08/215,085, filed 21 Mar 94, which is a CIP of

Serial No. 07/801,812, which issued as U.S. Patent No. 5,357,041 on 18 Oct 94.

To expedite the research, development, and commercialization of these compounds, the National Institutes of Health is seeking a CRADA with a pharmaceutical or biotechnology company in accordance with the regulations governing the transfer of Government-developed agents. Any proposal to use or develop these compounds will be considered.

**ADDRESSES:** CRADA proposals and questions about this opportunity should be addressed to: Dr. Gary D. Colby, Office of Technology Development, National Cancer Institute, Executive Plaza South, Suite 450, 6120 Executive Boulevard MSC 7182, Bethesda, MD 20892–7182; telephone: 301/496–0477; fax: 301/402–2117.

Licensing proposals and questions about this opportunity should be addressed to: Ms. Carol Lavrich, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7735, ext. 287; fax: 301/402–0220.

Information about the patent applications and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA.

**DATES:** There is no deadline by which license applications must be received. CRADA proposals must be received on or before September 16, 1996.

**SUPPLEMENTARY INFORMATION:** These inventions identify a family of related peptides, peptide analogs, and peptidomimetics useful for blocking or modifying the biological activities of heparin, sulfatides, fibronectin, fibroblast growth factor and transforming growth factor-β (TGFβ) Among the activities exhibited by compounds within this family of agents are:

- Inhibition of tumor cell growth, including inhibition of breast tumor growth in a mouse xenograft model;
- Inhibition of Kaposi's Sarcoma (SK) cell proliferation and migration *in vitro* and KS-like lesion formation in vivo;
- Inhibition of endothelial and breast carcinoma cell proliferation, adhesion, and motility in vitro;
- Inhibition of angiogenesis in vivo;
- Specific, high affinity binding to heparin and related sulfated glycoconjugates, including preventing interaction with adhesion molecules, growth factors, cells, and heparin-dependent enzymes; and
- Activation of latent TGFβ.

The compounds within this family of agents are based upon functional sequences from the three type I repeats of human endothelial cell thrombospondin. The inventions identify particular peptides, analogs, and peptidomimetics that have particularly advantageous properties such as increased physiological stability, enhanced activity, lack of electrostatic charge, and increased solubility. The inventions also describe unique approaches to constructing water-soluble conjugates which exhibit a number of interesting and useful biological activities.

It is expected that the high potency of these agents will lower the effective dose needed, and, subsequently, will reduce the immunological response against the peptides and the risks of toxicity. Among the diseases for which these agents may prove to be particularly useful therapeutic agents are:

- Kaposi's sarcoma
- Breast carcinoma
- Melanoma
- Other epithelial cancers
- Other diseases involving abnormal vascular proliferation

The inventors of these agents seek collaborators for their ongoing research and development efforts. Two research projects for which collaborators are particularly sought involve investigation of means of controlling angiogenesis and investigation of means for modulating the activity of TGFβ, particularly to control fibrosis, using the agents described above.

Thrombospondin has been identified as an anti-angiogenic factor in human epithelial tissue. Certain agents described above have shown particular utility for inhibition of pathological angiogenesis in vivo. These agents have been engineered to decrease both proteolytic degradation and the rapidity of their clearance from the bloodstream and to increase their biological activity. These agents have been shown to influence tumor cell adhesion and growth in vitro and in vivo. Other peptides have been shown to inhibit tumorigenesis and metastasis in vivo. Further development of agents, and their application in therapeutic capacities, is planned.

The antiproliferative activities of certain agents upon epithelial and breast

carcinoma cells has demonstrated to be independent of latent TGFβ activation. Other agents, however, have been shown to activate latent TGFβ. TGFβ-activating agents also exhibit anti-tumor activity in vivo. Further development of TGFβ-modulating agents, particularly those useful for control of fibrosis, is planned.

Particularly sought are companies dedicated to the development of small therapeutic molecules, such as peptides and their analogs. Collaborators should have particular in-house expertise relating to peptide research and development. It is anticipated that fruitful collaboration will result from sustained and meaningful contribution on the part of the collaborator.

The CRADA aims will include optimizing peptide and peptridomimetic activity *in vitro* and *in vivo*, preclinical development of the synthetic peptides and mimetics, and clinical studies as warranted. The CRADA partner will enjoy the benefit of a right of first refusal for a license (on a reasonable commercial terms) to government-owned rights in any invention arising within the scope of the CRADA. Furthermore, the CRADA partner will be responsible for reimbursement of government expenses for patenting any resulting inventions during the term of the CRADA.

The role of the National Cancer Institute will include the following:

1. The government will continue *in vitro* and *in vivo* preclinical development of the peptides and mimetics as inhibitors of tumor growth and metastasis and as modulators of TGF-β activity.

2. The government will provide available data and expertise in structure-function relationships and conformational analysis of the active peptides and peptidomimetics. These data will be evaluated jointly in order to assess an efficient research path.

3. As appropriate, the government will initiate collaborative clinical trials under its extramural clinical trials network, thus ensuring the clinical evaluation of the compounds.

The role of the collaborator will include the following:

1. Prepare and characterize GMP quality nonmetabolizable analogs (as determined by both parties) of the active peptides and provide these to the NCI for characterization as angiogenesis and metastasis inhibitors or as modulators of TGF-β activity.

2. Provide funds for preclinical development of the peptides *in vitro* and for screening activities in appropriate animal models.

3. Collaborate in the planning and support for clinical development leading to FDA approval and marketing.

Selection criteria for choosing the CRADA partner will include, but are not limited to, the following:

1. Experience in preclinical and clinical drug development.

2. Experience and ability to produce, package, market, and distribute pharmaceutical products, particularly peptides and peptide analogs, in the United States.

3. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication, and maintenance of data from clinical trials of investigational agents.

4. Willingness to share the costs associated with the development of the peptides and mimetics. These costs include acquisition of synthesis or both of the peptides and mimetics in amounts adequate for clinical trials and marketing.

5. Agreement to be bound by DHHS rules and regulations regarding the use of human subjects in clinical investigations, intellectual property rights, ethical treatment of animals, and randomized clinical trials.

6. The aggressiveness of the development plan, including the appropriateness of milestone and deadlines for preclinical and clinical development.

7. Agreement with provisions for equitable distribution of patent rights to any inventions developed under the CRADA(s). Generally, the rights of ownership are retained by the organization which is the employer of the inventor, with an irrevocable, non-exclusive, royalty-free license to the Government (when a company employee(s) is the sole inventor) or a first option to negotiate an exclusive or non-exclusive license to the company on terms that are appropriate (when the Government employee(s) is the sole or a joint inventor).

Dated: June 7, 1996.

Barbara M. McGarey,

*Deputy Director, Office of Technology Transfer.*

[FR Doc. 96–15363 Filed 6–17–96; 8:45 am]

BILLING CODE 4140–01–M

## Prospective Grant of Exclusive License: Gossypol Acetic Acid for the Treatment of Cancer

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodies in U.S. Patent No. 5,385,936 and U.S. Patent Applicant No. 08/379,872 to Cary Medical Corporation of Great Falls, Virginia. U.S. Patent No. 5,385,936 is directed toward a method of treating cancers using Gossypol Acetic Acid (GAA). U.S. Patent Application No. 08/379,872 is directed toward the use of Gossypol for the treatment of cancer. Patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Gossypol is a biphenolic compound derived from crude cottonseed oil that has been widely used in China as a male contraceptive. Clinical trials have demonstrated GAA's efficacy against gliomas and adrenal cancer. Clinical trials are planned or underway for the use of GAA in breast and prostate cancer. GAA exhibits low toxicity relative to other chemotherapeutic agents and does not appear to cause myelosuppression, significant hair loss, cardiac failure or neurotoxicity. The milder side effects of the use of GAA include mild fatigue, muscle tremor, dry mouth, dry skin, and occasional nausea. Patients treated with GAA, therefore, may be able to continue normal activities.

**ADDRESSES:** Requests for a copy of the issued patent, patent application, inquiries, comments, and other materials relating to the contemplated license should be directed to: Allan Kiang, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7735 ext. 270; Fax: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent application. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the NIH

Office of Technology Transfer on or before August 19, 1996 will be considered. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 6, 1996.

Barbara M. McGarey,

*Deputy Director, Office of Technology Transfer.*

[FR Doc. 96–15364 Filed 6–17–96; 8:45 am]

**BILLING CODE 4140–01–M**

## Substance Abuse and Mental Health Services Administration (SAMHSA)

### Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of the SAMHSA Special Emphasis Panel II in July.

A summary of the meetings may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–4783.

Substantive program information may be obtained from the individual named as Contact for the meetings listed below.

The meetings will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (3),(4), and (6) and 5 U.S.C. App. 2, 10(d).

*Committee Name:* SAMHSA Special Emphasis Panel II.

*Meeting Date:* July 9–10, 1996.

*Place:* Doubletree Hotel, Randolph Conference Room, 1750 Rockville Pike, Rockville, Maryland 20852.

*Closed:* July 9, 1996, 8:30 a.m.–5:00 p.m.; July 10, 1996, 8:30 a.m.–adjournment.

*Contact:* Ferdinand W. Hui, Ph.D., Room 17–89, Parklawn Building, Telephone: (301) 443–9912 and FAX: (301) 443–3437.

*Committee Name:* SAMHSA Special Emphasis Panel II.

*Meeting Date:* July 15, 1996.

*Place:* Residence Inn, Gatehouse Conference Room. 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

*Closed:* July 15, 1996, 8:30 a.m.–5:00 p.m.

*Contact:* Ferdinand W. Hui, Ph.D., Room 17–89, Parklawn Building, Telephone: (301) 443–9912 and FAX: (301) 443–3437.

*Committee Name:* SAMHSA Special Emphasis Panel II.

*Meeting Date:* July 24–26, 1996.

*Place:* Chevy Chase Holiday Inn, Palladium Room, 5520 Wisconsin, Avenue, Chevy Chase, Maryland 20815.

*Closed:* July 24–25, 1996, 8:30 a.m.–5:00 p.m.; July 26, 1996, 8:30 a.m. to adjournment.

*Contact:* Constance M. Burtoff, M.A., Room 17–89, Parklawn Building, Telephone: (301) 443–2437 and FAX: (301) 443–3437.

Dated: June 12, 1996.

Jeri Lipov,

*Committee Management Officer, SAMHSA.*

[FR Doc. 96–15393 Filed 6–17–96; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–020–06–5440–A137; AZA–29495]**

### Notice of Realty Action, Recreation and Public Purposes (R&PP) Act Classification and Conveyance; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Sale of Public Land in Pima County.

**SUMMARY:** The following public lands in Pima County, Arizona have been examined and through the land use planning process have been determined to be suitable for disposal to Pima County Property Division under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) Pima County proposes to use the lands for a transfer station for sanitary waste from the area. The land will not be patented until at least 60 days after the date of publication of this notice in the Federal Register.

Gila and Salt River Meridian, Arizona

T. 13 S., R. 5 W.,

Sec. 24, W½SW¼SW¼SW¼.

The area described contains 5 acres in Pima County.

The patent, when issued, will be subject to the following terms, conditions and reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States.

2. Those rights for transmission line purposes granted to U.S. West Communications by Right-of-Way Number AZAR–017163.

3. Those rights the grazing permittee, James Gould, may have to continue current grazing use for two years from receipt of a cancellation notice. (Grazing Record No. 022407).

4. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

**DATES:** Upon publication of this Notice in the Federal Register, the land described above will be segregated from appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. By no later than August 2, 1996, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

**FOR FURTHER INFORMATION CONTACT:** Hector Abrego or Bob Hale, at the address shown above or call (602) 780–8090.

**CLASSIFICATION COMMENTS:** Interested parties may submit comments involving the suitability of the land for a sanitary waste transfer site. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use of the land, whether the use is consistent with local planning and zoning or if the use is consistent with state and federal programs.

**APPLICATION COMMENTS:** Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the Bureau of Land Management followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a sanitary waste transfer site. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of the publication of this notice in the Federal Register.

Dated: June 12, 1996.

Michael A. Taylor,

*Acting District Manager.*

[FR Doc. 96–15378 Filed 6–17–96; 8:45 am]

**BILLING CODE 4310–32–P**

---

**[OR–020–02–1430–01: G6–0186]**

## Realty Action: Sale of Public Lands in Barney County, Oregon

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of realty action, sale of public lands.

**SUMMARY:** The following described public lands in Harney County, Oregon, have been examined and found suitable for sale under Section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719), at not less than the appraised market value. All of the lands described are within the Willamette Meridian

OR–52571 T.18S., R.33½E., sec. 22, SWSW

The area described aggregates 40 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $2,120.

This tract is being offered by direct sale to Actin Ranch, Inc., c/o Jim and Alicia Bentz. The Bentzs will be allowed 30 days from receipt of a written offer to submit a deposit of at least 20 percent of the appraised market value of the parcel and 180 days thereafter to submit the balance. Failure to meet either timeframe shall constitute waiver of their preference consideration and will cause the deposit to be forfeited. The parcel will be declared unsold and offered competitively on a continuing basis until sold or withdrawn.

In accordance with 43 CFR 2710.0–6(c)(3)(iii), direct sale procedures are appropriate because the lands are completely surrounded by one ownership (Actin Ranch) and there is no legal public access to the property.

Any purchaser other than the Actin Ranch, Inc., by accepting the land patent, agrees to take the property subject to the current grazing permit until December 31, 2002, when the permit expires.

OR–52572 T.120., R.34E., sec. 13, NESENE

The area described aggregates 10 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $1,000.

The sale of this parcel will be by modified competitive procedures. Sitz Ranch Partnership will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

If any person other than the Sitz Ranch Partnership is the successful bidder for the land, the patent, when issued, would be subject to the right to construct, operate, maintain, and terminate a waterwell, water pipeline, and buried powerline granted to Sitz Ranch Partnership, its successors and assigns by right-of-way No. OR–48710 pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

The patent would also be subject to a road right-of-way in conjunction with the Harney County road system.

OR–52573 T.24S., R.29E., sec. 2, SWSW

The area described aggregates 40 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $2,520.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners John Bauer, James and Ramona Bishop, and Steven and Cynthia Grasty will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

OR–52574 T.24S., R.34E., sec. 20, SWNE, W2SE

The area described aggregates 120 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $6,000.

The sale of this parcel will be by modified competitive procedures. The highest valid sealed bid received shall be declared the purchaser. Bids shall meet the same requirements and timeframes as specified below for modified competitive bids.

OR–52575 T.24S., R.34E., sec. 20, N2NW

The area described aggregates 80 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $5,040.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners C.M. Rocca, c/o Clarence Phyllis, Kirk L. Dillon, and Julian R. and Hazel B. Zimmerman, c/o Mike L. and Patricia M. McCombs will be given the opportunity meet or exceed the highest sealed bid received from the general public.

OR–52576 T.25S., R.31E., sec. 17, SESE

The area described aggregates 40 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $2,520.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners Charles and Wanda Musso, c/o. Nydams Hardware, Inc., Floyd and Marion E. Olson, Trustees, and Alfred H. Dewey, c/o Vernon L. Seaman will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

OR–52577 T.25S., R.34E., sec. 18, E2E2

The area described aggregates 160 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $10,400.

The sale of this parcel will be by modified competitive procedures. Bell A Grazing Cooperative, Clarence E. Morlan, Jr., and Clayton and Mary C King, c/o Walter H. Kleiner will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

OR–52578 T.26S., R.29E., sec. 1, lots 2, 3, SWNE, SENW

The area described aggregates 159.36 acres, more or less in Harney County, Orgeon. The appraised market value and minimum bid for this parcel has been determined to be $9,600.

The sale of this parcel will be by modified competitive procedures. Richard C. Hubbard and June D. Moon will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

If any person other than J.V. Moon and Sons is the successful bidder for the land, such person agrees to take the property subject to the current grazing permit until February 2, 1998, when the permit expires.

OR–52579, T.26S., R.29E., sec. 2, SESE

The area described aggregates 40 acres, more or less in Harney County, Oregon. The appraised market value and minimum bid for this parcel has been determined to be $2,400.

The sale of this parcel will be by modified competitive procedures. The adjacent landowners Richard C. Hubbard, Gilbert O. Hammer, and June D. Moon will be given the opportunity to meet or exceed the highest sealed bid received from the general public.

If any person other than J.V. Moon and Sons is the successful bidder for the land, such person agrees to take the property subject to the current grazing permit until February 2, 1998, when the permit expires.

In addition to the conditions described above, all patents when issued, will contain a reservation for a right-of-way for ditches and canals constructed thereon by the authority of United States under the Act of August 30, 1890 (43 U.S.C. 945).

Access will not be guaranteed to any of the parcels being offered for sale, nor any warranty made as to the use of the property in violation of applicable land

use laws and regulations. Before submitting a bid, prospective purchasers should check with the appropriate city or county planning department to verify approved uses.

All persons, other than the successful bidder, claiming to own unauthorized improvements on the lands are allowed 60 days from the date of sale to remove the improvements.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action, or 270 days from the date of publication of this notice, whichever occurs first.

In accordance with 43 CFR 2722,1–3, this Notice of Realty Action constitutes the required 2-year prior notification that any grazing permits associated with the above described lands may be canceled in whole or in part upon the termination or expiration of the current permit.

With the exception of OR–52571 and OR–52574, sales will be modified competitive procedures. Federal regulations dealing with sales (43 CFR 2710.0–6(c)(3)(ii)) provide for modified competitive procedure to assure compatibility with possible uses on adjacent land and to protect ongoing uses. The above named landowners abut the property on at least one side, control access and, in some cases, use the land in conjunction with adjacent private lands.

Under modified competitive procedures the preference bidders designated above will be given the opportunity to match or exceed the apparent high bid. The apparent high bid will be established by the highest valid sealed bid received for each parcel. If two or more valid sealed bids of the same amount are received for the same parcel, that amount shall be determined to be the apparent high bid. The bid deposit for the apparent high bid(s) will be retained and all others will be returned.

The preference bidders will be notified by certified mail of the apparent high bid. Where there are two or more preference bidders for a single parcel they will be allowed 30 days to provide the authorized officer with an agreement as to the division of the property or, if agreement cannot be reached, sealed bids for not less than the apparent high bid. Failure to submit an agreement or a bid shall be considered a waiver of the option to divide the property equitably and forfeiture of the preference consideration. Failure to act by all of the preferred bidders will result in the parcel being offered to the apparent high bidder.

All sealed bids must be submitted to the Burns District Office, no later than 10:00 a.m. PST on October 9, 1996, the time of the bid opening. Bid envelopes must be clearly marked ''BLM Land Sale'' with the parcel number and the bid opening date. Bids must be for not less than the appraised fair market value specified in this notice. Separate bids must be submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Department of the Interior-BLM for not less than 20 percent of the amount bid.

The total purchase price for the land shall be paid within 180 days of the date of the offer to sell. Failure to pay the full price will disqualify the purchaser and the bid deposit will be forfeited. The parcel will be declared unsold and made available for sale to the general public on a continuing basis until sold.

Sale of unsold parcels will be by sealed bid meeting the same requirements specified above. Sealed bids for unsold parcels will be opened on the second Wednesday of each month at 10:00 a.m. PST.

Federal law requires that purchasers must be U.S. citizens, 18 years of age or older, a state or state instrumentality authorized to hold property or a corporation authorized to own real estate in the state in which the land is located.

A successful bid on a parcel will qualify the prospective purchaser to make application for conveyance of those mineral interests offered under the authority of Section 209(b) of the Federal Land Policy and Management Act of 1976. A nonrefundable fee of $50 will be required from the prospective purchaser for purchase of the mineral interests to be conveyed simultaneously with the sale of the land.

**DATES:** On or before August 2, 1996, interested persons may submit comments regarding the proposed sale to the Burns District Manager at the address described below. Comments or protests must reference a specific parcel and identified with the appropriate serial number. In the absence of any objections, this proposal will become the determination of the Department of the Interior.

**ADDRESSES:** Comments, bids, and inquiries should be submitted to the Burns District Manager, HC 74–12533, Hwy 20 West, Hines, Oregon 97738.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning this public land sale is available from Craig M. Hansen, Area Manager or Skip Renchler, Realty Specialist, Three Rivers Resource Area at the above address, phone (541) 573–4400.

Dated: June 10, 1996.

Michael T. Green,

*District Manager.*

[FR Doc. 96–15463 Filed 6–12–96; 8:45 am]

**BILLING CODE 1430–01–M**

---

## National Park Service

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's intention to request an extension for and revision to a currently approved information collection in support of its Concession Management Program based on re-estimates.

**DATES:** Comments on this notice must be received no later than August 19, 1996.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Robert K. Yearout, Chief, Concession Program Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127 or 202–343–3784.

**SUPPLEMENTARY INFORMATION:**

*Title:* Concessioner Annual Financial Reports, 10–356, 10–356A and 10–356B.

*OMB Number:* 1024–0029.

*Expiration Date of Approval:* December 31, 1995.

*Type of Request:* Extension and revision of a currently approved information colelction.

*Abstract:* The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. The concessioner Annual Financial Report (Forms 10–356, 10–356A and 10–356B) provides concessioner financial information to the NPS as required by each concession contract. This information is necessary to comply with requirements placed on the NPS by the Congress.

Public Law 89–249 requires that the NPS exercise its authority in a manner consistent with a reasonable opportunity for a concessioner to realize a profit on its operation as a whole commensurate with the capital invested and the obligations assumed. It also requires that franchise fees be determined with consideration to both gross receipts and capital invested. The financial information collected is necessary to provide insight into and knowledge of the concessioner's operation so that this authority can be

exercised appropriately and franchise fees determined in a timely manner without undue burden on the concessioner.

*Estimate of Burden (Gross Receipts):*

Under $100,000: approximately 2 hours per response.

$100,000–$250,000: approximately 4 hours per response.

Over $250,000—approximately 16 hours per response.

*Estimated Number of Respondents:*

Under $100,000—281 respondents.

$100,000–$250,000—67 respondents.

*Over $250,000—171 respondents.*

*Estimated Number of Responses per Respondent:* One.

*Estimated Total Annual Burden on Respondents:*

Under $100,000—approximately 562 hours.

$100,000–$250,000—approximately 268 hours.

Over $250,000—approximately 2,736 hours.

Sample copies of this information collection can be obtained from Robert K. Yearout, Chief, Concession Program Division, at 202–343–3784.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to Robert K. Yearout, Chief, Concession Program Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 29, 1996.

Maureen Finnerty,

*Associate Director, Park Operations and Education.*

[FR Doc. 96–15372 Filed 6–17–96; 8:45 am]

**BILLING CODE 4310–70–P**

---

## Notice of Request for Extension and Revision of a Currently Approved Information Collection

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's intention to request an extension for and revision to a currently approved information collection in support of its Concession Management Program based on reestimates.

**DATES:** Comments on this notice must be received no later than August 19, 1996.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Robert K. Yearout, Chief, Concession Program Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127 or 202–343–3784.

**SUPPLEMENTARY INFORMATION:**

*Title:* Submission of Offers for Concession Opportunities.

*OMB Number:* 1024–0125.

*Expiration Date of Approval:* January 31, 1996.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. The NPS issues prospectuses to advise interested parties of concession business opportunities and to solicit offers from all parties interested in specific opportunities.

16 U.S.C. 20(d) requires that before granting extensions, renewals or new concession contracts, the NPS must give reasonable public notice and must consider and evaluate all proposals received as a result thereof. Implementing regulations at 36 CFR, Part 51, further require the submission of offers by all interested parties, and provide that the principal factors to be considered in selecting the best offer shall be (1) the experience and related background of the offeror, (2) the offeror's financial capability, and (3) conformance to the terms and conditions of the prospectus issued by the NPS in relation to quality of service to the visitor. Secondary factors include franchise fee offered and other factors as may be specified.

The information requested in each prospectus is used to evaluate all offers received and determine which among them is the best offer for purposes of contract award. Specific information on the experience and background of the person(s) or entity, the financial capabilities of each offeror, their financial and operational plans, the franchise fee offered, and the proposed term of contract are requested in each prospectus issued by the NPS. The amount of information or degree of detail requested varies widely, depending upon the size and scope of the business opportunity. For example, a much greater amount of detailed information would be required for a multi-unit food and lodging operation such as that at Yellowstone, than would be required for a small firewood sales operation. Without such information, the NPS would be unable to objectively evaluate offers received for a particular business opportunity, and would be unable to assure that the park resources will be adequately protected, or to determine which offeror would provide the best service to visitors at reasonable rates, and the greatest overall return to the Government.

*Estimate of Burden:*

For large operations—approximately 480 hours per response.

For small operations—approximately 240 hours per response.

*Estimated Number of Respondents:*

Large operations—approximately 150.

Small operations—approximately 200.

*Estimated Number of Responses per Respondent:* One

*Estimated Total Annual Burden on Respondents:*

Large operations—72,000 hours.

Small operations—48,000 hours.

A sample copy of this information collection can be obtained from Robert K. Yearout, Chief, Concession Program Division, at 202–343–3784.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to Robert K. Yearout, Chief, Concession Program Division, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 29, 1996.

Maureen Finnerty,

*Associate Director, Park Operations and Education.*

[FR Doc. 96–15373 Filed 6–17–96; 8:45 am]

**BILLING CODE 4310–70–P**

---

## Notice of Request for Extension of a Currently Approved Information Collection

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

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's intention to request an extension for a currently approved information collection in support of its Concession Management Program.

**DATES:** Comments on this notice must be received no later than August 19, 1996.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Robert K. Yearout, Chief, Concession Program Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127 or 202–343–3784.

**SUPPLEMENTARY INFORMATION:**

*Title:* Proposed Sale of Concession Operations.

*OMB Number:* 1024–0126.

*Expiration Date of Approval:* January 31, 1996.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park System. Concession authorizations may be assigned, sold, transferred or encumbered by the concessioner subject to prior written approval of the NPS. The NPS requires that certain information be submitted for review prior to the consummation of any sale, transfer, assignment or encumbrance.

16 U.S.C. 3 provides that no contract, lease, permit or privilege granted for the purpose of providing accommodations for visitors to the national parks shall be assigned or transferred by such grantees, permittees, or licensees without the approval of the NPS, first obtained in writing. It further provides that the NPS may authorize concessioners to execute mortgages and issue bonds, shares of stock, and other evidences or interest in or indebtedness upon their rights, properties and franchises, for the purposes of installing, enlarging or improving plant and equipment and extending facilities for the accommodation of the public within national parks and monuments. 16 U.S.C. 20(3) also provides that the possessory interest of a concessioner may be assigned, transferred, encumbered, or relinquished. Regulations at 36 CFR, Part 51, require that certain information be submitted for review by the NPS prior to the consummation of any sale, transfer, assignment or encumbrance.

The information requested is used to determine whether or not the proposed transaction will result in decreased services to the public, the lack of a reasonable opportunity for profit over the remaining term of the authorization, or rates in excess of existing approved rates to the public. In addition, pursuant to the regulations at 36 CFR, Part 51, the value of rights for intangible assets such as the concession contract, right of preference in renewal, user days, or low fees belong to the Government. If any portion of the purchase price is attributable either directly or indirectly to such assets, the transaction may not be approved. The amount and type of information to be submitted varies with the type and complexity of the proposed transaction. Without such information, the NPS would be unable to determine whether approval of the proposed transaction would be in the best interest of the public and whether the return to the Government for the privileges authorized would be adequate.

*Estimate of Burden:* Approximately 80 hours per response.

*Estimated Number of Respondents:* Approximately 20.

*Estimated Number of Responses per Respondent:* One.

*Estimated Total Annual Burden on Respondents:* 1,600 hours.

A list of information required to be submitted with a request for sale, assignment, transfer or encumbrance of a concession authorization is set forth at 36 CFR, Part 51.7.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to: Robert K. Yearout, Chief, Concession Program Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 29, 1996.

Maureen Finnerty,

*Associate Director, Park Operations and Education.*

[FR Doc. 96–15374 Filed 6–17–96; 8:45 am]

**BILLING CODE 4310–70–P**

---

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before JUNE 8, 1996. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 3, 1996.

Beth Boland,

*Acting Keeper of the National Register.*

Arizona

*Pima County*

Armory Park Historic Residential District (Boundary Increase), Roughly, 19th, 20th, and 21st Sts. from Stone Ave. to Jacobs Ave., Tucson, 96000754

District of Columbia

*District of Columbia State Equivalent*

Chevy Chase Theater, 5612 Connecticut Ave., Washington, 96000734

Codman Carriage House and Stable, 1413–1415 22nd St., NW, Washington, 96000733

Georgia

*Worth County*

US Post Office, 122 N. Main St., Sylvester, 96000735

Massachusetts

*Worcester County*

Grove Street School, 23 Grove St., Spencer, 96000737

Oakdale Village Historic District, 11–68 N. Main, 8–24 May, 6–10 Green, 12–23 High, 4–68 Laurel, 14–34 Washacum, and park at Thomas and N. Main, West Boylston, 96000738

Pleasant Street School, 54 Pleasant St., Spencer, 96000736

New Mexico

*Valencia County*

El Cerro Tome Site, .5 mi. E of jct. of NM 47 and Tome Hill Rd., Tome vicinity, 96000739

South Dakota

*Clay County*

Burbank School No. 10, White St., 2 blocks N of Chicago, Milwaukee, St. Paul, and Pacific RR tracks., Burbank, 96000740

*Codington County*

Goodhue Lutheran Church, 15555 441st Ave., Florence vicinity, 96000745

*Lawrence County*

Nemo School House, Nemo Rd., Nemo, 96000747

*Minnehaha County*

Bridge at Iverson Crossing, 48054 266th St., Brandon vicinity, 96000746

*Potter County*

Curran, D. H. and Leah, House, 206 S. Broadway, Gettysburg, 96000741

Potter County Courthouse (County Courthouses of South Dakota), 201 S. Exene St., Gettysburg, 96000743

Stocker, G.L., Blacksmith Shop, Main St., 2 blocks S of US 212, Gettysburg, 96000744

*Union County*

Hyden House, 405 Hyden House, Alcester, 96000742

Tennessee

*Warren County*

Walling, Edgar, House, 406 N. Spring St., McMinnville, 96000749

*Weakley County*

US Post Office (Martin MPS) 100 Main St., Martin, 96000751

University Street Historic District (Martin MPS) 225–248 University St., Martin, 96000750

*Williamson County*

Boyd-Wilson Farm (Historic Family Farms in Middle Tennessee MPS) 3209 Boxley Valley Rd., Franklin vicinity, 96000748

Texas

*Bexar County*

Randolph Field Historic District, Randolph Air Force Base, off Pat Booker Rd., 18 mi. NE of San Antonio, San Antonio vicinity, 96000753

[FR Doc. 96–15455 Filed 6–17–96; 8:45 am]

BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** June 24, 1996 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–748 (Preliminary) (Engineered Process Gas Turbo-Compressor Systems from Japan)—briefing and vote.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: June 14, 1996.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 96–15606 Filed 6–14–96; 3:26 pm]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### National Institute of Justice

**[OJP (NIJ) No.1084]**

**RIN 1121–ZA36**

### Reminder of Deadline for Receipt of Proposals for Law Enforcement and Corrections Technology Research

**AGENCY:** Office of Justice Programs, National Institute of Justice, U.S. Department of Justice.

**ACTION:** The National Institute of Justice (NIJ), Office of Science and Technology reminds interested parties that June 17, 1996 is the biannual closing date for receipt at NIJ of research proposals to enhance law enforcement and corrections technologies under the NIJ 1995–96 Research Plan.

Interested parties should obtain a copy of the NIJ 1995–96 Research Plan by contacting the National Criminal Justice Reference Service (NCJRS) at (800) 851–3420. The NIJ 1995–96 Research Plan is also available electronically via the NCJRS Bulletin Board System on the Internet (telnet to ncjrsbbs.aspensys.com or gopher to ncjrs.aspensys.com 71).

**DATES:** The deadline for receipt of proposals is close of business on June 17, 1996.

**ADDRESSES:** National Institute of Justice, Office of Science and Technology, 633 Indiana Avenue, NW., Washington, D.C. 20531.

**FOR FURTHER INFORMATION CONTACT:** Tawana Waugh, U.S. Department of Justice Response Center, at 800–421–6770 (in Metropolitan Washington, DC, 202–307–1480).

**SUPPLEMENTARY INFORMATION:** The following supplementary information is provided:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1988).

Jeremy Travis,

*Director, National Institute of Justice.*

[FR Doc. 96–15432 Filed 6–17–96; 8:45 am]

BILLING CODE 4410–18–P

**[OJP (NIJ) No. 1086]**

**RIN 1121–ZA38**

### National Institute of Justice Solicitation for Policing Research and Evaluation: Fiscal Year 1996

**AGENCY:** U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

**ACTION:** Announcement of the availability of the National Institute of Justice ''Solicitation for Policing Research and Evaluation: Fiscal Year 1996''

**DATES:** There are two deadlines for receipt of proposals. Those submitted in response to the locally-intiated partnerships section are due by close of business on August 15, 1996. All others are due by close of business on July 22, 1996.

**ADDRESSES:** National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Tawana Waugh, U.S. Department of Justice Response Center, at 800–421–6770 (in Metropolitan Washington, DC, 202–307–1480).

**SUPPLEMENTARY INFORMATION:** The following supplementary information is provided:

Authority: This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–3723 (1988).

Background

The National Institute of Justice is soliciting a second year of proposals for policing research and evaluation responsive to the Public Safety Partnership and Community Policing Act (Title I) of the Violent Crime Control and Law Enforcement Act of 1994. Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for Policing Research and Evaluation: Fiscal Year 1996'' (refer to document No. SL000148). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.ncjrs.org, or gopher to ncjrs.org:71. For World Wide Web access, connect to the NCJRS Justice Information Center at http://www.ncjrs.org. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

*Director, National Institute of Justice.*

[FR Doc. 96–15431 Filed 6–17–96; 8:45 am]

BILLING CODE 4410–18–P

**[OJP (NIJ) No. 1085]**

**RIN 1121–ZA37**

### National Institute of Justice Solicitation for Proposals to Evaluate and Research Sentencing Reforms and Their Effects on Corrections

**AGENCY:** U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

**ACTION:** Announcement of the availability of the National Institute of Justice Solicitation for proposals to evaluate and research sentencing reforms and their effects on corrections.

**DATES:** The deadline for receipt of proposals is close of business on July 30, 1996.

**ADDRESSES:** National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** Tawana Waugh, U.S. Department of Justice Response Center, at 800–421–

6770 (in Metropolitan Washington, DC, 202–307–1480).

**SUPPLEMENTARY INFORMATION:** The following supplementary information is provided:

Authority: This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–203, as amended, 42 U.S.C. 3721–3723 (1988).

Background

As part of the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Act), most State and local correctional systems will receive Federal funds in fiscal year 1996 to expand capacity to incarcerate violent offenders with more certainty and to impose longer and more determinate sentences. The Act directs that a portion of appropriated funds be set aside for research and evaluation, including an assessment of the effect on public safety and other effects of the expansion of correctional capacity and sentencing reforms. The National Institute of Justice will award up to $4 million for research and evaluation efforts.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Solicitation for Proposals to Evaluate and Research Sentencing Reforms and Their Effects on Corrections'' (refer to document No. SL000141). The solicitation is available electronically via the NCJRS Bulletin Board, which can be accessed via Internet. Telnet to ncjrsbbs.aspensys.com, or gopher to ncjrs.aspensys.com 71. For World Wide Web access, connect to the Justice Information Center at http://www.ncjrs.org. Those without Internet access can dial the NCJRS Bulletin Board via modem: dial 301–738–8895. Set modem at 9600 baud, 8–N–1.

Jeremy Travis,

*Director, National Institute of Justice.*

[FR Doc. 96–15430 Filed 6–17–96; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Collection; Comment Request

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the Worker Adjustment Formula Financial Report, ETA Form 9041. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before August 19, 1996. The Department of Labor is particularly interested in comments which:

* 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;
* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* enhance the quality, utility, and clarity of the information to be collected; and
* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESS:** Eric Johnson, Office of Worker Retraining and Adjustment Programs, Office of Work-Based Learning, Employment and Training Administration, U.S. Department of Labor, Room N–5426, 200 Constitution Avenue N.W., Washington, D.C. 20210, 202–219–5577 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

I. Background

The collection of the information in the Worker Adjustment Formula Financial Report (WFFR) is necessary in order to satisfy the requirements of the provisions of the Job Training Partnership Act (JTPA), as amended. The provisions are related to the Secretary's responsibilities and authority for monitoring performance and expenditures, and for recordkeeping and reporting related to JTPA Title III.

II. Current Actions

This is a request for OMB approval of an extension of an existing collection of information previously approved by OMB. The extension will allow the Department to continue: 1) to monitor performance of the formula programs under Title III of JTPA, 2) to report to Congress and the Treasury, and 3) to prepare annual budget reports.

*Type of Review:* Extension.

*Agency:* Employment and Training Administration.

*Title:* Worker Adjustment Formula Financial Report.

*OMB Number:* 1205–0326.

*Affected Public:* State, Local or Tribal Government.

*Total Respondents:* 52.

*Frequency:* Quarterly.

*Average Time per Response:* 8.75 hours.

*Estimated Total Burden Hours:* 1,820.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 11, 1996.

Grace A. Kilbane,

*Administrator, Office of Work-Based Learning, Employment and Training Administration.*

[FR Doc. 96–15389 Filed 6–17–96; 8:45 am]

**BILLING CODE 4510–30–M**

## NATIONAL CREDIT UNION ADMINISTRATION

### Information Collection Under Review

The National Credit Union Administration (NCUA) intends to submit the following public information collection requests to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). The proposed information collections are published to obtain comments from the public. Public comments are encouraged and will be accepted for 60 sixty days from the date listed at the top of this page in the Federal Register.

Copies of these individual information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Suzanne Beauchesne, ((703) 518–6412). Comments and/or

suggestions regarding the information collection requests listed below should be directed to Ms. Beauchesne, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. (703) 518–6433; E-Mail Address: SUEB@NCUA.GOV within 60 days from the date of this publication in the Federal Register. Comments may also be sent to the OMB Desk Officer at the following address: Mr. Milo Sunderhauf, OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington DC 20530.

National Credit Union Administration

*OMB Number:* 3133–0108.
*Form Number:* None.
*Type of Review:* Extension of a currently approved collection.
*Title:* Report of Crime or Catastrophic Act and Bank Secrecy Act Compliance.
*Description:* Section 748.2 of NCUA's regulations, 12 C.F.R. § 748.2, directs credit unions to adopt a written program and to maintain procedures that ensure the credit union's continued compliance with the Bank Secrecy Act (31 U.S.C. §§ 5311–5330) and the Department of Treasury's currency reporting regulations (31 C.F.R. Part 103).
*Respondents:* Federally insured credit unions.
*Estimated Number of Respondents/Recordkeepers:* 11,732.
*Estimated Burden Hours Per Response:* 3.02 hours.
*Frequency of Response:* Annually.
*Estimated Total Annual Burden Hours:* 35,436 hours.
*Estimated Total Annual Cost:* None.

*OMB Number:* 3133–0068.
*Form Number:* None.
*Type of Review:* Extension of a currently approved collection.
*Title:* Nondiscrimination Requirements.
*Description:* Section 701.31 of NCUA's regulations, 12 C.F.R. § 701.31, requires federal credit unions (FCU) to maintain a copy of the appraisal used to support a member's real estate-related loan application and to make the appraisal available to the member upon request for 25 months. The regulation also directs FCUs that use the collateral's location to evaluate real estate loan applications to disclose that fact and to justify the practice.
*Respondents:* Federal credit unions.
*Estimated Number of Respondents/Recordkeepers:* 4,286.
*Estimated Burden Hours Per Response:* 1 hour.
*Frequency of Response:* On Occasion.
*Estimated Total Annual Burden Hours:* 4,286 hours.
*Estimated Total Annual Cost:* None.

*OMB Number:* 3133–0121.
*Form Number:* None.
*Type of Review:* Extension of a currently approved collection.
*Title:* Change in Official or Senior Executive Officer in Credit Unions that are Newly Chartered or are in Troubled Condition.
*Description:* Section 701.14 of NCUA's regulations, 12 C.F.R. § 701.14, directs newly chartered or troubled credit unions (credit unions with CAMEL Ratings of 4 or 5, and credit unions that have signed Letter of Understanding Agreements) to submit a notice to the NCUA before making any changes to the credit union's board of directors, committee members or senior executive officers. NCUA may disapprove the proposed management change within 30 days of receiving the notice.
*Respondents:* Federally insured credit unions.
*Estimated Number of Respondents/Recordkeepers:* 605.
*Estimated Burden Hours per Response:* 2.
*Frequency of Response:* On Occasion.
*Estimated Total Reporting Burden:* 1,210 hours.
*Estimated Total Annual Cost:* None.

By the National Credit Union Administration Board on June 10, 1996.

Becky Baker,

*Secretary of the Board.*

[FR Doc. 96–15347 Filed 6–17–96; 8:45 am]

BILLING CODE 7535–01–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Cooperative Agreement for an Artist is Residency in Correctional Institutions Project

**AGENCY:** National Endowment for the Arts, National Foundation on the Arts and the Humanities.

**ACTION:** Notification of availability.

**SUMMARY:** The National Endowment for the Arts requests proposals leading to the award of a Cooperative Agreement for the setting up, monitoring, and evaluating of one-year arts residencies in three Federal correctional institutions. Available funding for the Cooperative Agreement is limited to $12,000 which will cover administrative costs. The artists will be compensated directly by the correctional institutions for the residency. Eligibility to apply for the Cooperative Agreement is limited to nonprofit organizations, including educational institutions, and units of state and local government. Those interested in receiving the Solicitation should reference Program Solicitation PS 96–07 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

**DATES:** Program Solicitation PS 96–07 is scheduled for release approximately July 8, 1996 with proposals due on August 8, 1996.

**ADDRESSES:** Requests for the Solicitation should be addressed to National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., N.W., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:**

William I. Hummel, Grants and Contracts Office, National Endowment for the Arts, 1100 Pennsylvania Ave., N.W., Washington, D.C. 20506 (202/682–5482).

William I. Hummel,

*Coordinator, Cooperative Agreements and Contracts.*

[FR Doc. 96–15345 Filed 6–17–96; 8:45 am]

BILLING CODE 7537–01–M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

Agenda

**TIME AND DATES:** 9:30 a.m., Tuesday, June 25, 1996.

**PLACE:** The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W. Washington, D.C. 20594.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

6712 Aviation Brief of Incident: 1995 File No. 5025, Corsicana, Texas, November 17, 1995
6713 Aviation Brief of Accident: 1995 File No. 873, Ramona, California, June 21, 1995
6714 Aviation Brief of Accident: 1995 File No. 1521, Beaver Dam, Arizona, September 2, 1995.
6714A Recommendations to FAA: Inspections of Exhaust Systems of Cessna Twin-Engine Turbocharged Airplanes.

**NEWS MEDIA CONTACT:** Telephone: (202) 382–0660.

**FOR MORE INFORMATION CONTACT:** Bea Hardesty, (202) 382–6525.

Dated: June 14, 1996.

Bea Hardesty,

*Federal Register* Liaison Officer.

[FR Doc. 96–15657 Filed 6–14–96; 3:56 pm]

BILLING CODE 7533–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–133, 50–275, AND 50–323]**

## Diablo Canyon Power Plant, Units 1 and 2 and Humboldt Bay Power Plant Unit 3 Pacific Gas and Electric Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering approval under 10 CFR 50.80(a) of the transfer of control of the licenses that would be effected by the corporate restructuring of Pacific Gas and Electric Company (the licensee), holder of Facility Operating Licenses Nos. DPR–80, DPR–82, and DPR–7, issued for operation of the Diablo Canyon Nuclear Power Plant (DCPP), Units 1 and 2, located in San Luis Obispo County, California, and the Humboldt Bay Power Plant (HBPP), Unit 3, located in Humboldt County, California.

Environmental Assessment

*Identification of the Proposed Action*

The proposed action would consent to the transfer of control of the licenses that would result from the restructuring of Pacific Gas and Electric (PG&E) by establishment of a holding company under the temporary name ''PG&E Parent Co., Inc.'' PG&E would become a wholly owned subsidiary and would continue to be the licensee of Diablo Canyon Nuclear Power Plant, Units 1 and 2, and Humboldt Bay Power Plant Unit 3. The proposed action is in accordance with PG&E's application dated November 1, 1995.

*The Need for the Proposed Action*

The proposed action is required to enable PG&E to restructure as described above. PG&E has submitted that restructuring will enable it to better prepare to implement changes resulting from electric industry restructuring, and will enhance the insulation of PG&E's California utility business, including the DCPP and HBPP units, from any business risks associated with non-utility enterprises.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed corporate restructuring and concludes that there will be no physical or operational changes to Diablo Canyon and Humboldt Bay. The corporate restructuring will not affect the qualifications or organizational affiliation of the personnel who operate the facilities, as PG&E will continue to be responsible for the operation of the Diablo Canyon Nuclear Power Plant, Units 1 and 2 and Humboldt Bay Power Plant Unit 3.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the restructuring, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the corporate restructuring would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the restructuring would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Diablo Canyon Power Plant, dated May 1973, and the Humboldt Bay Power Plant, dated April 1987.

*Agencies and Persons Contacted*

In accordance with its stated policy, on May 17, 1996, the staff consulted with the California State official, Mr. Steve Hsu of the Radiologic Health Branch of the State Department of Health Services, regarding the environmental impact of the proposed action. The State official had no comments.

*Finding of No Significant Impact*

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 1, 1995, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Humboldt County Library, 1313 3rd Street, Eureka, California 95501, and at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 11th day of June 1996.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

*Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 96–15399 Filed 6–17–96; 8:45 am]

BILLING CODE 7590–01–P

## Nuclear Safety Research Review Committee

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of change of meeting.

As previously announced, the Nuclear Safety Research Review Committee (NSRRC) will hold its next meeting on June 27–28, 1996. The purpose of the present notice is to provide a revised schedule, reflecting a change in meeting location and a change in the list of meeting topics. The location of the meeting will now be in Room T–10A1, Two White Flint North (TWFN) Building, 11545 Rockville Pike, Rockville, MD. The meeting will still be held from 9am to 5pm on both days.

The revised list of topics is as follows:

(1) To discuss the March 27, 1996 NSRRC briefing with the Commission;

(2) To receive a presentation by the Nuclear Energy Institute on their views on nuclear safety research needs; and

(3) To review and discuss the reports and recommendations of the Subcommittees on Research in Support of Risk-Based Regulation (PRA), including discussions on risk informed performance-based regulation; Instrumentation and Control (I&C) and

Human Factors; and Subcommittee on Accident Analysis.

Any inquiries regarding this notice or any subsequent changes in the status and schedule of the meeting, may be made to the Designated Federal Officer, Dr. Jose Luis M. Cortez (telephone: 301–415–6596), between 8:15 am and 5:00 pm.

Dated at Rockville, Maryland this 12th day of June, 1996.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

*Federal Advisory Committee Management Officer.*

[FR Doc. 96–15396 Filed 6–17–96; 8:45 am]

**BILLING CODE 7590–01–P**

## Nuclear Safety Research Review Committee (NSRRC); Meeting of the Materials and Engineering Subcommittee

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

The Materials and Engineering Subcommittee will hold a meeting on June 26, 1996. The meeting will take place, starting at 9:00 a.m., in room T–2B1, Two White Flint North (TWFN) Building, 11545 Rockville Pike, Rockville, MD and will be open to public attendance.

The Materials and Engineering Subcommittee will review the general nuclear safety research activities of the Division of Engineering Technology, including:

- Recent research activities in the area of reactor pressure vessel integrity including developments in the vessel thermal annealing demonstration program,
- Progress in the research program on the equipment qualification of electric cables,
- Steam generator tube integrity activities,
- Assessment of degraded structures and components,
- Generic Safety Issues, and
- Other items of interest to the Subcommittee.

A detailed agenda will be made available at the meeting. Oral statements may be presented by members of the public with the concurrence of the presiding Subcommittee Chairman; written statements will be accepted and made available to the Subcommittee. Questions may be asked only by members of the NSRRC Subcommittee and the staff. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portions of the meetings, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding the topics to be discussed.

Further information regarding topics to be covered, the rescheduling and/or cancellation of meeting sessions, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted for discussion can be obtained by a telephone call to Dr. Jose Luis M. Cortez (telephone 301/415–6596) between 9:00 a.m. and 4:30 p.m. (EST). Persons planning to attend these meetings are urged to contact the above named individual one or two business days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: June 10, 1996.

Jose Luis M. Cortez,

*Senior Research Program Coordinator, Office of Nuclear Regulatory Research.*

[FR Doc. 96–15401 Filed 6–17–96; 8:45 am]

**BILLING CODE 7590–01–P**

**[Docket Nos. 50–528, 50–529, 50–530]**

## Arizona Public Service Company (Palo Verde Nuclear Generating Station) (License Nos. NPF–41, NPF–51, NPF–74); Issuance of Director's Decision Under 10 CFR 2.206

A Petition was filed by Thomas J. Saporito, Jr. (Petitioner), in accordance with 10 CFR 2.206 on May 12, 1993. The Petition requested that the NRC: (1) Institute a show cause proceeding pursuant to 10 CFR 2.202 to modify, suspend, or revoke Arizona Public Service (APS) Company's operating licenses for Palo Verde Nuclear Generating Station (Palo Verde); (2) initiate actions to shut down Palo Verde; (3) take escalated enforcement action against APS, including the issuance of civil penalties against APS and/or licensee management personnel at Palo Verde; and (4) survey Palo Verde employees to gauge the chilling effect that may exist and whether the licensee's actions were effective in limiting the chilling effect. On May 28, 1993, Petitioner forwarded a New Times article to the NRC as a supplement to this petition. On October 26, 1993, Petitioner supplemented the May 12, 1993 Petition to include a copy of an October 23, 1993 discrimination complaint filed by the Petitioner with the Department of Labor against APS and The Atlantic Group (TAG). In the October 26, 1993 supplement, Petitioner reiterated his earlier request for action and additionally requested escalated enforcement action against TAG and against any of its employees who are found to have engaged in wrongdoing.

Another Petition was filed by Petitioner on January 15, 1994. This Petition, which has been treated as a supplement to the May 12, 1993 Petition: (1) Reiterated the requests for escalated enforcement action against APS that were made in the May 12, 1993 Petition; (2) requested that APS be required to provide a make-whole remedy for Petitioner for terminating Petitioner and failing to rehire him as a result of Petitioner's engaging in protected activities; and (3) requested that APS be required to abate and obviate the chilling effect at APS arising from the failure to provide the Petitioner with employee protections afforded under 10 CFR 50.7.

As the bases for the May 12, 1993 request, Petitioner asserted that: (1) A Department of Labor (DOL) Administrative Law Judge (ALJ) ruled that APS discriminated against Petitioner; (2) the DOL case is evidence that ''the licensee appears to have violated numerous NRC requirements regarding operation of the Palo Verde nuclear station; and (3) licensee managers have made questionable if not false statements to the NRC regarding the emergency lighting at Palo Verde. Petitioner's October 26, 1993 supplement to the original Petition bases the request for action on Petitioner's October 23, 1993 complaint filed with DOL and the ruling in favor of Ms. Sarah C. Thomas against APS. Petitioner's January 15, 1994 supplement to the original Petition bases the request for action on the admission by one of the witnesses at the Petitioner's DOL hearing that the witness lied under oath, as evidence of APS' intent to discriminate against Petitioner and that the discriminatory treatment of Petitioner has caused a chilling effect on other employees at Palo Verde.

Another Petition was filed by Petitioner and Florida Energy Consultants (Petitioners) on May 27, 1994. This Petition: (1) Reiterated the request for a show cause proceeding, and further requested that the NRC: (2) issue a notice of violation against the Licensee for continuing to employ TAG as a labor contractor at Palo Verde; (3) investigate alleged material false statements made by William F. Conway, Executive Vice President at Palo Verde,

during his testimony at a DOL hearing (ERA Case No. 92–ERA–030) and that, in the interim, the NRC require that Mr. Conway be relieved of any authority over operations at Palo Verde; (4) investigate the Licensee's statements regarding Petitioner Saporito in an August 10, 1993 letter from Mr. Conway to NRC Administrator, Mr. Bobby H. Faulkenberry, in which the Licensee said that Mr. Saporito gave materially false, inaccurate, and incomplete information on his application for unescorted access to Palo Verde so that, as a result of that event, Petitioner Saporito lacks trustworthiness and reliability for access to Palo Verde; (5) investigate the circumstances surrounding the February 1994 termination of Licensee employee Joseph Straub, a former radiation protection technician at Palo Verde, to determine if his employment was illegally terminated by the Licensee for having engaged in ''protected activity'' during the course of his employment; (6) require that the Licensee respond to a ''chilling effect'' letter regarding the circumstances surrounding Mr. Straub's termination from Palo Verde and whether any measures were taken to ensure that his termination did not cause a chilling effect at Palo Verde; (7) initiate appropriate actions to require the Licensee to immediately conduct eddy current testing on all steam generators at Palo Verde, because the steam generator tubes were recently subjected to cracking.

As the bases for these requests, Petitioners asserted that: (1) A show cause proceeding is necessary because the public health and safety concerns alleged are significant and to permit public participation to provide NRC with new and relevant information; (2) past practices of TAG demonstrate that employees of TAG were retaliated against for having raised safety concerns while employed at Palo Verde; (3) citations to testimony from transcripts and numerous newspaper articles (appended as exhibits to the Petition), demonstrate that Mr. Conway's testimony is not credible; (4) statements in the August 10, 1993 letter are inaccurate and materially false and characterize Mr. Saporito as an individual lacking trustworthiness and reliability for access to Palo Verde, so that such negative characterizations have blacklisted him from continued employment in the nuclear industry, which is all in retaliation for him raising safety concerns about operations at Palo Verde; thus, Petitioners ask that these statements be rescinded; (5) an investigation into the termination of Mr. Straub is warranted in view of the fact that the Licensee has engaged in similar illegal conduct in the past where the NRC has required the Licensee to pay fines; (6) Mr. Straub is entitled to reinstatement with pay and benefits pending the NRC's investigation into his termination to offset any chilling effect his termination had on the Palo Verde workforce; and (7) the stress corrosion and cracking in the steam generators is a recurring problem of which the Licensee is aware and which the Licensee has failed to properly correct, in addition to cooling tower problems, so that the NRC should be concerned about proper maintenance of safety systems and equipment there.

Immediate action with respect to item 7 of the May 27, 1994 Petition, regarding eddy current testing of the steam generators, was denied by William T. Russell, Director, Office of Nuclear Reactor Regulation in a letter to the Petitioners dated July 26, 1994. The non-immediate portion of the request is being addressed in a separate Director's Decision by Mr. Russell and the issue will not be discussed further here.

On July 8, 1994, Petitioners filed a supplement to the May 27, 1994 Petition raising additional issues concerning technical matters unrelated to the issues addressed in this Decision. The requests filed in this July 8, 1994 supplement will be addressed in the above-noted Director's Decision by Mr. Russell and will not be addressed here.

Another Petition was filed by Thomas J. Saporito, Jr., Florida Energy Consultants, and Linda Mitchell (Petitioners) on November 14, 1994. The Petition requested that NRC: (1) Issue a confirmatory order requiring APS to reduce power at all Palo Verde units to 0% until APS can demonstrate corrective actions for the hostile work environment at Palo Verde; (2) issue a demand for information to APS asking (a) why NRC should have confidence that APS can operate Palo Verde without a hostile work environment; (b) about the current duties and responsibilities of certain listed employees, including whether any of those employees is currently involved in NRC-licensed activities; (c) why the Commission should have confidence that these employees will comply with NRC requirements; and (d) why the NRC should not take action to prohibit the involvement of these employees in NRC licensed activities.

As the bases for these requests, Petitioners assert that: (1) DOL found that Sarah Thomas was discriminated against by APS; (2) DOL found that Linda Mitchell was discriminated against by APS; (3) DOL found that Thomas J. Saporito, Jr., was discriminated against by APS; (4) these matters could have been settled before adjudication by DOL; (5) recent other DOL complaints by Straub and Irick are indicators that discrimination is the normal course of business at Palo Verde; (6) Petitioner Linda Mitchell lives within 2 air miles of Palo Verde and, therefore, has standing to intervene in a hearing before the NRC Atomic Safety and Licensing Board (Board); (7) Petitioners Saporito and Florida Energy Consultants have requisite standing to intervene in a hearing before a Licensing Board through Ms. Mitchell; Petitioner Saporito has requisite standing to intervene in a hearing before the Board through Ms. Mitchell; (8) Petitioners are subject to physical harm and loss of personal property in the event of a nuclear accident at Palo Verde as a direct or indirect result of the hostile work environment fostered at Palo Verde; and (9) a hostile work environment exists and is pervasive at Palo Verde and is condoned and fostered by licensee management.

The request for enforcement action against APS has been granted. For the reasons discussed in the Director's Decision, the remaining requests, other than those being addressed by Mr. Russell in his separate Director's Decision, have been denied.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission on the issues discussed herein 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decision within that time.

Dated: at Rockville, Maryland, this 3rd day of June 1996.

For the Nuclear Regulatory Commission.

James Lieberman,

*Director, Office of Enforcement.*

[FR Doc. 96–15400 Filed 6–17–96; 8:45 am]

BILLING CODE 7590–01–P

## Sunshine Act Meeting

**DATES:** Weeks of June 17, 24, July 1, and 8, 1996.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS OF BE CONSIDERED:**

Week of June 17

*Tuesday, June 18*

10:00 a.m.

Briefing on Status of NRC Operator Licensing Initial Examination Pilot Process (Public Meeting)
(Contact: Stuart Richards, 301–415–1031)
11:30 a.m.
Affirmation Session (Public Meeting)
*(Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rulemaking—Revision to 10 CFR Parts 2, 50, and 51, Related to Decommissioning of Nuclear Power Reactors.
b. Yankee Atomic Electric Company (Yankee Nuclear Power Station) Docket No. 50–029–DCOM (Tentative)
(Contact: Andrew Bates, 301–415–1963)

Week of June 24—Tentative

*Tuesday, June 25*

10:00 a.m.
Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: Victor McCree, 301–415–1711)

*Wednesday, June 26*

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)
2:30 p.m.
Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
(Contact: John Larkins, 301–415–7360)

Week of July 1—Tentative

*Monday, July 1*

2:00 p.m.
Briefing by Executive Branch (Closed—Ex. 1)

*Tuesday, July 2*

10:00 a.m.
Briefing on Alternatives for Regulating Fuel Cycle Facilities (Public Meeting)
(Contact: Ted Sherr, 301–415–7218)

*Wednesday, July 3*

10:00 a.m.
Briefing on BPR Project on Redesigned Material Licensing Process (Public Meeting)
(Contact: Pat Rathbun, 301–415–7178)
11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of July 8—Tentative

There are no meeting scheduled for the Week of July 8.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill (301) 415–1661.

* * * * *

This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963)

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to alb@nrc.gov or dkw@nrc.gov

* * * * *

William M. Hill, Jr.,
*Secy Tracking Officer, Office of the Secretary.*

[FR Doc. 96–15609 Filed 6–14–96; 3:27 pm]

BILLING CODE 7590–01–M

## OFFICE OF GOVERNMENT ETHICS

### Senior Executive Service (SES) Performance Review Board: Updating

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the appointment of members of the updated OGE SES Performance Review Board.

**EFFECTIVE DATE:** June 18, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Lammon, Associate Director for Administration, Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005–3917; telephone: 202–208–8000; FAX: 202–208–8037; Internet E-mail address: relammon@attmail.com (for E-mail messages, the subject line should include the following reference—OGE SES Performance Review Board).

**SUPPLEMENTARY INFORMATION:** 5 U.S.C. 4314(c) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management at 5 CFR part 430, subpart C and § 430.307 thereof in particular, one or more Senior Executive Service performance review boards. As a small executive branch agency, OGE has just one board. In order to ensure an adequate level of staffing and to avoid a constant series of recusals, these newly designated members of OGE's SES Performance Review Board are being drawn, as in the past, primarily from the SES ranks of other agencies because OGE itself currently has only three SES members. The board shall review and evaluate the initial appraisal of each OGE senior executive's performance by his or her supervisor, along 1with any recommendations in each instance to the appointing authority relative to the performance of the senior executive. This notice updates the membership of OGE's SES Performance Review Board as it was last published at 58 FR 14225–14226 (March 16, 1993).

Approved: June 12, 1996.

Stephen D. Potts,
*Director, Office of Government Ethics.*

The following have been selected as regular members of the SES Performance Review Board of the Office of Government Ethics:

F. Gary Davis [Chair], Deputy Director, Office of Government Ethics
Joseph E. Gangloff, Principal Deputy, Public Integrity Section, Department of Justice
Gabriele J. Paone, Deputy Agency Ethics Staff Officer, Department of the Interior
James H. Thessin, Deputy Legal Adviser, Department of State
Steven Y. Winnick, Deputy General Counsel for Program Service, Department of Education

[FR Doc. 96–15392 Filed 6–17–96; 8:45 am]

BILLING CODE 6345–01–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Public Comments on the Caribbean Basin Economic Recovery Act: Report to Congress

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice and request for comments.

**SUMMARY:** Section 212(f) of the Caribbean Basin Economic Recovery Expansion Act of 1990 (19 U.S.C. 2702(f)) (''the Act'') requires the Administration to submit a report to the Congress on or before October 1, 1996 regarding the operation of the program. All interested parties are invited to submit comments relevant to the issues to be examined in preparing such a report, including the considerations included in subsections 212 (b) and (c) of the Act (19 U.S.C. 2702 (b) and (c)).

**DATES:** Public comments are due by noon on Monday, July 15, 1996.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, N.W., Room 523, Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Dale Eppler, Director for Central American and Caribbean Affairs, (202–395–5190).

**SUPPLEMENTARY INFORMATION:** Section 212(f) (19 U.S.C. 2702(f)) of the Caribbean Basin Economic Recovery Act states: ''On or before October 1, 1993, and the close of each 3-year period thereafter, the President shall submit to the Congress a complete report

regarding the operation of this title, including the results of a general review of beneficiary countries based on the consideration described in subsections (b) and (c).''

The Chairman of the Trade Policy Staff Committee invites written comments from the public relevant to the program's operation, including the status of beneficiary countries under the criteria set out below. Interested parties may comment on any aspect of the program's operation. Issues to be examined include: The program's effect on the volume and composition of trade and investment between the United States and the region; its effect on economic growth and development of beneficiary countries; the effect on U.S. firms and consumers; the degree to which the Act has encouraged the trade and investment policies cited in the Act; and the administrative requirements for beneficiary exporters and U.S. importers.

Interested parties are also asked to comment on the following Act designation criteria as contained in Sections 212(b) and (c) of the Act:

(b) * * * In addition, the President shall not designate any country a beneficiary country under this title—

(1) if such country is a Communist country;

(2) if such country

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(b) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of, a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens; and

(7) if such country has not or is not taking steps to afford internationally recognized worker rights (as defined in section 502(a)(4) of the Trade Act of 1974) to workers in the country (including any designated zone in that country). Paragraphs (1), (2), (3), (5), and (7) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) In determining whether to designate any country a beneficiary country under this title, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2(a) of the Trade Agreements Act of 1979;

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to promote its own economic development;

(8) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this title.

Persons submitting written comments should provide a statement, in twenty copies, by noon, Monday, July 15, 1996, to Carolyn Frank, Executive Secretary, TPSC, Office of the U.S. Trade Representative, Room 501, 600 17th street, N.W., Washington, D.C. 20508. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading

Room, room 101, Monday through Friday, 10:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof.

Frederick L. Montgomery,

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 96–15435 Filed 6–17–96; 8:45 am]

BILLING CODE 3190–01–M

---

**[Docket No. 301–99]**

## Section 304 Determinations: Barriers to Access to the Japanese Market for Consumer Photographic Film and Paper

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of determinations.

**SUMMARY:** On June 13, 1996, the Acting United States Trade Representative (USTR) determined, pursuant to section 304(a)(1)(A) of the Trade Act of 1974, 19 U.S.C. 2414, (the Trade Act) that certain acts, policies, and practices of the Government of Japan with respect to the sale and distribution of consumer photographic materials in Japan are unreasonable and burden or restrict U.S. commerce. Specifically, the USTR found that the Government of Japan established and tolerated a market structure that impedes U.S. exports of consumer photographic materials to Japan, and in which practices occur that also impede U.S. exports of these products to Japan, thereby denying fair and equitable market opportunities. The USTR also concluded that there is reason to believe based on strong evidence that certain Japanese Government liberalization countermeasures, including *inter alia,* distribution guidelines and related measures, the Law Pertaining to Adjustment of Business Activities of the Retail Industry for Large Scale Retail Stores (LSRS Law) and the Law Against Unjustifiable Premiums and Misleading Representations (Premiums Law) contravene Japan's obligations under the Multilateral Trade Agreements annexed to the Marrakesh Agreement Establishing the World Trade Organization (WTO), and nullify or impair benefits accruing to the United States under the WTO agreements. As provided by the Trade Act, the United States will invoke the dispute settlement procedures of the WTO with respect to these measures and their application. The United States also will request consultations with the Government of Japan under a WTO provision for consultations on restrictive business practices. As appropriate, the USTR will determine what further action under section 301 is warranted.

**EFFECTIVE DATE:** June 13, 1996.

**FOR FURTHER INFORMATION CONTACT:** Barbara Weisel, Director of Policy Planning for Japan and China, (202) 395–5070; or, for legal issues, Joanna McIntosh, Associate General Counsel, (202) 395–7203, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

**SUPPLEMENTARY INFORMATION:** In July 1995, the USTR initiated an investigation under section 302(a) of the Trade Act with respect to certain acts, policies, and practices of the Government of Japan affecting access to the Japanese market for consumer photographic film and paper. Upon initiating the investigation, the United States requested bilateral consultations with the Government of Japan. At an October 3, 1995 meeting in Tokyo, U.S. Government officials were prepared to discuss the substance of the issues involved in the investigation, and they solicited the views of and information from Japanese officials concerning those issues. However, at that meeting and throughout the course of the investigation, the Government of Japan unreasonably refused to consult on the substance of the matters under investigation, despite repeated U.S. attempts to engage in consultations.

As a result of the investigation conducted by USTR and USTR's review of all of the information submitted by the petitioner and other parties, and in the absence of rebuttal from the Government of Japan, the USTR determined that, pursuant to section 304(a)(1)(A) of the Trade Act that certain acts, policies, and practices of the Government of Japan with respect to the sale and distribution of consumer photographic materials in Japan are unreasonable and burden or restrict U.S. commerce. Specifically, the USTR found that the Government of Japan established and tolerated a market structure that impedes U.S. exports of these products to Japan, and in which practices occur that also impede U.S. exports of these products to Japan, thereby denying fair and equitable market opportunities.

The USTR found that when the Japanese Government gradually withdrew its formal restrictions on imports and inward investment following international pressure beginning in the late 1960s, it simultaneously implemented liberalization countermeasures designed to restrict access of foreign capital and goods to the Japanese market. The capital and import liberalization countermeasures implemented beginning in the 1960s, included measures to block or limit foreign direct investment in both new and established enterprises with the intent and effect, *inter alia,* of limiting market access for imported products. Because of the perceived need to protect the Japanese photographic materials industry from foreign products, the consumer photographic materials sector was among the last to be liberalized. Restrictions on foreign investment in existing enterprises remained in effect until the early 1980s. During the period of capital and import liberalization countermeasures, the Government of Japan, in particular the Ministry of International Trade and Industry (MITI), took steps to restructure the distribution sector to prevent foreign products from making inroads into the Japanese market. For example, MITI promulgated distribution guidelines for photographic film, and the market structure and practices established under and promoted by these guidelines fostered a dependent and exclusionary relationship among Japan's major photographic materials manufacturer, the primary wholesalers (*tokuyakuten*), secondary wholesalers, and retailers. The distribution structure, retail sales environment, and business relationships in this sector that were established as a result of MITI's protection of the sector remain in place today.

USTR also uncovered significant evidence of anticompetitive activities that warrants full and thorough examination.

The USTR determined that these acts, policies and practices should be addressed comprehensively as follows.

(1) Having concluded that there is reason to believe based on strong evidence that certain Japanese Government liberalization countermeasures, including inter alia, distribution guidelines and related measures, the LSRS Law, and the Premiums Law, violate Japan's obligations and commitments under the WTO agreements and nullify or impair benefits accruing to the United States under those agreements, the United States immediately will seek recourse to the dispute settlement procedures of the WTO to challenge these measures and their application, as provided by the Trade Act and in accordance with

Article 23 of the WTO Dispute Settlement Understanding (DSU). If, at the conclusion of dispute settlement proceedings, the WTO Dispute Settlement Body finds that Japanese government acts, policies or practices violate, or are inconsistent with, the provisions of, or otherwise deny benefits accruing to the United States under, any of the WTO agreements, and, unless Japan is taking satisfactory measures to grant the rights of the United States under the WTO agreements, has agreed to eliminate or phase out the affected act, policy or practice, or agreed to an imminent satisfactory solution to the burden or restriction on U.S. commerce, or provided satisfactory compensatory trade benefits, the United States shall take action under section 301 in accordance with the DSU.

(2)(a) The United States will request consultations immediately with the Government of Japan pursuant to arrangements for consultations on restrictive business practices adopted by the GATT Contracting Parties in 1960 and carried forward into the WTO; (b) in light of Prime Minister Hashimoto's statements of his personal commitment and the series of commitments made by the Government of Japan under the Structural Impediments Initiative and the Joint Statement on the U.S.-Japan Framework for a New Economic Partnership to strengthen the Japan Fair Trade Commission (JFTC) and enforcement of Japan's competition laws, the United States (i) is requesting that Kodak provide information for submission to the JFTC concerning certain anticompetitive practices in the Japanese consumer photographic materials market, and (ii) will provide information to the JFTC to enforce competition laws in the consumer photographic materials markets; (c) the Department of Justice will seek to cooperate with the JFTC in its review of evidence of anticompetitive practices in the Japanese market and in consideration of remedial actions, as appropriate, and USTR will consult with the Department of Justice in assessing efforts of the JFTC to enforce competition laws in Japan's photographic materials market; and (d) the United States will study the extent to which Japan's market structure for consumer photographic materials distorts competition or causes economic harm in the United States and in third markets and consider any appropriate responses.

At the appropriate time, based on developments in these consultations and proceedings, the USTR will consider what further action needs to be taken to ensure that barriers in the Japanese consumer photographic materials sector are eliminated.

Irving A. Williamson,
*Chairman, Section 301 Committee.*

[FR Doc. 96–15436 Filed 6–17–96; 8:45 am]

BILLING CODE 3190–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request for Review of a Currently Approved Information Collection: RI 38–45

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for extension of a currently approved information collection, RI 38–45, We Need the Social Security Number of the Person Named Below, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

We estimate 3,000 RI 38–45 forms are completed annually. Each form takes approximately 5 minutes to complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jimfarron@mail.opm.gov

**DATES:** Comments on this proposal should be received on or before July 18, 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

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, 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. 96–15404 Filed 6–17–96; 8:45 am]

BILLING CODE 6325–01–M

## POSTAL RATE COMMISSION

**[Docket No. A96–18; Order No. 1116]**

### Trevett, Maine 04571 (Arthur W. Ridlon, Petitioner); Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: June 12, 1996.

*Docket Number:* A96–18.

*Name of Affected Post Office:* Trevett, Maine 04571.

*Name(s) of Petitioner(s):* Arthur W. Ridlon.

*Type of Determination:* Closing.

*Date of Filing of Appeal Papers:* June 10, 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 25, 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.*

June 10, 1996—Filing of Appeal letter
June 12, 1996—Commission Notice and Order of Filing of Appeal
July 5, 1996—Last day of filing of petitions to intervene [see 39 C.F.R. § 3001.111(b)]
July 15, 1996—Petitioner's Participant Statement or Initial Brief [see 39 C.F.R. § 3001.115 (a) and (b)]
August 5, 1996—Postal Service's Answering Brief [see 39 C.F.R. § 3001.115(c)]
August 20, 1996—Petitioner's Reply Brief should Petitioner choose to file one [see 39 C.F.R. § 3001.115(d)]
August 27, 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 C.F.R. § 3001.116]
October 8, 1996—Expiration of the Commission's 120-day decisional schedule [see 39 U.S.C. § 404(b)(5)]

[FR Doc. 96–15385 Filed 6–17–96; 8:45 am]

**BILLING CODE 7710–FW–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34– 37303; File No. SR–DTC–96–09]**

## Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Establishment of Procedures to Establish a Drop Window Service.

June 11, 1996

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 25, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–96–09) as described in Items I, II, and III below, which items have been prepared primarily by DTC. 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

DTC is filing a proposed rule change that establishes procedures for a transfer agent drop service (''Drop Service''). The Drop Service will provide transfer agents located outside of New York City with a central location within the Borough of Manhattan to receive and deliver securities.

[1] 15 U.S.C. 78S(B)(1) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

DTC proposes to offer a Drop Service in order to provide transfer agents located outside of New York City with a central location within Manhattan for the receipt of securities from banks, broker-dealers, depositories, and shareholders. DTC's Drop Service will enable transfer agents to comply with New York Stock Exchange Rule 496 and American Stock Exchange Rule 891. These rules require a transfer agent seeking qualification as a transfer agent for securities listed on the respective exchanges to maintain an office acceptable to the exchange and the issuer located south of Chambers Street in the Borough of Manhattan, City of New York to receive and deliver securities.

In the past, some transfer agents located outside of New York City complied with these rules by using a drop service offered by the New York office of the Midwest Clearing Corporation (''MCC''). However, in 1996 MCC withdrew from the clearing business and no longer offers a drop service.[3] DTC proposes to offer the DTC Drop Service to replace the drop facility offered by MCC and to ensure continuity of service to transfer agents. In connection with the Drop Service, DTC will provide ancillary services to transfer agents such as the inspection of securities, maintenance of records regarding the receipt and delivery of securities, facilitation of rush transfers, cancellation of certificates, and advice regarding legal and regular transfer requirements.[4]

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act because it promotes efficiencies in the prompt and accurate clearance and settlement of securities transactions, specifically the transfer of record ownership. DTC estimates that 80% of securities delivered to transfer agents through a drop service originate as DTC deposits, withdrawals by transfer, and denomination changes. By establishing a central drop facility at DTC, certificates will be sent directly to a transfer agent from DTC, rather than from DTC to a separate drop location in Manhattan and ultimately to the transfer agent. Therefore, DTC's Drop Service will promote efficiencies in the transfer of record ownership. DTC's Drop Service also will reduce the expenses associated with the transfer of record ownership by centralizing the recording and filming of securities received by transfer agents. Moreover, DTC believes the Drop Service will foster cooperation and coordination between DTC and other entities engaged in the clearance and settlement of securities transactions.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

DTC perceives no impact on competition by reason of the proposed rule change.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

DTC has not solicited or received comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

[2] The Commission has modified the text of the statements DTC submitted.

[3] For a complete discussion of MCC's and Midwest Securities Trust Company's (''MSTC'') withdrawal from the clearing and depository business, refer to Securities Exchange Act Release No. 36684 (January 5, 1996), 61 FR 1195 [File Nos. SR–CHX–95–27, SR–DTC–95–22, SR–MCC–95–04, SR–MSTC–95–10, SR–NSCC–95–15] (order approving MCC's and MSTC's withdrawal from the clearance and settlement, securities depository, and branch receive businesses).

[4] A more detailed description of these services is set forth in Section II of DTC's Drop Service Agreement which describes the terms under which DTC's service will be provided. The Drop Service Agreement is attached as Exhibit 2 to DTC's proposed rule change and is available through DTC or through the Commission's Public Reference Room. All transfer agents are required to execute the Drop Service Agreement in order to use DTC's Drop Service.

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 DTC. All submissions should refer to the file number SR–DTC–96–09 should be submitted by July 9, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–15349 Filed 6–17–96; 8:45 am]

**BILLING CODE 8010–01–M**

[5] 17 CFR 200.30–3(a)(12) (1995).

---

**[Release No. 34–37287; File No. SR-Phlx–96–13]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Trading Hours and Expiration Times for Customized Foreign Currency Options

June 7, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend certain Exchange rules to: (1) adjust the time that all customized FCOs cease trading on expiration day from 9:00 a.m. and 2:30 p.m. until 8:00 a.m.; (2) adopt a uniform expiration time for all customized FCOs of 10:15 a.m. (instead of 11:59 p.m.) (all time references are to eastern standard time); and (3) make all customized FCOs subject to pro-rata assignment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

The Exchange has different expiration times and procedures and trading hours for both regular and customized FCOs. Regular non-customized FCOs cease trading at 2:30 p.m., expire at 11:59 p.m. on their expiration date, and are subject to a random assignment process. Customized FCOs which expire on any trading day except a regular mid-month or end-of-month expiration are referred to as ''custom dated FCOs.'' Custom dated FCOs currently cease trading at 9:00 a.m., expire at 10:15 a.m. on their expiration date, and are subject to a pro-rata assignment process.

The third type of FCO (which is the subject of this rule filing) is the customized FCO which does not have a custom date (*i.e.,* the option expires on a mid-month or end-of-month expiration date).[1] These option contracts are treated the same as regular expiring FCOs, *i.e.,* they cease trading at 2:30 p.m., expire at 11:59 p.m., and are subject to random assignment. The Exchange proposes to change this scheme to correspond with custom dated FCOs. Accordingly, Phlx proposes to alter the expiration times for customized FCOs with mid-month or end-of-month expirations so that they cease trading at 8:00 a.m.,[2] expire at 10:15 a.m. on their expiration date, and are subject to pro-rata assignment. As a result, all customized FCOs will have the same expiration process regardless of when they expire.

According to Phlx, customized FCOs are mainly traded by institutional customers who often by the options as a hedge against over-the-counter contracts. Because the over-the-counter options typically expire at 10:00 a.m., these customers cannot effectively hedge their risk with customized FCOs unless they know their assignment exposure at the same time. Thus, custom dated options have been a very useful trading vehicle for the institutional market due to their 10:15 a.m. expiration (with pro-rata exercise notification at 10:00 a.m.). Customized FCOs with mid-month or end-of-month expirations, however, have not been as useful for offsetting purposes since customers do not know their assignment exposure until the following day. The Exchange therefore believes that by having all customized FCOs expire at 10:15 a.m., it will add liquidity to the market and encourage institutions to take advantage of all types of exchange traded FCOs. Furthermore, the Phlx believes that by revising the expiration times on the mid-month and end-of-month expiration days, it will increase the volume for customized FCOs and thereby reduce the amount of paperwork at expiration.

The Exchange proposes to implement this change as of the August 1996 mid-month expiration. Currently, open interest exists in customized FCO contracts expiring on September 13, 1996 (mid-month expiration), December 13 1996 (mid-month expiration) and March 27, 1997 (end-of-month expiration). If this open interest still exists at the time that this rule change is approved, the Exchange will exempt these expirations from the new procedure (*i.e.,* they will continue to cease trading at 2:30 p.m., expire at 11:59 p.m., and be subject to random assignment). This exemption will be noted in Phlx Rule 1000(b)(21)(iv), which defines the term Expiration Date and will be publicized in numerous memoranda to the membership.[3]

[1] An example of this would be an FCO which has a custom strike price or is quoted as an inverse option.

[2] Although custom-dated FCOs currently cease trading at 9:00 a.m., the Phlx, as discussed below, proposes to amend this time such that all customized FCOs cease trading at 8:00 a.m.

[3] This transitional process will be similar to the one used when the Exchange changed the expiration from the Saturday preceding the third

Second, in order to facilitate back office processing, the Exchange proposes to extend by one hour the amount of time between the period when an option ceases trading and expiration. Accordingly, Phlx proposes to have all customized FCOs cease trading at 8:00 a.m. (rather than at 9:00 a.m.) on the day of expiration. Presently, member firms only have one hour (between 9:00 a.m. and 10:00 a.m.) to prepare and accept exercise instructions and submit them to the Option Clearing Corporation (''OCC''), which then processes and disseminates a preliminary indication of the percent of contracts exercised for each series. The contracts then expire at 10:15 a.m. and a pro-rata assignment process is used. By ceasing trading one hour earlier (8:00 a.m.), the firms and OCC would double the amount of time in which they have to process these instructions.

Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, 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, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Other*

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the rule number SR-Phlx–96–13 and should be submitted by July 9, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96–15348 Filed 6–17–96; 8:45 am]

**BILLING CODE 8010–01–M**

Wednesday of the expiration month to the Friday preceding the third Wednesday. *See* Securities Exchange Act Release No. 32452 (July 13, 1993).

[4] 17 CFR § 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Charlottesville-Albermarle Airport, Charlottesville, VA

**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 impose and use the revenue from a PFC at Charlottesville-Albermarle 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).

**DATES:** Comments must be received on or before July 18, 1996.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia 22046.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bryan O. Elliott, Airport Manager of the Charlottesville-Albermarle Airport at the following address: Charlottesville-Albermarle Airport, 201 Bowen Loop, Charlottesville, Virginia 22901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Charlottesville-Albermarle Airport Authority under Section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Mendez, Manager, Washington Airports District Office, 101 West Broad Street, Suite 300, Falls Church, Virginia, 22046 (Tel. (703) 285–2570). 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 to impose and use the revenue from a PFC at Charlottesville-Albermarle 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 May 1, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Charlottesville-Albermarle Airport Authority was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 8, 1996.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* February 1, 2002.

*Proposed charge expiration date:* October 1, 2004.

*Total estimated PFC revenue:* $3,745,504.

*Brief description of proposed projects:*

—Overlay and groove runway 3–21 including making and signage, paving

the runway shoulders, widening taxiway fillets, and installing runway Surface Sensor System.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator Filing FAA 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 Charlottesville-Albermarle Airport Authority.

Issued in Jamaica, New York on June 11, 1996.

Thomas Felix,

*Airports Grant Program Manager, Eastern Region.*

[FR Doc. 96–15417 Filed 6–17–96; 8:45 am]

**BILLING CODE 4910–13–M**

## Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before July 18, 1996.

**ADDRESSES:** Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

New Exemptions

| Application No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 11699–N ..... | GEO Specialty Chemicals, Bastrop, LA. | 49 CFR 174.67 ..... | To authorize the installation of a 1″ plugcock valve on the air inlet line located on the dome of rail cars that are not equipped with dome vents or safety relief valves that are used for transporting aluminum sulfate, solution, Division 2.3. (mode 2) |
| 11700–N ..... | Cryodyne Technologies, Inc., Madison, CT. | 49 CFR 173.301(i)(j). | To authorize the transportation in commerce of non-flammable, non-toxic compressed gases, Division 2.2, in foreign made cylinders from the port area to a compressed gas company where the materials are repackaged into DOT authorized compressed gas cylinders for shipment to domestic users of the material. (mode 1) |
| 11701–N ..... | Dept. of Defense, Falls Church, VA. | 49 CFR 173.34(e)(13) (i) & (iii). | To provide for a 3-year hydrostatic pressure test and to extend the life of non-DOT specification cylinders used in the missile program to 30 years. (modes 1, 2, 4) |
| 11702–N ..... | Eka Nobel Inc., Columbus, MS. | 49 CFR 172.101SP B81, 178.345–10. | To authorize the use of a continuous vent and pressure relief device on DOT 412 stainless steel cargo tanks for use in transporting Division 5.1. material. (mode 2) |
| 11703–N ..... | Walter Kidde, Mebone, NC | 49 CFR 171.2(c), 173.301(h), 178.65. | To authorize the manufacture, marking and sale of non-DOT specification cylinders comparable to DOT Specification 39 for shipment of certain gases. (mode 1) |
| 11708–N ..... | Elf Atochem North America, Inc., Philadelphia, PA. | 49 CFR 172.101, SP T18&T26. | To authorize the transportation in commerce of methane sulfonic acid, Class 8, in IM101 tanks. (mode 1) |
| 11711–N ..... | N.C. Department of Agriculture, Raleigh, NC. | 49 CFR 171, 172, 173, 177. | To authorize the transportation in commerce of pesticide wastes as essentially non-regulated for residence involved in a pesticide collection program. (mode 1) |

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 13, 1996.

J. Suzanne Hedgepeth,

*Director, Office of Hazardous Materials, Exemptions and Approvals.*

[FR Doc. 96–15414 Filed 6–17–96; 8:45 am]

**BILLING CODE 4910–60–M**

### Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions or Applications to Become a Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for modification of exemptions or applications to become a party to an exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of

application have been shown in earlier Federal Register publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. Application numbers with the suffix ''P'' denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before July 3, 1996.

**ADDRESSES:** Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

| Application No. | Applicant | Renewal of exemption |
|---|---|---|
| 4453–M | Dyno Nobel Inc., Salt Lake City, UT[1] | 4453 |
| 5876–M | FMC Corp., Philadelphia, PA[2] | 5876 |
| 10131–M | FOMO Products Inc. Norton, OH[3] | 10131 |
| 11186–M | Cryenco, Inc., Denver, CO[4] | 11186 |
| 11252–M | Advanced Monobloc, Ontario, L3[5] | 11252 |
| 11262–M | Caire, Inc., Burnsville, MN[6] | 11262 |
| 11510–M | McCall & Wilderness Air Taxi, Inc., McCall, ID[7] | 11510 |
| 11650–M | Morton International, Ogden, UT[8] | 11650 |

[1] To modify the exemption to provide for the transportation in commerce of a Division 5.1 material as an additional class of material for transportation in non-DOT specification bulk, hopper-type tanks.

[2] To modify the exemption to provide for additional packaging method and delete requirement for fully loaded freight containers, truckloads and carloads, when used in transporting carbamate pesticide, solid, toxic, Division 6.1.

[3] To modify exemption to provide for Division 2.1 material as an additional class and increase the maximum authorized lading pressure to 180 psig non-DOT specification containers conforming to DOT Specification 2Q for use in transporting various hazardous material.

[4] To modify exemption to provide for several technical changes to crogenic portable tank equipped with safety relief valve with 250 psig for use in transporting hazardous materials classed in Division 2.1 and 2.2.

[5] To modify exemption to provide for alternative random testing of non-DOT specification metal aerosol containers for use in transporting Division 2.1 and 2.2 material.

[6] To modify exemption to provide for several technical modifications to the non-DOT specification cylinders comparable to DOT 4L for use in the transportation of oxygen, Division 2.2.

[7] To reissue the exemption originally issued on an emergency basis to authorize the transportation of certain DOT specification cylinders containing propane, a Division 2.1 gas, which is forbidden for shipment aboard passenger carrying aircraft.

[8] To reissue the exemption originally issued on an emergency basis for the transportation in commerce of non-DOT specification non-refillable cylinders charged with pyrotechnic initiating device classed as igniters, Division 1.4G.

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 4453–P | Golden State Explosives, Plymouth, CA | 4453 |
| 4884–P | IWECO, Inc., Houston, TX | 4884 |
| 6691–P | Central McGowan, Inc., St. Cloud, MN | 6691 |
| 8451–P | TPL, Inc. (Laboratory/Technical Annex), Albuquerque, NM | 8451 |
| 8451–P | TPL, Inc. (Financial/Technical Annex), Albuquerque, NM | 8451 |
| 8451–P | TPL, Inc. (Corporate/Technical Annex), Albuquerque, NM | 8451 |
| 8451–P | TPL, Inc. (FT. Wingate Army Depot), Ft. Wingate, NM | 8451 |
| 8451–P | Day & Zimmermann, Inc., Parsons, KS | 8451 |
| 8554–P | Golden State Explosives, Plymouth, CA | 8554 |
| 8723–P | Transamerica Leasing, Inc., Houston, TX | 8723 |
| 8723–P | Nelson Brothers, Inc., Parrish, AL | 8723 |
| 8723–P | Eurotainer SA, Montigny le Bretonneux, France | 8723 |
| 8958–P | Alpha-Ireco, Inc., Lincoln, CA | 8958 |
| 9275–P | Gryphon Development, New York, NY | 9275 |
| 9525–P | Epichem, Inc., Allentown, PA | 9525 |
| 9571–P | Municipal Services Corp., Columbia, SC | 9571 |
| 9571–P | Solvent Services Co., Columbia, SC | 9571 |
| 9617–P | Golden State Explosives, Plymouth, CA | 9617 |
| 9623–P | Golden State Explosives, Plymouth, CA | 9623 |
| 9723–P | Solvent Services Co., Columbia, SC | 9723 |
| 9723–P | Municipal Services Corp., Columbia, SC | 9723 |
| 9769–P | Envirotech Systems, Inc., Seattle, WA | 9769 |
| 9769–P | Rinchem Company, Inc., Albuquerque, NM | 9769 |
| 10048–P | Epichem, Inc., Allentown, PA | 10048 |
| 10298–P | SouthCentral Air, Inc., Kenai, AK | 10298 |
| 10441–P | Solvent Services Co., Columbia, SC | 10441 |
| 10441–P | Municipal Services Corp., Columbia, SC | 10441 |
| 10441–P | Chemical Analytics, Inc., Romulus, MI | 10441 |
| 10441–P | Triumvirate Environmental, Inc., Somerville, MA | 10441 |
| 10610–P | Harcros Chemicals, Inc. (FL), Tampa, FL | 10610 |
| 10610–P | Harcros Chemicals, Inc. (LA), St. Gabriel, LA | 10610 |
| 10610–P | Harcros Chemicals, Inc. (TN), Memphis, TN | 10610 |
| 10610–P | Harcros Chemicals, Inc. (TX), Dallas, TX | 10610 |
| 10610–P | Harcros Chemicals, Inc. (AL), Muscle Shoals, AL | 10610 |
| 10704–P | Portagas, Inc., Houston, TX | 10704 |
| 10705–P | Envirotech Systems, Inc., Seattle, WA | 10705 |
| 10751–P | Golden State Explosives, Plymouth, CA | 10751 |
| 10880–P | Golden State Explosives, Plymouth, CA | 10880 |
| 10880–P | Buckley Powder Co., Englewood, CO | 10880 |
| 10933–P | Rollins Environmental, Inc., Wilmington, DE | 10933 |
| 10933–P | Triumvirate Environmental, Inc., Somerville, MA | 10933 |
| 10933–P | Chemical Analytics, Inc., Romulus, MI | 10933 |
| 10949–P | Municipal Services Corp., Columbia, SC | 10949 |
| 10949–P | Solvent Services Co., Columbia, SC | 10949 |
| 10949–P | Envirotech Systems, Inc., Seattle, WA | 10949 |
| 11043–P | Municipal Services Corp., Columbia, SC | 11043 |

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 11043–P | Triumvirate Environmental, Inc., Somerville, MA | 11043 |
| 11055–P | Rollins Environmental, Inc., Wilmington, DE | 11055 |
| 11055–P | Envirotech Systems, Inc., Seattle, WA | 11055 |
| 11151–P | Environmental Response, Inc., Hendersonville, TN | 11151 |
| 11153–P | Municipal Services Corp., Columbia, SC | 11153 |
| 11153–P | Bryson Industrial Services, Inc., Columbia, SC | 11153 |
| 11153–P | United States Pollution Control, Inc., Columbia, SC | 11153 |
| 11153–P | Solvent Services Co., Columbia, SC | 11153 |
| 11153–P | Envirotech Systems, Inc., Seattle, WA | 11153 |
| 11153–P | Environmental Response, Inc., Hendersonville, TN | 11153 |
| 11153–P | Laidlaw Environmental Services (North East), Inc., Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services (FS), Inc., Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services (TS), Inc., Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services (TES), Inc., Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services (TG), Inc., Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services (Recovery), Inc., Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services of South Carolina, Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services of Bartow, Inc., Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services of California, Inc., Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services of Illinois, Inc., Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services of Chattanooga, Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services, Ltd., Columbia, SC | 11153 |
| 11153–P | Laidlaw Environmental Services (Quebec), Ltd., Columbia, SC | 11153 |
| 11156–P | Golden State Explosives, Plymouth, CA | 11156 |
| 11196–P | Compagnie Des Containers Reservoirs, Paris, France | 11196 |
| 11207–P | Pike Co. Light and Power Co., Milford, PA | 11207 |
| 11207–P | Rockland Electric Co., Saddle River, NJ | 11207 |
| 11207–P | Orange & Rockland Utilities, Inc., Middletown, NY | 11207 |
| 11230–P | Golden State Explosives, Plymouth, CA | 11230 |
| 11294–P | Municipal Services Corp., Columbia, SC | 11294 |
| 11294–P | J.B. Hunt Special Commodities, Inc., Lowell, AR | 11294 |
| 11294–P | Solvent Services Co., Columbia, SC | 11294 |
| 11294–P | Envirotech Systems, Inc., Seattle, WA | 11294 |
| 11294–P | Laidlaw Environmental Services of Chattanooga, Columbia, SC | 11294 |
| 11294–P | Laidlaw Environmental Services of Bartow, Inc., Columbia, SC | 11294 |
| 11294–P | Laidlaw Environmental Services of South Carolina, Columbia, SC | 11294 |
| 11294–P | Laidlaw Environmental Services (WT), Inc., Columbia, SC | 11294 |
| 11294–P | Laidlaw Environmental Services (Recovery), Inc., Columbia, SC | 11294 |
| 11294–P | Laidlaw Environmental Services, Ltd., Columbia, SC | 11294 |
| 11294–P | Laidlaw Environmental Services, (Quebec), Ltd., Columbia, SC | 11294 |
| 11294–P | Chemical Analytics, Inc., Romulus, MI | 11294 |
| 11294–P | Triumvirate Environmental, Inc., Somerville, MA | 11294 |
| 11458–P | Reckitt & Colman, Inc., Montvale, NJ | 11458 |
| 11458–P | Helene Curtis, Inc., Rolling Meadows, IL | 11458 |
| 11588–P | Red Environmental Disposal, Inc., Central Islip, NY | 11588 |
| 11600–P | Esquire Novelty Corp. (div. of Strombecker Corp.), Amsterdam, NY | 11600 |
| 11600–P | Durant Plastics, Inc. (div. of Strombecker Corp.), Durant, OK | 11600 |
| 11600–P | Esquire Canada, Inc. (affiliate Strombecker Corp.), Port Robinson, Ontario, CN | 11600 |
| 11685–P | Remote Effects Systems, Inc., Prior Lake, MN | 11685 |
| 11685–P | Banner Fireworks Display, Inc., Zimmerman, MN | 11685 |

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 13, 1996.

J. Suzanne Hedgepeth,

*Director, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 96–15415 Filed 6–17–96; 8:45 am]

**BILLING CODE 4910–60–M**

---

**[Docket No. PS–139; Notice 2]**

## Improving the Pipeline Safety Program; Public Meeting Related to Regulatory Review and Customer Service

**SUMMARY:** This Notice announces a public meeting in St. Louis, Missouri, to seek public input on regulatory reform and improved customer service in RSPA's pipeline safety program. This meeting is the fourth of its kind since the April 25, 1995, meeting in Dallas, Texas. This public meeting is consistent with the objectives of the President's Regulatory Reinvention Initiative (RRI) and seeks to improve the customer service provided by the pipeline safety program.

*Comments:* Interested persons are also invited to submit written comments regarding the subject matter of this Notice. Comments received will not be limited to RRI issues or the subject matter of this Notice, and attendance in the meeting is not a prerequisite for the submission of written comments. General comments or suggestions for

improving the Pipeline Safety Program are invited. Please submit comments before July 18, 1996. Please address written comments to the RSPA Dockets Unit, attention Verdell Simpkins, U.S. Department of Transportation, Room 8421, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should reference Docket No. PS–139.

**DATE/ADDRESS:** The public meeting will be held on June 27, 1996, from 9:00 am to 4:00 pm, at the Henry VIII Hotel, 4690 N. Lindbergh Boulevard, St. Louis, Missouri.

**FOR FURTHER INFORMATION CONTACT:** Eben M. Wyman, Transportation Specialist, (202) 366–0918 regarding the subject matter of this notice; or the Dockets Unit (202) 366–4900; RSPA, Department of Transportation, Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:** On March 4, 1995, President Clinton issued a memorandum to heads of departments and agencies calling for a review of all agency regulations and elimination or revision of those that are outdated or in need of reform. The President also directed that front line regulators ''* * * get out of Washington and create grassroots partnerships'' with people affected by agency regulations.

RSPA has reviewed the pipeline safety regulations in response to the President's directive, and has prepared four regulatory actions, now in the final rule stage, that are scheduled to be published in the Federal Register by early June. These rules will lessen unnecessary burdens on the pipeline industry by revisions or updates in areas including the gas pipeline and liquefied natural gas safety standards, administrative practices, industry consensus standards incorporated by reference, and general updates and corrections to the pipeline safety regulations. The four rules ''reinvent'' 52 pages of the pipeline safety regulations.

In April and May of 1995, RSPA held three similar outreach meetings in Dallas, Denver, and Houston in response to the RRI directive. RSPA received many comments from participants at the meetings as well as written comments to Docket No. PS–139. The public offered support on some issues, and pointed out areas where RSPA needs improvement in its service to customers. Issues discussed at the meetings included RSPA's pipeline risk management initiatives, the present scope of RSPA's outreach efforts, the pipeline safety regulations and the regulatory process, compliance, enforcement, and jurisdictional issues. These issues were also addressed in written comments to the docket. Commenters expressed views on other issues such as the status of One-Call legislation, the varying needs of small and large pipeline operators, and the role of the pipeline safety advisory committees. Finally, specific comments on numerous regulations were presented. RSPA has summarized the comments discussed at the previous outreach meetings, as well as the written comments submitted by mail or fax. These documents are available in Docket No. PS–139.

RSPA has taken all comments into consideration in its page-by-page review of the pipeline safety regulations. However, RSPA continues efforts to increase outreach projects and to promote partnerships with the pipeline industry. To enhance partnerships with the regulated community and all parties affected by RSPA regulatory actions, RSPA believes that public outreach meetings offer an effective forum to obtain input from the public on its pipeline safety program and regulations.

Conduct of the Meeting

The meeting will be informal and is intended to produce an open dialogue between agency personnel and persons affected by the pipeline safety program. RSPA's goal is to receive input from all interested parties, so no formal agenda will be prepared. Depending on the number of attendees, RSPA reserves the right to limit the time allocated to each speaker to ensure that all participants have an opportunity to speak. Conversely, the meeting may conclude before the scheduled time if all persons have been heard. RSPA invites participation by all interested parties on the status of the pipeline safety program, regulatory reform and customer service efforts, regulations and procedures needing improvement, or any other issues.

Issued in Washington, DC on June 12, 1996.

Richard B. Felder,

*Associate Administrator for Pipeline Safety.*

[FR Doc. 96–15353 Filed 6–17–96; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Senior Executive Service; Financial Management Service Performance Review Board

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice.

**SUMMARY:** This notice announces the appointment of members to the Financial Management Service (FMS) Performance Review Board (PRB).

**DATES:** This notice is effective on June 18, 1996.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Smokovich, Deputy Commissioner, Financial Management Service, 401 14th St., SW., Washington, DC 20027; telephone (202) 874–7000.

**SUPPLEMENTARY INFORMATION:** Pursuant to 5 U.S.C. 4314(c)(4), notice is given of the appointment of individuals to serve as members of the FMS PRB. The PRB reviews the performance appraisals of career senior executives below the Assistant Commissioner level and makes recommendations regarding ratings, bonuses, and other personnel actions. Three voting members constitute a quorum. The names and titles of the FMS PRB members are as follows:

Primary Members

Michael T. Smokovich, Deputy Commissioner
Bland T. Brockenborough, Assistant Commissioner, Regional Operations
Constance E. Craig, Assistant Commissioner, Information Resources
Michael A. Levine, Assistant Commissioner, Management

Alternate Members

Larry D. Stout, Assistant Commissioner, Federal Finance
Walter L. Jordan, Assistant Commissioner, Agency Services
Virginia B. Harter, Associate Deputy Commissioner for Re-Engineering.
Diane E. Clark, Assistant Commissioner, Financial Information

Dated: June 11, 1996.

Russell D. Morris,

*Commissioner.*

[FR Doc. 96–15293 Filed 6–17–96; 8:45 am]

BILLING CODE 4810–35–M

## Internal Revenue Service

**[Delegation Order No. 77 (Rev. 28)]**

### Delegation of Authority

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Delegation of authority.

**SUMMARY:** The authority to issue or execute agreements to rescind notices of deficiency is given to the appropriate officials at the local level to whom authority should be delegated. These individuals may then redelegate authority to those with actual responsibility for signing or rescinding

statutory notices of deficiency. The text of the delegation order appears below.

**EFFECTIVE DATE:** May 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** Grace Robertson, CP:EX:CS:R, Room 108, Aerospace Building, Washington, D.C. 20224, (202) 401–4478 (not a toll-free call).

DELEGATION ORDER NO. 77 (REV. 28)

Effective: May 17, 1996.

Authority To Issue or Execute Agreement To Rescind Notices of Deficiency

*Authority:* To sign and send to the taxpayer by registered or certified mail, any notice of deficiency and to sign a written form or document rescinding any notice of deficiency.

*Delegated to:*

Chiefs, Appeals Offices
Appeals Team Chiefs (as to their respective cases)
Directors, Computing Centers
Directors, Customer Service Centers
Directors, Submission Processing Centers
Assistant Commissioner (International)
Chiefs, Employee Plans and Exempt Organizations Divisions
Chiefs, Collection Divisions
Chiefs, Examination Divisions

*Redelegation:* This authority may be redelegated by all the above listed officials, except Appeals Team Chiefs, directly to selected individuals within their functional area. This authority may not be further redelegated.

*Sources of Authority:* Authority granted to the Commissioner of Internal Revenue, District Directors, and Service Center Directors by 26 CFR 301.7701–9; 26 CFR 301.6212–1; 26 CFR 301.6861–1; 26 U.S.C. 6212; 26 U.S.C. 6212(d); Treasury Order 150–10; and section 1562 of the Tax Reform Act of 1986.

To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified. This order supersedes Delegation Order No. 77 (Rev. 27), effective October 15, 1992.

Dated: May 17, 1996.

Michael P. Dolan,

*Deputy Commissioner.*

[FR Doc. 96–15452 Filed 6–17–96; 8:45 am]

BILLING CODE 4830–01–P

## UNITED STATES INFORMATION AGENCY

### U.S. Advisory Commission on Public Diplomacy Meeting

**AGENCY:** United States Information Agency.

**ACTION:** Notice.

**SUMMARY:** A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on June 19 in Room 600, 301 4th Street, S.W., Washington D.C. from 10:00 a.m. to 11:30 a.m.

At 10:00 the Commission will hold a panel discussion on NGOs and Public Diplomacy. It will examine the growing role of non-governmental organizations in foreign affairs. The panelists are Penn Kemble, Deputy Director, USIA; Ambassador William Rugh, Director, AMIDEAST Foundation; and Michael Clough, Senior Fellow, Council on Foreign Relations.

**FOR FURTHER INFORMATION CONTACT:** Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: June 12, 1996.

Rose Royal,

*Management Analyst, Federal Register Liaison.*

[FR Doc. 96–15462 Filed 6–17–96; 8:45 am]

BILLING CODE 8230–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Wage Committee, Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Public Law 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, July 17, 1996, at 2:00 p.m.
Wednesday, August 14, 1996, at 2:00 p.m.
Wednesday, August 28, 1996, at 2:00 p.m.

The July meeting will be held in Room 1225, Department of Veterans Affairs, Tech World Plaza, 801 I Street, NW., Washington, DC 20001. The August meetings will be held in Room 246, Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, and as cited in 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee (05), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: June 10, 1996.

By Direction of the Secretary.

Heyward Bannister,

*Committee Management Officer.*

[FR Doc. 96–15365 Filed 6–17–96; 8:45 am]

BILLING CODE 8320–01–M

federal register

Tuesday
June 18, 1996

# Part II

# Department of Transportation

## Federal Railroad Administration

**49 CFR Part 225**

**Railroad Accident Reporting; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 225**

**[FRA Docket No. RAR–4, Notice No. 13]**

**RIN 2130–AA58**

## Railroad Accident Reporting

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FRA is amending the railroad accident reporting regulations in several ways. First, railroads are required to adopt internal control procedures to ensure accurate reporting of accidents, casualties, injuries, illnesses and highway-rail grade crossing accidents. Second, railroads are allowed the option to submit, update, and amend accident, casualty, and highway-rail accident reports through transfer of information on computer diskettes, magnetic tapes, or electronically over telephone lines. Third, the accident and injury reporting forms, including definitions, are amended to allow for the collection of additional safety information. Fourth, injury and illness, as well as derailment and collision, recordkeeping requirements are amended to require the recordation of reportable and accountable, *i.e.*, nonreportable, illnesses and injuries as well as the recordation of reportable and accountable rail equipment accidents and incidents. Finally, the method for calculation of the accident reporting monetary threshold is amended to allow for use of publicly available data and statistics. The purpose of the rule is to enhance the quality of information FRA collects pertaining to rail equipment accidents and incidents, as well as illnesses, injuries and casualties to railroad employees, passengers and other persons on railroad property.

**EFFECTIVE DATE:** The rule is effective January 1, 1997.

**ADDRESSES:** Any petition for reconsideration should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Finkelstein, Staff Director, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–501–4863 or 202–366–0543); or Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–366–0628).

**SUPPLEMENTARY INFORMATION:**

### Background

*A. Purpose and Structure of the Accident Reporting Regulations*

FRA's primary function is to promote safety within the railroad industry. To carry out its safety mission, FRA requires information about the conditions of the nation's railroads to set safety standards, to enforce those standards, and to develop railroad injury and accident prevention programs. The injury and accident reports submitted by the railroads form a principal basis for FRA's railroad safety program. FRA uses injury and accident data for, among other things, establishing its inspection strategy, determining comparative trends of railroad safety, and calculating the costs and benefits of proposed safety rules. FRA also uses railroad accident, injury and illness data to determine if new regulations are needed or if current regulations are in need of revision. Because FRA uses the data in all aspects of its operations, it is important that the data it receives be as accurate and consistent as possible.

The railroad accident reporting regulations set forth in 49 CFR Part 225 require railroads to submit monthly reports to FRA summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on railroad property.

Section 225.19 of the regulations divides railroad accidents/incidents into three categories: (1) highway-rail grade crossing accidents/incidents; (2) rail equipment accidents/incidents; and (3) death, injury, or occupational illness accidents/incidents. Every railroad accident/incident that meets the stated criteria for each category must be reported to FRA as required under 49 CFR 225.11. Because the reporting requirements and the information needed regarding each category of accident/incident are unique, a different reporting form is used for each category. If the circumstances of an accident/incident are such that it falls within two or even all three categories, then a separate reporting form for each category must be completed by the railroad.

*B. General Accounting Office Study on Accident Reporting to FRA*

During the late 1980s, Congress, increasingly concerned with railroad safety, asked the General Accounting Office (GAO) to determine whether FRA's safety programs were adequate to protect railroad employees and the general public from injuries associated with train accidents. GAO studied FRA's railroad injury and accident reporting data and issued a report in April 1989 (GAO/RCED–89–109) that raised important questions about the quality of railroad compliance with FRA's accident reporting regulations. GAO found that there were underreporting and inaccurate reporting of injury and accident data for 1987 by the railroads it audited.

GAO recommended that FRA (a) require railroads to establish injury and accident reporting internal control procedures; (b) include an analysis of railroads' internal control procedures for reporting in FRA's safety records inspections; (c) provide inspectors with the authority to take enforcement actions against railroads with deficient internal control procedures; (d) require railroads to update reports on workdays lost due to injuries; and (e) clarify FRA's requirement for railroads to update accident reports when significant changes occur.

*C. Advance Notice of Proposed Rulemaking on Accident Reporting*

In response to the GAO audit, FRA published an advance notice of proposed rulemaking (ANPRM) on March 14, 1990 (55 FR 9469) soliciting comments and suggestions from the public regarding methods for improving FRA's injury and accident reporting system and its governing regulations. Interested parties were invited to participate in a public hearing held on May 17, 1990, and to file written comments prior to May 25, 1990. The responses to that public notice provided additional information and identified further issues and subissues related to the matters in the ANPRM. In order to further explore matters related to the accident/incident reporting system, FRA held informal, open meetings on June 13, 1991, August 22, 1991, and August 18, 1992, in Washington, D.C., with members of the Association of American Railroads (AAR) Committee for Uniformity in Reporting. At the request of rail labor representatives, FRA also held an informal, open meeting on October 21, 1991, in Washington, D.C., to discuss the same issues with representatives of various rail unions.

*D. Notice of Proposed Rulemaking on Accident Reporting*

FRA published a notice of proposed rulemaking (NPRM) on accident reporting on August 19, 1994 (59 FR

42880), and conducted a series of public hearings to obtain the industry's views and comments on specific issues addressed in the NPRM. Public hearings were held in Washington, D.C. on October 5–6, 1994; in Kansas City, Missouri on October 19, 1994; and in Portland, Oregon on November 3, 1994. FRA examined the issues and interests involved and made a preliminary inquiry among the hearing participants to determine whether additional hearings or regulatory meetings could be successful in narrowing areas of disagreement and exploring possible accommodations. Most participants expressed interest in continuing the rulemaking process by holding additional or supplementary regulatory meetings, roundtables or workshops. After further deliberation, FRA decided that an informal public regulatory conference would prove advantageous in the development of the accident reporting regulations.

*E. Public Regulatory Conference*

In accordance with a notice published on December 27, 1994 (59 FR 66501), FRA held an informal public regulatory conference on January 30–February 2, 1995, in Washington, D.C. to further discuss issues related to its NPRM on railroad accident reporting. In accordance with the provisions of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), the public regulatory conference was a continuation of the accident reporting rulemaking proceeding. The format of the discussions was informal and employed a topical, interactive approach. Conference participants offered various alternative approaches in response to the specific proposals set forth in the NPRM. The AAR and The American Short Line Railroad Association (ASLRA) requested that they be allowed to address specific topics by the existing comment deadline of March 10, 1995, and that such comments be incorporated into a second or supplemental NPRM. FRA believed that a decision as to whether or not to issue a supplemental NPRM was premature at this point in the rulemaking proceeding. FRA therefore requested, through publication in the Federal Register (60 FR 9001), that written comments addressing all issues in the NPRM be filed no later than March 10, 1995, as specified in FRA's December 27, 1994, notice. After thorough review and analysis of the submitted comments, FRA stated that it would decide whether a supplemental NPRM was warranted for this rulemaking and would issue a decision in the Federal Register. FRA also stated that the decision whether or not to issue a supplemental NPRM would be based primarily on the extent that written comments addressed constructive, creative solutions to the subjects and issues involved in the NPRM.

*F. Supplemental Notice of Proposed Rulemaking*

FRA published a notice on July 3, 1995 (60 FR 34498), which stated that a second or supplemental NPRM would be issued for the rulemaking to revise the railroad accident reporting regulations. The decision to issue a supplemental NPRM was made pursuant to requests advanced by some participants at the public regulatory conference held on January 30–February 2, 1995, in Washington, D.C., during which specific topics were discussed related to the accident reporting NPRM. It was anticipated that the supplemental NPRM would address whether or not a meaningful performance standard for accident reporting could be devised for use by the railroads. It was also anticipated that the supplemental NPRM would discuss revised documentation requirements for the proposed Internal Control Plan; calculation of damage costs for rail equipment accidents and incidents for the determination of whether the threshold is met for FRA reporting purposes; and the proposed definition for the classification ''Worker on Duty'' as it pertains to ''Contractors'' and ''Volunteers'' performing safety-sensitive functions.

FRA reviewed thoroughly the written comments received in response to the NPRM, the transcripts of the public hearings, as well as the transcripts of the public regulatory conference. This review revealed that a supplemental NPRM was not warranted. By notice published in the Federal Register on January 24, 1996 (61 FR 1892), FRA announced that it would not issue a supplemental NPRM in the rulemaking; instead, the final rule would deal fully with major alternative resolutions for the issues in the rulemaking, explaining clearly why they were endorsed or rejected in favor of the option selected.

Summary of Public Comments

FRA received comments from the AAR, ASLRA, the Brotherhood of Railway Carmen (BRC), the Brotherhood of Maintenance of Way Employes (BMWE), the Brotherhood of Locomotive Engineers (BLE), the Brotherhood of Railroad Signalmen (BRS), individual members of some of these associations, the State of California's Public Utilities Commission, the Contra Costa County Health Services Department of the State of California, the American Trucking Associations (ATA), the Tourist Railroad Association, the Association of Railway Museums, Inc. (ARM), the Illinois Railway Museum, the American Public Transit Association (APTA), the National Railroad Construction and Maintenance Association, Inc. (NRC), and individual members of the public.

Section-by-Section Analysis

*A. Section 225.33 Internal Control Plan*

Proposed Rule

FRA proposed that each railroad must prepare and maintain an Internal Control Plan (ICP) that required institution of proper internal control procedures for reporting. FRA believed that requiring an ICP would ensure the reconciliation and incorporation of accident/incident and injury/illness data from the various departments within the railroad for submission to the railroad's reporting officer. The proposed rule required that the reporting office have access to all pertinent claims records, including medical records and payroll records, and be notified by claims and medical departments of each new case/claim opened by a railroad worker. The proposal also stated that identification of offices and responsible railroad officers would aid FRA in identification of procedural weaknesses in reporting. FRA proposed periodical review of the ICP by FRA in order to detect procedural deficiencies. If FRA should find the railroad to be in noncompliance, the proposed regulation allowed FRA to cite that railroad for violating procedural requirements of the ICP when inaccurate reporting was found and the cause could be attributed to internal control weakness.

Comments

This proposal created significant controversy among the railroad representatives who participated in the proceeding. Most railroad commenters did not support mandated internal control procedures. Railroad representatives stated that they did not want to change or modify any internal control plan, if such a plan was already in place, to fit the ICP as proposed by FRA. Railroad members also believed that the plan was too detailed and, as such, would require constant updating in order to accommodate normal changes such as personnel changes and reorganizations. These members also perceived that the ICP would result in additional, unjust monetary penalties for steps missed in the ICP that led to

inaccurate accident reporting. As proposed, if a reporting violation was found, then the railroad might be fined for both the reporting violation and any departure from the ICP which resulted in the reporting violation. Instead of an ICP mandated by FRA, AAR and its constituent members suggested that FRA adopt a performance standard for determining and measuring a railroad's compliance with reporting requirements.

ASLRA and its members stated that the performance standard proposed by AAR should be adopted for Class I railroads, but that such a standard would be impracticable for the short line industry since each short line's sample size would be too small to make such an approach meaningful. ASLRA supported the concept of development and maintenance of an ICP by other than Class I railroads. However, ASLRA believed that elements of the ICP should be determined by each railroad to suit its unique needs and circumstances and that such elements should not be mandated by FRA.

Rail labor associations and other commenters opposed adoption of the performance standard proposed by AAR in lieu of specific ICP's because they believed that such a standard could not ensure reliable, accurate and uniform reporting data on an industry-wide basis. These commenters proposed adoption of uniform, formalized ICP's with some minor modifications to FRA's proposed ICP to allow for more flexibility in its actual requirements.

Most railroads did not support FRA's provision authorizing civil penalties for inaccurate reporting due to internal control weakness. Most other commenters favored an enforcement system in which monetary penalties might be issued against the railroad for inaccurate reporting resulting from noncompliance with procedures outlined in the ICP.

AAR's Proposed Performance Standard

AAR proposed that FRA adopt a performance standard for determining whether a railroad complied with reporting requirements. The performance standard proposed by AAR was based on methods selected from a set of statistical procedures developed for use by the U.S. Military (MIL–STD–105E, 1989) as means of statistically controlling process quality in a stable environment. Specifically, AAR proposed that:

(a) Each railroad would maintain a written ICP which would achieve a compliance rate of 99 percent for the accident and incident reports required under § 225.11. This written ICP would be developed internally by each reporting railroad.

(b) The compliance rate would be based on a reporting period covering a closed twelve-month calendar year.

(c) The compliance rate would be determined by comparing accident and incident reports filed with FRA against the railroad-maintained data base which contains information about employee injuries, employee illnesses, as well as property damage, so that determinations about reportability may be reasonably made.

(d) Audits conducted to determine the compliance rate would conform to the following procedures:

(1) Each railroad would provide FRA a list of both reportable and nonreportable accidents/incidents and illnesses/injuries for a specified calendar year and would make accident/incident and injury/illness reports available for inspection by FRA;

(2) FRA would take a random sample from the list of these reports. Sampling procedures would conform to the military performance standard. Railroads would have to achieve a compliance rate of 99 percent; for example, one rejection out of a random sample of 100 cases. A rejection would be defined as a railroad's failure to report a reportable occurrence; and

(3) Audits would be conducted by FRA personnel, and audit results would be provided in writing to the railroad.

(e) If a railroad failed to achieve a compliance rate of 99 percent, then the railroad would be subject to a monetary penalty and would have to submit an action plan within 30 days to FRA explaining what corrective action had been taken to achieve 99-percent compliance.

(f) If a railroad failed to achieve a compliance rate of 99 percent in two consecutive audits, then the railroad would be subject to another monetary penalty; would be required to submit an action plan within 30 days to FRA explaining what corrective action had been taken to achieve 99-percent compliance; and would be subject to a follow-up audit after 30 days from submission of the action plan to FRA. Further, the railroad might be directed to file with FRA an ICP detailing internal reporting processes and procedures.

FRA had an independent statistical firm examine and review the military performance standard to determine whether it was feasible to apply the standard to measure compliance with accident/incident reporting requirements. A summary of this report has been included as Attachment 1. This firm concluded that the military performance standard invoked by AAR (MIL-STD–105E, 1989) was based on sound statistical methods; however, several problems existed with the standard's application to accident reporting. A brief description of the deficiencies follows:

(a) Reporting by a railroad is not a stable process. AAR's reporting process has not been fully defined or tested in the real world; and its stability has not been demonstrated. AAR assumed that reporting would be a stable process and applied procedures appropriate only for stable processes.

(b) AAR's sample-inclusion criterion is flawed. The denominator for nonreportable accidents and incidents can be inflated to ensure that the 99-percent compliance rate is achieved. The AAR formula for determining a railroad's compliance rate is:

compliance rate = 1.00 − (number of failures to report reportable cases/(total number of reportable cases + total number of nonreportable cases)).

For determining sample size, AAR's sampling plan combines reportable and nonreportable accidents and incidents. For counting failures or rejections, AAR's sampling plan recognizes only the reporting errors in nonreportable accidents and incidents, but not the reporting errors related to reportable accidents and incidents. In this scenario, therefore, increasing the number of nonreportable cases would improve the compliance rate for that reporting railroad.

(c) AAR overstated the compliance rate. Using any reasonable definition of ''compliance rate,'' the AAR sampling plan, *at best*, achieves only a 97-percent compliance rate. See Attachment 1 for further discussion.

(d) AAR's performance standard lacks requirements for maintaining written ICPs. The Military Standard includes a general requirement for developing written procedures (such as an ICP), which FRA could require to be made available to its inspectors for review. AAR's performance standard does not permit FRA to direct a railroad to develop an ICP until after the railroad fails to demonstrate 99-percent compliance in two consecutive audits. Without written procedures, *i.e.*, an ICP, it is not possible to guarantee full implementation of management decisions by line employees.

(e) AAR's performance standard does not implement the full set of procedures prescribed in the Military Standard. Specifically, AAR's performance standard fails to implement ''switching procedures,'' which are needed when consecutive lots or batches are rejected. ''Switching procedures'' are a set of

rules that tell users when to adopt ''normal,'' ''tightened,'' or ''reduced'' inspection. AAR's performance standard lacks switching procedures and rules, and AAR has not determined the compliance rate bias resulting from this lack.

Even if the AAR's performance standard were revised to deal with some of these problems, it would still fail to meet the main objective of the ICP, which is to improve the accuracy of the submitted accident and injury reports. Hypothetically, a railroad could meet an improved version of the AAR's performance standard by reporting all of the reportable accidents and incidents, but the submitted reports could be riddled with inaccuracies that the ICP would have prevented. For example, in the case where an employee is injured, the submitted ''Railroad Injury and Illness (Continuation Sheet)'' (Form FRA F 6180.55a) may state that the employee missed five days from work because the employee's initial medical report indicated that he or she missed five work days. However, in actuality, the employee missed 20 work days for his or her injury. In this example, the failure to provide the reporting officer with the correct payroll ''time and attendance'' information resulted in an inaccurate filed report, with no harm to the railroad's compliance rate under even a modified AAR performance standard.

Final Rule

*Section 225.33 Internal Control Plan*

FRA believes that an Internal Control Plan (ICP) best provides the procedures necessary to ensure that complete, reliable, and accurate data is obtained, maintained, and disclosed by the railroads. FRA investigations have repeatedly found instances in which departments within the same railroad failed to provide to the railroad reporting officer information critical to determining reportability or information necessary for filing an accurate and complete report. Thus, the final rule adopts the proposed ICP with modifications recommended by various parties in this proceeding.

The ICP is not a ''command and control'' system; it is a type of performance standard which ensures the accuracy of a process and, in this case, the process is accident/incident reporting. This ICP requirement does not tell the railroad how to develop the internal control procedures; how the lines of communication should be established; the type of correspondence to be used; the forms that should be used; which executives in the company are responsible for reportability decisions; nor the periods of time necessary for information exchange. The ICP is a performance standard that dictates the necessity for communication within each railroad to ensure that proper reporting will be accomplished. The changes to the proposed ICP allow each railroad, including the short lines, the flexibility to design an ICP suitable to the needs and circumstances of the particular railroad. The ICP, therefore, may vary in size from one that is a few pages for smaller railroads and short lines, to one of considerable size for the major carriers.

In general, the ICP challenges the railroads to develop a Total Quality Management (TQM) system to ensure that there are no errors in reporting. ''No errors'' means that all reportable accidents and incidents are reported to the FRA and that each report is accurately completed prior to submission to FRA, in other words, a ''zero tolerance'' policy with respect to inaccurate reporting. TQM focuses on continuous and incremental improvements of process performance. In contrast, acceptance testing, as in AAR's proposed performance standard, judges acceptability of process output by applying predefined criteria. AAR's proposed performance standard suggests, therefore, that some defects in reporting are permissible.

The ICP also addresses intimidation and harassment of any person calculated to prevent or discourage such person from either receiving proper medical treatment for an injury or illness or from reporting an accident, incident, illness or injury. FRA has become increasingly aware that many railroad employees fail to disclose their injuries to the railroad or fail to accept reportable treatment from a physician because they wish to avoid potential harassment from management or possible discipline that is sometimes associated with the reporting of such injuries. FRA is also aware that in some instances supervisory personnel and mid-level managers are urged to engage in practices which may undermine or circumvent the reporting of injuries and illnesses. Railroads must remain proactive in accurate reporting of all reportable accidents, injuries and illnesses, and must not engage in practices that could manipulate reportability of these incidents. In some instances, railroads report an injury or illness to FRA only after FRA inspectors make management aware that a particular injury or illness was not reported. Many times FRA inspectors conduct an investigation pursuant to a complaint from an employee alleging that his or her injury/illness was not properly reported or was not reported at all. Again, the railroad usually reports this injury/illness to FRA only after FRA informs management of the situation.

FRA remains committed to improving the accuracy of the accident reporting data base and can do so only with the full cooperation of both rail workers and management. In order to address this widespread problem, the ICP mandates that each railroad adopt a policy statement which affirms that intimidation or harassment by any officer, manager, supervisor, or employee of the railroad that aims to undermine or negatively influence the treatment of persons with an injury or illness or that adversely affects the reporting of such injuries and illnesses will not be tolerated nor permitted and that appropriate prescribed disciplinary action may be taken by the railroad against such person committing the harassment or intimidation. The policy statement addressing intimidation and harassment must be disseminated to all employees, supervisors and to all levels of railroad management. Further, the railroad must have procedures in place to process complaints when the railroad's intimidation and harassment policy has been violated, and such procedures must also be disseminated to all employees and management/supervisory personnel.

Consequently, the final rule states in § 225.33(a) that each railroad shall adopt and comply with a written Internal Control Plan that must be maintained at the office where the railroad's reporting officer conducts his or her official business or duties. The ICP must be amended, as necessary, to reflect any significant changes to the railroad's internal reporting procedures. The ICP is to include, at a minimum, each of the following ten components:

(1) A policy statement indicating the railroad's commitment to complete and accurate reporting of all accidents, incidents, injuries, and occupational illnesses arising from the operation of the railroad. This statement should include, in absolute terms, that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting an accident, incident, injury or illness will not be permitted or tolerated and will result in some stated disciplinary action against such person committing the harassment or intimidation.

(2) The dissemination of the policy statement; complaint procedures. Each railroad must provide to all employees,

supervisory personnel, and management the policy statement described in paragraph (a)(1). Each railroad must have procedures to process complaints from any person when the policy stated in paragraph (a)(1) is violated, and to impose the appropriate prescribed disciplinary actions on each person found to have violated the policy. These procedures must be disclosed to railroad employees, supervisors and management. The railroad must provide ''whistle blower'' protection to any person subject to this policy, and such policy must be disclosed to all railroad employees, supervisors and management.

(3) Copies of internal forms and/or a description of the internal computer reporting system used for the collection and internal recording of accident and incident information.

(4) A description of the internal procedures used by the railroad for the processing of forms and/or computerized data regarding accident and incident information.

(5) A description of the internal review procedures applicable to accident and incident information collected, and reports prepared by, the railroad's safety, claims, medical and/or other departments engaged in collecting and reporting accident and incident information.

(6) A description of the internal procedures used for collecting cost data and compiling costs with respect to accident and incident information.

(7) A description of applicable internal procedures for ensuring adequate communication between the railroad department responsible for submitting accident and incident reports to FRA and any other department within the railroad responsible for collecting, receiving, processing and reporting accidents and incidents.

(8) A statement of applicable procedures providing for the updating of accident and incident information prior to reporting to FRA and a statement of applicable procedures providing for the amendment of accident and incident information as specified in the *FRA Guide for Preparing Accidents/Incidents Reports*.

(9) A statement that specifies the name and title of the railroad officer responsible for auditing the performance of the reporting function; a statement of the frequency (not less than once per calendar year) with which audits are conducted; and identification of the site where the most recent audit report may be found for inspection and photocopying.

(10) A brief description of the railroad organization, including identification of (i) all components that regularly come into possession of information pertinent to the preparation of reports under this part (*e.g.*, medical, claims, and legal departments; operating, mechanical, and track and structures departments; payroll, accounting, and personnel departments); (ii) the title of each railroad reporting officer; (iii) the title of each manager of such components, by component; and (iv) all officers to whom managers of such components are responsible, by component. A current organization chart would satisfy items (iii) and (iv).

The penalty schedule is amended so that if the railroad fails to adopt the ICP, then that railroad is subject to the assessment of a civil monetary penalty in the amount of $2,500 or, if willful, $5,000. Also each railroad's reporting error arising from noncompliance with the ICP subjects that railroad to the assessment of a civil monetary penalty in the amount of $2,500 or, if willful, $5,000. Consequently, if a reporting violation is found, then the railroad may be fined for both the reporting violation and any departure from the ICP which resulted in the reporting violation. FRA may require the railroad to make modifications to its ICP to prevent such reporting errors in the future. However, if there is a reporting violation, but FRA determines that the ICP was followed by the railroad, then just one violation may be written. FRA believes that availability of a monetary civil penalty is necessary in order to compel the railroads to correct procedural deficiencies and weaknesses in their ICPs. However, in some instances FRA may employ use of a compliance order or other remedy in lieu of civil penalties where appropriate in order to promote future compliance.

Additionally, FRA may assess a civil monetary penalty against any railroad employee, manager, or supervisor who willfully causes a violation or noncompliance with any requirement of Part 225, including §§ 225.33(a) and (b), requiring adherence to the railroad's intimidation and harassment policy and noninterference with that policy. FRA may issue these civil penalties pursuant to 49 U.S.C. 21301, 21302, and 21304. Also see Appendix A to Part 209 of the Code of Federal Regulations for other sanctions. Criminal penalties and/or imprisonment provided for in 49 U.S.C. 21311 may also be imposed on any individual who knowingly and willfully makes a false entry in a record or report required by the accident reporting regulations or other regulations issued under 49 U.S.C. chapter 201; destroys, mutilates, changes, or falsifies such a record or report; does not enter required specified facts in a such record or report; makes or preserves such a record or report in violation of such a regulation or order; or who files a false record or report with FRA. FRA wants to make it clear to all railroads that it will be diligent in its efforts to ensure that all parties adhere to and comply with the intimidation and harassment policy in the ICP. It should be noted that FRA will be aggressive in pursuing enforcement sanctions against any person found to be in violation of the railroad's harassment and intimidation policy.

FRA's proposal in § 225.33(b) which stated that railroads must make ''a reasonable and conscientious effort to adhere to the Plan'' is too vague and would undoubtedly create considerable variability in perceptions of compliance. Thus, FRA has eliminated this requirement. FRA believes that imposition of a monetary penalty and other enforcement sanctions on the reporting railroad and against individuals as discussed above provides an incentive for the reporting railroad and all parties to observe and follow its internal control procedures.

*B. Section 225.37 Computer Magnetic Media Transfer and Electronic Submission*

Proposed Rule

FRA proposed, in § 225.37, to amend the current reporting requirements to provide railroads the option of using magnetic media (computer diskettes and magnetic tape) in lieu of the paper (''hard copy'') forms currently submitted to transmit both the initial and updated versions of the following reports: (a) the ''Rail Equipment Accident/ Incident Report'' (Form FRA F 6180.54); (b) the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a); and (c) the ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57). FRA proposed that reports submitted via magnetic media would be due within 30 days after expiration of the month in which the accident/incident occurred.

In particular, the proposed rule allowed railroads, in § 225.37(a), subject to various conditions, the option to submit magnetic media that would contain: (a) initial accident/incident reports, (b) updates or amendments to all reports previously submitted in hard copy, and (c) updates or amendments to reports initially transmitted on magnetic media.

The proposed rule allowed railroads to continue to submit hard copy reports,

as the current regulations require, but to update the data contained on the hard copy by way of magnetic media. Alternatively, the proposal allowed railroads the option of utilizing magnetic media exclusively for all initial reports and all updates and amendments to those reports. FRA proposed that all transmissions of updated or amended reports by means of magnetic media would be added to a year-to-date file created exclusively for each reporting railroad. This year-to-date file would include all updates and amendments on reported accidents and incidents and would be maintained by FRA.

FRA also proposed, in § 225.37(b), to require that when a railroad utilizes the magnetic media option, whether to submit an initial report, or an updated or amended report, it was to submit along with the magnetic media: (a) a sworn report, as required by 49 U.S.C. 20901 (formerly contained at § 1 of the Accident Reports Act, 45 U.S.C. 38), in the form of a notarized ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55), and (b) a signed ''Batch Control Form'' for magnetic media. The requirement to submit a notarized Form FRA F 6180.55 is necessary to ensure that railroad reporting officials attest to the validity of the information reported to FRA in the magnetic media. It also provides FRA with evidence necessary to hold those officials accountable for false reporting.

Since the magnetic media option is a fairly new concept, FRA proposed, in § 225.37(c), to require the railroads that utilize this medium to initially include the hard copy of the particular accident/incident report with the magnetic media. During this assimilation period, FRA would compare the data on hard copy reports to the data contained in the magnetic media to determine if the information reported via magnetic media was consistent and reliable. This requirement would ensure quality control and would provide FRA a measure by which to gauge accurate reporting. After a three-month period of 100-percent accuracy verification, FRA would notify the railroad in writing that the hard copy was no longer necessary.

Comments

Nearly all commenters expressed an interest in implementing some kind of electronic transmission and exchange of data from the railroads to FRA. Several commenters expressed the desire to have a standard, consistent format that would assure the credibility of the original report while others expressed the desire to submit data utilizing a variety of different reporting formats designed by the individual railroads. Some commenters recommended that FRA should design and make available to all railroads a software package of the formats required for transmission of all types of data in order to ensure uniformity in reporting. Several commenters suggested that FRA should examine another option for the transfer of data to FRA, *i.e.*, electronic submission of data over telephone lines.

Final Rule

*Section 225.37 Magnetic Media Transfer and Electronic Submission*

Section 225.37 of the final rule allows for the submission of accident reporting data to FRA by two alternate means: (1) magnetic media (computer diskette or magnetic tape), or (2) electronically, over telephonic lines. Submission of this data through either means remains *optional* for the reporting railroad.

Section 225.37(a) states that railroads utilizing either option may submit the following reports, updates to reports, and amendments to reports to FRA:

(1) the ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54);

(2) the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55);

(3) the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a);

(4) the ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57); and

(5) the ''Batch Control Form'' (Form FRA F 6180.99). Section 225.37(d) states that each railroad that employs either option must submit its monthly reporting data to FRA in a year-to-date file format. For example, the railroad's April submission must contain the reporting data for the months of January through April, including any amendments or updates for the months of January through March.

Section 225.37(b) states that each railroad utilizing the magnetic media option must submit the following:

(1) the computer diskette or magnetic tape;

(2) the ''Batch Control Form'' (Form FRA F 6180.99); and

(3) the notarized hard copy of the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55), signed by the railroad's reporting officer.

Also note that each railroad need submit only one ''Batch Control Form'' (Form FRA F 6180.99) with its monthly submission since the ''Batch Control Form'' contains the sum totals for the four reports that appear on the form.

As previously stated, the notarization of Form FRA F 6180.55 is required by 49 U.S.C. 20901 and this form must continue to be submitted to FRA in hard copy format. Also note that the proposal requiring the railroad reporting officer's signature on the Batch Control Form is not adopted in the final rule. The format for the Batch Control Form is set forth in Attachment 2 to this final rule.

Legislation before Congress (the ''Department of Transportation Regulatory Reform Act of 1996'') would amend 49 U.S.C. 20901(a) to eliminate the requirement that railroads file notarized monthly reports with FRA regarding accidents and incidents on their properties. The amendment would allow the Secretary to specify the frequency with which reports must be filed; provide discretion to set different reporting requirements for different classes of railroads; and facilitate electronic filing and a corresponding reduction in paper filings. It is believed these amendments would reduce unnecessary expense and delay associated with filing monthly reports, particularly for small railroads and those railroads which may have no events to report for a particular month.

Section 225.37(c) outlines the requirements for submission of data electronically, through telephonic means. The requirements for electronic submission parallel those for magnetic media submissions. The only difference is that a railroad utilizing the electronic submission option must transmit its year-to-date file reporting data to an FRA-designated computer. Note, however, that each railroad must continue to submit the notarized hard copy of the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55).

Section 225.37(e) states that, initially, each railroad utilizing either the magnetic media or electronic submission option must submit the hard copy report(s) for each accident/incident it reports by such means. FRA will continually review the hard copy reports against the data submitted electronically or by means of magnetic media for that reporting railroad. Once the magnetic media or electronic submission is in *total* agreement with the submitted hard copies of the reports for *three* consecutive reporting months, FRA will notify the railroad, in writing, that submission of the hard copy reports is no longer required. However, note that each railroad must continue to submit the notarized hard copy of the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55) with its magnetic media or electronic submissions until such time that legislation is passed eliminating this requirement.

The next revised *FRA Guide* will contain more detail concerning the submission of data via magnetic media

or, electronically, over telephone lines or other means.

*C. Section 225.27 Retention of Records*

Proposed Rule

FRA proposed that railroads that chose to submit their data via magnetic media or electronically, over telephone lines, as discussed in the previous section, would remain responsible for having on file hard copies of the reports identified in the current regulations at § 225.21. Therefore, FRA proposed, in § 225.27(c), that each railroad must maintain on file, at one or more central locations designated by the railroad, a signed copy of both the ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54) and the ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57), as well as a copy of all other reports pursuant to Part 225. This requirement was also meant to include a hard copy of *any* record submitted via magnetic media or, electronically, over telephone lines, so as to enable both federal and State inspectors, as well as other authorized representatives, a means by which to verify whether the railroad reported a specific accident/incident or injury/illness to FRA.

Comments

Most railroads expressed concern that the requirement for records to be maintained at one or more central locations was far too stringent and impracticable. In contrast, rail labor representatives agreed with the FRA proposal that railroads should have a hard copy of all records on file at a central location designated by that railroad. With new moves by railroads to centralize functions of their operations, the State of California suggested that railroads should be required to provide a central location for retention of records within the boundaries of each State in which it operates.

Final Rule

*Section 225.27 Retention of Records*

Section 225.27(a) states that each railroad must retain the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) and the Monthly List of Injuries and Illnesses (both discussed in detail later in this preamble), as required by § 225.25, for at least five years after the end of the calendar year to which they relate. The ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97), as required by § 225.25, must be retained for at least two years after the end of the calendar year to which they relate. The ''Initial Rail Equipment Accident/Incident Record'' is discussed in detail later in this preamble.

Please note that maintenance and access to any record and report required under this part are discussed in this preamble in the section entitled ''Access to Records and Reports'' (§ 225.35).

*D. Reporting Definitions and Forms*

1. Form FRA F 6180.45—''Annual Summary Report of Railroad Injury and Illness''

Form FRA F 6180.45 has been used by the rail industry to report all deaths, injuries, and occupational illnesses of on-duty railroad employees that occurred during the calendar year.

Proposal

FRA proposed to eliminate the requirement for submission of the ''Annual Summary Report of Railroad Injury and Illness'' (Form FRA F 6180.45). However, certain blocks of information on this form were deemed important for accurate injury and illness data analysis. Information regarding ''Terminations or Permanent Transfers'' found in column ''8'' on the annual summary report lists the number of cases in column ''3'' (Total Lost Workday Cases) and column ''7'' (Non-Fatal Cases without Lost Workdays) that resulted in either the termination or the permanent transfer of the employee for reasons related to the sustained injury or occupational illness. FRA proposed to move the block designated ''Terminations or Permanent Transfers'' to the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a). Similarly, FRA proposed to move the blocks that solicit information on ''Establishments Included in this Report'' and ''Average Employment in Reporting Year'' on the annual summary report to the ''Annual Railroad Report of Employee Hours and Casualties, by State'' (Form FRA F 6180.56).

Comments

Commenters agreed with FRA's proposal to eliminate Form FRA F 6180.45 and to transfer the information blocks pertaining to ''Terminations or Permanent Transfers,'' ''Establishments Included in this Report, and ''Average Employment in Reporting Year'' to other existing reporting forms.

Final Rule and Decision

The final rule eliminates the requirement for railroads to submit the ''Annual Summary Report of Railroad Injury and Illness'' (Form FRA F 6180.45). Blocks that solicit information on ''Establishments Included in this Report'' and ''Average Employment in Report Year'' are transferred to the ''Annual Railroad Report of Employee Hours and Casualties, by State'' (Form FRA F 6180.56) as blocks ''4'' and ''5,'' respectively. The block designated ''Termination or Permanent Transfer'' is transferred to the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) as block ''5r.''

2. Form FRA F 6180.54—''Rail Equipment Accident/Incident Report''

Collisions, derailments, explosions, fires, acts of God, and other events involving the operation of standing or moving on-track equipment resulting in more than $6,300 of reportable damage (the current reporting threshold) must be reported using Form FRA F 6180.54. FRA proposed to make limited changes to the ''Rail Equipment Accident/Incident Report.'' The format for the revised ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54) is set forth in Attachment 3 to this final rule.

*a. Special Study Blocks*

Proposal

FRA proposed establishment of three new blocks on Form FRA F 6180.54, each designated as a ''Special Study Block'' (SSB), to collect information on specific accident issues over a specified time period in response to particular hazards or associated railroad risks that are of safety concern.

Comments

AAR and its constituent members opposed the addition of the special study blocks to the ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54). AAR stated that gathering information, as the need may arise, would be somewhat expensive due to the computer programming necessary to complete the SSB information. These same members stated that collection of SSB information would be time consuming for the rail industry since instructions would have to be issued to the field as to what type of information is actually needed.

Several union representatives felt that the addition of the SSBs to Form FRA F 6180.54 was necessary to collect pertinent data but that FRA should be very specific in its information request.

Other parties stated that if FRA decided not to add the SSBs as proposed, then the block allowing for a narrative description of the special event should be completed by the reporting railroad only when other blocks did not define the special circumstances surrounding the accident.

Final Decision

The ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54) contains two SSBs in block ''49.'' As the need arises, FRA will notify the railroads in writing or, if appropriate, through publication in the Federal Register, of the purpose and the type of information that is to be collected. FRA will be as specific as possible in order to minimize both costs and the amount of time associated with the collection of this new information. Each SSB has 20 characters in order to standardize the data structure for computer files. FRA believes the SSBs will prove extremely valuable in collecting information to help FRA identify and evaluate issues of safety concern as well as other nonsafety issues as the need arises.

FRA anticipates that use of one or more SSBs will be occasional, rather than continuous. As appropriate, FRA will consult with the Railroad Safety Advisory Committee (RSAC) before formulating the respective information collections.

*b. Reporting Definitions*

Proposal

First, FRA proposed to make it clear that when estimating damage costs, the labor costs to be reported are only the direct labor costs to the railroad, *e.g.*, hourly wages, transportation costs, and hotel expenses. The cost of fringe benefits would be *excluded* when calculating direct labor costs. Second, for services performed by a contractor, FRA proposed that the railroad would estimate a direct hourly labor cost by multiplying the contractor's total labor hours charged to the railroad by the applicable direct hourly wage rate for a railroad worker in that particular craft. Third, FRA proposed to make it clear that overhead is to be *excluded* from damage costs due to the unacceptable non-uniform treatment of overhead under the current process. Lastly, FRA proposed that material costs would be calculated based upon the costs of acquiring new material, even if the railroad chose to use refurbished or used material in its actual repairs.

Comments

Most commenters favored the proposal to include only direct labor costs when estimating damage costs for labor, and to exclude overhead costs from reporting. On the other hand, most railroads did not support the proposal that material/equipment costs should be calculated based upon the costs of newly acquired material, even if the railroad chose to use refurbished or used material in its actual repairs. Railroad representatives stated that if the railroad has available, or is able to obtain, used material to repair or replace ''in kind'' the damaged material, charging the material at an artificial cost would inaccurately assess the real economic impact of the incident. Further, these commenters stated that to charge material ''incorrectly'' would require railroads to set up expensive duplicate recordkeeping. Most railroad representatives also stated that it would be difficult to derive the equivalent direct labor hours and rates from contractual services involved in railroad accident and repair costs.

Most rail labor associations stated that the costs of all materials utilized to effectuate repair (whether to new, used or refurbished equipment) should be based upon a uniform cost for new material and that such costs should be determined by FRA using a uniform scale. These commenters stated that such standardized costs based on a uniform scale would eliminate any advantage or disadvantage relative to the volume of materials purchased, the vendor or manufacturer used, or the age of equipment or materials involved in the incident. Further, rail labor representatives favored standardized person-hour costs to assure a uniform mechanism for accurate comparison of identical or similar accidents. Using this approach, these commenters stated that accident reporting would be reduced to a ''level playing field'' from one railroad to the next.

Final Decision

When estimating damage costs, the labor costs to be reported are only the *direct labor costs* to the railroad, *e.g.*, hourly wages, transportation costs, and hotel expenses. The cost of fringe benefits is *excluded* when calculating direct labor costs. Overhead is also *excluded* when calculating damage costs due to the unacceptable non-uniform treatment of overhead under the current process.

For services performed by a contractor, a direct hourly labor cost is calculated by multiplying the contractor's total labor hours charged to the railroad by the applicable direct hourly wage rate for a railroad worker in that particular craft. However, if a railroad cannot match the equivalent craft to the labor hours spent by a contractor, then the railroad must use the loaded rate, *i.e.*, the cost by hour for labor, fringe benefits, and other costs and fees for services charged by the contractor for the tasks associated with the repair of the track, equipment, and structures due to the train accident.

Due to the controversy surrounding FRA's proposal to calculate material costs based upon the costs of acquiring new material, even if the railroad chose to use refurbished or used material in its actual repairs, FRA has decided to reexamine this issue in a subsequent rulemaking for the accident reporting regulations in consultation with the Railroad Safety Advisory Committee. Therefore, the current methodology used to calculate material costs, *i.e.*, depreciated value estimates, will continue to be used by all railroads.

*c. Filing of an Amended Form FRA F 6180.54*

As stated in the proposed rule, the *FRA Guide* was changed to specifically provide that amended reports are filed only if subsequently acquired information showed the damage to be at least a ten-percent variance from the amount originally reported to FRA (*see* page V–2 of the *FRA Guide*). This change became effective January 1, 1993.

3. Form FRA F 6180.55a—''Railroad Injury and Illness Summary (Continuation Sheet)''

The ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) collects information about injuries, fatalities, and illnesses of railroad workers, trespassers, contractors, and passengers and about highway-rail grade crossing injuries and fatalities. FRA proposed numerous changes to this form in order to collect data that would aid in development of railroad injury and accident prevention programs. The format for the revised ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) is set forth in Attachment 4 to this final rule.

*a. Exposure to Hazardous Materials*

Proposal

FRA proposed to add an additional block to Form FRA F 6180.55a to collect data on the number of persons injured, as well as the type of injury (*e.g.*, burn, inhalation, rash), due to release and exposure to hazardous materials.

Comments

Some commenters supported the proposal to add this block of information while others stated that this type of information would be better collected by expanding the existing injury/illness codes currently used to complete Form FRA F 6180.55a. Several commenters expressed concern with this proposal since they believed it would be difficult to obtain this information, especially in the case

where the individual does not tell the railroad that he or she was exposed to hazardous materials.

Final Decision

Form FRA F 6180.55a contains block ''5q'' entitled ''Exposure to Hazmat,'' which is used to collect data on the number of persons injured and the type of injury resulting from exposure to hazardous materials.

The Research and Special Projects Administration (RSPA) collects injury and fatality data associated with the release of hazmat. RSPA Form DOT 5800.1 counts the number of fatalities, hospitalized injuries and non-hospitalized injuries associated with a hazmat release. However, RSPA's data cannot provide FRA with the type of person injured or the type of exposure. FRA believes that collection of this information is critical to its data base. The next revised *FRA Guide* will contain the codes used to complete this block.

FRA does not agree with the comments that obtaining information on hazardous materials exposure would be very difficult for a railroad to obtain. For employees of the railroad, most would inform their employer of such exposure and, for those employees who did not inform their employer, the railroad would not have knowledge of the exposure and therefore would not be able to report it on the Form. Further, for members of the general public, the reporting railroad usually can gather information on their exposure to release of a hazardous material from the claims filed by such persons.

*b. County/Day of Month/Time of Day*

Proposal

FRA proposed the addition of blocks to collect information on the county where the incident occurred, as well as the day of the month and the time of day when the incident occurred.

Comments

Most commenters believed that information that would help pinpoint and identify an accident site was useful and would help identify problem areas and regional patterns. A few commenters stated that present requirements for location information provide sufficient information to identify accident sites.

Final Decision

Form FRA F 6180.55a contains blocks ''5b'' (day of the month); ''5c'' (time of day); and ''5d'' (county) in order for FRA safety inspectors to determine which sites or railroad shops have more injuries or illnesses and to assist FRA inspectors in records inspections.

c. *Gender/Ethnicity.*

Proposal

FRA proposed requiring the gender and ethnicity of the person injured or ill in an effort to help identify whether particular groups of individuals, particularly trespassers, are more susceptible than others to certain injuries and illnesses.

Comments

Almost all commenters opposed the addition of blocks to gather information on the ethnicity and gender of the injured or ill person. These commenters stated that reporting of gender and ethnicity would lead to misunderstandings between employees and supervisors as to why this information was necessary and, that for trespassers, verification of ethnicity would be difficult, if not impossible.

Final Decision

FRA agrees that collection of information, particularly with respect to ethnicity, would be difficult to collect and may be perceived as violating privacy rights of the employee, trespasser, passenger or any other individual injured in a train related accident/incident. Therefore, the proposed blocks to collect gender and ethnicity information on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' are not adopted in the final rule.

*d. Circumstance Codes*

Proposal

FRA proposed to develop new codes, in addition to those currently used, to describe the cause and/or circumstance of injuries and illnesses not currently covered by the regulations. Specifically, these circumstance codes would be used to complete the following blocks of information on Form FRA F 6180.55a: ''Physical Act,'' ''Location,'' ''Event,'' ''Result,'' and ''Cause.''

Comments

Most commenters agreed that the existing occurrence codes were outdated and in need of revision; however, they stated that there was no need to add an entire set of new circumstance codes. These commenters stated that some of the circumstance codes, as proposed, were redundant and lacked objectivity and thus recommended revision of the existing occurrence codes through the AAR's Uniformity in Reporting Committee. Other commenters believed that the addition of the proposed codes was necessary and desirable because such data would help identify particular hazards.

These commenters also suggested that FRA should expand the codes to include special non-employee cause codes.

Final Decision

The occurrence codes used to best describe the event or activity that caused the casualty (found in Appendix F of the *FRA Guide*) will become obsolete as of December 31, 1996. A set of codes will be developed to complete the information in blocks ''5j—Physical Act,'' ''5k—Location,'' ''5l—Event,'' ''5m—Result,'' and ''5n—Cause'' for Form FRA F 6180.55a. FRA will shortly issue a letter requesting one or more special meetings with an advisory committee or, with the AAR Committee for Uniformity in Reporting, members of ASLRA, rail labor associations, and other interested groups, to assist in the development of the new circumstance codes for reporting accidents/incidents.

*e. Termination or Permanent Transfer*

Since FRA eliminated the requirement for submission of the ''Annual Summary Report of Railroad Injury and Illness'' (Form FRA F 6180.45), data on ''Termination or Permanent Transfer'' is now collected in block ''5r'' on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a).

f. *Narrative on Unusual Circumstances.*

Proposal

FRA proposed the addition of a narrative block on Form FRA F 6180.55a that would allow the reporting railroad the opportunity to provide details (up to 250 characters) on any unusual circumstance(s) surrounding the railroad worker's injury or illness.

Comments

Many commenters expressed concern regarding the intended use of the narrative and questioned whether or not completion of the narrative would be optional for the reporting railroad.

Final Decision

Form FRA F 6180.55a contains a narrative block ''5s'' that allows the railroad the opportunity to further explain unusual circumstances surrounding a worker's injury or illness using up to 250 characters. Completion of this narrative is mandatory for the reporting railroad *unless* the injury or illness can be adequately described using all other entries (information blocks) on the form.

4. Form FRA F 6180.55—''Railroad Injury and Illness Summary''

The ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55) is used by the industry to summarize a railroad's accidents/incidents for a given month. This report must be filed with FRA even when no accidents/incidents occurred during the reporting month.

The *FRA Guide* currently classifies persons as:

(1) Employees on Duty (Class A),
(2) Employees Not on Duty (Class B),
(3) Passengers on Trains (Class C),
(4) Other Nontrespassers (Class D),
(5) Trespassers (All Classes)(Class E), and
(6) Contractor Employees (Class F).

These ''person'' classifications are used by the reporting railroad for completing the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55) and the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a).

The format for the revised ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55) is set forth in Attachment 5 to this final rule.

*a. Classifications of Persons*

Proposal

1. ''Nontrespassers—Off Railroad Property'' and ''Nontrespassers—On Railroad Property''

FRA proposed to add a new classification of person entitled ''Nontrespassers—Off Railroad Property'' to include those individuals (nontrespassers) who are injured while off railroad property and to distinguish them from nontrespassers injured while on railroad property.

Comments

All commenters supported the proposal for the breakdown of the classification ''Nontrespassers'' into the classifications of ''Nontrespassers—Off Railroad Property'' and ''Nontrespassers—On Railroad Property'' and believed that these distinctions would be useful in identifying particular safety problems with these person groups.

Final Decision

The ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55) contains the classifications of persons entitled ''Nontrespassers—On Railroad Property'' (Class D) and ''Nontrespassers—Off Railroad Property'' (Class J). An injury ''off railroad property,'' includes an injury resulting from an event, such as a derailment or collision, that begins on railroad property but ends on public or private non-railroad property, so long as the injury is incurred while the person is physically located off railroad property. Similarly, if a derailment results in a release of hazardous materials onto public or private non-railroad property and the hazardous material injures a ''Nontrespasser'' located on public or private non-railroad property, the injury is reported as an injury to ''Nontrespassers—Off Railroad Property'' (Class J). Conversely, injuries to nontrespassers occurring while on public or private railroad property are reported as injuries to ''Nontrespassers—On Railroad Property'' (Class D).

2. ''Worker on Duty'' and ''Worker Not on Duty''

FRA proposed that a ''Worker on Duty'' be defined as an individual who receives direct monetary compensation from the railroad or who is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad. FRA proposed that the classifications ''Worker on Duty'' (Class A) and ''Worker Not on Duty'' (Class B) would replace the presently used classifications of persons ''Employee on Duty'' (Class A) and ''Employee Not on Duty'' (Class B), respectively. Additionally, FRA proposed that the definition of a ''Worker on Duty'' would be expanded to include individuals who do not necessarily receive direct compensation from the railroad (including certain contractor employees and volunteers) and who perform either (i) the operation of on-track equipment or (ii) any other safety-sensitive activity for the reporting railroad.

Comments

Most commenters did not object to the proposal to change the terms ''Employee on Duty'' and ''Employee not on Duty'' to ''Worker on Duty'' and ''Worker not on Duty,'' respectively. Commenters, however, did object to the proposed expansion of the definition of a ''Worker on Duty'' to include ''Contractors'' and ''Volunteers'' who perform either safety-sensitive functions for the railroad or who operate on-track equipment. Commenters did not want injuries and illnesses sustained by such contractors and volunteers to be counted under the ''Worker on Duty'' classification. Nor did commenters want the hours worked by such ''Contractors'' and ''Volunteers'' to be reported as ''railroad worker hours.''

Railroads strongly opposed the proposal to make carriers responsible for gathering and submitting information relative to hours worked by contractor employees. Railroad representatives claimed that they did not have data on contractor hours and had no process in place to accumulate and verify total hours worked by contractor employees. Railroads believed that if FRA deemed this information critical to its data base, then the contractor should be compelled to report its hours directly to FRA or other pertinent federal agencies, such as the Occupational Safety and Health Administration (OSHA).

Final Decision

A ''Worker on Duty—Employee'' (Class A) is defined as an individual who receives direct monetary compensation from the railroad. All reportable injuries and illnesses are reported as those to a ''Worker on Duty—Employee'' (Class A) in block ''5f'' on Form FRA F 6180.55a together with the applicable job code series of the service performed.

An ''Employee not on Duty'' (Class B) is defined as an individual (i) who receives direct monetary compensation from the railroad and (ii) who is on railroad property for purposes connected with his or her employment or with other railroad permission, but (iii) who is not ''on duty'' as currently defined in the *FRA Guide.*

3. (i) ''Volunteer'' and (ii) Volunteer or Contractor Employee Who Is Classified as a ''Worker on Duty''

FRA proposed that ''Volunteer'' be added to the classes of persons, for purposes of completing Sections A and B on Form FRA F 6180.55, and that ''Volunteer'' be defined to include an individual who willingly performs a service for the reporting railroad; who does not receive direct monetary compensation from that railroad; and who is *not* engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the reporting railroad. As proposed, such injuries or illnesses sustained by this volunteer would be reported on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) as injuries to a ''Volunteer.'' Further, FRA proposed that the railroad report all hours for that tour of service as ''volunteer hours'' on the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55).

In contrast, FRA proposed that injuries or illnesses sustained by an individual, including a ''Volunteer'' or a ''Contractor'' who was engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad, would be reported as

injuries/illnesses to a ''Worker on Duty'' (Class A) on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a). Further, FRA proposed that the railroad report all hours worked by such a ''Volunteer'' or ''Contractor'' for that tour of service as ''railroad worker hours'' on the ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55).

FRA further elaborated on this issue at the public regulatory conference held in Washington, D.C. where FRA proposed development of three new subclasses of ''Worker on Duty,'' which would include (i) ''Worker on Duty—Employee,'' (ii) ''Worker on Duty—Contractor,'' and (iii) ''Worker on Duty—Volunteer.''

Comments

Many commenters supported the development of the three classifications of a ''Worker on Duty'' as proposed and discussed at the public regulatory conference. These commenters stated that the three classifications would be beneficial for recordkeeping purposes and would aid in tracking the frequency rate of accidents and injuries for each person category. Commenters agreed that the three proposed classifications of ''Worker on Duty'' were qualitatively and quantitatively different in terms of training, tenure, supervisory oversight, motivational and disciplinary regimes, and experience and, that such a distinction should be captured in FRA's database to ensure the opportunity to analyze these differences. Many railroads supported the development of the three classifications of a ''Worker on Duty'' provided that the FRA reportable injury ratio would still reflect only the classification of ''Worker on Duty—Employee'' (Class A). As stated previously, most commenters were opposed to reporting injuries and illnesses sustained by ''Contractors'' and ''Volunteers'' who perform either ''safety-sensitive functions'' or who ''operate on-track equipment'' under the classification of ''Worker on Duty.'' These commenters believed that a distinction between railroad employees and such contractors and volunteer workers should be maintained for reporting purposes and, that such a distinction would allow FRA to compare the accident/injury rates of ''Railroad Workers on Duty'' to those of ''Contractors'' and/or ''Volunteers.''

Railroads also opposed reporting hours worked by a ''Volunteer'' or ''Contractor'' who was engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as ''railroad worker hours'' on Form FRA F 6180.55.

Final Decision

A ''Worker on Duty—Volunteer'' (Class H) is a volunteer who does not receive direct monetary compensation from the railroad and who is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303.

Section 209.303 of title 49 of the Code of Federal Regulations describes ''safety-sensitive functions'' as applying to the following individuals:

(a) Railroad employees who are assigned to perform service subject to the Hours of Service Act (45 U.S.C. 61–64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service;

(b) Railroad employees or agents who:

(1) Inspect, install, repair, or maintain track and roadbed;

(2) Inspect, repair, or maintain, locomotives, passenger cars, and freight cars;

(3) Conduct training and testing of employees when the training or testing is required by the FRA's safety regulations; or

(c) Railroad managers, supervisors, or agents when they:

(1) Perform the safety-sensitive functions listed in paragraphs (a) and (b) of this section;

(2) Supervise and otherwise direct the performance of the safety-sensitive functions listed in paragraphs (a) and (b) of this section; or

(3) Are in a position to direct the commission of violations of any of the requirements of parts 213 through 236 of this title.

Note that there have been amendments and additions to the set of railroad safety regulations found in the Code of Federal Regulations; thus, ''safety-sensitive functions'' in § 209.303(c)(3) is interpreted to include railroad managers, supervisors, etc., when they are in a position to direct the commission of violations of any of the requirements of parts 213 through 240 of title 49 of the Code of Federal Regulations.

Hours worked by a ''Worker on Duty—Volunteer'' (Class H) are not reported on any form because FRA recognizes from the comments received in response to this proposal that railroads may have difficulty in acquiring this information.

A volunteer who does not receive direct monetary compensation from the railroad and who is not engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303 is classified as a ''Volunteer—Other'' (Class I), and hours worked by this person also are not reported on any FRA form.

Similarly, a ''Worker on Duty—Contractor'' (Class F) is an employee of a contractor for a railroad who does not receive direct monetary compensation from the railroad and who, while on railroad property, is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303. Hours worked by persons in Class F are not reported on any FRA form due to the difficulty railroad representatives expressed they would have in acquiring this data.

A contractor employee for a railroad who does not receive direct monetary compensation from the railroad and who is not engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303 is classified as a ''Contractor—Other'' (Class G) and hours worked by this person are similarly not reported on any FRA form.

Also note that the FRA reportable injury ratio will continue to reflect only injuries sustained by the persons in Class A, ''Worker on Duty—Employee.'' This will preserve the bench marking tool utilized by the railroad industry while ensuring that FRA has the information necessary to distinguish injuries between railroad workers, and contractors and volunteers engaged in any safety-sensitive function or in the operation of on-track equipment.

To summarize, Form FRA F 6180.55 (Railroad Injury and Illness Summary) now contains the following classifications of persons:

(1) Worker on Duty—Employee (Class A),

(2) Employee not on Duty (Class B),

(3) Passengers on Trains (Class C),

(4) Nontrespassers—On Railroad Property (Class D),

(5) Trespassers (Class E),

(6) Worker on Duty—Contractor (Class F),

(7) Contractor—Other (Class G),

(8) Worker on Duty—Volunteer (Class H),

(9) Volunteer—Other (Class I), and

(10) Nontrespassers—Off Railroad Property (Class J).

These classifications will not be defined in the rule text for the accident reporting regulations; rather, they will be defined in the next revised *FRA Guide*.

The following are examples of situations involving reportable injuries suffered by a ''Worker on Duty—Volunteer,'' a ''Volunteer—Other,'' a

''Worker on Duty— Contractor,'' and a ''Contractor—Other'' in the course of different types of work performed:

*Example 1.* A volunteer operates a locomotive for an excursion railroad. Operation of a locomotive clearly falls within the realm of ''operation of on-track equipment.'' If the volunteer sustains a reportable injury during operation of the locomotive, then the incident is reported on the ''Railroad Injury and Illness Summary (Continuation Sheet)'' (Form FRA F 6180.55a) as an injury to a ''Worker on Duty— Volunteer'' (Class H), with the applicable job code series.

*Example 2.* A volunteer sells memorabilia at a historic railroad. Selling memorabilia does not fall within the scope of either ''the operation of on-track equipment'' or ''any other safety-sensitive function.'' When such a volunteer sustains a reportable injury, such injury, is reported on Form FRA F 6180.55a as an injury to a ''Volunteer—Other'' (Class I).

*Example 3.* A volunteer sells tickets for train rides on a tourist railroad and also clears vegetation adjacent to roadbed. Under 49 CFR 213.37, vegetation is to be cleared from the roadbed for safe rail operations; vegetation clearing is thus an aspect of maintaining roadbed under § 209.303(b)(1) and, therefore, considered a ''safety-sensitive function.'' Any injury or illness sustained by the volunteer during the vegetation clearing is classified as one to a ''Worker on Duty—Volunteer'' (Class H) with the applicable reporting requirements for purposes of Form FRA F 6180.55a. If any reportable injury is sustained by the volunteer during the process of selling tickets, then such injury is classified as one to a ''Volunteer—Other'' (Class I). If, however, the volunteer sells tickets and then clears vegetation *during the same tour*, then all injuries are considered as those attributable to a ''Worker on Duty—Volunteer'' (Class H). Therefore, when a volunteer is engaged in ''mixed service,'' the railroad must report all reportable injuries and illnesses for that volunteer as those to a ''Worker on Duty—Volunteer'' (Class H) on Form FRA F 6180.55a. Conversely, when a contractor employee is engaged in such ''mixed service'' on railroad property, the railroad must report all reportable injuries and illnesses for that volunteer as those to a ''Worker on Duty— Contractor'' (Class F) on Form FRA F 6180.55a, with the applicable job code series of the service performed.

*Example 4.* The employee of a contractor performs payroll as well as time-and-attendance functions for the railroad on railroad property. Such functions are *not* considered ''safety-sensitive'' because they are not related to the continued safety of the railroad and do not fall under the definition of any ''safety-sensitive function'' as defined in § 209.303. Thus, injuries sustained by this contractor performing those tasks are reported on Form FRA F 6180.55a as those attributable to a ''Contractor—Other'' (Class G).

*Example 5.* A contractor employee inspects and replaces roller bearings for the reporting railroad *on the railroad's property.* Injuries sustained by this contractor are reported as those to a ''Worker on Duty—Contractor'' (Class F) on Form FRA F 6180.55a. Under 49 CFR 215.113, cars with defective roller bearings should not be in service, thus any illness or injury associated with replacement of roller bearings is a ''safety-sensitive function'' qualifying as an injury or illness attributable to a ''Worker on Duty—Contractor'' (Class F). In contrast, if this same injury was sustained by a contractor employee at the contractor's facility *off railroad property,* then such injury would not be reported to FRA.

5. FRA Form F 6180.56—''Annual Railroad Report of Employee Hours and Casualties, by State''

A summary of all hours worked by railroad employees during the report year is made on Form FRA F 6180.56. This form is submitted as part of the monthly ''Railroad Injury and Illness Summary'' (Form FRA F 6180.55) for the month of December of each year. The format for the revised ''Annual Railroad Report of Employee Hours and Casualties, by State'' (Form FRA F 6180.56) is set forth in Attachment 6 to this final rule.

Final Decision

Information on ''Establishments Included in this Report'' and ''Average Employment in Report Year,'' which previously appeared on Form FRA F 6180.45, is now found on Form FRA F 6180.56 in blocks ''4'' and ''5'' respectively, because, as discussed previously in this preamble, FRA has eliminated the requirement to submit Form FRA F 6180.45. A column reflecting a count for ''Casualties'' is also added to Form FRA F 6180.56.

6. FRA Form F 6180.57—''Highway-Rail Grade Crossing Accident/Incident Report''

Form FRA F 6180.57 collects information on accidents and incidents occurring at highway-rail grade crossings. Any impact, regardless of severity, between a railroad on-track equipment consist and any user of a public or private crossing site, including sidewalks and pathways, must be reported on this form. The information collected on this report is vital to identifying and resolving problems at highway-rail grade crossings. The format for the revised ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57) is set forth in Attachment 7 to this final rule.

*a. Occupants*

Proposal

Under the heading ''Highway Vehicle Property Damage/Casualties'' on the currently used form, FRA proposed to delete blocks ''43'' through ''45,'' which requested information on the total number of occupants and the total number of occupants killed and injured, and to replace those blocks with several new ones to gather additional information on the number of highway-rail crossing users killed or injured; the total number of highway-rail grade crossing users involved in the incident; the number of railroad workers killed or injured; the total number of people on the train at the time of the incident; and the number of train passengers killed or injured.

Comments

No negative comments were received in response to this proposal.

Final Decision

Form FRA F 6180.57 requests the following information under the heading ''Highway Vehicle Property Damage/Casualties'':

*Block 46*: the number of highway-rail crossing users (*i.e.*, pedestrians and vehicle occupants) killed; and the number of highway-rail crossing users injured;

*Block 48*: the total number of highway-rail crossing users involved in the incident (including the driver);

*Block 49*: the number of railroad employees killed; and the number of railroad employees injured;

*Block 50*: the total number of people on the train at the time of the incident (including passengers and train crew); and

*Block 52*: the number of train passengers killed; and the number of train passengers injured.

*b. Amtrak/Autotrain Distinction*

Proposal

FRA proposed to eliminate the distinction between Amtrak and Autotrain in item ''1'' on the current Form, as such a distinction is now obsolete.

Comments

No negative comments were received in response to this proposal.

Final Decision

The distinction between Amtrak and Autotrain is deleted from Form FRA F 6180.57.

*c. Signal Crossing Warning*

Proposal

FRA further proposed to clarify the question in block ''32,'' ''[w]as the signaled crossing warning identified in item ''31'' operating?'' Item ''31'' listed several types of signal devices (active and passive). Confusion existed in

completing this information when the report identified a passive device and then the railroad reported it as not operating.

Comments

Rail labor associations believed that this information would effectively capture the status of the warning device at the time of the accident and that such information was crucial to FRA's data bank to track the effectiveness of rail safety regulations pertaining to highway-rail grade crossings. Most other commenters agreed that this question was in need of further clarification by FRA.

Final Decision

Block ''32'' is now block ''33'' on Form FRA F 6180.57, is entitled ''Signaled Crossing Warning,'' and refers the reader to the reverse side of the form for instructions and codes in completing this block. The instructions for completing block ''33'' read as follows:

Only if Types 1–6, Item 32, are indicated, mark in Block 33 the status of the warning devices at the crossing at the time of the accident using the following codes:

1. Provided minimum 20-second warning.
2. Alleged warning time greater than 60 seconds.
3. Alleged warning time less than 20 seconds.
4. Alleged no warning.
5. Confirmed warning time greater than 60 seconds.
6. Confirmed warning time less than 20 seconds.
7. Confirmed no warning.

If status code 5, 6, or 7 was entered, also enter a letter code explanation from the list below:

A. Insulated rail vehicle.
B. Storm/lightning damage.
C. Vandalism.
D. No power/batteries dead.
E. Devices down for repair.
F. Devices out of service.
G. Warning time greater than 60 seconds attributed to accident-involved train stopping short of the crossing, but within track circuit limits, while warning devices remain continuously active with no other in-motion train present.
H. Warning time greater than 60 seconds attributed to track circuit failure (*e.g.*, insulated rail joint or rail bonding failure, track or ballast fouled, etc.).
J. Warning time greater than 60 seconds attributed to other train/equipment within track circuit limits.
K. Warning time less than 20 seconds attributed to signals timing out before train's arrival at the crossing/island circuit.
L. Warning time less than 20 seconds attributed to train operating counter to track circuit design direction.
M. Warning time less than 20 seconds attributed to train speed in excess of track circuit's design speed.
N. Warning time less than 20 seconds attributed to signal system's failure to detect train approach.
P. Warning time less than 20 seconds attributed to violation of special train operating instructions.
R. No warning attributed to signal system's failure to detect the train.
S. Other cause(s). Explain in Narrative Description.

*d. Narrative Block*

Proposal

A narrative block allowing for up to 250 characters was proposed for addition to Form FRA F 6180.57 in order to gather information on unusual causes/circumstances surrounding the highway-rail grade crossing accident/incident.

Comments

Almost all commenters requested that completion of the narrative block remain optional on their part.

Final Decision

Form FRA F 6180.57 contains block ''54'', entitled ''Narrative Description.'' Completion of this narrative is mandatory for the reporting railroad *unless* the accident/incident can be described adequately using all other informational blocks on the form.

*e. Special Study Blocks*

Proposal

FRA also proposed at the public regulatory conference the addition of three Special Study Blocks (SSBs) to Form FRA F 6180.57 in order to gather essential data as the need arises.

Comments

Some commenters believed that SSBs on this form would be useful for capturing specialized data which could be used, for instance, to analyze or predict trends in safety hazards or to initiate planning for correction of identified problems. The American Trucking Associations (ATA) requested that the use of the SSB should be publicly announced in the Federal Register so that affected highway users would be aware of any special study that may be undertaken, and that they be afforded an opportunity for appropriate input.

Final Decision

The ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57) contains two special study blocks (SSBs) in block ''53.'' As the need arises, FRA will notify the railroads in writing, or if appropriate, through publication in the Federal Register, of the purpose and the type of information that is to be collected. In conjunction with the Federal Highway Administration (FHWA), FRA will publish in the Federal Register any announcement affecting highway users, thus allowing motor carriers the opportunity to provide FRA pertinent special study information. FRA will be as specific as possible in order to minimize both costs and the amount of time associated with the collection of this new information. Each SSB has 20 characters in order to standardize the data structure for computer files. FRA believes the SSBs will prove extremely valuable in collecting information to help FRA identify and evaluate issues of safety concern as well as other nonsafety issues as the need arises.

*f. Whistle Bans and Signal System Failure*

Proposal

FRA also proposed to add two new questions to the ''Highway-Rail Grade Crossing Accident/Incident Report'' to gather information on whether whistle bans were in effect and observed at the time of the accident/incident, and whether there was signal system failure within the last seven calendar days up to and including the day of the accident. The codes for completing both items would be included in the next revised *FRA Guide.*

Comments

Rail labor associations viewed these information blocks necessary as this information would effectively capture the status of the warning device prior to the time of the accident. Many railroads stated that the proposed question on whistle bans was necessary to collect information on this subject due to the increased focus by the media, as well as state and federal agencies, on accidents occurring at grade crossings. A few railroads opposed addition of these questions but failed to express their reasoning as to why such questions should not be added to the form. All participants at the public hearings and at the public regulatory conference acknowledged their concern in connection with whistle bans and further emphasized the need for federal regulations requiring the sounding of a locomotive horn upon approaching and entering public highway-rail grade crossings.

ATA stated that current whistle bans were unacceptable and that highway users approaching a grade crossing are fully entitled to be warned of the approach of a train by every practicable means. They further commented that active warning devices frequently

malfunction in a manner indicating the approach of a train when such is not the case. ATA stated that a specific warning of the approach of a train, through sounding of the whistle, is essential to safety and that active warning devices were not adequate substitutes for the requirement to have the engineer sound the whistle.

The proposal to add the question regarding signal system failure to Form FRA F 6180.57 had a similar response in that some commenters opposed addition of this question while others stated that the information was critical to identifying problems at highway-rail grade crossings. ATA urged that, not only should the existence of a failure be noted, but that the nature of the failure should be included in the record. ATA stated that this information could be a significant factor particularly where active warning devices falsely indicate the approach of a train.

Final Decision

It is imperative that FRA ascertain as many details concerning accidents connected with whistle bans. Thus, the ''Highway-Rail Grade Crossing Accident/Incident Form'' (Form FRA F 6180.57) contains question ''34'' to gather information on whether whistle bans were in effect and observed at the time of the accident/incident. The codes for completing this block will be included in the next revised *FRA Guide.*

However, the proposal to gather information on whether there was signal system failure within the last seven calendar days up to and including the day of the accident is not adopted. FRA collected information about signal failures and false activations for a period of 27 months over the past several years. The statistical results did not indicate a correlation between a signal failure and an accident within seven days of such failure. The burden to collect this information therefore cannot be justified based upon FRA's study. If new data should indicate that this information is needed, then FRA will gather such information using the Special Study Blocks (SSBs) on Form FRA F 6180.57.

*g. Motorist Age/Gender/Impairment*

Proposal

In order to collect more information on motorists involved in highway-rail grade crossing accidents, FRA proposed to amend Form FRA F 6180.57 to require information under the heading ''Motorist,'' if known, on the motorist's age and gender, and whether the motorist was impaired by alcohol or drugs at the time of the accident/incident.

Comments

As to the proposed block for ''Motorist Impairment,'' most commenters believed the information was useful but preferred that reporting of this data remain optional for the reporting railroad. Since all grade crossing accidents are routinely investigated by the local police, information on motorist impairment is normally provided to the railroad only after the police conclude their investigation, which may be several weeks or months after the actual accident. Most commenters agreed that motorist age and gender information was readily available and easier to collect than information on motorist impairment.

Final Decision

Form FRA F 6180.57 does not contain a block on ''Motorist Impairment.'' If FRA deems this information necessary at some point in the future, the Special Study Blocks (SSBs) on Form FRA F 6180.57 may be utilized to collect data regarding impaired motorists.

The ''Highway-Rail Grade Crossing Accident/Incident Report'' contains block ''38'' for the driver's age, and block ''39'' for the driver's gender (sex). This information is readily available to the reporting railroad, however, completion of driver's age in block ''38'' and driver's gender in block ''39'' remains *optional* for the reporting railroad. However, FRA encourages each railroad to be as diligent as possible in completing these and any other optional information blocks.

*h. Trapped Motorist*

Proposal

At the public regulatory conference, FRA proposed the collection of information regarding situations where motorists are trapped by other motor vehicle traffic in order to help identify alternative grade crossing protection systems that may prevent this situation.

Comments

Rail labor associations regarded this information useful for identifying alternate grade crossing protection systems that may help prevent this type of situation. A few commenters believed that this requirement was troublesome because in most cases railroads would have to make a judgment call. These commenters requested that completion of this information remain optional for the reporting railroad. ATA supported the inclusion of this data element so that FRA receive clear information as to what actually happens in such a situation.

Final Decision

Form FRA F 6180.57 contains entry ''#4. Trapped'' in block ''16'' entitled ''Position'' to allow for the collection of information regarding situations where motorists are trapped by other motor vehicle traffic. FRA will include the codes for completion of this entry in the next revised *FRA Guide.* The narrative block (block ''54'') can also be used to explain and expand on the actual occurrence. FRA believes this information is critical to its data base in order to identify alternate grade crossing protection systems that may help prevent occurrence of this type of situation.

7. Form FRA F 6180.78—''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report''

If a railroad should cite an employee human factor as the primary or contributing cause of a rail equipment accident/incident, then current regulations require the reporting railroad to complete the ''Railroad Employee Human Factor Attachment'' (Form FRA F 6180.81), and attach it to the ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54). Additionally, for each employee listed on Form FRA F 6180.81, the reporting railroad must complete part I, ''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor,'' on Form FRA F 6180.78, and must provide a copy of this form to the employee within 45 days after the end of the month in which the accident/incident occurred. Upon receipt of Form FRA F 6180.78, the employee has the option of providing a statement in part II (entitled ''Employee Statement Supplementing Railroad Accident Report''). The format for the revised ''Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report'' (Form FRA F 6180.78) is set forth in Attachment 8 to this final rule.

Proposal

Recipients of the notice (Form FRA F 6180.78) are to include only those railroad employees who were the primary cause or a contributing cause of the rail equipment accident/incident. In order to minimize any confusion or misunderstanding for recipients of the

notice, FRA proposed refinement of the language in the block entitled ''Notice to Recipient'' so that only those railroad employees who were determined by the railroad to be the primary cause or a contributing cause of the rail equipment accident/incident receive Form FRA F 6180.78.

Comments

The few comments received in response to this proposal were favorable.

Final Decision

The block entitled ''Notice to Recipient'' on Form FRA F 6180.78 reads as follows:

Notice to Recipient. An accident occurred on the above date which the railroad alleges was at least partially caused by an action, lack of action, or the physical condition of a railroad employee. The railroad is sending you this notice because it believes that you had a role, but may not necessarily be the primary or only person responsible for the accident's occurrence. The railroad has reported to FRA that the primary and/or major contributing cause(s) of this accident are those listed above. Other causal factors related to this event may be described in the narrative portion of the railroad's report; a copy of which is attached.

You *may* submit a statement to FRA with a copy to this railroad and comment on any aspect of the railroad's report. The decision whether to submit such a statement is entirely optional on your part. If you choose to do so, please see the additional notices and instructions on the reverse of this form.

*D. Recordkeeping*

*1. Sections 225.25(a) and (b) and the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98)*

Proposal

Section 225.25(a) currently refers to the log of injuries and occupational illnesses at and for each railroad establishment. In order to accurately identify and review both reportable and nonreportable railroad injuries and illnesses, FRA proposed to amend § 225.25(a) to require that railroads maintain a log or report of all reportable and ''nonreportable'' (*i.e.*, ''recordable'') injuries and illnesses to railroad employees for each railroad establishment using a new form entitled ''Railroad Employee Injury and/or Illness Log'' (Form FRA F 6180.98). Over the years, FRA inspectors have found it increasingly difficult to ascertain whether the railroad is reaching a correct decision on whether to report a given injury or illness. Thus, the requirement was proposed in order to alleviate the problem FRA inspectors encounter during routine inspections. The format for the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) is set forth in Attachment 9 to this final rule.

Comments

Many commenters expressed concern with the proposal to add nonreportable injuries (''recordable'' injuries) to the proposed ''Railroad Employee Injury and/or Illness Log.'' Most railroad representatives stated that this proposal would create another class of reportable injuries, *i.e.*, nonreportable recordables. These commenters saw no justification for what they believed was a burdensome exercise in recordkeeping. They also stated that this proposal would create another avenue for issuance of citations and that FRA was taking another step toward classifying every injury as reportable. Some commenters suggested that the proposed definition of ''recordable'' was too stringent in that every single injury or illness, however minor, would have to be logged by the reporting railroad.

Some participants at the public regulatory conference requested that FRA use the term ''nonreportable'' instead of the proposed ''recordable'' so that FRA's proposed ''recordables'' would not be confused with OSHA's ''recordables.''

Many commenters urged FRA to allow each railroad use of a railroad-designed log or form, instead of the specific log proposed in the NPRM, as long as the railroad captured the data required on the FRA log. Other commenters favored the proposal to log all ''recordable'' injuries and illnesses, and stated that such information should be maintained on either FRA's log or some other format.

Final Rule

*Recordkeeping—Sections 225.25(a) and (b) and the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98)*

FRA concludes that in order to effectively enforce railroad injury reporting, *all* injuries and illnesses to railroad employees that arise from the operation of the railroad and that cause the employee to be examined or treated by a qualified health care professional must be recorded using the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98). Unless FRA has the opportunity to examine those injuries and illnesses deemed ''nonreportable'' as well as those deemed ''reportable'' by the railroad, it is difficult for FRA to determine whether a railroad is properly making the ''reportable'' decision.

FRA agrees that use of the terms ''recordable'' and ''nonreportable recordables'' to define those injuries and illnesses which are not reportable to FRA but are recordable on the log may be confusing for the railroad. The proposed term ''recordable'' or ''nonreportable recordables'' is replaced therefore with the term ''accountable'' so as to minimize any confusion.

An ''accountable'' injury or illness is defined as encompassing any condition, not otherwise reportable, of a railroad worker that is associated with an event, exposure, or activity in the work environment that causes the worker to be examined or treated by a qualified health care professional. Such treatment would usually occur at a location other than the work environment; however, it may be provided at any location, including the work site.

Any condition initially classified as accountable, *i.e.*, ''nonreportable'' or ''recordable,'' may subsequently become reportable if certain consequences occur. For example, a minor cut that is disinfected and covered with a bandage may later become infected and require medical treatment. It would be difficult, if not impossible, for the railroad to monitor self-treatment of such minor injuries. Thus, the type of injuries that are generally expected to be recorded on the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) are those that create a ''documentation trail.'' This documentation could include records such as: incident reports; health care provider records; claim payouts; or any other records that may identify the fact that an employee has sustained physical harm while in the work environment that required treatment. This broad scope is necessary since all conditions, regardless of severity, must be evaluated to determine if the requirements necessary for reporting the injury/illness have been met.

Section 225.25(a) states that each railroad must maintain either the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98), or an alternative railroad-designed record as described in § 225.25(b), to record all reportable and accountable injuries and illnesses to railroad employees that arise from the operation of a railroad for each railroad establishment where such employees report to work. Section 225.25(b) outlines the information FRA requires on the alternative railroad-designed record used in lieu of the ''Railroad Employee Injury and/or Illness Record.'' All the information requested on ''Railroad Employee Injury and/or Illness Record'' must be present on the

alternative record. Although this information may be displayed in a different order from that on the Railroad Employee Injury and/or Illness Record, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad must be consistent for each of the railroad's reporting establishments. Also note that the reporting railroad may choose to have additional information on its record extending beyond the information required on Form FRA F 6180.98.

Section 225.25(a) states that the ''Railroad Employee Injury and/or Illness Record,'' or its alternate, must be maintained for each operational railroad establishment, *i.e.*, an establishment wherein workers report to work such as an operating division, general office, and major installations such as a locomotive or car repair or construction facility. FRA believes that this requirement will help alleviate the difficulty FRA inspectors encounter when attempting to locate injury and illness information at railroad establishments. Please refer to the discussion in § 225.25(g) regarding maintenance of these records at railroad establishments.

Section 225.25(c) states that each railroad must provide the employee a copy of either the completed ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) or the alternative railroad-designed record upon his or her request, as well as a copy of any other record or report filed with FRA or held by the railroad pertaining to the employee's injury or illness. This requirement is necessary in order to provide the injured or ill employee a means by which to review and verify the reporting status of his or her injury or illness.

*2. Elimination of Supplementary Record—Former § 225.25(b) Proposal*

FRA determined that much of the information requested in the supplementary record of injuries and illnesses pursuant to former § 225.25(b) would be collected on the new ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98). Thus, FRA proposed elimination of this supplementary record.

Comments

All comments received in response to this proposal were favorable.

Final Rule

The requirement that each railroad maintain a supplementary record, as required under former § 225.25(b), is eliminated in the final rule.

*3. Sections 225.25 (d) and (e) and the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97)*

Railroads have been required to maintain a log of only reportable rail equipment accidents. Information on nonreportable events may be found in ''unusual occurrence'' reports and ''morning reports'' that are maintained at various locations by the railroad. However, there is no guarantee that all of those reports are either available or complete. As a result, during routine accident/incident records inspections it is often difficult, if not impossible, for FRA inspectors to identify the events that were determined by the railroad to be nonreportable. The format for the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97) is set forth in Attachment 10 to this final rule.

Proposal

In order to accurately identify and review both reportable and nonreportable rail equipment accident/incidents, FRA proposed that railroads must maintain a log to list all reportable and ''recordable'' rail equipment accidents using a new form entitled ''Rail Equipment Accident/Incident Log'' (Form FRA F 6180.97). FRA proposed that a recordable rail equipment accident/incident would encompass any event not otherwise reportable, involving the operation of on-track equipment that causes physical damage to either the on-track equipment or the track upon which such equipment was operated and that requires the removal or repair of rail equipment before any rail operations over the track can continue. A recordable rail equipment accident/incident, if not tended to, would thus disrupt railroad service. A scrape or indentation to rail equipment, however, would not make a rail equipment/accident recordable if routine rail operations over the track can continue without such equipment being repaired or removed from service.

Comments

Rail labor representatives supported use of the proposed standardized FRA form for reporting certain rail equipment accidents/incidents deemed nonreportable by the railroad. However, these commenters proposed that a ''recordable'' accident and incident be defined as:

> Any event not otherwise reportable, involving the operation of on-track equipment that causes personal injury requiring the worker to be examined or treated by a qualified health care professional *or* causes physical damage to either the on-track equipment or the track, roadbed, signals and/or structures which requires removal, replacement or repair of equipment, track, roadbed, signals and/or structures. Incidents arising from broken knuckles, failed journals, and dragging equipment that do not cause damage beyond that of the item of equipment that failed, are not required to be logged on Form FRA F 6180.97.

Under the definition proposed by rail labor, recordable rail equipment accidents/incidents would not be limited to those occurring exclusively on the railroad right-of-way; thus rail equipment accidents/incidents involving ''shop crafts'' in the performance of worker duties would be encompassed within the definition.

Many railroad representatives opposed a new log to record reportable and recordable rail equipment accidents. They stated that the log would create additional recordkeeping requirements with little or no real benefit to rail safety and, that the proposal would create another avenue for FRA to issue fines and penalties for what they considered to be minor paperwork entries. Railroad representatives also wanted further clarification on the definition of a ''recordable'' accident/incident especially with respect to what constituted a ''disruption'' to rail service.

Most commenters suggested that the term ''recordable'' should be replaced with the term ''nonreportable'' so as to limit confusion with the terminology.

Final Rule

*Recordkeeping—Sections 225.25 (d) and (e) and the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97)*

As stated previously, FRA agrees that use of the term ''recordable'' or ''nonreportable recordables'' to define those rail equipment accidents and incidents which are not reportable to FRA but are required to be recorded on the log may be confusing for the railroad. The proposed term ''recordable'' or ''nonreportable recordable'' is replaced therefore with the term ''accountable'' so as to minimize any confusion.

FRA concludes that both reportable and accountable rail equipment accidents and incidents must be recorded on the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97). FRA inspectors must have a means by which they can determine whether the reporting railroad is accurately making its ''reportability'' decision pertaining to rail equipment accidents and incidents. In addition, accountable events may be of

considerable interest in determining the safety of railroad facilities and operations.

Further, the definition of an ''accountable'' rail equipment accident/incident as proposed by rail labor is not adopted in the final rule. FRA believes that personal injuries resulting from the operation of on-track equipment do not need to be tied into the ''accountable'' rail equipment accident/incident definition since all reported injuries and illnesses will be recorded on the monthly injury/illness list. This list will be posted in a conspicuous location for and at each establishment as described and discussed in the preamble to this final rule under the section entitled ''Monthly List of Injuries and Illnesses'' (§ 225.25(h)).

Consequently, an ''accountable'' rail equipment accident/incident is defined as encompassing any event not otherwise reportable, involving the operation of on-track equipment that causes physical damage to either the on-track equipment or the track upon which such equipment was operated and that requires the removal or repair of rail equipment from the track before any rail operations over the track can continue. An accountable rail equipment accident/incident, if not tended to, thus would disrupt railroad service. Examples of ''disruption of service'' would include: loss of main track; one or more derailed wheels; any train failing to arrive or depart at its scheduled time; one or more cars or locomotives taken out of service; or rerouting trains due to a damaged car or locomotive.

Section 225.25(d) states that each railroad must maintain *either* the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97), or an alternative railroad-designed record, to record all reportable and accountable rail equipment accidents and incidents for each railroad establishment. Thus, § 225.25(e) allows railroads to design and use an alternative railroad-designed record in lieu of the ''Initial Rail Equipment Accident/Incident Record.'' All the information requested on the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97) must be present on the alternative record designed and used by the railroad. Although this information may be displayed in a different order from that on the Initial Rail Equipment Accident/Incident Record, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad must also be consistent for each of the railroad's reporting establishments. Also note that the reporting railroad may choose to have additional information on its record extending beyond the information required on Form FRA F 6180.97.

Section 225.25(d) states that the ''Initial Rail Equipment Accident/Incident Record,'' or its alternate, must be maintained for each operational railroad establishment, *i.e.*, an establishment wherein workers report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility. FRA believes that this requirement will help alleviate the difficulty FRA inspectors encounter when attempting to locate rail equipment accident and incident information at railroad establishments. Please refer to § 225.25(g) for a discussion of maintenance of these records at railroad establishments.

*4. Property Damage Estimate Worksheet and Record (Proposed Form FRA F 6180.xx(b))*

Proposal

FRA proposed use of a ''Property Damage Estimate Worksheet and Record'' (Form FRA F 6180.xx(b)) by the reporting railroad to determine costs associated with damage to (i) on-track equipment, (ii) signal equipment, (iii) track, (iv) track structures and roadbed, and (v) costs of equipment rental and operation. These five cost categories would be totaled to derive the total accident cost. As proposed, if the total accident cost met or exceeded the reporting threshold, then the total cost for ''damage to on-track equipment'' in ''Part A'' would be transferred to a block entitled ''Equipment Damage'' on the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97). Likewise, FRA proposed that the total cost for ''damage to signal equipment,'' ''damage to track,'' and ''damage to track structures and roadbed'' in ''Parts B, C, and D'' respectively, would be totaled and that this amount would be transferred to a block entitled ''Track, Signal, Way & Structure Damage'' on the ''Initial Rail Equipment Accident/Incident Record.'' Finally, FRA proposed to print the ''Property Damage Estimate Worksheet and Record'' on the reverse side of the ''Initial Rail Equipment Accident/Incident Record.''

Comments

Most hearing participants opposed adoption of this proposal. These same participants expressed their concern with the proposed estimation of property damage at the public regulatory conference. Written comments received in response to this proposal further elucidated problems with the proposed methods of determining the cost of the damage.

Final Rule

Due to the controversy surrounding FRA's proposal to calculate costs associated with damage to (i) on-track equipment, (ii) signal equipment, (iii) track, (iv) track structures and roadbed, and (v) costs of equipment rental and operation, FRA has decided to reexamine this issue in a subsequent rulemaking for the accident reporting regulations in consultation with FRA's Railroad Safety Advisory Committee. Therefore, the final rule does not adopt the ''Property Damage Estimate Worksheet and Record.''

*5. Sections 225.25 (f) and (g) Updating and Maintaining the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) and the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97)*

Proposal

Discrepancies in logs are the most recurring problems FRA inspectors encounter during an inspection. FRA has found that many railroads fail to update existing logs in a timely manner, particularly with respect to lost/restricted workdays. Therefore, in order to assure that each railroad continuously updates the ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) and the ''Initial Rail Equipment Accident/Incident Record'' (Form FRA F 6180.97), or the alternative railroad-designed records (each record hereinafter is referred to as ''Record''), FRA proposed that each reportable and recordable injury and illness, as well as each reportable and recordable rail equipment accident/incident, must be entered on the appropriate Record as early as practicable, but in any event no later than seven working days after receiving information or acquiring knowledge that an illness or injury has occurred or, that a rail equipment accident/incident has occurred.

Additionally, FRA proposed that if either Record is maintained at a centralized location, but not through electronic means, then a paper copy of the record or report that is current within 35 days of the month to which it applies must be available at the appropriate establishment. When the Record for an establishment is maintained at a central location through electronic means, FRA proposed, the records for that establishment must be

available for review in a hard copy format (paper printout) within four business hours of the request.

Comments

The few comments received in response to these proposals were favorable. However, some commenters objected to the requirement that records maintained through electronic means must be available for review in ''hard copy'' within four business hours of the request. These commenters were concerned with what action FRA would take if the request could not be fulfilled within this prescribed time limit due to problems outside the railroad's control.

Most commenters believed that, in most cases, seven days should be sufficient to update the records. Some commenters were concerned that this proposal failed to recognize the varying factual circumstances that railroads may encounter before the initial information provided to the railroad by the employee is verified. These commenters stated that many times there are conflicting facts which must be sorted out before a determination can be made as to whether the accident/incident or the injury/illness is reportable or nonreportable.

Final Rule

*Updating and Maintaining the Records—Sections 225.25 (f) and (g)*

Section 225.25(f) states that each railroad must enter each reportable and accountable injury and illness on the ''Railroad Employee Injury and/or Illness Record'' or the alternative railroad-designed record, as early as practicable, but in any event, no later than seven working days after receiving information or acquiring knowledge that an illness or injury has occurred. Likewise, each railroad must enter each reportable and accountable rail equipment accident and incident on the ''Initial Rail Equipment Accident/Incident Record'' or the alternative railroad-designed record, as early as practicable, but in any event, no later than seven working days after receiving information or acquiring knowledge that a rail equipment accident or incident has occurred. FRA believes the seven-day requirement is an extremely reasonable and generous amount of time afforded railroads to enter information on the Record and to make a decision on whether the illness/injury and/or accident/incident is reportable or accountable.

Section 225.25(g) states that if either Record is maintained at a centralized location, but not through electronic means, then a paper copy of the Record that is current within 35 days of the month to which it applies must be available at the appropriate establishment. When either Record is maintained at a central location through electronic means, the Record for that establishment must be available for review in a hard copy format within four business hours of the request. Of course, FRA anticipates that railroads would be able to provide the requested information as soon as practicable. FRA believes the four-hour time limit is more than a reasonable amount of time for the railroad to provide information made pursuant to a request. FRA recognizes that this request may be impossible to fulfill if the establishment is experiencing problems with its computer or other instruments used in obtaining the information electronically. No punitive action would be taken by FRA for the railroad's failure to supply the requested documents when circumstances *outside* the control of the railroad preclude it from obtaining the information *and* the railroad has exercised reasonable effort to correct the problem.

*6. Section 225.25(h) Monthly List of Injuries and Illnesses*

Proposal

FRA proposed that each railroad must maintain a list of all reported injuries and illnesses for the previous month and that such list be posted in a conspicuous location at each railroad establishment within 30 days after expiration of the month during which the injuries and illnesses occurred. For example, the monthly list of injuries and illnesses for the month of May would have to be completed and posted by the railroad no later than June 30th. Moreover, FRA proposed that the monthly injury and illness list would be displayed for a minimum of 60 consecutive days so as to allow all workers at that establishment the opportunity to view the list. Given the example above, the list, if posted on June 30th, would remain posted for a minimum of 60 days, or until August 30th. Further, if no reported injuries or illnesses were associated with an establishment, FRA proposed that the posting shall make reference to that fact.

Comments

Most commenters supported this proposal with some modifications. Namely, commenters stated that the proposal requiring that the list be posted within 30 days after expiration of the month during which the injuries and illnesses occurred, coupled with the proposal that the list be displayed for a minimum of 60 consecutive days was confusing. Several railroad representatives suggested that railroads should be allowed to post a ''year to date'' list of reportable and nonreportable illnesses and injuries quarterly. These commenters stated that this would provide more accurate information than a monthly listing and that it would also produce less burdensome paperwork.

Some railroad representatives expressed concern that posting this information (date, type and location of injury) in a public place may lead to identification of the injured or ill person and, that the identified person may perceive that his or her privacy rights have been violated.

Rail labor associations supported the posting of the monthly listing of injuries and illnesses and stated that ''each railroad establishment'' should be consistently interpreted to require posting at each establishment or assembly point where railroad workers report to work.

Final Rule

*Monthly List of Injuries and Illnesses—Section 225.25(h)*

Section 225.25(h) states that a listing of all reported injuries and occupational illnesses for the previous month shall be posted in a conspicuous location for and at each railroad establishment within 30 days after expiration of the month during which the injuries and illnesses occurred. For purposes of fulfilling this requirement, this posting will be necessary only for those establishments that are in *continual* operation for a minimum of 90 calendar days or more. For those establishments that do not meet this level of operation or time requirement, the posting of reported injuries and illnesses must be made at the next higher organizational level, *i.e.*, the establishment that controls or directs the activities that take place at the temporary work site. Further, this listing must be posted in a conspicuous location so that it may be observed by workers at that establishment and shall remain continuously displayed for the next 12 months. This requirement therefore allows the employee the opportunity to get a one-year ''snapshot'' of reportable injuries and illnesses associated with that establishment. Thus, for example, April's list of reportable injuries and illnesses must be posted by June 1, and must remain posted until May 31 of the following year. This requirement allows railroad workers the opportunity to easily and readily review reportable illnesses and injuries for that

establishment in a cumulative fashion. FRA also believes that posting of this monthly list of injuries and illnesses will improve the general quality of illness and injury data.

Section 225.25(h) further states that incidents reported for employees on the listing must be displayed in date sequence. The listing must contain, at a minimum, the following information:

- Name and address of the establishment;
- Calendar year of the cases being displayed;
- Incident number used to report case;
- Date of the injury or illness;
- Location of incident;
- Regular job title of employee injured or ill;
- Description of the injury or condition;
- Number of days employee was absent from work at time of posting; and the number of days of work restriction at time of posting;
- Date of death, if the employee died;
- Annual average number of railroad employees reporting to this establishment;
- Name, title, telephone number with area code, and signature of preparer; and
- Date the report was completed.
- When there are no reportable injuries or occupational illnesses associated with an establishment for that month, the listing must make reference to this fact.

*E. Employer Notification (Proposed § 225.39(a)) and Copy of ''Railroad Employee Injury and/or Illness Record'' to Employee (Proposed § 225.39(b))*

Proposal

Rail labor organizations have repeatedly expressed concern that many injured employees fail to inform their employers of injuries. By placing part of the burden for reporting on the individual railroad employee, FRA believed it could improve the general quality of the injury/illness reporting data. Consequently, FRA proposed in § 225.39(a) that railroad employees must notify their employer, in writing, that they have sustained an injury and/or illness (whether reportable or nonreportable) within seven calendar days of incurring either the injury or illness or obtaining knowledge that they incurred the injury or illness. FRA also recommended a civil monetary penalty against the railroad employee for failure to notify his or her employer of the injury or illness within the prescribed time period.

FRA also was concerned with the fact that injured workers did not have the opportunity to review and verify the information on the accident/illness report prior to submission of that report to FRA. FRA thus proposed, in § 225.39(b), that the reporting railroad must provide the railroad employee with a copy of the completed ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98). FRA believed that the general quality of injury and illness data would improve by allowing the employee to participate in the reporting process as set forth above. Similarly, FRA recommended a civil monetary penalty against the railroad for its failure to issue this log to the railroad employee within the prescribed time limit.

Comments

Railroad representatives strongly opposed this proposal and instead recommended that all known injuries should be reported by the employee to railroad officials *immediately*, but in any event, no later than the end of the employee's shift. They also recommended that after obtaining knowledge of incurring the injury or illness, notification to the proper railroad official(s) should be mandatory within 24 hours of obtaining such knowledge. These commenters also stated that if the railroad had more stringent notification rules, then the railroad's rules should govern the matter. Many railroad representatives commented that they already require immediate notification of an injury and that they cannot adequately investigate the circumstances and potential causes of the injury or illness without immediate notice by the employee. Further, these same commenters stated that a monetary penalty issued to the employee was not appropriate and, that such sanctions (*i.e.*, disciplinary measures) were better left between the railroad and the railroad employee.

In contrast, rail labor associations fully supported FRA's seven-day notification proposal. However, these commenters did not support the proposal to assess monetary penalties against an employee for his or her failure to report an accident or injury within the seven-day time frame. Instead, these commenters stated that railroads should be held accountable for the actions of their supervisory personnel who knowingly fail to report accidents or injuries that occur to railroad employees. Rail labor representatives acknowledged that railroad policy can, and often does, require more immediate notice than that proposed by FRA, but they also stated that FRA's proposal did not in any way hinder the right of railroads to establish their own policy regarding the timeliness of injury or illness reporting. Rail labor also stated that the proposed regulations should contain language that would suspend the employee's seven-day notification in writing requirement in the event of a severe injury which may prevent the employee from complying with this provision.

In response to the proposal to require railroads to provide employees with a copy of the completed injury and illness log (proposed § 225.39(b)), rail labor representatives stated that an employee should be notified that his or her case has been reported to FRA by either U.S. mail or by hand delivery in a sealed envelope on the property at a time when the employee would regularly receive other company correspondence. Rail labor supported the proposal to exempt the railroad from the seven-day notification requirement when compliance would not be possible due to a severe injury.

Final Rule

FRA does not adopt the proposed seven-day employer notification requirement. Similarly, FRA does not adopt the proposal that would require railroads to provide employees a copy of the completed ''Railroad Employee Injury and/or Illness Record'' within the prescribed time limit of seven days. However, as discussed previously in this preamble, § 225.25(c) does require each railroad to provide the employee, upon his or her request, a copy of either the completed ''Railroad Employee Injury and/or Illness Record'' (Form FRA F 6180.98) or the alternative railroad-designed record, as well as a copy of any other form, record, or report filed with FRA or held by the railroad pertaining to the employee's injury or illness. Section 225.25(c) thus eliminates the seven-day time limit in which to accomplish this requirement. By providing this requested information, the employee will have the opportunity to assess why, or why not, a particular event was, or was not, reported to FRA.

FRA believes that requiring a paper trail to prove that employees were in fact notified of how the railroad reported their injury, with a receipt, places an unnecessary burden on railroads. Problems also exist with the seven-day requirement in the case where the injured employee may not be at his or her residence during this time period.

FRA believes that the amended recordkeeping requirements in § 225.25 will provide injured and ill railroad employees a means by which to review

and verify the reporting status of their injury or illness.

*F. Reporting Threshold*

FRA has periodically adjusted the reporting threshold based on the prices of a market basket of railroad labor and materials. The purpose of these adjustments has been to maintain comparability between different years of data by having the threshold keep pace with equipment and labor costs so that each year the same groups of accidents are included in the reportable accident counts.

Congress has given FRA some direction for modifying the procedure for calculating the threshold in 49 U.S.C. 20901(b) (formerly contained at section 15(a) of the Rail Safety Enforcement and Review Act (Pub. L. 102–365)): ''[i]n establishing or changing a monetary threshold for the reporting of a railroad accident or incident, * * * damage cost calculations'' shall be based ''only on publicly available information obtained from (A) the Bureau of Labor Statistics; or (B) another department, agency or instrumentality of the United States Government if the information has been collected through objective, statistically sound survey methods or has been previously subject to a public notice and comment process in a proceeding of a Government department, agency, or instrumentality.'' Congress allows an exception to this general rule only if the necessary data is not available from the sources described, and only after public notice and comment.

Proposal

FRA proposed to obtain in October, of the year that it would publish a final rule on accident reporting, the latest Producer Price Index (''PPI'') and National Employment Hours and Earnings figures from the Department of Labor's Bureau of Labor Statistics (''BLS''). At that time, the latest final figures, as opposed to preliminary figures, would be available to cover the period through June of that year. In October of each subsequent year, FRA would obtain the latest 12 months of final BLS figures and calculate the threshold for the upcoming year, publishing the new figure in the Federal Register prior to its implementation.

Proposed Equation

Specifically, FRA proposed to use data from the U.S. Department of Labor, LABSTAT Series Reports for calculating the threshold. The equation used to adjust the reporting threshold would be based on the average hourly earnings reported for Class I railroads and an overall railroad equipment cost index determined by the BLS. The two factors would be weighted equally.

For the wage component, FRA proposed to use LABSTAT Series Report, Standard Industrial Classification (SIC) code 4011 for Class I Railroad Average Hourly Earnings. For the equipment component, FRA proposed to use LABSTAT Series Report, Producer Price Index (PPI) Series WPU 144 for Railroad Equipment. In the month of October of each year, FRA would obtain from the BLS, finalized cost data covering the twelve-month period ending with the month of June. The monthly figures would then be totaled and divided by twelve to produce annual averages. The wage data would be reported in terms of dollars earned per hour, while the equipment cost data would be indexed to a base year of 1982.

As proposed in the NPRM, the procedure for adjusting the reporting threshold is shown in the formula below. The wage component appears as a fractional change relative to the prior year, while the equipment component is a difference of two percentages which must be divided by 100 to present it in a consistent fractional form. After performing the calculation, the result would be rounded to the nearest $100.

Formula

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{ 1 + 0.5\frac{\text{Wn} - \text{Wp}}{\text{Wp}} + 0.5\frac{\text{En} - \text{Ep}}{100} \right\}$$

Where:

Wn = New average hourly wage rate ($)

Wp = Prior average hourly wage rate ($)

En = New equipment average PPI value

Ep = Prior equipment average PPI value

The current weightings represent the general assumption that damage repair costs, at levels at or near the threshold, are split approximately evenly between labor and materials.

Comments

The few comments received in response to the proposal to amend the calculation of the monetary accident reporting threshold using publicly available data were favorable.

Final Rule

The formula to calculate the monetary accident reporting threshold is adopted as proposed. FRA will gather the necessary data in October 1996 and will issue a notice in the Federal Register announcing the revised threshold dollar value. The threshold will then become effective beginning January 1, 1997.

*G. Miscellaneous Amendments*

This segment of the final rule outlines a number of amendments to various sections of the rule text.

*1. Section 225.3 Applicability*

Section 225.3 defines the applicability of the accident reporting regulations. FRA's delegated regulatory authority under 49 U.S.C. 20101 *et seq.* (formerly contained in the Federal Railroad Safety Act of 1970 (the ''FRSA'') (45 U.S.C. 431 *et seq.*)) permits FRA to amend the current applicability sections of its various regulations so as to contract the populations of railroads covered by a particular set of regulations or to expand them to the full extent of that authority.

FRA, as the Secretary's delegate, has had jurisdiction over all ''railroads'' since the FRSA was enacted. In 1988, Congress amended the older railroad safety laws, including the Accident Reports Act, to conform their reach to that of the FRSA (while also extending FRA's safety jurisdiction to certain other fixed guideway systems). There is a very wide range of operations that could be considered tourist railroads under the broadest reading of the term ''railroad.'' Beginning in 1992, FRA announced that the Agency intended to exercise jurisdiction over ''non-insular'' railroads that are *not* part of the general railroad system and that Part 225, among certain laws and regulations, applies to those entities in the same manner as railroads that are part of the general system. Tourist railroads have written several letters to members of Congress questioning the basis for FRA's assertion of jurisdiction. Additionally, in 1992, FRA received a petition from a scenic railway requesting that regulations be tailored specifically to the tourist rail industry.

Proposal

In an effort to clarify the proper extent of the exercise of FRA's jurisdiction,

FRA announced several principles that would be used as guidelines. FRA stated that it would exercise jurisdiction over all tourist operations, whether or not they operate over the general railroad system, *except* those that are (1) less than 24 inches in gage and/or (2) insular.

To determine insularity, FRA described criteria that would measure the likelihood that a railroad's operations might affect a member of the public. FRA stated that a tourist operation is insular if its operations were limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public (except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser) would be affected by the operation. An operation would *not* be considered insular if one or more of the following exists on its line: (a) A public highway-rail crossing that is in use; (b) an at-grade rail crossing that is in use; (c) a bridge over a public road or waters used for commercial navigation; or (d) a common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad. Thus, the mere fact that a tourist operation was not connected to the general system did not make it insular under these criteria. While these criteria tend to sort out the insular theme parks and museums, a need to do case-by- case analysis in certain close situations still existed.

As a matter of clarification, FRA proposed to conform Part 225 to its policy on exercise of jurisdiction so that Part 225 would apply to non-general system, non-insular tourist operations confined to an installation that is not part of the general system (*i.e.*, it is a stand-alone with no freight traffic but has one or more features that preclude its being considered insular).

Comments

The Association of Railway Museums, Inc. (ARM), the Tourist Railroad Association, and the Illinois Railway Museum, strongly opposed this proposal. In general, these commenters made the following assertions:

(a) Any requirements imposed on railway museum operations should also be imposed on amusement park railroads.

(b) The non-accident information requirements would be extremely costly and burdensome, and the imposition of the proposed requirements would be contrary to the Regulatory Flexibility Act and the Swift Rail Development Act.

(c) The insular/non-insular railroad criteria proposed by FRA to determine which non-general system passenger railroads would be subject to regulations is irrational and arbitrary. Regulatory burdens are focused on an insignificant sector of non-general system passenger railroads since large amusement park rail operations that haul millions of passengers a year would be excluded from the regulations.

(d) FRA's practice of subjecting museum and tourist railroads to multiple rulemaking proceedings is extremely burdensome. These commenters urged FRA to deal with museum and tourist railroad issues in a separate, single proceeding.

Final Rule

*Section 225.3 Applicability*

Tourist railroad commenters had no objections to the proposed accident reporting requirements, but did oppose the non-accident information requirements due to the costs and burdens of collecting what they believed to be information of little value and use to FRA. These commenters further stated that any requirements imposed on the tourist/museum railroads should likewise be imposed on amusement park railroads. These commenters, in essence, are stating that since FRA does not require the amusement park railroads to be subject to Part 225, nor should FRA require the tourist, excursion, scenic, and museum railroads to be subject to the requirements of Part 225. FRA does not believe that exclusion of part of one industry (insular amusement park railroads) compels the exclusion of other parts of an industry (non-insular tourist and museum railroads). The accident reporting regulations set forth in Part 225 have always applied to non-general system, non-insular railroad operations, *e.g.*, a tourist railroad that confines its operations to an installation that is not part of the general system. Exclusion of insular amusement park railroads is not irrational given state and local regulation of these entities as amusements.

Consequently, § 225.3 states that Part 225 will apply to all railroads except (a) A railroad that operates freight trains only on track inside an installation which is not part of the general railroad system of transportation or that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation; (b) rail mass transit operations in an urban area that are not connected with the general railroad system of transportation; and (c) a railroad that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation that is insular.

An operation will not be considered insular if one or more of the following exists on its line: (1) A public highway-rail grade crossing that is in use; (2) an at-grade rail crossing that is in use; (3) a bridge over a public road or waters used for commercial navigation; or (4) a common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

FRA appreciates the concerns of small tourist operations that reviewing applicability of individual parts of the Code of Federal Regulations (CFR) in individual proceedings involves some burden on commenters. In order to foster broader and better coordinated dialogue with small rail passenger operations, FRA has established, within the Railroad Safety Advisory Committee (RSAC), a Tourist and Historic Railroads Working Group. This Working Group will review applicability of current and future regulations to these entities.

As discussed previously, legislation before Congress (the ''Department of Transportation Regulatory Reform Act of 1996'') would amend 49 U.S.C. 20901(a) to eliminate the requirement that railroads file notarized monthly accident/incident reports with FRA. The amendment would allow the Secretary to specify the frequency with which reports must be filed; provide discretion to set different reporting requirements for different classes of railroads; and facilitate electronic filing and a corresponding reduction in paper filings. This amendment would particularly benefit the tourist, excursion, scenic and museum rail industries which may have no events to report for a particular month.

*2. Section 225.5 Definitions*

Section 225.5 lists definitions applicable to part 225. FRA proposed that § 225.5 be reorganized so that definitions would appear in alphabetical order and without paragraph designations. Definitions proposed for revision included: ''accident/incident,'' ''employee human factor,'' ''medical treatment,'' ''occupational illness,'' and ''railroad.'' New terms proposed for addition to the list of definitions included: ''day away from work,'' ''day of restricted work activity,'' ''establishment,'' ''first aid treatment,'' ''FRA representative,'' ''nonreportable injury or illness,'' ''nonreportable rail equipment accident/incident,'' ''non-train incident,'' ''person,'' ''qualified health care professional,'' ''train accident,'' ''train

incident,'' ''volunteer,'' ''work environment,'' ''worker on duty,'' and ''work related.'' Finally, FRA proposed deletion of the definitions of ''lost workdays'' and ''restriction of work or motion.''

As discussed previously in this preamble, the proposed term ''recordable'' is replaced with the term ''accountable'' for purposes of defining those injuries/illnesses and rail equipment accidents/incidents which are not reportable to FRA but which are required to be recorded on the appropriate injury/illness and rail equipment accident/incident record.

Also note that ''railroad'' has been redefined to mean a person providing railroad transportation. The old definition for ''railroad'' has been reassigned to the term ''railroad transportation.'' Further, the definition of ''accident/incident'' is redefined in the final rule to conform to the amendment of § 225.19(d).

*Train Accident*

Proposed Rule

A ''train accident'' was defined as any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed.

Comments

No comments received.

Final Rule

Adopted as proposed.

*Train Incident*

Proposed Rule

A ''train incident'' was defined as an event involving the movement of on-track equipment that results in a reportable casualty but does not cause reportable damage above the threshold established for train accidents.

Comments

No comments received.

Final Rule

Adopted as proposed.

*Employee Human Factor*

Proposed Rule

In the definition of ''employee human factor,'' the proposed rule removed reference to ''cause code 506'' because it was obsolete and replaced it with the term ''train accident cause codes pertaining to non-railroad employees.''

Comments

No comments received.

Final Rule

The definition of ''railroad employee human factor'' removes reference to ''cause code 506'' and is amended so as to capture the classifications for a ''Worker on Duty— Employee,'' ''Employee not on Duty,'' ''Worker on Duty— Contractor,'' and ''Worker on Duty—Volunteer.''

*Medical Treatment*

Proposed Rule

''Medical treatment'' was defined to include any medical care or treatment beyond ''first aid'' regardless of who provided such treatment. The definition would not include diagnostic procedures, such as X-rays or drawing blood samples.

Comments

Several commenters believed the proposed change to the definition of ''medical treatment'' would create confusion. Commenters questioned whether employees who sought their own treatment, such as purchasing a sling for a strained arm, would qualify as ''medical treatment.'' They also questioned whether the definition would include the scenario where an employee chooses to take leftover prescribed medication to treat his or her injury or illness. Railroad representatives stated that the determination of appropriate treatment and the administration of reportable medical attention should be performed solely by licensed physicians and medical professionals working under the direction of physicians. These commenters urged FRA to retain the current definition of ''medical treatment'' to reduce the probability of confusion and possible abuse by employees who may jeopardize their treatment.

Final Rule

The definition of ''medical treatment'' is adopted as proposed with minor modification. FRA's definition of ''medical treatment'' is intended to remove the association between the type of treatment rendered and the person who provided the treatment. If a physician treats an injury using first aid measures, the treatment is nonreportable even though a highly skilled medical person administered the care. Conversely, someone with medical skills less than those of a physician (M.D.) may provide medical treatment for a condition. Generally, injuries that are self-treated would not satisfy the reporting requirements since the employee would not normally have the credentials of a ''qualified health care professional.'' However, an employee engaged in self-treatment may later have complications making the treatment ''reportable.'' For example, an employee may drill or puncture a finger nail at the work site so as to remove pressure from the blood that has pooled beneath the nail (a nonreportable injury at this point). If the nail should later become infected requiring treatment by a ''qualified health care professional,'' then the railroad must report the injury.

Medical treatment does *not* include preventive emotional trauma counseling provided by the railroad's employee counseling and assistance officer *unless* the participating worker has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident and this condition requires a regimen of treatment to correct. Further, the railroad's employee counseling and assistance officer rendering counseling to an employee diagnosed with such a mental disorder meets the definition of a ''qualified health care professional'' as discussed later in this preamble.

*Occupational Illness*

Proposed Rule

In the definition of ''occupational illness,'' FRA proposed that the reference to ''his or her railroad employment'' be replaced with the phrase ''worker's railroad employment.''

Comments

No comments received.

Final Rule

The definition of ''occupational illness'' is amended so as to include and capture occupational illnesses of the classifications of ''Worker on Duty— Employee,'' ''Worker on Duty— Contractor,'' and ''Worker on Duty— Volunteer.''

*Railroad and Railroad Transportation*

Proposed Rule

''Railroad'' was defined as it is in 49 U.S.C. 20102(1) (formerly contained in the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

Comments

No comments received.

Final Rule

The proposed definition for ''railroad'' is correctly reassigned to the term ''railroad transportation.'' Note that ''railroad'' is redefined to mean a person providing railroad transportation, which

is the definition of ''railroad carrier'' in 49 U.S.C. 20102(2).

*Day Away From Work*

Proposed Rule

''Day away from work'' was defined as any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad worker does not report to work for reasons associated with his or her condition.

Comments

No comments received.

Final Rule

Adopted as proposed.

*Day of Restricted Work Activity*

Proposed Rule

A ''day of restricted work activity'' was defined as any day that a worker is restricted in his or her job following the day of the injury or diagnosis of occupational illness.

Comments

No comments received.

Final Rule

Adopted as proposed.

*Establishment*

Proposed Rule

''Establishment'' was defined as a physical location where workers report to work, where business is conducted or where services or operations are performed.

Comments

Some commenters proposed that ''establishment'' should be defined as one single, central location. Others suggested that ''each railroad establishment'' should be consistently interpreted to require posting of reports at ''designated assembly points where employees report for work.'' These commenters stated that such posting would not place an undue administrative burden on the railroad as railroads are already required under most collective bargaining agreements to regularly post and/or distribute job bulletins, awards and certain notices. They further stated each railroad should be required to identify ''establishments'' where pertinent records are maintained.

Some commenters stated that each railroad should be authorized to designate the ''establishments'' for which it would tabulate injury and illness data and at which ''establishments'' records would be maintained. They further commented that the railroad would provide FRA with a list of establishments it has designated and would inform FRA of periodic changes to its list.

Final Rule

The definition of ''establishment'' is adopted as proposed. In order to provide compatible counts for the railroad industry that duplicate those being reported by all other industries to the Department of Labor, FRA needs a total count of the number of railroad ''establishments'' that exist in the country. Thus, the block soliciting information on ''Establishments Included in this Report'' appears on the ''Annual Railroad Report of Employee Hours and Casualties, by State'' (Form FRA F 6180.56) as block ''4.'' In the NPRM, FRA proposed that railroads must maintain certain records ''at and for'' each establishment. The final rule, in §§ 225.25 and 225.27, states that records must be maintained for each establishment, but that centralization of recordkeeping may be performed at any location(s), as long as prescribed accessibility requirements are met. Refer to § 225.35 for a discussion of ''access to records and reports.''

*First Aid Treatment*

Proposed Rule

''First aid treatment'' was defined as being limited to simple procedures used to treat minor conditions, such as abrasions, cuts, bruises, or splinters. First aid treatment is typically confined to a single treatment and does not require special skills or procedures.

Comments

Commenters requested that FRA clarify the definition of ''first aid treatment'' in order to reduce or eliminate confusion as to what actually constituted such treatment.

Final Rule

The definition of ''first aid treatment'' is adopted as proposed. FRA believes this definition is adequate and the examples of first aid treatments found in the *FRA Guide* are sufficient to assist the reporting officer in identifying which treatments are reportable and which are nonreportable. FRA intends to review the examples in the *FRA Guide* to determine if any additional examples and/or guidance pertaining to ''first aid treatment'' and ''medical treatment'' would be beneficial to the railroad reporting officer.

*FRA Representative*

Proposed Rule

''FRA representative'' was defined to include the Associate Administrator for Safety, FRA; the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter); the Chief Counsel, FRA; or the Chief Counsel's delegate.

Comments

No comments received.

Final Rule

Adopted as proposed.

*Non-Train Incident*

Proposed Rule

A ''non-train incident'' was defined as an event that results in a reportable casualty, but does not involve the movement of on-track equipment nor cause reportable damage above the threshold established for train accidents.

Comments

No comments received.

Final Rule

Adopted as proposed.

*Person*

Proposed Rule

''Person'' was defined to add independent contractors and their employees and workers, as well as volunteers.

Comments

No comments received.

Final Rule

Adopted as proposed.

*Qualified Health Care Professional*

Proposed Rule

A ''qualified health care professional'' was defined to include a professional operating within the scope of his or her license, registration, or certification. For example, an otolaryngologist is qualified to diagnose a case of noise-induced hearing loss and identify potential causal factors, but may not be qualified to diagnose a case of silicosis. FRA also asked for comments regarding whether the railroad's employee assistance officer (EAO) should be considered a ''qualified health care professional'' when he or she provides counseling to an employee who has experienced traumatic stress from involvement in a serious or fatal accident.

Comments

Some rail labor representatives commented that the proposed definition was reasonable and that there was no need to restrict the definition of a ''qualified health care professional'' to an ''M.D.'' as long as the treating or

attending individual was qualified and operated within the scope of his or her license, registration, or certification. However, some of these commenters stated that the railroad's employee assistance officer (EAO) should not be considered a ''qualified health care professional'' when he or she counsels employees on a preventive basis.

Several railroad representatives stated that the definition should remain as broad as possible and that the railroad's EAO should be considered a ''qualified health care professional.'' Some of these commenters further emphasized that FRA should make it clear that when prescribed medical treatment is refused by an employee, the injury should continue to be considered reportable, provided such medical treatment meets reportability criteria.

Other railroad representatives opposed the definition because they believed that the latitude resulting from the proposed definition would allow treatment by nearly anyone who claimed to be a health care professional. One example offered by a major carrier involved the situation where a registered massage therapist, qualified to diagnose muscle strain due to work stress, could provide ''treatments'' which would cause the injury to be reportable. These commenters emphasized that the definition of a ''qualified health care professional'' should be restricted to physicians who are universally recognized as capable of diagnosing and treating individuals for illnesses and injuries.

Final Rule

The definition of ''qualified health care professional'' is adopted as proposed. However, the railroad's employee assistance officer (EAO) is considered a ''qualified health care professional'' when he or she provides counseling to an employee who has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident, and this condition requires a regimen of treatment to correct.

As discussed previously in this preamble under the definition of ''first aid'' treatment, many reportable injuries can be treated by a ''qualified health care professional'' who is not a physician, *i.e.*, who does not hold an M.D. Likewise, a physician (M.D.) may perform first aid treatment. In many instances, emergency medical treatment is performed in the absence of physicians. With all the variables, FRA believes that limiting the definition of ''qualified health care professional'' to encompass only physicians, would result in the underreporting of many injuries that require more than first aid treatment, thus rendering the injury reportable.

*Volunteer*

Proposed Rule

''Volunteer'' was defined to include individuals who willingly perform a service for the reporting railroad, who do not receive direct monetary compensation from that railroad and who are not involved in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the reporting railroad as described in § 209.303.

Comments

Please refer to the detailed discussion of the definition of ''Volunteer'' in the preamble to this rule in the section entitled ''Form FRA F 6180.55—Railroad Injury and Illness Summary.''

Final Rule

The following definitions will not appear in § 225.5. They will however, be defined in the next revised *FRA Guide*.

*Worker on Duty—Volunteer (Class H)* is a volunteer who does not receive direct monetary compensation from the railroad and who is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303.

*Volunteer—Other (Class I)* is a volunteer who does not receive direct monetary compensation from the railroad and who is not engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303.

*Worker on Duty—Contractor (Class F)* is an employee of a contractor who does not receive direct monetary compensation from the railroad and who, while on railroad property, is engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303.

*Contractor—Other (Class G)* is an employee of a contractor who does not receive direct monetary compensation from the railroad and who is not engaged in either (i) the operation of on-track equipment or (ii) any other safety-sensitive function for the railroad as defined in § 209.303.

*Work Environment*

Proposal

''Work environment'' was defined as the physical location, equipment, materials processed or used, and activities of a worker associated with his or her work, whether on or off the railroad's property.

Comments

No comments received.

Final Rule

Adopted as proposed.

*Work Related*

Proposed Rule

''Work related'' was defined as relating to any incident, activity, exposure, etc. occurring within the work environment.

Comments

No comments received.

Final Rule

Adopted as proposed.

*Worker on Duty*

Proposal

A ''worker on duty'' was defined as an individual who receives direct monetary compensation from the railroad or who is engaged in either (i) the operation of on-track equipment or (ii) with any other safety-sensitive function as described in § 209.303.

Comments

Please refer to the detailed discussion of the definition of ''Worker on Duty'' in the preamble to this rule in the section entitled ''Form FRA F 6180.55—Railroad Injury and Illness Summary.''

Final Rule

*Worker on Duty—Employee (Class A)* is defined as an individual who receives direct monetary compensation from the railroad. Please note that this definition will not appear in § 225.5, but will appear in the next revised *FRA Guide*.

*Lost Workdays and Restriction of Work or Motion*

Proposal

FRA proposed deletion of the definitions for ''Lost Workdays'' and ''Restriction of Work or Motion.''

Comments

No comments received.

Final Rule

Adopted as proposed.

*3. Section 225.7 Public Examination and Use of Reports Proposal*

In § 225.7(a), FRA proposed that the reference to ''Executive Director'' would be removed as obsolete, and would be replaced with ''Office of Safety.'' Thus, written requests for a copy of any report would be addressed to the Office of Safety at FRA.

In § 225.7(b), FRA proposed that ''Accident Reports Act'' would replace the erroneous reference to ''Accidents Reports Act.''

Comments

No comments received.

Final Rule

*Section 225.7 Public Examination and Use of Reports*

Section 225.7(a) removes reference to ''Executive Director'' and replaces it with ''Freedom of Information Officer, Office of Chief Counsel.'' Thus, written requests for a copy of any report would be addressed to the Freedom of Information Officer, Office of Chief Counsel, at FRA.

The statutory reference also is revised to reflect the 1994 repeal of the Accident Reports Act and the simultaneous revision and reenactment without substantive change of its provisions in title 49 of the United States Code.

*4. Section 225.11 Reporting of Accidents/Incidents Proposal*

As proposed, § 225.11 would be revised to reflect that reports identified in § 225.19 submitted via magnetic media or electronically, over telephone lines, would be due within 30 days after the end of the month in which the accident/incident occurred.

Comments

No comments received.

Final Rule

*Section 225.11 Reporting of Accidents/Incidents*

Adopted as proposed. Additionally, this section is amended to identify the office, *i.e.*, RRS–22, within the Office of Safety, where one may obtain a copy of the ''FRA Guide for Preparing Accidents/Incidents Reports.''

*5. Section 225.12 Rail Equipment Accident/Incident Reports Alleging Employee Human Factor as Cause; Employee Human Factor Attachment; Notice to Employee; Employee Supplement*

Final Rule

Since employee human factor is redefined to include the classifications of Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, and Worker on Duty—Volunteer, § 225.12(a) is amended to clarify that, for purposes of this section, ''employee'' is defined to include Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, or Worker on Duty—Volunteer.

*6. Section 225.19 Primary Groups of Accidents/Incidents Proposal*

Proposed revisions to §§ 225.19 (a) and (b) would remove reference to the current threshold of ''$6,300'' and would replace it with the phrase ''current reporting threshold.''

Section 225.19(d) identifies the third group of accidents (''death, injury or occupational illness'') that are to be reported on Form FRA F 6180.55a. FRA proposed that the language be simplified to read as follows: ''Each event arising from the operation of a railroad, must be reported on Form FRA F 6180.55a, if it results in (1) death to any person; (2) injury to any person that requires medical treatment; (3) injury to a railroad worker that results in (i) a day away from work; (ii) restricted work activity or job transfer; or (iii) loss of consciousness; or (4) occupational illness of a railroad worker.

Comments

No comments received.

Final Rule

*Section 225.19 Primary Groups of Accidents/Incidents*

Adopted as proposed. Additionally, § 225.19(e) is added to clarify that the current accident/incident reporting threshold of $6,300 is effective until FRA amends that amount and provides notice in the Federal Register.

*7. Section 225.21 Forms*

Proposal

In addition to the revisions to the titles of the forms listed in § 225.21, FRA proposed that the reference to ''Class I and II line-haul and terminal and switching railroads'' in § 225.21(b), would be removed as obsolete, and replaced with ''All railroads subject to this part.''

Because FRA proposed deletion of the annual summary report (as discussed previously in this preamble), reference to Form FRA F 6180.45 (entitled ''Annual Summary Report of Railroad Injury and Illness'') in § 225.25(f) would be removed.

The Records discussed in new §§ 225.25 (a) and (b) and in §§ 225.25 (d) and (e) and the alternative, railroad-designed records would be added to the list of forms as § 225.21(h) (Form FRA F 6180.98—Railroad Employee Injury and/or Illness Record) and as § 225.21(i) (Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record).

Comments

No comments received.

Final Rule

*Section 225.21 Forms*

Adopted as proposed.

*8. Section 225.29 Penalties*

Proposal

Section 225.29 identifies the penalties FRA may impose upon any person that violates any requirement of this part. FRA proposed amendment to the language of this section to reflect the 1992 amendments to the Federal Railroad Safety Act of 1970 which increased the minimum penalty and settlement per violation to $500.

Comments

No comments received.

Final Rule

*Section 225.29 Penalties*

Adopted as proposed.

*9. Section 225.35 Access to Records and Reports*

Proposal

FRA inspectors frequently encounter reluctance from the railroads when examining and photocopying claims department records, particularly railroad employee medical records. FRA proposed that FRA representatives, or any representative of a State participating in investigative and surveillance activities under the Federal railroad safety laws and regulations, must have access to *all* records, reports, logs, and supplementary records related to (a) rail equipment accidents/incidents, including collisions and derailments; (b) highway-rail grade crossing accidents/incidents; (c) death, injuries, and illnesses, including claims and medical records; as well as all records and reports identified in § 225.25, for examination and photocopying (at no expense to the representative) in a reasonable manner during normal business hours. Further, a penalty was proposed for each instance the railroad denies a representative access to any record, report, log, and supplementary record identified above.

Comments

Most railroads representatives stated that the requirement for records to be maintained at one or more central locations was far too stringent and impracticable. In contrast, rail labor representatives agreed with the FRA proposal that railroads should have a hard copy of all records on file at a

central location designated by that railroad and that such records should be easily and readily accessible upon request.

Final Rule

*Section 225.35 Access to Records and Reports*

Section 225.35 requires that each railroad must have at least one location, and must identify the location(s), where both federal and State inspectors, and authorized representatives, have centralized *access* to a copy of all records and reports provided for in this Part. Each railroad must identify at least one location where a copy of any record or report is accessible for inspection by maintaining a list of such establishments in the office where the railroad's reporting officer conducts his or her business. Further, inspectors and representatives must be able to access within a reasonable time, but in any event no later than four business hours after the request, a hard copy of the signed ''Rail Equipment Accident/Incident Report'' (Form FRA F 6180.54) and the ''Highway-Rail Grade Crossing Accident/Incident Report'' (Form FRA F 6180.57), as well as a hard copy of all other records and reports pursuant to Part 225. This requirement also includes access to a hard copy of *any* report submitted to FRA via magnetic media or, electronically, over telephonic lines, and also includes copies of the records and reports identified in § 225.25.

Note that the requirement under § 225.35 does not state that original records and reports must be kept at a centralized location by the railroad. Rather, it states that each railroad must have a list (in the office where the railroad's reporting officer conducts his or her official duties/business) which identifies at least one location where a copy of all records and reports pursuant to Part 225 may be accessed by the inspector or other authorized representative. The four business hours time period affords railroads sufficient time to fulfill any record request.

*10. Appendix A Schedule of Penalties*

Proposal

FRA proposed that Appendix B to Part 225 would be redesignated as Appendix A and would be revised to add penalties for the following sections: § 225.33, ''Failure to Adhere to the Internal Control Plan''; § 225.39, ''Failure to Inform Employer of Injury and/or Illness'' and ''Failure to Provide Employee with a Copy of Form FRA F 6180.98''; and § 225.35, ''Access to Records and Reports.'' Additionally, the rule proposed that the dual entries under each of paragraphs (a), (b), and (d) of § 225.12 would be coded ''(1)'' and ''(2),'' respectively, to allow the proper entry of data into FRA's enforcement database. Further, the penalties for violations of § 225.12(a) code (2) would be increased, in light of the 1992 amendments to the Federal Railroad Safety Act of 1970 which increased the minimum penalty and settlement to $500.

Comments

Railroad representatives opposed the addition of any penalty. Rail labor representatives opposed the addition of a penalty against the employee for his or her ''failure to notify the railroad within seven calendar days of incurring an injury or illness'' but favored the addition of a penalty for both § 225.33, the railroad's failure to adhere to its Internal Control Plan, and § 225.39, the railroad's failure to provide the employee with a copy of Form FRA F 6180.98 (the ''Railroad Employee Injury and/or Illness Record'').

Final Rule

*Appendix A Schedule of Penalties*

The Schedule of Civil Penalties, Appendix A, contains additional penalties for violations of § 225.33(1), ''Failure to Adopt the Internal Control Plan''; § 225.33(2), ''Inaccurate Reporting due to Failure to Comply with the Internal Control Plan''; § 225.33(3), ''Failure to Comply with the Intimidation/Harassment Policy in the Internal Control Plan''; and § 225.35, ''Access to Records and Reports.'' The dual entries under each of paragraphs (a), (b), and (d) of § 225.12 are coded ''(1)'' and ''(2),'' respectively, to allow the proper entry of data into FRA's enforcement database. The penalties for violations of § 225.12(a) code (2) are increased, in light of the 1992 amendments to the Federal Railroad Safety Act of 1970 which increased the minimum penalty and settlement to $500.

*11. Revision of Title 49, United States Code*

On July 5, 1994, all the general and permanent Federal railroad safety laws were simultaneously repealed, reenacted without substantive change, and recodified as positive law in Title 49 of the United States Code by Public Law 103–272. Due to this change, Part 225 is amended throughout to reference the newly codified provisions.

Regulatory Impact

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; February 26, 1979). This final rule also has been reviewed under Executive Order 12866 and is considered ''nonsignificant'' under that Order.

AAR stated in its written comments that FRA is required by law to explain its noncompliance with Executive Order 12866. AAR and member railroads claimed that GAO's 1989 audit on accident/incident reporting was outdated and that GAO's findings should not be considered for this rulemaking. GAO's audit concluded that only one railroad, out of the five it studied, had a written ICP and, only that railroad did not have serious errors in accident/incident reporting. GAO found that the other railroads underreported the actual number of reportable accidents and incidents, and that many of the reports submitted to FRA contained inaccurate or incomplete information. During the several days of public hearings and in the written comments provided in response to this rulemaking, there was no statement from any party that an independent audit was conducted by any railroad to determine whether that railroad was properly reporting accidents and incidents; nor did any railroad state that even an internal audit was performed to determine whether the GAO audit was in fact outdated. Based on the lack of empirical evidence, FRA rejects AAR's claim that it is in noncompliance with Executive Order 12866.

Although the rulemaking is ''nonsignificant,'' FRA nonetheless has prepared a regulatory impact analysis addressing the economic impact of the final rule. The regulatory evaluation estimates the economic costs and consequences of this final rule as well as its anticipated benefits of the impact. This regulatory impact analysis has been placed in the docket and is available for public inspection and copying during normal business hours in Room 8201, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address. FRA has assessed quantitative measurements of the costs and benefits expected from the implementation of this rule. The Net Present Value (NPV) of the net costs is

$2.34 million or, $117,000 per year. Over a 20-year period, the NPV of the estimated quantifiable societal benefits is $2.62 million, and the NPV of the estimated quantifiable societal costs is $4.96 million. Assuming the improved data generated by this rule led to regulatory decisions that provided the margin of safety necessary to prevent even one rail-related death over 20 years, this rule would produce quantified benefits equaling the quantified costs. Thus, it is FRA's position that the qualitative benefits as a result of this final rule, *i.e.*, the collection of consistent and uniform data and the value of well focused regulatory decisions and properly targeted compliance activities, will far exceed the costs.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Some small entities (*e.g.*, tourist, scenic, museum and excursion railroads) expressed a concern for FRA's accident reporting NPRM due to the proposal to include ''Volunteers'' who perform safety-sensitive functions or who operate on-track equipment in the ''Worker on Duty'' classification. This concern was based on the fact that tourist railroads would have to collect and report to FRA the number of safety-sensitive hours its volunteers worked each month. Tourist and museum railroads viewed this proposal as being excessively burdensome. This final rule revises this proposal so that there are new categories for the classification of ''Volunteer'' on Form FRA F 6180.55. Further, the final rule eliminates the proposal that would have required railroads to collect and report any of the hours worked by volunteers.

The final rule requires railroads to implement an Internal Control Plan (ICP) for their railroad accident reporting process. This requirement is a process standard that will promote the accuracy of the reporting process. The requirement does not tell the railroads how to develop and implement an ICP or how the lines of communication should be established. Nor does the ICP dictate who is responsible for which functions or information exchange. The final rule adopts an ICP which allows railroads greater flexibility in design and implementation. Therefore, the needs, resources, and suitability of an ICP for each railroad can be reflected in its implementation. Most small railroads will be burdened proportionately less by this requirement than large or medium sized railroads.

Small railroads also expressed some concern for the proposal to calculate costs associated with damage to (i) On-track equipment, (ii) signal equipment, (iii) track, (iv) track structures and roadbed, and (v) costs of equipment rental and operation. The proposed damage worksheet required the damages to be estimated using the costs associated with acquiring new parts. This differed greatly from the current methods that railroads use to estimate accident damages. This potentially created problems and additional burdens for small railroads because they generally perform repairs with used or refurbished parts. This final rule does not adopt this method of calculating accident damages and does not adopt use of the property damage worksheet by railroads. The burden on small railroads therefore has been reduced with elimination of this proposal.

FRA appreciates the concerns small railroads and tourist operations expressed concerning the impact the accident reporting and other regulations have on these entities. As stated previously, there is legislation before Congress (the ''Department of Transportation Regulatory Reform Act of 1996'') which, if passed, would amend 49 U.S.C. 20901(a) to eliminate the requirement that railroads file notarized monthly reports with FRA regarding accidents and incidents on their properties. The amendment also would allow the Secretary to specify the frequency with which reports must be filed; provide discretion to set different reporting requirements for different classes of railroads; and facilitate electronic filing and a corresponding reduction in paper filings. It is believed these amendments would reduce unnecessary expense and delay associated with filing monthly reports, particularly for small railroads and tourist operations which may have no events to report for a particular month.

In reviewing the economic impact of the rule, FRA has concluded that it will have a small economic impact on small entities. Therefore, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

FRA has prepared a regulatory flexibility assessment addressing the impact of the final rule on small entities. This regulatory flexibility assessment has been placed in the docket and is available for public inspection and copying during normal business hours in Room 8201, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Copies may also be obtained by submitting a written request to the FRA Docket Clerk at the above address.

*Paperwork Reduction Act*

The information collections contained in the accident reporting NPRM were approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) under control number 2130–0500. This approval will expire on June 30, 1997. This final rule contains amendments to the approved information collections, and these revisions are subject to review by OMB under the Paperwork Reduction Act of 1995. The sections that contain the new and/or revised information collection requirements and the estimated time to fulfill each requirement are as follows:

| Proposed section | Brief description | Estimated average time |
|---|---|---|
| 225.19(b), 225.21(e) | Form FRA F 6180.57—Highway-Rail Grade Crossing Accident/Incident Report | 4 hours. |
| 225.19(c), 225.21(a) | Form FRA F 6180.54—Rail Equipment Accident/Incident Report | 2 hours. |
| 225.19(d), 225.21(c) | Form FRA F 6180.55a—Railroad Injury and Illness Summary (Continuation Sheet) | 10 minutes. |
| 225.21(b) | Form FRA F 6180.55—Railroad Injury and Illness Summary | 45 minutes. |
| 225.21(d) | Form FRA F 6180.56—Annual Railroad Report of Manhours and Casualties by State. | 3 hours. |
| 225.21(g) | Form FRA F 6180.78—Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report. | 15 min./2 hours. |
| 225.21(h), 225.25(a) | Form FRA F 6180.98—Railroad Employee Injury and/or Illness Record | 30 minutes. |
| 225.21(i), 225.25(b) | Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record | 30 minutes. |

| Proposed section | Brief description | Estimated average time |
|---|---|---|
| 225.25(h) | Monthly List of Injuries and Illnesses | 5 hours (Class I RR). 45 minutes (RR with 400,000 manhours or more, excluding Class I RR). 10 minutes (RR with less than 400,000 manhours) |
| 225.33(a) | Internal Control Plans | 32 hours (Class I RR). 20 hours (RR with 400,000 manhours or more, excluding Class I RR)) 1.75 hours (RR with less than 400,000 manhours). |
| 225.37(b)(2), 225.37(c)(1) | FRA F Form 6180.99—Batch Control Form | 10 minutes. |
| 225.25(c) | Copy of Railroad Employee Injury and/or Illness Record to Employee | 2 minutes. |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information shall have practical utility; on the accuracy of FRA''s estimates of the burden of the information collection requirements; on the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Gloria Swanson at (202) 501–4982.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Federal Railroad Administration, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Ms. Gloria Swanson, Federal Railroad Administration, Room 8301, RRS–211, 400 Seventh Street, S.W., Washington, D.C. 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements when they do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new or revised information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

*Environmental Impact*

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. It has been determined that this rule will not have any effect on the quality of the environment.

*Federalism Implications*

This rule will not have a substantial effect 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

List of Subjects in 49 CFR Part 225

Railroad accident reporting rules, Railroad safety.

The Final Rule

In consideration of the foregoing, FRA amends part 225, Title 49, Code of Federal Regulations as follows:

## PART 225—[AMENDED]

1. The authority citation for part 225 is revised to read as follows:

Authority: 49 U.S.C. 20901, 20102, 322(a), 21302, 21304, formerly codified at 45 U.S.C. 38, 42, 43, and 43a; 49 U.S.C. 20102–20103, 20107, 20108, 20110, 20131–20143, 21301–21302, 21304, 21311, 24902, formerly codified at 45 U.S.C. 39, 431, 437, and 438; 49 U.S.C. 103, 49 U.S.C. 20901–20902, 21302, formerly codified at 49 App. U.S.C. 1655(e)(1)(K); 49 CFR 1.49 (c), (g), and (m).

2. By revising § 225.1 to read as follows:

### § 225.1 Purpose.

The purpose of this part is to provide the Federal Railroad Administration with accurate information concerning the hazards and risks that exist on the Nation's railroads. FRA needs this information to effectively carry out its regulatory responsibilities under 49 U.S.C. chapters 201–213. FRA also uses this information for determining comparative trends of railroad safety and to develop hazard elimination and risk reduction programs that focus on preventing railroad injuries and accidents. Issuance of these regulations under the federal railroad safety laws and regulations preempts States from prescribing accident/incident reporting requirements. Any State may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accidents/incidents and injuries/illnesses which occur in that State.

3. By revising § 225.3 to read as follows:

### § 225.3 Applicability.

This part applies to all railroads except—

(a) A railroad that operates freight trains only on track inside an installation which is not part of the general railroad system of transportation

or that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation and used for freight operations.

(b) Rail mass transit operations in an urban area that are not connected with the general railroad system of transportation.

(c) A railroad that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation that is insular. An operation is not considered insular if one or more of the following exists on its line:

(1) A public highway-rail grade crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a railroad, *i.e.*, its operations are within 30 feet of those of any railroad.

4. By revising § 225.5 to read as follows:

**§ 225.5 Definitions**

As used in this part—

*Accident/incident* means:

(1) Any impact between railroad on-track equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle or pedestrian at a highway-rail grade crossing;

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed;

(3) Any event arising from the operation of a railroad which results in:

(i) Death to any person;

(ii) Injury to any person that requires medical treatment;

(iii) Injury to a railroad employee that results in:

(A) A day away from work;

(B) Restricted work activity or job transfer; or

(C) Loss of consciousness; or

(4) Occupational illness of a railroad employee. *Accountable injury or illness* means any condition, not otherwise reportable, of a railroad worker that is associated with an event, exposure, or activity in the work environment that causes or requires the worker to be examined or treated by a qualified health care professional. Such treatment would usually occur at a location other than the work environment; however, it may be provided at any location, including the work site.

*Accountable rail equipment accident/incident* means any event not otherwise reportable, involving the operation of on-track equipment that causes physical damage to either the on-track equipment or the track upon which such equipment was operated and that requires the removal or repair of rail equipment from the track before any rail operations over the track can continue. An accountable rail equipment accident/incident, if not tended to, thus would disrupt railroad service. Examples of ''disruption of service'' would include: loss of main track; one or more derailed wheels; any train failing to arrive or depart at its scheduled time; one or more cars or locomotives taken out of service; or rerouting trains due to a damaged car or locomotive.

*Arising from the operation of a railroad* includes all activities of a railroad that are related to the performance of its rail transportation business.

*Day away from work* is any day subsequent to the day of the injury or diagnosis of occupational illness that a railroad employee does not report to work for reasons associated with his or her condition.

*Day of restricted work activity* is any day that a employee is restricted (as defined below) in his or her job following the day of the injury or diagnosis of occupational illness.

*Employee human factor* includes any of the accident causes signified by the train accident cause codes listed under ''Train Operation—Human Factors'' in the current ''FRA Guide for Preparing Accidents/Incidents Reports,'' except for those train accident cause codes pertaining to non-railroad workers. For purposes of this definition ''employee'' includes the classifications of Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, and Worker on Duty—Volunteer.

*Establishment* means a single physical location where workers report to work, where business is conducted or where services or operations are performed, for example, an operating division, general office, and major installation, such as a locomotive or car repair or construction facility.

*First aid treatment* means treatment limited to simple procedures used to treat minor conditions, such as abrasions, cuts, bruises, and splinters. First aid treatment is typically confined to a single treatment and does not require special skills or procedures.

*FRA representative* means the Associate Administrator for Safety, FRA; the Associate Administrator's delegate (including a qualified State inspector acting under part 212 of this chapter); the Chief Counsel, FRA; or the Chief Counsel's delegate.

*Highway-rail grade crossing* means a location where a public highway, road, street, or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

*Joint operations* means rail operations conducted on a track used jointly or in common by two or more railroads subject to this part or operation of a train, locomotive, car, or other on-track equipment by one railroad over the track of another railroad.

*Medical treatment* includes any medical care or treatment beyond ''first aid'' regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include preventive emotional trauma counseling provided by the railroad's employee counseling and assistance officer *unless* the participating worker has been diagnosed as having a mental disorder that was significantly caused or aggravated by an accident/incident and this condition requires a regimen of treatment to correct.

*Non-train incident* means an event that results in a reportable casualty, but does not involve the movement of on-track equipment nor cause reportable damage above the threshold established for train accidents.

*Occupational illness* means any abnormal condition or disorder, of any person who falls under the definition for the classifications of Worker on Duty—Employee, Worker on Duty—Contractor, or Worker on Duty—Volunteer, other than one resulting from injury, caused by environmental factors associated with the person's railroad employment, including, but not limited to, acute or chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion, or direct contact.

*Person* includes all categories of entities covered under 1 U.S.C. 1, including, but not limited to, a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any passenger; any trespasser or nontrespasser; any independent contractor providing goods or services to a railroad; any volunteer providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

*Qualified health care professional* is a health care professional operating within the scope of his or her license,

registration, or certification. For example, an otolaryngologist is qualified to diagnose a case of noise-induced hearing loss and identify potential causal factors, but may not be qualified to diagnose a case of repetitive motion injuries.

*Railroad* means a person providing railroad transportation.

*Railroad transportation* means any form of non-highway ground transportation that run on rails or electro-magnetic guideways, including commuter or other short-haul railroad passenger service in a metropolitan or suburban area, as well as any commuter railroad service that was operated by the Consolidated Rail Corporation as of January 1, 1979, and high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

*Train accident* means any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed.

*Train incident* means any event involving the movement of on-track equipment that results in a reportable casualty but does not cause reportable damage above the current threshold established for train accidents.

*Work environment* is the physical location, equipment, materials processed or used, and activities of a railroad employee associated with his or her work, whether on or off the railroad's property.

*Work related* means related to any incident, activity, exposure, or the like occurring within the work environment.

**§ 225.7 [Amended]**

5. By removing ''Executive Director'' in the third sentence in § 225.7(a) and adding in lieu thereof ''Freedom of Information Officer, Office of Chief Counsel'' and by removing ''Section 4 of the Accidents Reports Act (36 Stat. 351, 45 U.S.C. 41)'' in the first sentence in § 225.7(b) and adding in lieu thereof ''49 U.S.C. 20903'' and by removing ''Accident Reports Act'' in the second sentence in § 225.7(b) and adding in lieu thereof ''49 U.S.C. 20901'' and by removing ''45 U.S.C. 41'' at the end of paragraph (b) and adding in lieu thereof ''49 U.S.C. 20903.''

6. By revising § 225.11 to read as follows:

**§ 225.11 Reporting of accidents/incidents.**

Each railroad subject to this part shall submit to FRA a monthly report of all railroad accidents/incidents described in § 225.19. The report shall be made on the forms prescribed in § 225.21 in hard copy or, alternatively, by means of magnetic media or electronic submission, as prescribed in § 225.37, and shall be submitted within 30 days after expiration of the month during which the accidents/incidents occurred. Reports shall be completed as required by the current ''FRA Guide for Preparing Accidents/Incidents Reports.'' A copy of this guide may be obtained from the Office of Safety, RRS–22, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

7. By adding a sentence to § 225.12(a), by revising the second sentence in § 225.12(g)(3), and by revising §§ 225.12(h) (1) and (2) to read as follows:

**§ 225.12 Rail Equipment Accident/Incident Reports alleging employee human factor as cause; Employee Human Factor Attachment; notice to employee; employee supplement.**

(a) * * * For purposes of this section, ''employee'' is defined as a Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, or Worker on Duty—Volunteer.

* * * * *

(g) * * *

(1) * * *

(2) * * *

(3) * * * If an employee wishes to provide confidential information to FRA, the employee should not use the Supplement form (part II of Form FRA F 6180.78), but rather provide such confidential information by other means, such as a letter to the employee's collective bargaining representative, or to the Federal Railroad Administration, Office of Safety Assurance and Compliance, RRS–11, 400 Seventh Street, S.W., Washington, D.C. 20590.

* * *

(h) * * *

(1) Under 49 U.S.C. 21301, 21302, and 21304, any person who willfully files a false Supplement with FRA is subject to a civil penalty. See Appendix A to this part.

(2) Any person who knowingly and willfully files a false Supplement is subject to a $5,000 fine, or up to two years'' imprisonment, or both, under 49 U.S.C. 21311.

8. By revising the second sentence in § 225.19(b), by revising the first, third, and fifth sentences of § 225.19(c), by revising § 225.19(d), and by adding § 225.19(e) to read as follows:

**§ 225.19 Primary groups of accidents/incidents.**

* * * * *

(b) * * * In addition, whenever a highway-rail grade crossing accident/incident results in damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, or roadbed, that accident/incident shall be reported to the FRA on Form FRA F 6180.54. * * *

(c) * * * Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment, signals, track, track equipment (standing or moving) that result in damages greater than the current reporting threshold to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. * * * If the property of more than one railroad is involved in an accident/incident, the reporting threshold is calculated by including the damages suffered by all of the railroads involved. * * * The reporting threshold will be reviewed periodically and will be adjusted every year.

(d) *Group III—Death, injury, or occupational illness.* Each event arising from the operation of a railroad shall be reported on Form FRA F 6180.55a if it results in:

(1) Death to any person;

(2) Injury to any person that requires medical treatment;

(3) Injury to a railroad employee that results in:

(i) A day away from work;

(ii) Restricted work activity or job transfer; or

(iii) Loss of consciousness; or

(4) Occupational illness of a railroad employee.

(e) The accident/incident reporting threshold for calendar years 1991 through 1996 is $6,300. This threshold dollar amount will remain in effect until FRA amends that amount and provides notice in the Federal Register. The procedure for determining the reporting threshold will appear as Appendix B to Part 225.

9. By revising the fourth sentence in § 225.21(b), by removing § 225.21(f) and redesignating §§ 225.21(g) and 225.21(h) as §§ 225.21(f) and 225.21(g), respectively, and by adding new §§ 225.21 (h) and (i) to read as follows:

**§ 225.21 Forms.**

* * * * *

(b) * * * All railroads subject to this part, shall show on this form the total number of freight train miles, passenger train miles, yard switching train miles,

and other train miles run during the month.

* * * * *

(h) *Form FRA F 6180.98—Railroad Employee Injury and/or Illness Record.* Form FRA F 6180.98 or an alternative railroad-designed record shall be used by the railroads to record all reportable and accountable injuries and illnesses to railroad employees for each establishment. This record shall be completed and maintained in accordance with the requirements set forth in § 225.25.

(i) *Form FRA F 6180.97—Initial Rail Equipment Accident/Incident Record.* Form FRA F 6180.97 or an alternative railroad-designed record shall be used by the railroads to record all reportable and accountable rail equipment accidents/incidents for each establishment. This record shall be completed and maintained in accordance with the requirements set forth in § 225.25.

10. By revising § 225.25 to read as follows:

**§ 225.25 Recordkeeping.**

(a) Each railroad shall maintain either the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or an alternative railroad-designed record as described in paragraph (b) of this section of all reportable and accountable injuries and illnesses of its employees that arise from the operation of the railroad for each railroad establishment where such employees report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

(b) The alternative railroad-designed record may be used in lieu of the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) described in paragraph (a) of this section. Any such alternative record shall contain all of the information required on the Railroad Employee Injury and/or Illness Record. Although this information may be displayed in a different order from that on the Railroad Employee Injury and/or Illness Record, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad shall be consistent for each of the railroad''s reporting establishments. Railroads may list additional information on the alternative record beyond the information required on the Railroad Employee Injury and/or Illness Record. The alternative record shall contain, at a minimum, the following information:

(1) Name of railroad;

(2) Case/incident number;

(3) Full name of railroad employee;

(4) Date of birth of railroad employee;

(5) Gender of railroad employee;

(6) Social security number of railroad employee;

(7) Date the railroad employee was hired;

(8) Home address of railroad employee; include the street address, city, State, ZIP code, and home telephone number with area code;

(9) Name of facility where railroad employee normally reports to work;

(10) Address of facility where railroad employee normally reports to work; include the street address, city, State, and ZIP code;

(11) Job title of railroad employee;

(12) Department assigned;

(13) Specific site where accident/incident/exposure occurred; include the city, county, State, and ZIP code;

(14) Date and time of occurrence; military time or AM/PM;

(15) Time employee's shift began; military time or AM/PM;

(16) Whether employee was on premises when injury occurred;

(17) Whether employee was on or off duty;

(18) Date and time when employee notified company personnel of condition; military time or AM/PM;

(19) Name and title of railroad official notified;

(20) Description of the general activity this employee was engaged in prior to the injury/illness/condition;

(21) Description of all factors associated with the case that are pertinent to an understanding of how it occurred. Include a discussion of the sequence of events leading up to it; and the tools, machinery, processes, material, environmental conditions, etc., involved;

(22) Description, in detail, of the injury/illness/condition that the employee sustained, including the body parts affected. If a recurrence, list the date of the last occurrence;

(23) Identification of all persons and organizations used to evaluate or treat the condition, or both. Include the facility, provider and complete address;

(24) Description of all procedures, medications, therapy, etc., used or recommended for the treatment of the condition.

(25) Extent and outcome of injury or illness to show the following as applicable:

(i) Fatality—enter date of death;

(ii) Restricted work; number of days; beginning date;

(iii) Occupational illness; date of initial diagnosis;

(iv) Instructions to obtain prescription medication, or receipt of prescription medication;

(v) If missed one or more days of work or next shift, provide number of work days; and beginning date;

(vi) Medical treatment beyond ''first aid'';

(vii) Hospitalization for treatment as an inpatient;

(viii) Multiple treatments or therapy sessions;

(ix) Loss of consciousness;

(x) Transfer to another job or termination of employment;

(26) Each railroad shall indicate if the Railroad Injury and Illness Summary (Continuation Sheet) (FRA Form F 6180.55a) has been filed with FRA for the injury or illness. If FRA Form F 6180.55a was not filed with FRA, then the railroad shall provide an explanation of the basis for its decision.

(27) The reporting railroad shall indicate if the injured or ill railroad employee was provided an opportunity to review his or her file; and

(28) The reporting railroad shall identify the preparer's name; title; telephone number with area code; and the date the log entry was completed.

(c) Each railroad shall provide the employee, upon request, a copy of either the completed Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or the alternative railroad-designed record as described in paragraphs (a) and (b) of this section as well as a copy of any other form, record or report filed with FRA or held by the railroad pertaining to the employee's injury or illness.

(d) Each railroad shall maintain the Initial Rail Equipment Accident/Incident Record (Form FRA F 6180.97) or an alternative railroad-designed record as described in paragraph (e) of this section of reportable and accountable collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment, signals, track, or track equipment (standing or moving) that result in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and all other costs for repairs or replacement in kind for each railroad establishment where workers report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

(e) The alternative railroad-designed record may be used in lieu of the Initial Rail Equipment Accident/Incident Record (Form FRA F 6180.97). Any such alternative record shall contain all of the information required on the Initial Rail Equipment Accident/Incident Record. Although this information may be

displayed in a different order from that on the Initial Rail Equipment Accident/Incident Record, the order of the information shall be consistent from one such record to another such record. The order chosen by the railroad shall be consistent for each of the railroad's reporting establishments. Railroads may list additional information in the alternative record beyond the information required on the Initial Rail Equipment Accident/Incident Record. The alternative record shall contain, at a minimum, the following information:

(1) Date and time of accident;

(2) Reporting railroad, and accident/incident number;

(3) Other railroad, if applicable, and other railroad's accident/incident number;

(4) Railroad responsible for track maintenance, and that railroad's incident number;

(5) Type of accident/incident (derailment, collision, etc.);

(6) Number of cars carrying hazardous materials that derailed or were damaged; and number of cars carrying hazardous materials that released product;

(7) Division;

(8) Nearest city or town;

(9) State;

(10) Milepost (to the nearest tenth);

(11) Specific site;

(12) Speed (indicate if actual or estimate);

(13) Train number or job number;

(14) Type of equipment (freight, passenger, yard switching, etc.);

(15) Type of track (main, yard, siding, industry);

(16) Total number of locomotives in train;

(17) Total number of locomotives that derailed;

(18) Total number of cars in train;

(19) Total number of cars that derailed;

(20) Total amount of damage in dollars to equipment based on computations as described in the ''FRA Guide for Preparing Accidents/Incidents Reports'';

(21) Total amount of damage in dollars to track, signal, way and structures based on computations as described in the ''FRA Guide for Preparing Accidents/Incidents Reports'';

(22) Primary cause;

(23) Contributing cause;

(24) Persons injured and persons killed, broken down into the following classifications: worker on duty—employee; employee not on duty; passenger on train; nontrespasser—on railroad property; trespasser; worker on duty—contractor; contractor—other; worker on duty—volunteer; volunteer—other; and nontrespasser—off railroad property;

(25) Narrative description of the accident;

(26) Whether the accident/incident was reported to FRA;

(27) Preparer's name, title, telephone number with area code, and signature; and

(28) Date the report was completed.

(f) Each railroad shall enter each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident on the appropriate record, as required by paragraphs (a) through (e) of this section, as early as practicable but no later than seven working days after receiving information or acquiring knowledge that an injury or illness or rail equipment accident/incident has occurred.

(g) The records required under paragraphs (a) through (e) of this section may be maintained at the local establishment or, alternatively, at a centralized location. If the records are maintained at a centralized location, but not through electronic means, then a paper copy of the records that is current within 35 days of the month to which it applies shall be available for that establishment. If the records are maintained at a centralized location through electronic means, then the records for that establishment shall be available for review in a hard copy format within four business hours of FRA's request. FRA recognizes that circumstances outside the railroad's control may preclude it from fulfilling the four-business-hour time limit. In these circumstances, FRA will not assess a monetary penalty against the railroad for its failure to provide the requested documentation provided the railroad made a reasonable effort to correct the problem.

(h) A listing of all reported injuries and occupational illnesses for the previous month shall be posted in a conspicuous location at and for each railroad establishment within 30 days after expiration of the month during which the injuries and illnesses occurred. For purposes of this paragraph, this list is required to be posted only at those establishments that are in continual operation for a minimum of 90 calendar days; otherwise the list shall be posted at the next higher organizational level establishment. This listing shall be posted and shall remain continuously displayed for the next twelve consecutive months. Incidents reported for employees at that establishment shall be displayed in date sequence. The listing shall contain, at a minimum, the following information:

(1) Name and address of the establishment;

(2) Calendar year of the cases being displayed;

(3) Incident number used to report case;

(4) Date of the injury or illness;

(5) Location of incident;

(6) Regular job title of employee injured or ill;

(7) Description of the injury or condition;

(8) Number of days employee absent from work at time of posting;

(9) Number of days of work restriction for employee at time of posting;

(10) If fatality—enter date of death;

(11) Annual average number of railroad employees reporting to this establishment;

(12) Preparer's name, title, telephone number with area code, and signature; and

(13) Date the report was completed.

(14) When there are no reportable injuries or occupational illnesses associated with an establishment for that month, the listing shall make reference to this fact.

11. By revising the first sentence in § 225.27(a) and by adding a new sentence after the revised first sentence to read as follows:

**§ 225.27 Retention of records.**

(a) Each railroad shall retain the Railroad Employee Injury and/or Illness Record and the Monthly List of Injuries and Illnesses required by § 225.25 for at least five years after the end of the calendar year to which they relate. Each railroad shall retain the Initial Rail Equipment Accident/Incident Record required by § 225.25 for at least two years after the end of the calendar year to which they relate. * * *

* * * * *

12. By removing ''$250'' in the first sentence in § 225.29 and adding in lieu thereof ''$500'' and by revising the third and fourth sentences in § 225.29 to read as follows:

**§ 225.29 Penalties.**

* * * See Appendix A to this part for a statement of agency civil penalty policy. A person may also be subject to the criminal penalties provided for in 49 U.S.C. 21311.

13. By revising 225.31(f) to read as follows:

**§ 225.31 Investigations.**

* * * * *

(f) Section 20903 of title 49 of the United States Code provides that no part of a report of an accident investigation

under section 20902 of title 49 of the United States Code may be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in the accident investigation report.

14. By adding new § 225.33 as follows:

**§ 225.33 Internal Control Plans.**

(a) Each railroad shall adopt and comply with a written Internal Control Plan that shall be maintained at the office where the railroad's reporting officer conducts his or her official business. Each railroad shall amend its Internal Control Plan, as necessary, to reflect any significant changes to the railroad's internal reporting procedures. The Internal Control Plan shall be designed to maintain absolute accuracy and shall include, at a minimum, each of the following ten components:

(1) A policy statement declaring the railroad's commitment to complete and accurate reporting of all accidents, incidents, injuries, and occupational illnesses arising from the operation of the railroad, to full compliance with the letter and spirit of FRA's accident reporting regulations, and to the principle, in absolute terms, that harassment or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting such accident, incident, injury or illness will not be permitted or tolerated and will result in some stated disciplinary action against any employee, supervisor, manager, or officer of the railroad committing such harassment or intimidation.

(2) The dissemination of the policy statement; complaint procedures. Each railroad shall provide to all employees, supervisory personnel, and management the policy statement described in paragraph (a)(1). Each railroad shall have procedures to process complaints from any person about the policy stated in paragraph (a)(1) being violated, and to impose the appropriate prescribed disciplinary actions on each employee, supervisor, manager, or officer of the railroad found to have violated the policy. These procedures shall be disclosed to railroad employees, supervisors, managers, and officers. The railroad shall provide ''whistle blower'' protection to any person subject to this policy, and such policy shall be disclosed to all railroad employees, supervisors and management.

(3) Copies of internal forms and/or a description of the internal computer reporting system used for the collection and internal recording of accident and incident information.

(4) A description of the internal procedures used by the railroad for the processing of forms and/or computerized data regarding accident and incident information.

(5) A description of the internal review procedures applicable to accident and incident information collected, and reports prepared by, the railroad's safety, claims, medical and/or other departments engaged in collecting and reporting accident and incident information.

(6) A description of the internal procedures used for collecting cost data and compiling costs with respect to accident and incident information.

(7) A description of applicable internal procedures for ensuring adequate communication between the railroad department responsible for submitting accident and incident reports to FRA and any other department within the railroad responsible for collecting, receiving, processing and reporting accidents and incidents.

(8) A statement of applicable procedures providing for the updating of accident and incident information prior to reporting to FRA and a statement of applicable procedures providing for the amendment of accident and incident information as specified in the ''FRA Guide for Preparing Accidents/Incidents Reports.''

(9) A statement that specifies the name and title of the railroad officer responsible for auditing the performance of the reporting function; a statement of the frequency (not less than once per calendar year) with which audits are conducted; and identification of the site where the most recent audit report may be found for inspection and photocopying.

(10)(i) A brief description of the railroad organization, including identification of:

(A) All components that regularly come into possession of information pertinent to the preparation of reports under this part (*e.g.*, medical, claims, and legal departments; operating, mechanical, and track and structures departments; payroll, accounting, and personnel departments);

(B) The title of each railroad reporting officer;

(C) The title of each manager of such components, by component; and

(D) All officers to whom managers of such components are responsible, by component.

(ii) A current organization chart satisfies paragraphs (a)(10)(i)(C)(D) (iii) and (iv) of this section.

(b) [Reserved]

15. By adding new § 225.35 to read as follows:

**§ 225.35 Access to records and reports.**

Each railroad subject to this part shall have at least one location, and shall identify each location, where any representative of the Federal Railroad Administration or of a State agency participating in investigative and surveillance activities under Part 212 of this chapter or any other authorized representative, has centralized *access* to a copy of any record and report (including relevant claims and medical records) required under this part, for examination and photocopying in a reasonable manner during normal business hours. Such representatives shall display proper credentials when requested. Each railroad shall identify the locations where a copy of any record and report required under this part is accessible for inspection and photocopying by maintaining a list of such establishment locations at the office where the railroad's reporting officer conducts his or her official business. A copy of any record and report required under this part shall be accessible within four business hours after the request. FRA will not assess a monetary penalty against the railroad for its failure to provide the requested documentation when circumstances outside the railroad's control preclude it from fulfilling the four-business-hour time limit and the railroad has made a reasonable effort to correct the problem.

16. By adding new § 225.37 to read as follows:

**§ 225.37 Magnetic media transfer and electronic submission.**

(a) A railroad has the option of submitting the following reports, updates, and amendments by way of magnetic media (computer diskette or magnetic tape), or by means of electronic submission over telephone lines or other means:

(1) The Rail Equipment Accident/Incident Report (Form FRA F 6180.54);

(2) the Railroad Injury and Illness Summary (Form FRA F 6180.55);

(3) the Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a);

(4) the Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57); and

(5) the Batch Control Form (Form FRA F 6180.99).

(b) Each railroad utilizing the magnetic media option shall submit to FRA the following:

(1) the computer diskette or magnetic tape;

(2) the Batch Control Form (Form FRA F 6180.99); and

(3) a notarized hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55), signed by the railroad's reporting officer.

(c) Each railroad utilizing the electronic submission option shall submit to FRA the following:

(1) the Batch Control Form (Form FRA F 6180.99) which is submitted to an FRA-designated computer; and

(2) a notarized hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55), signed by the railroad's reporting officer.

(d) Each railroad employing either the magnetic media or electronic submission option, shall submit its monthly reporting data for the reports identified in paragraph (a) of this section in a year-to-date file format as described in the ''FRA Guide for Preparing Accidents/Incidents Reports.''

(e) In addition to fulfilling the requirements stated in paragraph (b) through (d) of this section, each railroad initially utilizing either the magnetic media or electronic submission option, shall submit the hard copy report(s) for each accident/incident it reports by such means. FRA will continually review the railroad''s submitted hard copy reports against the data it has submitted electronically, or by means of magnetic media. Once the magnetic media or electronic submission is in *total* agreement with the submitted hard copies of the reports for *three* consecutive reporting months, FRA will notify the railroad, in writing, that submission of the hard copy reports, except for the notarized Railroad Injury and Illness Summary, is no longer required.

Appendix A—[Removed]

17. By removing Appendix A.

18. By redesignating Appendix B as Appendix A and by revising newly redesignated Appendix A to read as follows:

APPENDIX A TO PART 225—SCHEDULE OF CIVIL PENALTIES [1]

| Section (including computer code, if applicable) | Violation | Willful violation |
|---|---|---|
| 225.9 Telephonic reports of certain accidents/incidents | $1,000 | $2,000 |
| 225.11 Reports of accidents/ incidents | 2,500 | 5,000 |
| 225.12(a): | | |
| Failure to file Railroad Employee Human Factor Attachment properly. | | |
| (1) Employee identified | 2,500 | 5,000 |
| (2) No employee identified | 1,000 | 2,000 |
| 225.12(b): | | |
| (1) Failure to notify employee properly | 2,500 | 5,000 |
| (2) Notification of employee not involved in accident | 2,500 | 5,000 |
| 225.12(c): | | |
| Failure of employing railroad to provide requested information properly | 1,000 | 2,000 |
| 225.12(d): | | |
| (1) Failure to revise report when identity becomes known | 2,500 | 5,000 |
| (2) Failure to notify after late identification | 2,500 | 5,000 |
| 225.12(f)(1): | | |
| Submission of notice if employee dies as result of the reported accident | 2,500 | 5,000 |
| 225.12(g): | | |
| Willfully false accident statement by employee | ..... | 5,000 |
| 225.13 Late reports | 2,500 | 5,000 |
| 225.17(d) Alcohol or drug involvement | 2,500 | 5,000 |
| 225.23 Joint operations | (1) | (1) |
| 225.25 Recordkeeping | 2,500 | 5,000 |
| 225.27 Retention of records | 1,000 | 2,000 |
| 225.33: | | |
| (1) Failure to adopt the Internal Control Plan | 2,500 | 5,000 |
| (2) Inaccurate reporting due to failure to comply with the Internal Control Plan | 2,500 | 5,000 |
| (3) Failure to comply with the intimidation/harassment policy in the Internal Control Plan | 2,500 | 5,000 |
| 225.35 Access to records and reports | 2,500 | 5,000 |

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $20,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. A failure to comply with § 225.23 constitutes a violation of § 225.11. For purposes of §§ 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) a missing or incomplete log entry for a particular employee's injury or illness; or (2) a missing or incomplete log record for a particular rail equipment accident or incident. Each day a violation continues is a separate offense.

**§§ 225.12, 225.13, 225.15, 225.19, 225.21 [Amended]**

19. In addition to the amendments set forth above, in 49 CFR part 225 remove the word ''rail-highway'' and add, in its place, the word ''highway-rail'' in the following places:

(a) § 225.12(b)(2)(iii);

(b) § 225.13;

(c) § 225.15(a);

(d) §§ 225.19(a) and (b); and

(e) § 225.21(e).

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

Donald M. Itzkoff,

*Deputy Federal Railroad Administrator.*

Attachments

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

Attachments 1—Review of AAR's Proposed Performance Standards

*I. Introduction*

The NPRM for amending the Accident/Incident Report Regulations (49 CFR 225) included a section on Internal Control Procedures (ICP). The Association of American Railroads (AAR) and its members objected to the ICP and, instead proposed that a Performance Standard be used to measure compliance with the reporting requirements.

Westat, Inc. reviewed the statistical implications of the Performance Standards for Railroad Accident/Incident Reporting as proposed by AAR. Our comments on AAR's proposal, are presented below.

AAR's recommended approach relies on auditing a sample of records, rather than all records, to assure a specified rate of compliance with reporting requirements. A

statistical audit can be designed to reduce the labor requirements of the monitoring process without compromising reliable reporting of reportable occurrences. It has become common in recent years to view statistical audits as an important part of Total Quality Management (TQM), rather than as just a tool of the more traditional approach to quality assurance based on acceptance testing. The key difference between the two approaches is that TQM focuses on continuous and incremental improvements of process performance, whereas acceptance testing, as in AAR's Performance Standards, simply judges acceptability of process output by applying pre-defined criteria (Gitlow, *et. al.*, Tools and Methods for the Improvement of Quality, 1989, IRWIN, Homewood, IL, Boston, MA).

*II. AAR'S Recommendations for Auditing a Sample of Records*

AAR's Performance Standards are based on methods selected from a set of statistical procedures that were developed for the U.S. military (MIL–STD–105E, 1989) as means of statistically controlling process quality in a stable environment. The military standard (Standard, for short) invoked by AAR is based on sound statistical methods. However, AAR's application of the Standard suffers from at least the five major deficiencies discussed below. A detailed summary of AAR's recommendations for applying the Standard is given in Appendix 1. Westat's critique of the proposed Performance Standards is presented here.

1. Reporting Process May Not Be Stable

AAR's reporting process has not been fully defined, it has not been tested in the real world, and its stability in the sense the Standard uses this term has not been demonstrated, yet AAR assumed that reporting will be a stable process, and applied procedures appropriate only for stable processes. The documentation of the Standard clearly states that the procedures described therein are directly applicable only to stable processes.

2. AAR's Sample Inclusion Criterion Is Flawed

The Standard established batch sampling plans and procedures for inspection by attributes. To apply the procedures, batches would be sampled at random, and sampled items classified by inspection either as ''acceptable'' or as ''defective.'' It is assumed that all items can be classified, and leaving items unclassified is not permitted. The Standard offers rules for choosing sample sizes and acceptance criteria. The Standard formulates acceptance criteria in terms of the number, or the percentage, of defectives in the sample. Acceptance criteria logic is to accept the batch if a random sample of a specified size contained fewer than a pre-determined number of defectives, otherwise, reject the batch.

In Westat's understanding of AAR's scheme for applying the Standard, a batch is ''* * * a list of all reportable and non-reportable accidents/incidents occurrences for a specified calendar year,'' ''* * * a rejection is defined as railroad's failure to report an occurrence required to be reported * * * [that is] not reported * * * '', and ''random sample[s] [would] be taken from the list of occurrences.''

AAR's lists can include two types of records, R-type, and NR-type (*See* Table 1):

* R-type records are records of occurrences classified by the railroad as reportable, and

* NR-type records are records of occurrences classified by the railroad as non-reportable.

AAR uses reportability as the inspection attribute. AAR's method counts rejections only among NR-type records, and equates the number of rejections to the number of reportable occurrences that were mistakenly reported as NR-type records. These records are identified in the second row of Table 1. Note that records in the third row of Table 1 are also in error, but they are not rejections according to the rules proposed by AAR.

AAR plans to sample lists containing records classified as R-type and NR-type, and reject a list whenever a random sample from it includes too many reportable NR-type records. For statistical reasons, this is expected to happen if the number of reportable occurrences that were classified as NR-type (*i.e.*, $N_2$ in Table 1) was large relative to the total number of records, N, in the list. It is clear that AAR's sampling plan treats R-type records and NR-type records differently. For determining sample size, AAR's sampling plan combines R-type and NR-type records. For counting rejections, it recognizes only the reporting errors in NR-type records (row 2 in Table 1) but not the reporting errors in R-type records (row 3 in Table 1). Whether in error, or not in error, R-type records are not rejected according to AAR's criteria. This implies that increasing the proportion of R-type records reduces the expected number of rejections in fixed-sized random samples. Metaphorically speaking, increasing the size of the lake (R-type records) without increasing the stock of fish in it (NR-type records) makes it harder to catch the large fish (rejected records).

We have showed that AAR's audit scheme makes audit results depend on the number of out-of-scope (non-reportable) records on the audited list. Surely, making audit results depend on data outside the audit's scope is not acceptable: valid acceptance criteria must be based only on data relevant to rejection rate, *e.g.*, the total number reportable occurrences, and the number of reportable occurrences in error.

3. AAR Overstated Compliance Rate

Using any reasonable definition of compliance rate, AAR's audit does not actually deliver the claimed compliance rate of 99-percent for accident/incident reports. In fact, we show in the Appendix 2 that AAR's sampling plan, at best, achieves 97-percent compliance rate. But even this weaker claim requires an unreasonable, and inappropriate, stretch of what one means by ''compliance rate.''

Specifically, if one were willing to assume the reporting process to be stable, with no evidence for this assumption, and if AAR was willing to adopt the full set of procedures specified in the Standard for monitoring stable processes, then such a strengthened plan would actually ensure roughly even odds for rejecting a composite list of 5,000 records of reportable occurrences that included about three-percent of miss-classified reportable occurrences (cf. Appendix 2).

However, as we showed earlier, even a plan strengthened in this way could say absolutely NOTHING about the actual under-reporting rate of reportable occurrences without determining the split between the true frequencies of reportable and non-reportable occurrences.

4. AAR's Performance Standards Lack Requirements for Maintaining Written Internal Control Procedures (ICP)

Westat believes that high quality accident/incident reporting cannot be achieved without maintaining a written ICP. The Military Standard includes a general requirement for developing written procedure (cf. General Requirements, 4.1) which would be made available to the Government representative's review upon request. This requirement is fully in line with standard business practice of making explicit all major parts of complex systems. Without written directives governing company policy and operational procedures, it is not possible to guarantee full implementation of management decisions by line employees.

In contrast, AAR's proposal for a Performance Standard does not permit FRA to direct a railroad to develop and maintain a written ICP until after the railroad failed to demonstrate compliance in two consecutive audits.

5. Non-compliance With the Standard

AAR's Performance Standards do not implement the full set of procedures prescribed in Military Standard. Most importantly, AAR's Performance Standards fail to implement the ''switching procedures.'' These are explained below. The Military Standard defines three levels of inspection (normal, tightened, and reduced) and specifies conditions for their applicability. For example, users are directed to institute tightened inspection ''when 2 out of 2, 3, 4, or 5 consecutive lots or batches have been rejected by the original inspection.'' Switching procedures, in general, refer to a set of rules that tell users when to adopt normal, tightened, or reduced inspection. The Standard clearly states that the sampling plan performance characteristics it published are valid only when the full set of procedures, including the switching procedures, are adopted. AAR's Performance Standard lacks switching rules, and AAR has not determined the compliance rate bias resulting from this lack.

## Appendix 1—Review of AAR'S Performance Standard Proposal

*1. Summary of AAR's Proposal*

Key features of the proposals by AAR's Performance Standard for Part 225 Reporting by Class I Railroads and Amtrak are as follow:

(a) Class I Railroads shall maintain Internal Control Procedures (ICP) designed to assure 99-percent compliance for accident/incident reporting under § 225.11.

(b) Accident/incident compliance rate will be estimated for reporting periods of 12

months or more from comparisons between reports filed with FRA and the railroad's own data base containing records for employee injuries, illnesses, and property damage.

(c) Key features of audits to be conducted to monitor compliance rates are as follow:

(1) Each railroad will provide to FRA a list of reportable occurrences for a specified calendar year containing all relevant information and record locations, and make records available for inspection upon FRA request, subject to special rules.

(2) FRA will draw a random sample of entries from each list in accordance with the General Inspection Level II procedures contained in Military Standard (MIL–STD–105E), and assess the sample for compliance based on procedures specified in that Standard.

(3) A rejection is defined as failure to report a reportable occurrence under § 225.19, subject to applicable procedures for resolving reporting requirements.

(4) Audits will be conducted by qualified FRA personnel. Results will be reported to railroads in writing.

(d) Failure to achieve a 99-percent compliance rate is subject to civil penalties. Railroads must propose corrective action within 30 days. FRA may reschedule new audits within a reasonable period.

(e) Failure to achieve 99-percent compliance rate for a second time is treated as in paragraph (d), except that FRA may also direct the railroad to file a written ICP with FRA.

(f) Each railroad directed to file a written ICP in accordance with this paragraph, shall maintain a written ICP, covering internal processes/procedures within the railroad's control, for the preparation of accident/incident reports under § 225.11.

(g) Railroads may petition for relief from paragraph (f) after achieving 99-percent compliance rate twice in a row.

*2. Overview of Audit Using MIL–STD–105E*

The procedure identified by AAR in paragraph (c)(2) involves the following operational steps:

Step 1. Determine the sample size (N) of reported occurrences for checking by reference to the family of single sampling plans for normal inspection that are contained in Master Table II–A. The applicable sample size is in the 2nd column of Table II–A in the row identified by the sample size code letter for the number of reported occurrences on the list. The code letter is to be found in the column headed ''General inspection level II'' using reported number of occurrences as ''Lot or batch size'' to select the row in Table I.

Step 2. Draw a random sample of N occurrences from the list of all reportable and non-reportable accidents/incident occurrences submitted to FRA by the railroad company.

Step 3. Examine relevant data items for all occurrences in the sample, classify the reporting requirements for each element, and determine the total number of rejects, *i.e.*, reportable occurrences that were reported as non-reportable (n).

Step 4. Reject the sample if the total number of rejects equaled or exceeded the acceptance number (Ac) for the sampling plan. In general, sample size and acceptance number jointly determine the stringency of reporting requirements. For the plans advocated by AAR, Ac is located at the intersection of the row for the sample size code letter, and the column for which Acceptable Quality Level (normal inspection) in Table II–A equals 1.0.

*3. Interpreting AAR's Inspection Plan and Some Comments*

The sampling plans and procedures contained in Military Standard (MIL–STD–105E, 1989) were designed for use in planning and conducting inspection by attributes. As the foreword to the documentation states, ''the sampling concept is based on the probabilistic recurrence of events when a series of lots or batches are produced in a stable environment.''

When applying the Standard (MIL–STD–105E), AAR views a railroad's list of all reportable and non-reportable accidents/incidence occurrences for a 12 month period as ''a lot or a batch.''

The Standard defines ''inspection by attributes'' as ''inspection whereby either a unit of product is classified simply as defective or non-defective, or the number of defects in the unit is counted, with respect to a given requirement or set of requirements.'' AAR has provided only an implicit definition for the attribute it proposes to use by defining rejection ''* * *as a railroad's failure to report an occurrence required to be reported under section 225.19 and not reported, * * *'' With this definition of inspection attribute, only reportable accidents that were not reported can give rise to a rejection under any circumstance.

Reportable accidents that were reported, and non-reportable accidents are always correctly classified.

Note that list size depends on the number of non-reportable occurrences. AAR has not identified the class of non-reportable occurrences that railroads expect to include on lists.

The documentation for the Standard contains three types of sampling plans: single, double, and multiple. AAR recommended the use of single sampling plans. With a single sampling plan, a single random sample is drawn from each list. The documentation recognizes that samples may need to be stratified based on ''some rational criterion,'' or may need to be collected over time. AAR has not recommended the use of stratification.

Once sampling plan type has been chosen, inspection level determines the relationship between the number of occurrences included in the list (the lot or batch size) and sample size. The documentation recognizes three general inspection levels (I, II, and III), and four special inspection levels. Inspection level II is regarded as normal. Relative to the use of a level II plan, the use of a level I plan would reduce discrimination level, and the use of a level II plan would increase it. AAR recommends the use of level II plans.

Once sampling plan and inspection levels have been selected, the remaining choice is Acceptable Quality Level (AQL). According to the documentation, ''when a continuous series of lots is considered, the AQL is the quality level which, for the purpose of sampling inspection, is the limit of a satisfactory process average.'' For a given sampling plan, inspection level, and AQL, the documentation provides tables for determining sample size, acceptance numbers, and rejection numbers.

The Standard instructs users to choose AQL in a manner that is appropriate for the level of acceptable risk. This choice involves balancing the consequences of accepting lots with too many or too few defectives. The documentation of the Standard emphasizes that, by itself, AQL does not determine the chances of accepting or rejecting individual lots or batches. AQL relates directly only to what might be expected from a series of lots of batches provided appropriate ''switching procedures'' (see discussion below) and other related steps contained in the Standard, are also implemented. AAR recommended the use of 0.01 as the AQL value for audits.

In the terminology of the Standard, ''switching procedures'' describe how the inspection procedures need to be modified under special circumstances. Normal procedures would be in effect until 2 out of 2–5 consecutive lots have been rejected. When that happens, inspection procedures would need to be tightened. There are other rules for switching from tightened to normal, and from normal to reduced, procedures.

As stated earlier, by itself, AQL does not characterize the performance of a sampling plan. AQL is the designated value of percent defectives for which lots will be accepted most of the time by the sampling procedure. Understanding the full implications of a sampling plan requires looking at its operating characteristic curve (OCC). In general, OCCs indicate the percentage of lots and batches which may be expected to be accepted under various sampling plans for a given process quality. Table X in the documentation of the Standard provides the OCCs for normal inspection of a range of sample sizes and sampling plans.

## Appendix 2—Nominal Compliance Rate Under AAR's Performance Standard

AAR's scheme monitors the rate of reporting errors of reportable accidents/incidents relative to all records (R-type and NR-type combined), which is not interesting, rather than relative to all reportable occurrences (R-type records plus reportable occurrences reported as NR-type records), which is interesting. As proposed, AAR's Performance Standards would deliver 97-percent compliance based on the former compliance rate which is of no interest. The proposed Performance Standards are completely uninformative regarding the latter compliance rate, which does matter.

We apply AAR's scheme (cf paragraph (c)(2) in the Appendix to AAR's Comments) to AAR's example of 5,000 occurrences and an acceptable quality level of one-percent, AQL = 0.01. In this case, Tables I and II–A require drawing a random sample of size 200, and set the acceptance number to five, and the rejection number to six. The list is accepted whenever the random sample of

200 records contains five or fewer rejects. It is rejected whenever it contains six or more rejects.

Under this sampling plan, railroads that underreport up to one-percent of all reportable occurrences will pass the audit most of the time.

The OCC for this sampling plan is shown in Table X–L. According to Table X–L, the acceptance rate at AQL = 0.01 is 89-percent. In other words, if the list of 5,000 occurrences contained exactly 50 defectives (1%), there would be a 89-percent chance of accepting it based on auditing a random sample of size N = 200, and using five as the maximum acceptable number of rejects.

The tables show that if the list contains 142 defectives for an underreporting rate of 2.84-percent, expected rejection rate rises to 50-percent; if it contains 232 defectives for an underreporting rate of 4.64-percent, expected rejection rate rises to 90-percent. Thus, rejection and acceptance are more or less in balance when underreporting is close to three-percent and they reach extreme values above and below it. Specifically, the chances of acceptance and rejection are about the same when the underreporting rate is about 2.8-percent. Rejection rate increases to 90-percent when underreporting is about 4.6-percent, and it decreases to about ten-percent when underreporting is about one-percent.

Noting that three-percent underreporting could be considered the same as 97-percent compliance, one may reasonably characterize a sampling plan with the above characteristics as a plan that achieves 97-percent of compliance. It is hard to justify the claim that it achieves 99-percent compliance.

TABLE 1.—CORRECT AND REPORTED EVENT/OCCURRENCE CLASSIFICATIONS

| Event/occurrence: | | Report in error | Report rejected by sampling plan | |
|---|---|---|---|---|
| Correct | Reported | | | |
| Reportable. | R-type | No ..... | No ..... | $N_1$ |
| Reportable. | NR-type | Yes ..... | Yes ..... | $N_2$ |
| Non-reportable. | R-type | Yes ..... | No ..... | $N_3$ |
| Non-reportable. | NR-type | No ..... | No ..... | $N_4$ |
| All ..... | All ..... | All ..... | All ..... | N |

BILLING CODE 4910–06–P

## FRA BATCH CONTROL FOR MAGNETIC MEDIA

**DEPARTMENT OF TRANSPORTATION**
FEDERAL RAILROAD ADMINISTRATION (FRA)

OMB Approval No.: 2130-xxxx

| 1. Name of Reporting Railroad | 2. Alphabetic Code | 3. Report Month | 4. Report Year |
|---|---|---|---|
| | | | |

**5. Rail Equipment Accident/Incident Report (Form FRA F 6180.54)**

a. Number of records on the tape or diskette _____

b. Total equipment damage (Field Number 66, Field Name EQPDMG) for all records submitted _____

c. Total track damage (Field Number 67, Field Name TRKDMG) for all records submitted _____

d. Total number of cars in the consist (the sum of the fields LOADF1, LOADP1, EMPTYF1, EMPTYP1, and CABOOSE1 - Field Numbers 56, 57, 58, 59, and 60, respectively) for all records submitted _____

**6. Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57)**

a. Number of records on the tape or diskette _____

b. Total vehicle damage (Field Number 56, Field Name VEHDMG) for all records submitted _____

c. Total number of occupants killed (Field Number 59, Field Name TOTKLD) for all records submitted _____

d. Total number of occupants (Field Number 61, Field Name TOTOCC) for all records submitted _____

**7. Railroad Injury and Illness Summary (Form FRA F 6180.55)**

a. Number of records on the tape or diskette _____

b. Total of all miles (Freight, Passenger, Yard Switching, and Other) _____

c. Railroad worker hours _____

d. Passenger miles operated _____

**8. Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a)**

a. Number of records on the tape or diskette _____

b. Total number of lost work days (Field Number 11, Field Name DAYSABS) for all records submitted _____

c. Total number of days of restricted activity (Field Number 12, Field Name DAYSRES) for all records submitted _____

| 9. Name of Reporting Officer (Type or Print) | 10. Date |
|---|---|
| | |

FORM FRA F 6180.99

**ATTACHMENT 2**

**DEPARTMENT OF TRANSPORTATION**
FEDERAL RAILROAD ADMINISTRATION (FRA)

# RAIL EQUIPMENT ACCIDENT/INCIDENT REPORT

OMB Approval No.: 2130-xxxx

| | | |
|---|---|---|
| 1. Name of Reporting Railroad | 1a. Alphabetic Code | 1b. Railroad Accident/Incident No. |
| 2. Name of Other Railroad Involved in Train Accident/Incident | 2a. Alphabetic Code | 2b. Railroad Accident/Incident No. |
| 3. Name of Railroad Responsible for Track Maintenance *(single entry)* | 3a. Alphabetic Code | 3b. Railroad Accident/Incident No. |
| 4. U. S. DOT-AAR Grade Crossing Identification Number | 5. Date of Accident/Incident month / day / year | 6. Time of Accident/Incident AM ☐ PM ☐ |

| | | | | | | |
|---|---|---|---|---|---|---|
| 7. Type of Accident/ Incident *(single entry in code box)* | 1. Derailment<br>2. Head on collision<br>3. Rear end collision | 4. Side collision<br>5. Raking collision<br>6. Broken train collision | 7. Hwy-rail crossing<br>8. RR grade crossing<br>9. Obstruction | 10. Explosion-detonation<br>11. Fire/violent rupture<br>12. Other impacts | 13. Other *(describe in narrative)* | Code |

| | | | | |
|---|---|---|---|---|
| 8. Cars Carrying HAZMAT | 9. HAZMAT Cars Damaged/ Derailed | 10. Cars Releasing HAZMAT | 11. People Evacuated | 12. Division |

| | | | | |
|---|---|---|---|---|
| 13. Nearest City/ Town | 14. Mileport *(to nearest tenth)* | 15. State Abbr. / Code | 16. County | |

| | | | | |
|---|---|---|---|---|
| 17. Temperature (F) *(specify if minus)* ° F | 18. Visibility *(single entry)*<br>1. Dawn 3. Dusk<br>2. Day 4. Dark / Code | 19. Weather *(single entry)*<br>1. Clear 3. Rain 5. Sleet<br>2. Cloudy 4. Fog 6. Snow / Code | 20. Type of Track<br>1. Main 3. Siding<br>2. Yard 4. Industry / Code | |

| | | | |
|---|---|---|---|
| 21. Track Name/ Number | 22. FRA Track Class (1-6, X) / Code | 23. Annual Track Density *(gross tons in millions)* | 24. Time Table Direction<br>1. North 3. East<br>2. South 4. West / Code |

| | | | |
|---|---|---|---|
| 25. Type of Equipment Consist *(single entry)*<br>1. Freight train 4. Work train 7. Yard/switching<br>2. Passenger train 5. Single car 8. Light loco(s).<br>3. Commuter train 6. Cut of cars 9. Maint./inspect. car / Code | 26. Was Equipment Attended?<br>1. Yes 2. No / Code | 27. Train Number/Symbol | |

| | | |
|---|---|---|
| 28. Speed *(recorded speed, if available)*<br>R - Recorded<br>E - Estimated MPH / Code | 30. Method(s) of Operation *(enter code(s) that apply)*<br>a. ATCS g. Automatic block m. Special instructions o. Other *(specify in narrative)*<br>b. Auto train control h. Current of traffic n. Other than main track rules<br>c. Auto train stop i. Time table/train orders<br>d. Cab signals j. Track warrant control<br>e. Traffic control k. Direct traffic control<br>f. Interlocking l. Yard limits | Code(s) |
| 29. Trailing Tons *(gross tonnage, excluding power units)* | | |

| | | | | |
|---|---|---|---|---|
| 31. Principal Car/Unit | a. Initial and Number | b. Position in Train | c. Loaded *(yes/no)* | 32. If any railroad employees tested for drug or alcohol impairment, enter codes from reporting manual. Code(s) |
| (1) First Involved *(derailed, struck, etc.)* | | | | |
| (2) Causing *(if mechanical, cause reported)* | | | | 33. Was this consist transporting passengers? (y/n) |

| 34. Locomotive Units | a. Head End | Mid Train b. Manual | Mid Train c. Remote | Rear End d. Manual | Rear End e. Remote | 35. Cars | Loaded a. Freight | Loaded b. Pass. | Empty c. Freight | Empty d. Pass. | e. Caboose |
|---|---|---|---|---|---|---|---|---|---|---|---|
| (1) Total in Train | | | | | | (1) Total in Equipment Consist | | | | | |
| (2) Total Derailed | | | | | | (2) Total Derailed | | | | | |

| | | | |
|---|---|---|---|
| 36. Equipment Damage This Consist | 37. Track, Signal, Way, & Structure Damage | 38. Primary Cause Code | 39. Contributing Cause Code |

| Number of Crew Members | | | | Length of Time on Duty | |
|---|---|---|---|---|---|
| 40. Engineers/ Operators | 41. Firemen | 42. Conductors | 43. Brakemen | 44. Engineer/Operator Hrs: Mins: | 45. Conductor Hrs: Mins: |

| Casualties to: | 46. Railroad Employees | 47. Train Passengers | 48. Others | 49. Special Study Block |
|---|---|---|---|---|
| Fatal | | | | |
| Nonfatal | | | | |

50. Narrative Description *(Be specific, and continue on separate sheet if necessary)*

| | | |
|---|---|---|
| 51. Typed/Printed Name & Title of Preparer | 52. Signature | 53. Date |

FORM FRA F 6180.54

**ATTACHMENT 3**

**DEPARTMENT OF TRANSPORTATION**
FEDERAL RAILROAD ADMINISTRATION (FRA)

# RAILROAD INJURY AND ILLNESS SUMMARY

(Continuation Sheet)

SHEET ____ OF ____
OMB Approval No.: 2130-xxxx

| 1. Name of Reporting Railroad | 2. Alphabetic Code | 3. Report Month | 4. Report Year |
|---|---|---|---|
| | | | |

| 5a. Accident/Injury Number | 5b. Day | 5c. Time of Day | 5d. County | 5e. State | 5f. Type Person/ Job Code | 5g. Age |
|---|---|---|---|---|---|---|
| | | | | | | |

| 5h. Drug/ Alcohol Test | 5i. Injury Illness Code | 5j. Physical Act | 5k. Location | 5l. Event | 5m. Result | 5n. Cause | 5o. Number of Days Away From Work | 5p Number of Days Restricted | 5q. Exposure to Hazmat | 5r. Termination or Permanent Transfer? (y/n) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |

5s. Narrative (Up to 250 Characters)

| 5a. Accident/Injury Number | 5b. Day | 5c. Time of Day | 5d. County | 5e. State | 5f. Type Person/ Job Code | 5g. Age |
|---|---|---|---|---|---|---|
| | | | | | | |

| 5h. Drug/ Alcohol Test | 5i. Injury Illness Code | 5j. Physical Act | 5k. Location | 5l. Event | 5m. Result | 5n. Cause | 5o. Number of Days Away From Work | 5p Number of Days Restricted | 5q. Exposure to Hazmat | 5r. Termination or Permanent Transfer? (y/n) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |

5s. Narrative (Up to 250 Characters)

| 5a. Accident/Injury Number | 5b. Day | 5c. Time of Day | 5d. County | 5e. State | 5f. Type Person/ Job Code | 5g. Age |
|---|---|---|---|---|---|---|
| | | | | | | |

| 5h. Drug/ Alcohol Test | 5i. Injury Illness Code | 5j. Physical Act | 5k. Location | 5l. Event | 5m. Result | 5n. Cause | 5o. Number of Days Away From Work | 5p Number of Days Restricted | 5q. Exposure to Hazmat | 5r. Termination or Permanent Transfer? (y/n) |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | | |

5s. Narrative (Up to 250 Characters)

FORM FRA F 6180.55a

**ATTACHMENT 4**

**DEPARTMENT OF TRANSPORTATION**
FEDERAL RAILROAD ADMINISTRATION (FRA)

## RAILROAD INJURY AND ILLNESS SUMMARY

OMB Approval No.: 2130-xxxx

| 1. Name of Reporting Railroad | 2. Alphabetic Code | 3. Report Month & Year | 4. State Alphabetic Code | 5. County |
|---|---|---|---|---|
| | | | | |

| 6. Name of Reporting Officer | 7. Official Title |
|---|---|
| 8. Address | 9. Telephone *(Area Code) (Number)* |

10.

I, _____ , being first duly sworn, do say upon my oath that I
*(Name of Affiant)*
am _____ , of the railroad aforesaid and as such officer of the said railroad it is my duty to have supervision
*(Title of Office held by affiant)*
over the record of reportable incidents arising from the operation of the said railroad, and that I have caused to be compiled from the said record and to be carefully examined the annexed report in attached hardcopy forms or magnetic media or electronic submission of such incidents occurring during the month named at the head of this sheet; and that the said report is true and complete to the best of my knowledge and belief.

Subscribed and sworn to before me, a notary public in and for the State and County aforesaid, this _____ day of _____ , 19 _____ .

(Use an im-
[L.S]
pression seal) _____ _____
*(Notary Public)* *(Signature of affiant)*

**OPERATIONAL DATA & ACCIDENT/INCIDENT COUNTS FOR REPORT MONTH**

| 11. Freight Train Miles | 12. Passenger Train Miles | 13. Yard Switching Train Miles | 14. Other Train Miles |
|---|---|---|---|
| | | | |

| 15. Railroad Worker Hours | 16. Passenger Miles Operated | 17. Number of Passengers Transported |
|---|---|---|
| | | |

| 18. REPORTED CASUALTIES | | | 19. NUMBER OF FRA FORMS ATTACHED | |
|---|---|---|---|---|
| Type of Person | Fatal | Nonfatal | FRA Form Number | Number Attached |
| Worker on duty - employee | | | 6180.54 | |
| Employees not on duty | | | 6180.55a | |
| Passengers on trains | | | 6180.56 | |
| Nontrespassers/on railroad property | | | 6180.57 | |
| Trespassers | | | 6180.81 | |
| Worker on duty - contractor | | | | |
| Contractor - other | | | | |
| Worker on duty - volunteer | | | | |
| Volunteer - other | | | | |
| Nontrespassers/off railroad property | | | | |
| Grand total | | | | |

20. Remarks Section. Please describe operational, environmental, or other circumstances that account for unusual fluctuations in train miles operated, employee hours, or passenger counts.

FORM FRA F 6180.55

*This report is required by law (49 USC 20901). Failure to report can result in the imposition of civil penalties.*

**ATTACHMENT 5**

**DEPARTMENT OF TRANSPORTATION**
FEDERAL RAILROAD ADMINISTRATION (FRA)

**ANNUAL RAILROAD REPORT**
**OF**
**EMPLOYEE HOURS AND CASUALTIES, BY STATE**

OMB Approval No.: 2130-xxxx

| 1. Reporting Railroad | 2. Alphabetic Code | 3. Report Year |
|---|---|---|
| | | |

| 4. Establishments Included in this Report | 5. Average Employment in Report Year |
|---|---|
| | |

6.

| State | Employee Hours | Casualties | State | Employee Hours | Casualties |
|---|---|---|---|---|---|
| Alabama | | | Montana | | |
| Alaska | | | Nebraska | | |
| Arizona | | | Nevada | | |
| Arkansas | | | New Hampshire | | |
| California | | | New Jersey | | |
| Colorado | | | New Mexico | | |
| Connecticut | | | New York | | |
| Delaware | | | North Carolina | | |
| District of Columbia | | | North Dakota | | |
| Florida | | | Ohio | | |
| Georgia | | | Oklahoma | | |
| Idaho | | | Oregon | | |
| Illinois | | | Pennsylvania | | |
| Indiana | | | Rhode Island | | |
| Iowa | | | South Carolina | | |
| Kansas | | | South Dakota | | |
| Kentucky | | | Tennessee | | |
| Louisiana | | | Texas | | |
| Maine | | | Utah | | |
| Maryland | | | Vermont | | |
| Massachusetts | | | Virginia | | |
| Michigan | | | Washington | | |
| Minnesota | | | West Virginia | | |
| Mississippi | | | Wisconsin | | |
| Missouri | | | Wyoming | | |

| 7. Total Employee Hours for the Year | 8. Total Casualties During the Year | |
|---|---|---|
| 9. Typed Name and Title | 10. Signature | 11. Date |

FORM FRA F 6180.56

**ATTACHMENT 6**

**DEPARTMENT OF TRANSPORTATION**
FEDERAL RAILROAD ADMINISTRATION (FRA)

# HIGHWAY-RAIL GRADE CROSSING ACCIDENT/INCIDENT REPORT

OMB Approval No.: 2130-xxxx

1. Name of Reporting Railroad | 1a. Alphabetic Code | 1b. Railroad Accident/Incident

2. Name of Other Railroad Involved in Train Accident/Incident | 2a. Alphabetic Code | 2b. Railroad Accident/Incident No.

3. Name of Railroad Responsible for Track Maintenance *(single entry)* | 3a. Alphabetic Code | 3b. Railroad Accident/Incident No.

4. U. S. DOT-AAR Grade Crossing Identification Number | 5. Date of Accident/Incident month day year | 6. Time of Accident/Incident AM ☐ PM ☐

7. Nearest Railroad Station | 8. Division | 9. County | 10. State Abbr. Code

11. City *(if in a city)* | 12. Highway Name or Number Public ☐ Private ☐

**Highway User Involved**

13. Type — A. Auto, B. Truck, C. Truck-trailer, D. Pick-up truck, E. Van, F. Bus, G. School bus, H. Motorcycle, J. Other motor vehicle, K. Pedestrian, M. Other *(specify)* — Code

14. Vehicle Speed *(est. mph at impact)*

15. Direction *(geographical)* — 1. North 2. South 3. East 4. West — Code

16. Position — 1. Stalled on crossing 2. Stopped on crossing 3. Moving over crossing 4. Trapped — Code

20a. Was the highway user and/or rail equipment involved in the impact transporting hazardous materials? — 1. Highway user 2. Rail equipment 3. Both 4. Neither — Code

**Rail Equipment Involved**

17. Equipment — 1. Train *(units pulling)* 2. Train *(units pushing)* 3. Train *(standing)* 4. Car(s) *(moving)* 5. Car(s) *(standing)* 6. Light loco(s) *(moving)* 7. Light loco(s) *(standing)* 8. Other *(specify)* — Code

18. Position of Car Unit in Train

19. Circumstance — 1. Rail equipment struck highway user 2. Rail equipment struck by highway user — Code

20b. Was there a hazardous materials release by — 1. Highway user 2. Rail equipment 3. Both 4. Neither — Code

20c. State here the name and quantity of the hazardous material released, if any.

21. Temperature *(specify if minus)* °F

22. Visibility *(single entry)* — 1. Dawn 2. Day 3. Dusk 4. Dark — Code

23. Weather *(single entry)* — 1. Clear 2. Cloudy 3. Rain 4. Fog 5. Sleet 6. Snow — Code

24. Type of Equipment Consist *(single entry)* — 1. Freight train 2. Passenger train 3. Commuter train 4. Work train 5. Single car 6. Cut of cars 7. Yard/switching 8. Light loco(s). 9. Maint./inspect. car — Code

25. Track Type Used by Rail Equipment Involved — 1. Main 2. Yard 3. Siding 4. Industry — Code

26. Track Number or Name

27. FRA Track Class (1-6, X)

28. Number of Locomotive Units

29. Number of Cars

30. Consist Speed *(Recorded speed, if available)* — R - Recorded, E - Estimated — MPH — Code

31. Time Table Direction — 1. North 2. South 3. East 4. West — Code

32. Type of Crossing Warning — 1. Gates 2. Cantilever FLS 3. Standard FLS 4. Wig wags 5. Hwy. traffic signals 6. Audible 7. Crossbucks 8. Stop signs 9. Watchman 10. Flagged by crew 11. Other *(specify)* 12. None — Code(s)

33. Signaled Crossing Warning *(See reverse side for instructions and codes)* — Code

34. Whistle Ban — 1. Yes 2. No 3. Unknown — Code

35. Location of Warning — 1. Both sides 2. Side of vehicle approach 3. Opposite side of vehicle approach — Code

36. Crossing Warning Interconnected with Highway Signals — 1. Yes 2. No 3. Unknown — Code

37. Crossing Illuminated by Street Lights or Special Lights — 1. Yes 2. No 3. Unknown — Code

38. Driver's Age

39. Driver's Gender — 1. Male 2. Female — Code

40. Driver Drove Behind or in Front of Train and Struck or was Struck by Second Train — 1. Yes 2. No 3. Unknown — Code

41. Driver — 1. Drove around or thru the gate 2. Stopped and then proceeded 3. Did not stop 4. Stopped on crossing 5. Other *(specify)* — Code

42. Driver Passed Standing Highway Vehicle — 1. Yes 2. No 3. Unknown — Code

43. View of Track Obscured by *(primary obstruction)* — 1. Permanent structure 2. Standing railroad equipment 3. Passing train 4. Topography 5. Vegetation 6. Highway vehicles 7. Other *(specify)* 8. Not obstructed — Code

| Casualties to: | Killed | Injured |
|---|---|---|
| 46. Highway-Rail Crossing Users | | |
| 49. Railroad Employees | | |
| 52. Passengers on Train | | |

44. Driver was — 1. Killed 2. Injured 3. Uninjured — Code

45. Was Driver in the Vehicle? — 1. Yes 2. No — Code

47. Highway Vehicle Property Damage *(est. dollar damage)*

48. Total Number of Highway-Rail Crossing Users *(include driver)*

50. Total Number of People on Train *(include passengers and train crew)*

51. Is a Rail Equipment Accident/Incident Report Being Filed? — 1. Yes 2. No — Code

53a. Special Study Block | 53b. Special Study Block

54. Narrative Description *(Be specific, and continue on separate sheet if necessary)*

55. Typed Name and Title | 56. Signature | 57. Date

FORM FRA F 6180.57

* NOTE THAT ALL CASUALTIES MUST BE REPORTED ON FORM FRA F 6180.55A

**ATTACHMENT 7 PAGE 1**

**INSTRUCTIONS FOR COMPLETING BLOCK 33**

Only if Types 1 - 6, Item 32 are indicated, mark in Block 33 the status of the warning devices at the crossing at the time of the accident, using the following codes:

1. Provided minimum 20-second warning.

2. Alleged warning time greater than 60 seconds.

3. Alleged warning time less than 20 seconds.

4. Alleged no warning.

5. Confirmed warning time greater than 60 seconds.

6. Confirmed warning time less than 20 seconds.

7. Confirmed no warning.

If status code 5, 6, or 7 was entered, also enter a letter code explanation from the list below:

A. Insulated rail vehicle.

B. Storm/lightning damage.

C. Vandalism.

D. No power/batteries dead.

E. Devices down for repair.

F. Devices out of service.

G. Warning time greater than 60 seconds attributed to accident-involved train stopping short of the crossing, but within track circuit limits, while warning devices remain continuously active with no other in-motion train present.

H. Warning time greater than 60 seconds attributed to track circuit failure (e.g., insulated rail joint or rail bonding failure, track or ballast fouled, etc.).

J. Warning time greater than 60 seconds attributed to other train/equipment within track circuit limits.

K. Warning time less than 20 seconds attributed to signals timing out before train's arrival at the crossing/island circuit.

L. Warning time less than 20 seconds attributed to train operating counter to track circuit design direction.

M. Warning time less than 20 seconds attributed to train speed in excess of track circuit's design speed.

N. Warning time less than 20 seconds attributed to signal system's failure to detect train approach.

P. Warning time less than 20 seconds attributed to violation of special train operating instructions.

R. No warning attributed to signal system's failure to detect the train.

S. Other cause(s). Explain in Narrative Description.

**NOTICE TO RAILROAD EMPLOYEE* INVOLVED IN RAIL EQUIPMENT ACCIDENT/INCIDENT ATTRIBUTED TO EMPLOYEE HUMAN FACTOR**

**EMPLOYEE STATEMENT SUPPLEMENTING RAILROAD ACCIDENT REPORT**

**DEPARTMENT OF TRANSPORTATION**
FEDERAL RAILROAD ADMINISTRATION (FRA)

OMB Approval No.: 2130-xxxx

PART I - NOTICE TO RAILROAD EMPLOYEE INVOLVED IN RAIL EQUIPMENT ACCIDENT (To be completed by reporting railroad)

| Name of Reporting Railroad | Date of Accident/Incident ____/____/____ mo day year | Accident/Incident No. | Location of Accident/Incident (State, nearest city/town) |
|---|---|---|---|
| | | | |

| Applicable to this person? | Causes reported on Form FRA F 6180.54 Code | Description |
|---|---|---|
| ☐ Yes ☐ No | | |
| ☐ Yes ☐ No | | |

| Employee's Name (First, middle, last) | Job Title on Date of Accident | Name of Employing Railroad on Date of Accident/Incident |
|---|---|---|
| | | |

Employee's Home Address or RFD No.

**Notice to Recipient.** An accident occurred on the above date which the railroad alleges was at least partially caused by an action, lack of action, or the physical condition of a railroad employee. The railroad is sending you this notice because it believes that you had a role, but may not necessarily be the primary or only person responsible for the accident's occurrence. The railroad has reported to FRA that the primary and/or major contributing cause(s) of this accident are those listed above. Other causal factors related to this event may be described in the narrative portion of the railroad's report; a copy of which is attached.

You may submit a statement to FRA with a copy to this railroad and comment on any aspect of the railroad's report. The decision whether to submit such a statement is entirely optional on your part. If you choose to do so, please see the additional notices and instructions on the reverse of this form.

| Name of Railroad Representative | Signature of Railroad Representative | Date Signed | Date Mailed/Hand Delivered |
|---|---|---|---|
| | | | |

Name and address of railroad representative to whom form is to be returned:

PART II - EMPLOYEE STATEMENT SUPPLEMENTING RAILROAD ACCIDENT REPORT (To be completed by notified person)

**Willful false statements can result in imposition of civil penalties.**

(Continue statement on separate sheet, if required, and mail with statement)

I have carefully read this statement and confirm that it is true to the best of my knowledge and belief.

Date Mailed/Hand Delivered to FRA: _____

_____ Signature _____ Date Signed

Date Mailed/Hand Delivered to Railroad: _____

| Your Telephone Number | Home address, if different from address in Part I |
|---|---|
| Home: ( ) _____ | |
| Work: ( ) _____ | |

NOTE: This Notice and Employee Supplement under 49 CFR 225.12 are part of the reporting railroad's accident report to FRA pursuant to the accident reports statute and, as such, shall not "be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report . . . ." 49 USC 20903. See 49 CFR 225.7 (b).

FORM FRA F 6180.78 Employee includes the following classifications: Worker on Duty--Employee, Employee not on Duty, Worker on Duty--Contractor, and Worker on Duty--Volunteer.

ATTACHMENT 8

## RAILROAD EMPLOYEE INJURY AND/OR ILLNESS RECORD

**DEPARTMENT OF TRANSPORTATION**
FEDERAL RAILROAD ADMINISTRATION (FRA)

OMB Approval No.: 2130-xxxx

| 1. Railroad | 2. Case/Incident Number |
|---|---|
| | |

**EMPLOYEE INFORMATION**

| 3. Last Name, First Name, Middle Initial | 4. Date of Birth | 5. Sex (M/F) | 6. Social Security Number | 7. Date Hired |
|---|---|---|---|---|
| | | | | |

| **HOME ADDRESS:** | 8. Street Address *(include Apt. No.)* | 9. City | 10. State | 11. ZIP | 12. Home Telephone No. *(include area code)* |
|---|---|---|---|---|---|
| | | | | | |

| **ESTABLISHMENT/ FACILITY WHERE EMPLOYEE NORMALLY REPORTS:** | 13. Name of Facility | | | |
|---|---|---|---|---|
| | 14. Street Address | 15. City | 16. State | 17. ZIP |
| | | | | |

| 18. Job Title | 19. Department Assigned To |
|---|---|
| | |

**ACTIVITY/INCIDENT/EXPOSURE DESCRIPTION**

| **LOCATION WHERE ACCIDENT/ INCIDENT/ EXPOSURE OCCURRED:** | 20. Specific Site | | | |
|---|---|---|---|---|
| | 21. City | 22. County | 23. State | 24. ZIP |
| | | | | |

| 25. Is this on your premises? Yes ☐ No ☐ | 26. Date of Occurrence | 27. Time Shift Began AM ☐ PM ☐ | 28. Time of Occurrence AM ☐ PM ☐ | 29. Was person on duty? Yes ☐ No ☐ |
|---|---|---|---|---|
| | | | | |

| **COMPANY NOTIFICATION:** | 30. Date that Employee Notified Company Personnel of Condition | 31. Time that Employee Notified Company Personnel of Condition AM ☐ PM ☐ | 32. Person Notified |
|---|---|---|---|
| | | | |

33. Describe the general activity this person was engaged in prior to injury/illness.

34. Describe all factors associated with this case that are pertinent to an understanding of how it occurred. Include a discussion of the sequence of events leading up to it, and the tools, machinery, processes, material, environmental conditions, etc., involved.

FORM FRA F 6180.98

**ATTACHMENT 9 PAGE 1**

**INJURY/CONDITION INFORMATION**

35. Describe in detail the injury/condition that this person sustained. Include a discussion of the body parts affected. If this is a recurrence, list date of last occurrence.

36. Identify all persons and organizations used to evaluate and/or treat condition. (Include facility, provider, and address)

37. Describe all procedures, medications, therapy, etc., used/recommended for the treatment of condition:

38. Check any of the following consequences resulting from this injury/condition:

- ☐ Death. Date of: _____
- ☐ Restriction of work. Total days of restricted activity: _____ as of: _____
- ☐ Occupational illness. Date of initial diagnosis: _____
- ☐ Instructions to obtain prescription medication, or receipt of prescription medication.
- ☐ Missed a day of work or next shift. Actual days absent from work: _____ as of: _____
- ☐ Medical treatment. This includes any medical care or treatment beyond "first aid" that is given, or should have been given, regardless of who provided the treatment. "First Aid" treatment is limited to very simple procedures, e.g., application of a bandaid on minor scratches, cuts, abrasions, etc.
- ☐ Transfer to another job or termination of employment.
- ☐ Hospitalization for treatment as an inpatient.
- ☐ Multiple treatments or therapy sessions.
- ☐ Loss of consciousness.

39. If any of the above consequences occurred, the injury/condition is almost always reportable to FRA on Form FRA F 6180.55a. If you believe this case does not meet the reporting criteria, you must give a brief explanation below of the basis for this decision. Was the case reported? Yes ☐ No ☐

40. Has this employee been provided an opportunity to review his or her file? Yes ☐ No ☐

| 41. Preparer's Name | 42. Preparer's Title | 43. Telephone Number | 44. Date |
|---|---|---|---|
| | | | |

## INITIAL RAIL EQUIPMENT ACCIDENT/INCIDENT RECORD

**DEPARTMENT OF TRANSPORTATION**
FEDERAL RAILROAD ADMINISTRATION (FRA)

OMB Approval No.: 2130-xxxx

| | | |
|---|---|---|
| 1. Date of Accident/Incident (YY/MM/DD) | 2. Time of Accident/Incident AM / PM | |
| 3. Name of Railroad | 4. Incident Number | |
| 5. Other Railroad | 6. Incident Number | |
| 7. Railroad Responsible for Track Maintenance | 8. Incident Number | |
| 9. Type of Accident/Incident (Derailment, Collision, Obstruction, Other) | | |
| 10. Number of Hazmat Cars Damaged or Derailed | 11. Number of Hazmat Cars Releasing Product | |
| 12. Division | 13. Nearest City/Town | 14. State |
| 15. Milepost *(to nearest tenth)* | 16. Specific Site | |
| 17. Speed Actual / Estimated | 18. Train/Job Number | |
| 19. Type of Equipment (Freight, Passenger, Yard/Switching, etc.) | 20. Type of Track (Main, Yard, Siding, Industry) | |
| 21. Total Locomotive Units in Train | 22. Total Locomotives Derailed | 23. Total of Cars in Equipment Consist / 24. Total Cars Derailed |
| 25. Equipment Damage *(in dollars)* | 26. Track, Signal, Way & Structure Damage *(in dollars)* | |
| 27. Primary Cause | 28. Contributing Cause | |

| 29. Persons Injured and Killed | Injured | Killed | | Injured | Killed |
|---|---|---|---|---|---|
| Worker on duty - employee | | | Worker on duty - contractor | | |
| Employees not on duty | | | Contractor - other | | |
| Passengers on trains | | | Worker on duty - volunteer | | |
| Nontrespassers/on railroad property | | | Volunteer - other | | |
| Trespassers | | | Nontrespassers/off railroad property | | |

30. Narrative Description (Be specific, and continue on separate sheet if necessary)

31. Was this accident/incident reported to the FRA? Yes ☐ No ☐

| 32. Name of Railroad Official | 33. Signature | 34. Telephone Number | 35. Date |
|---|---|---|---|
| | | | |

FORM FRA F 6180.97

**ATTACHMENT 10**

[FR Doc. 96–14943 Filed 6–17–96; 8:45 am]
BILLING CODE 4910–06–C

federal register

Tuesday
June 18, 1996

# Part III

# Department of Defense

## Corps of Engineers

## Regulatory Guidance Letters; Notice

## DEPARTMENT OF DEFENSE

### Corps of Engineers

### Regulatory Guidance Letters Issued by the Corps of Engineers

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to provide current Regulatory Guidance Letters (RGL's) to all interested parties. RGL's are used by the Corps Headquarters as a means to transmit guidance on the permit program (33 CFR 320–330) to its division and district engineers (DE's). Each future RGL will be published in the Notice Section of the Federal Register as a means to insure the widest dissemination of this information while reducing costs to the Federal Government. The Corps no longer maintains a mailing list to furnish copies of the RGL's to the public.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph Eppard, Regulatory Branch, Office of the Chief of Engineers at (202) 272–1783.

**SUPPLEMENTARY INFORMATION:** RGL's were developed by the Corps of Engineers as a system to organize and track written guidance issued to its field agencies. RGL's are normally issued as a result of evolving policy; judicial decisions and changes to the Corps regulations or another agency's regulations which affect the permit program. RGL's are used only to interpret or clarify existing regulatory program policy, but do provide mandatory guidance to Corps district offices. RGL's are sequentially numbered and expire on a specified date. However, unless superseded by specific provisions of subsequently issued regulations or RGL's, the guidance provided in RGL's generally remains valid after the expiration date. The Corps incorporates most of the guidance provided by RGL's whenever it revises its permit regulations. We are hereby publishing all *current* RGL's, beginning with RGL 91–1 and ending with RGL 95–1. RGL 92–2 expired on 31 January 1995, and is removed from this publication. We will continue to publish each RGL in the Notice Section of the Federal Register upon issuance and in early 1997, we will again publish the complete list of all current RGL's.

Dated June 7, 1996.

Daniel R. Burns,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

Regulatory Guidance Letter (RGL 91–1)

RGL 91–1 Date: Dec 31, 1991, Expires: Dec 31, 1996

Subject: Extensions of Time For Individual Permit Authorizations

1. The purpose of this guidance is to provide clarification for district and division offices relating to extensions of time for Department of the Army permits (See 33 CFR 325.6).

2. *General:* A permittee is informed of the time limit for completing an authorized activity by General Condition #1 of the standard permit form (ENG Form 1721). This condition states that a request for an extension of time should be submitted to the authorizing official at least one month prior to the expiration date. This request should be in writing and should explain the basis of the request. The DE may consider an oral request from the permittee provided it is followed up with a written request prior to the expiration date. A request for an extension of time will usually be granted unless the DE determines that the time extension would be contrary to the public interest. The one month submittal requirement is a workload management time limit designed to prevent permittees from filing last minute time extension requests. Obviously, the one month period is not sufficient to make a final decision on all time extension requests that are processed in accordance with 33 CFR 325.2. It should be noted that a permittee may choose to request a time extension sooner than this (e.g., six months prior to the expiration date). While there is no formal time limit of this nature, a request for an extension of time should generally not be considered by the DE more than one year prior to the expiration date. A permit will automatically expire if an extension is not requested and granted prior to the applicable expiration date (See 33 CFR 325.6(d)).

3. *Requests for Time Extensions Prior to Expiration:* For requests of time extensions received prior to the expiration date, the DE should consider the following procedures if a decision on the request cannot be completed prior to the permit expiration date:

(a) The DE may grant an interim time extension while a final decision is being made; or

(b) The DE may, when appropriate, suspend the permit at the same time that an interim time extension is granted, while a final decision is being made.

4. *Requests for Time Extensions After Expiration:* A time extension cannot be granted if a time extension request is received after the applicable time limit. In such cases, a new permit application must be processed, if the permittee wishes to pursue the work. However, the DE may consider expedited processing procedures when: (1) the request is received shortly (generally 30 days) after the expiration date, (2) the DE determines that there have been no substantial changes in the attendant circumstances since the original authorization was issued, and (3) the DE believes that the time extension would likely have been granted. Expedited processing procedures may include, but are not limited to, not requiring that a new application form be submitted or issuing a 15 day public notice.

5. This guidance expires 31 December 1996 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

Regulatory Guidance Letter (RGL 92–1)

RGL 92–1 Date: 13 May 1992, Expires: 31 December 1997

Subject: Federal Agencies Roles and Responsibilities

1. Purpose: The purpose of this guidance is to clarify the Army Corps of Engineers leadership and decision-making role as ''project manager'' for the evaluation of permit applications pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. This guidance is also intended to encourage effective and efficient coordination among prospective permittees, the Corps, and the Federal resource agencies (i.e., Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS)). Implementation of this guidance will help to streamline the permit process by minimizing delays and ensuring more timely decisions, while providing a meaningful opportunity for substantive input from all Federal agencies.

2. Background:

(a) The Department of the Army Regulatory Program must operate in an efficient manner in order to protect the aquatic environment and provide fair, equitable, and timely decisions to the regulated public. Clear leadership and a predictable decision-making framework will enhance the public acceptance of the program and allow the program to

meet the important objective of effectively protecting the Nation's valuable aquatic resources.

(b) On August 9, 1991, the President announced a comprehensive plan for improving the protection of the Nation's wetlands. The plan seeks to balance two important objectives—the protection, restoration, and creation of wetlands and the need for sustained economic growth and development. The plan, which is designed to slow and eventually stop the net loss of wetlands, includes measures that will improve and streamline the current wetlands regulatory system. This Regulatory Guidance Letter is issued in accordance with the President's plan for protecting wetlands.

(c) The intent of this guidance is to express clearly that the Corps is the decision-maker and project manager for the Department of Army's Regulatory Program. The Corps will consider, to the maximum extent possible, all timely, project-related comments from other Federal agencies when making regulatory decisions. Furthermore, the Corps and relevant Federal agencies will maintain and improve as necessary their working relationships.

(d) The Federal resource agencies have reviewed and concurred with this guidance and have agreed to act in accordance with these provisions. While this guidance does not restrict or impair the exercise of legal authorities vested in the Federal resource agencies or States under the CWA or other statutes and regulations (e.g., EPA's authority under section 404(c), section 404(f), and CWA geographic jurisdiction and FWS/NMFS authorities under the Fish and Wildlife Coordination Act and the Endangered Species Act (ESA)), agency comments on Department of the Army permit applications must be consistent with the provisions contained in this regulatory guidance letter.

3. The Corps Project Management/Decision Making Role:

(a) The Corps is solely responsible for making final permit decisions pursuant to section 10 and section 404(a), including final determinations of compliance with the Corps permit regulations, the Section 404(b)(1) Guidelines, and Section 7(a)(2) of the ESA. As such, the Corps will act as the project manager for the evaluation of all permit applications. The Corps will advise potential applicants of its role as the project manager and decision-maker. This guidance does not restrict EPA's authority to make determinations of compliance with the Guidelines in carrying out its responsibilities under Sections 309 and 404© of the Clean Water Act.

(b) As the project manager, the Corps is responsible for requesting and evaluating information concerning all permit applications. The Corps will obtain and utilize this information in a manner that moves, as rapidly as practical, the regulatory process towards a final permit decision. The Corps will not evaluate applications as a project opponent or advocate—but instead will maintain an objective evaluation, fully considering all relevant factors.

(c) The Corps will fully consider other Federal agencies' project-related comments when determining compliance with the National Environmental Policy Act (NEPA), the Section 404(b)(1) Guidelines, the ESA, the National Historic Preservation Act, and other relevant statutes, regulations, and policies. The Corps will also fully consider the agencies' views when determining whether to issue the permit, to issue the permit with conditions and/or mitigation, or to deny the permit.

4. The Federal Resource Agencies' Role:

(a) It is recognized that the Federal resource agencies have an important role in the Department of the Army Regulatory Program under the CWA, NEPA, ESA, Magnuson Fisheries Conservation and Management Act, and other relevant statutes.

(b) When providing comments, Federal resource agencies will submit to the Corps only substantive, project-related information on the impacts of activities being evaluated by the Corps and appropriate and practicable measures to mitigate adverse impacts. The comments will be submitted within the time frames established in interagency agreements and regulations. Federal resource agencies will limit their comments to their respective areas of expertise and authority to avoid duplication with the Corps and other agencies and to provide the Corps with a sound basis for making permit decisions. The Federal resource agencies should not submit comments that attempt to interpret the Corps regulations or for the purposes of section 404(a) make determinations concerning compliance with the Section 404(b)(1) Guidelines. Pursuant to its authority under Section 404(b)(1) of the CWA, the EPA may provide comments to the Corps identifying its views regarding compliance with the Guidelines. While the Corps will fully consider and utilize agency comments, the final decision regarding the permit application, including a determination of compliance with the Guidelines, rests solely with the Corps.

5. Pre-Application Consultation:

(a) To provide potential applicants with the maximum degree of relevant information at an early phase of project planning, the Corps will increase its efforts to encourage pre-application consultations in accordance with regulations at 33 CFR 325.1(b). Furthermore, while encouraging pre-application consultation, the Corps will emphasize the need for early consultation concerning mitigation requirements, if impacts to aquatic resources may occur. The Corps is responsible for initiating, coordinating, and conducting pre-application consultations and other discussions and meetings with applicants regarding Department of the Army permits. This may not apply in instances where the consultation is associated with the review of a separate permit or license required from another Federal agency (e.g., the Federal Energy Regulatory Commission or the Nuclear Regulatory Commission) or in situations where resource agencies perform work for others outside the context of a specific Department of the Army permit application (e.g., the Conservation Reserve Program and technical assistance to applicants of Federal grants).

(b) For those pre-application consultations involving activities that may result in impacts to aquatic resources, the Corps will provide EPA, FWS, NMFS (as appropriate), and other appropriate Federal and State agencies, a reasonable opportunity to participate in the pre-application process. The invited agencies will participate to the maximum extent possible in the pre-application consultation, since this is generally the best time to consider alternatives for avoiding or reducing adverse impacts. To the extent practical, the Corps and the Federal resource agencies will develop local procedures (e.g., teleconferencing) to promote reasonable and effective pre-application consultations within the logistical constraints of all affected parties.

6. Applications for Individual Permits:

(a) The Corps is responsible for determining the need for, and the coordination of, interagency meetings, requests for information, and other interactions between permit applicants and the Federal Government. In this regard, Federal resource agencies will contact the Corps to discuss and coordinate any additional need for information from the applicant. The Corps will cooperate with the Federal resource agencies to ensure, to the extent practical, that information necessary for the agencies to carry out their responsibilities is obtained. If it is

determined by the Corps that an applicant meeting is necessary for the exchange of information with a Federal resource agency and the Corps chooses not to participate in such a meeting, the Federal resource agency will apprise the Corps, generally in writing, of that agency's discussions with the applicant. Notwithstanding such meetings, the Corps is solely responsible for permit requirements, including mitigation and other conditions—the Federal resource agencies must not represent their views as regulatory requirements. In circumstances where the Corps meets with the applicant and develops information that will affect the permit decision, the Corps will apprise the Federal resource agencies of such information.

(b) Consistent with 33 CFR 325, the Corps will ensure that public notices contain sufficient information to facilitate the timely submittal of project-specific comments from the Federal resource agencies. The resource agencies comments will provide specific information and/or data related to the proposed project site. The Corps will fully consider comments regarding the site from a watershed or landscape scale, including an evaluation of potential cumulative and secondary impacts.

(c) The Corps must consider cumulative impacts in reaching permit decisions. In addition to the Corps own expertise and experience, the Corps will fully consider comments from the Federal resource agencies, which can provide valuable information on cumulative impacts. Interested Federal agencies are encouraged to provide periodically to the Corps generic comments and assessments of impacts (outside the context of a specific permit application) on issues within the agencies' area of expertise.

7. General Permits:

(a) The Corps is responsible for proposing potential general permits, assessing impacts of and comments on proposed general permits, and deciding whether to issue general permits. The Corps will consider proposals for general permits from other sources, including the Federal resource agencies, although the final decision regarding the need to propose a general permit rests with the Corps. Other interested Federal agencies should provide comments to the Corps on proposed general permits. These Federal agency comments will be submitted consistent with established agreements and regulations and will focus on the Federal agencies' area(s) of expertise. The Corps will fully consider such agencies' comments in deciding whether to issue general permits, including programmatic general permits.

(b) The Corps is responsible for initiating and conducting meetings that may be necessary in developing and evaluating potential general permits. Any discussions with a State or local Government regarding proposed programmatic general permits will be coordinated through and conducted by the Corps. Prior to issuing a programmatic general permit, the Corps will ensure that the State or local program, by itself or with appropriate conditions, will protect the aquatic environment, including wetlands, to the level required by the section 404 program.

8. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Commander.

Arthur E. Williams,

*Major General, USA, Director of Civil Works.*

Regulatory Guidance Letter (92–3)

RGL 92–3 Date: 19 Aug 92, Expires: 31 Dec 97

Subject: Extension of Regulatory Guidance Letter (RGL) 86–10

RGL 86–10, subject: ''Special Area Management Plans (SAMP's)'' is extended until 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

RGL 86–10

Special Area Management Plans (SAMP's)

Issued 10/2/86, Expired 12/31/88

1. The 1980 Amendments to the Coastal Zone Management Act define the SAMP process as ''a comprehensive plan providing for natural resource protection and reasonable coastal-dependent economic growth containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses of lands and waters; and mechanisms for timely implementation in specific geographic areas within the coastal zone.'' This process of collaborative interagency planning within a geographic area of special sensitivity is just as applicable in non-coastal areas.

2. A good SAMP reduces the problems associated with the traditional case-by-case review. Developmental interests can plan with predictability and environmental interests are assured that individual and cumulative impacts are analyzed in the context of broad ecosystem needs.

3. Because SAMP's are very labor intensive, the following ingredients should usually exist before a district engineer becomes involved in a SAMP:

a. The area should be environmentally sensitive and under strong developmental pressure.

b. There should be a sponsoring local agency to ensure that the plan fully reflects local needs and interests.

c. Ideally there should be full public involvement in the planning and development process.

d. All parties must express a willingness at the outset to conclude the SAMP process with a definitive regulatory product (see next paragraph).

4. An ideal SAMP would conclude with two products:

(1) Appropriate local/State approvals and a Corps general permit (GP) or abbreviated processing procedure (APP) for activities in specifically defined situations; and

(2) A local/State restriction and/or an Environmental Protection Agency (EPA) 404© restriction (preferably both) for undesirable activities.

An individual permit review may be conducted for activities that do not fall into either category above. However, it should represent a small number of the total cases addressed by the SAMP. We recognize that an ideal SAMP is difficult to achieve, and, therefore, it is intended to represent an upper limit rather than an absolute requirement.

5. Do not assume that an environmental impact statement is automatically required to develop a SAMP.

6. EPA's program for advance identification of disposal areas found at 40 CFR 230.80 can be integrated into a SAMP process.

7. In accordance with this guidance, district engineers are encouraged to participate in development of SAMP's. However, since development of a SAMP can require a considerable investment of time, resources, and money, the SAMP process should be entered only if it is likely to result in a definitive regulatory product as defined in paragraph 4. above.

8. This guidance expires 31 December 1988 unless sooner revised or rescinded.

For the Chief of Engineers.

Peter J. Offringa,

*Brigadier General, USA, Deputy Director of Civil Works.*

Regulatory Guidance Letter (RGL–92–4)

RGL 92–4 Date: 14 Sep 1992, Expires: 21 Jan 1997

Subject: Section 401 Water Quality Certification and Coastal Zone Management Act Conditions for Nationwide Permits

1. The purpose of this Regulatory Guidance Letter (RGL) is to provide

additional guidance and clarification for divisions and districts involved in developing acceptable conditions under the Section 401 Water Quality Certifications and Coastal Zone Management Act (CZM) concurrences for the Nationwide Permit (NWP) Program. This RGL represents a clarification of 330.4(c) (2) and (3) and 330.4(d) (2) and (3), concerning when NWP Section 401 and CZM conditions should not be accepted and thus treated as a denial without prejudice. The principles contained in this RGL also apply to 401 certification and CZM concurrence conditions associated with individual permits and regional general permits.

2. Corps divisions and districts should work closely and cooperatively with the States to develop reasonable 401 and CZM conditions. All involved parties should participate in achieving the purpose of the NWP program, which is to provide the public with an expeditious permitting process while, at the same time, safeguarding the environment by only authorizing activities which result in no more than minimal individual and cumulative adverse effects. When a State certifying agency or CZM agency proposes conditions, the division engineer is responsible for determining whether 401 Water Quality Certification or CZM concurrence conditions are acceptable and comply with the provisions of 33 CFR 325.4. In most cases it is expected that the conditions will be acceptable and the division engineer shall recognize these conditions as regional conditions of the NWP's.

3. *Unacceptable Conditions:* There will be cases when certain conditions will clearly be unacceptable and those conditioned 401 certifications or CZM concurrences shall be considered administratively denied. Consequently, authorization for an activity which meets the terms and conditions of such NWP(s) is denied without prejudice.

a. Illegal conditions are clearly unacceptable. Illegal conditions would result in violation of a law or regulation, or would require an illegal action. For example, a condition which would require an applicant to obtain a 401 certification or CZM concurrence, where the State has previously denied certification or concurrence, *prior* to submitting a predischarge notification (PDN) to the Corps in accordance with PDN procedures, would violate the Corps regulation at 33 CFR 330.4(c)(6). Another example would be a case where an applicant would be required, through a condition, to apply for an individual Department of the Army permit. Another example is a requirement by the State agency to utilize the 1989 Federal Wetland Delineation Manual to establish jurisdiction.

b. As a general rule, a condition that would require the Corps or another Federal agency to take an action which we would not otherwise take and do not choose to take, would be clearly unacceptable. For example, where the certification or concurrence is conditioned to require a PDN, where the proposed activity did not previously require a PDN, the Corps should not accept that condition, since implicitly the Corps would have to accept and utilize the PDN. Another example would be a situation where the U.S. Fish and Wildlife Service is required, through a condition, to provide any type of formal review or approval.

c. Section 401 or CZM conditions which provide for limits (quantities, dimensions, etc.) different from those imposed by the NWP do not change the NWP limits.

1. Higher limits are clearly not acceptable. For example, increasing NWP 18 for minor discharges from 10 to 50 cubic yards would not be acceptable. Such conditions would confuse the regulated public and could contribute to violations.

2. Lower limits are acceptable but have the effect of denial without prejudice of those activities that are higher than the Section 401 or CZM condition limit but within the NWP limit. Thus, if an applicant obtains an individual 401 water quality certification and/or CZM concurrence for work within the limits of an NWP where the State had denied certification and/or CZM concurrence, then the activity could be authorized by the NWP.

d. A condition which would delete, modify, or reduce NWP conditions would be clearly unacceptable.

4. *Discretionary Enforcement:* The initiation of enforcement actions by the Corps, whether directed at unauthorized activities or to ensure compliance with permit conditions, is discretionary. The district engineer will consider the following situations when determining whether to enforce 401 and/or CZM conditions.

a. Unenforceable Conditions—Some conditions that a State may propose will not be reasonably enforceable by the Corps (e.g., a condition requiring compliance with the specific terms of another State permit). Provided such conditions do not violate paragraph 3 above, the conditions will be accepted by the Corps as regional conditions. However, limited Corps resources should not be utilized in an attempt to enforce compliance with 401 or CZM conditions which the district engineer believes to be essentially unenforceable, or of low enforcement priority for limited Corps resources.

b. Enforceable Conditions—Some other conditions proposed by a State may be considered enforceable (e.g., a condition requiring the applicant to obtain another State permit), but of low priority for Federal enforcement, since the Federal Government would not have required those conditions but for the State's requirement. Furthermore, the Corps will generally not enforce such State-imposed conditions except in very unusual cases, due to our limited personnel and financial resources.

5. *NWP Verification and PDN Responses:* In response to NWP verification requests and PDN's, district engineers should utilize the sample paragraphs presented below. This language should be used where conditional 401 certification or CZM concurrence has been issued. This specifically addresses situations when the conditions included with the certification or concurrence are such that the district engineer determines they are unenforceable or the district engineer cannot clearly determine compliance with the 401/CZM conditions (see 4.a.).

''Based on our review of your proposal to [describe proposal], we have determined that the activity qualifies for the nationwide permit authorization [insert NWP No(s.)], subject to the terms and conditions of the permit.

[Insert paragraph on any Corps required activity-specific conditions.]

Enclosed you will find a copy of the Section 401 Water Quality Certification and/or Coastal Zone Management special conditions, which are conditions of your authorization under Nationwide Permit [insert NWP No(s.)]. If you have questions concerning compliance with the conditions of the 401 certification or Coastal Zone Management concurrence, you should contact the [insert appropriate State agency].

If you do not or cannot comply with these State Section 401 certification conditions and/or CZM conditions, then in order to be authorized by this Nationwide Permit, you must furnish this office with an individual 401 certification or Coastal Zone Management concurrence from [insert appropriate State agency], or a copy of the application to the State for such certification or concurrence, [insert ''60 days'' for Section 401 water quality certification, unless another reasonable period of time has been determined pursuant to 33 CFR 330.4(c)(6), or insert ''six months'' for CZM concurrence] after you submit it to the State agency.''

6. This guidance expires 21 January 1997 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

*Chief, Operations, Construction Readiness Division, Directorate of Civil Works.*

Regulatory Guidance Letter (RGL 92–5)

RGL 92–5 Date: 29 October 1992, Expires: 31 December 1997

Subject: Alternatives Analysis Under the Section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act.

1. Enclosed for implementation is a joint Army Corps of Engineers/Environmental Protection Agency Memorandum to the Field on alternatives analysis for existing power plants that must be modified to meet requirements of the 1990 Clean Air Act. This guidance was developed jointly by the Corps and EPA.

2. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works.

Encl

John P. Elmore,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

EPA/Corps Joint Memorandum for the Field

Subject: Alternatives Analysis under the Section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act

1. The 1990 Clean Air Act (CAA) amendments require most electric generating plants to reduce emissions of sulfur dioxide in phases beginning in 1995 and requiring full compliance by 2010. The congressional endorsement of the industry's ability to select the most effective compliance method (e.g., sulfur dioxide scrubbers, low sulfur coal, or other methods) recognizes the expertise of the industry in these cases and is a fundamental element in the CAA market-based pollution control program. Given the need for cooling water, a substantial number of electric power generating plants are located adjacent, or in close proximity, to waters of the United States, including wetlands. Depending on the method chosen by the plants to reduce emissions, we expect that these facilities will be applying for Clean Water Act Section 404 permits for certain proposed activities.

2. The analysis and regulation under Section 404 of the Clean Water Act of activities in waters of the United States conducted by specific power plants to comply with the 1990 Clean Air Act amendments must ensure protection of the aquatic environment consistent with the requirements of the Clean Water Act. The review of applications for such projects will fully consider, consistent with requirements under the Section 404(b)(1) Guidelines, all practicable alternatives including non-aquatic alternatives, for proposed discharges associated with the method selected by the utility to comply with the 1990 Clean Air Act amendments. For the purposes of the Section 404(b)(1) Guidelines analysis, the project purpose will be that pollutant reduction method selected by the permit applicant.

3. For example, a utility may have decided to install sulfur dioxide scrubbers on an existing power plant in order to meet the new 1990 Clean Air Act standards. The proposed construction of the scrubbers, treatment ponds and a barge unloading facility could impact wetlands. In this case, the Section 404 review would evaluate practicable alternative locations and configurations for the scrubbers, ponds and of the docking facilities. The analysis will also consider practicable alternatives which satisfy the project purpose (i.e., installing scrubbers) but which have a less adverse impact on the aquatic environment or do not involve discharges into waters of the United States. However, in order to best effectuate Congressional intent reflected in the CAA that electric utilities retain flexibility to reduce sulfur dioxide emissions in the most cost effective manner, the Section 404 review should not evaluate alternative methods of complying with the Clean Air Act standards not selected by the applicant (e.g., in this example use of low sulfur coal).

4. In evaluating the scope of practicable alternatives which satisfy the project purpose (e.g., constructing additional scrubber capacity), the alternatives analysis should not be influenced by the possibility that, based on a conclusion that practicable upland alternatives are available to the applicant, the project proponent may decide to pursue other options for meeting Clean Air Act requirements. Continuing the above example, a Corps determination that practicable upland alternatives are available for scrubber waste disposal should not be affected by the possibility that an applicant may subsequently decide to select a different method for meeting the Clean Air Act standards (e.g., use of low sulfur coal that reduces waste generated by scrubbers).

5. The Corps and EPA will also recognize the tight time-frames under which the industry must meet these new air quality standards.

Robert H. Wayland,

*Director, Office of Wetlands, Oceans, Construction and Watersheds.*

John P. Elmore,

*Chief, Operations, and Readiness Division, Directorate of Civil Works.*

Regulatory Guidance Letter (RGL 93–1)

RGL 93–1 Issued: April 20, 1993, Expires: December 31, 1998

CECW–OR

Subject: Provisional Permits

1. *Purpose:* The purpose of this guidance is to establish a process that clarifies for applicants when the U.S. Army Corps of Engineers has completed its evaluation and at what point the applicant should contact the State concerning the status of the Section 401 Water Quality Certification and/or Coastal Zone Management (CZM) consistency concurrence. This process also allows for more accurate measurement of the total length of time spent by the Corps in evaluating permit applications (i.e., from receipt of a complete application until the Corps reaches a permit decision). For verification of authorization of activities under regional general permits, the Corps will use the appropriate nationwide permit procedures at 33 CFR 330.6.

2. *Background:* a. A Department of the Army permit involving a discharge of dredged or fill material cannot be issued until a State Section 401 Water Quality Certification has been issued or waived. Also, a Department of the Army permit cannot be issued for an activity within a State with a federally-approved Coastal Management Program when that activity that would occur within, or outside, a State's coastal zone will affect land or water uses or natural resources of the State's coastal zone, until the State concurs with the applicant's consistency determination, or concurrence is presumed. In many cases, the Corps completes its review before the State Section 401 Water Quality Certification or CZM concurrence requirements have been satisfied. In such cases, applicants and the public are often confused regarding who to deal with regarding resolution of any State issues.

b. The ''provisional permit'' procedures described below will facilitate a formal communication between the Corps and the applicant to clearly indicate that the applicant should be in contact with the appropriate State agencies to satisfy the State 401 Water Quality Certification or CZM concurrence requirements. In

addition, the procedures will allow for a more accurate measurement of the Corps permit evaluation time.

3. *Provisional Permit Procedures:* The provisional permit procedures are optional and may only be used in those cases where: (i) the District Engineer (DE) has made a provisional individual permit decision that an individual permit should be issued, and, (ii) the only action(s) preventing the issuance of that permit is that the State has not issued a required Section 401 Water Quality Certification (or waiver has not occurred) or the State has not concurred in the applicant's CZM consistency determination (or there is not a presumed concurrence). In such cases, the DE may, using these optional procedures, send a provisional permit to the applicant.

a. First, the DE will prepare and sign the provisional permit decision document. Then the provisional permit will be sent to the applicant by transmittal letter. (The sample transmittal letter at enclosure 1 contains the minimum information that must be provided.)

b. Next, the applicant would obtain the Section 401 Water Quality Certification (or waiver) and/or CZM consistency concurrence (or presumed concurrence). Then the applicant would sign the provisional permit and return it to the DE along with the appropriate fee and the Section 401 Water Quality Certification (or proof of waiver) and/or the CZM consistency concurrence (or proof of presumed concurrence).

c. Finally, the Corps would attach any Section 401 Water Quality Certification and/or CZM consistency concurrence to the provisional permit, then sign the provisional permit (which then becomes the issued final permit), and forward the permit to the applicant.

d. This is the same basic process as the normal standard permit transmittal process except that the applicant is sent an unsigned permit (i.e., a provisional permit) prior to obtaining the Section 401 Water Quality Certification (or waiver) and/or CZM consistency concurrence (or presumed concurrence). (See enclosure 2.) A permit can not be issued (i.e., signed by the Corps) until the Section 401 and CZM requirements are satisfied.

4. *Provisional Permit:* A provisional permit is a standard permit document with a cover sheet. The cover sheet must clearly indicate the following: that a provisional permit is enclosed, that the applicant must obtain the Section 401 Water Quality Certification or CZM concurrence from the State, that these documents must be sent to the Corps along with the provisional permit signed by the applicant, and that the Corps will issue the permit upon receipt of these materials. The issued permit is the provisional permit signed by the applicant and the Corps. The provisional permit must contain a statement indicating that the applicant is required to comply with the Section 401 Water Quality Certification, including any conditions, and/or the CZM consistency concurrence, including any conditions. At enclosure 3 is a sample cover sheet for the provisional permit.

5. *Provisional Permit Decision:* The DE may reach a final decision that a permit should be issued provided that the State issues a Section 401 Water Quality Certification and/or a CZM concurrence. In order to reach such a decision the DE must complete the normal standard permit evaluation process, prepare and sign a decision document, and prepare a standard permit, including any conditions or mitigation (i.e., a provisional permit). The decision document must include a statement that the DE has determined that the permit will be issued if the State issues a Section 401 Water Quality Certification or waiver and/or a CZM concurrence, or presumed concurrence. The standard permit will not contain a condition that requires or provides for the applicant to obtain a Section 401 Water Quality Certification and/or CZM concurrence. Once the decision document is signed, the applicant has the right to a DA permit if the State issues a Section 401 Water Quality Certification or waiver and/or a CZM concurrence, or if concurrence is presumed. Once the decision document is signed, the permittee's right to proceed can only be changed by using the modification, suspension and revocation procedures of 33 CFR 325.7, unless the State denies the Section 401 Water Quality Certification or nonconcurs with the applicant's CZM consistency determination.

6. *Enforcement:* In some cases, applicants might proceed with the project upon receipt of the provisional permit. The provisional permit is not a valid permit. In such cases, the Corps has a discretionary enforcement action to consider and should proceed as the DE determines to be appropriate. This occurs on occasion during the standard permit transmittal process. Since the Corps is not changing the normal process of sending unsigned permits to the applicant for signature, there should not be an increase in the occurrence of such unauthorized activities.

7. *Modification:* a. In most cases the Section 401 Water Quality Certification, including conditions, and/or CZM consistency concurrence, including conditions, will be consistent with the provisional permit. In such cases, the DE will simply sign the final permit and enclose the 401 water quality certification and/or CZM consistency concurrence with the final permit (i.e., the signed provisional permit).

b. In a few cases such State approval may necessitate modifications to the Corps preliminary permit decision. Such modifications will be processed in accordance with 33 CFR 325.7.

(1) When the modifications are minor and the DE agrees to such modifications, then a supplement to the provisional decision document may be prepared, as appropriate, and the permit issued with such modifications. (This should usually be done by enclosing the State 401 Water Quality Certification and/or CZM consistency concurrence to the permit, but in a few cases may require a revision to the permit document itself.)

(2) When the modification results in substantial change or measurable increase in adverse impacts or the Corps does not initially agree with the change, then the modification will be processed and counted as a separate permit action for reporting purposes. This may require a new public notice or additional coordination with appropriate Federal and/or state agencies. The provisional decision document will be supplemented or may be completely rewritten, as necessary.

8. *Denial:* If the State denies the Section 401 Water Quality Certification and/or the State nonconcurs with the applicant's CZM consistency determination, then the Corps permit is denied without prejudice.

9. This guidance expires 31 December 1998 unless sooner revised or rescinded.

For the Director of Civil Works.

3 Encls

John P. Elmore,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

Sample Provisional Permit Transmittal Letter

Dear_____:

We have completed our review of your permit application identified as [File No., appl. name, etc.] for the following proposed work:

_____

_____

_____

near/in/at _____.

Enclosed is a ''Provisional Permit.'' The provisional permit is not valid and does not authorize you to do your work. The provisional permit describes the work that will be authorized, and the General and

Special Conditions [if any] which will be placed on your final Department of the Army (DA) permit, if the State of _____ Water Quality Certification and/or Coastal Zone Management (CZM) consistency requirements are satisfied as described below. No work is to be performed in the waterway or adjacent wetlands until you have received a validated copy of the DA permit.

By Federal law no DA permit can be issued until a State Section 401 Water Quality Certification has been issued or has been waived and/or the State has concurred with a permit applicant's CZM consistency determination or concurrence has been presumed. As of this date the [State 401 certification agency] has not issued a Section 401 Water Quality Certification for your proposed work. If the [State 401 certification agency] fails or refuses to act by [date 401 certification must be issued] the Section 401 Water Quality Certification requirement will be automatically waived. Also, as of this date the [State CZM agency] has not concurred with your CZM consistency determination. If the State does not act by [six months from receipt by the State of the applicant's CZM consistency determination] then concurrence with your CZM consistency determination will automatically be presumed.

Conditions of the State Section 401 Water Quality Certification and/or the State CZM concurrence will become conditions to the final DA permit. Should the State's action on the required certification or concurrence preclude validation of the provisional permit in its current form, a modification to the provisional permit will be evaluated and you will be notified as appropriate. Substantial changes may require a new permit evaluation process, including issuing a new public notice.

Enclosure 1—Final Permit Actions; Normal Permit Process

1. Corps completes permit decision, and state 401/CZM issued/waived.
2. Corps sends unsigned permit to applicant.
3. Applicant signs permit and returns with fee.
4. Corps signs permit.

Draft Permit Process

1. Corps completes permit decision, but state 401/CZM not complete.
2. Corps sends draft permit to applicant.
3. State 401/CZM issued waived.
4. Applicant signs permit and returns with fee and 401/CZM action.
5. Corps reviews 401/CZM action and signs permit.

1. The signed draft permit with the attached 401/CZM action is to be treated as the applicant's request for a permit subject to any 401/CZM certification/concurrence including any conditions.

2. If the 401/CZM action results in a modification to the draft permit, then step 4. would be treated as a request for such modification and if we agree with the modification, then the permit would be issued with the modification and the decision document supplemented, as appropriate. If the Corps does not initially agree with the modification, or it involves a substantial change or measurable increase in adverse impacts, then the modification would be processed as a separate permit action for reporting purposes.

Enclosure 2

Once the State has issued the required Section 401 Water Quality Certification and/or concurred with your CZM consistency determination or the dates above have passed without the State acting, and you agree to the terms and conditions of the provisional permit, you should sign and date both copies and return them to us [along with your $100.00/$10.00 permit fee]. Your DA permit will not be valid until we have returned a copy to you bearing both your signature and the signature of the appropriate Corps official.

If the State denies the required Section 401 Water Quality Certification and/or nonconcurs with your CZM consistency determination, then the DA permit is denied without prejudice. If you should subsequently obtain a Section 401 Water Quality Certification and/or a CZM consistency determination concurrence, you should contact this office to determine how to proceed with your permit application.

If you have any questions concerning your State Section 401 Water Quality Certification, please contact (State 401 certification contact)

If you have any questions concerning your CZM consistency determination, please contact (State CZM contact)

If you have any other questions concerning your application for a DA permit, please contact [Corps contact] at [Corps contact telephone number].

Provisional Permit Not Valid—Do Not Begin Work

This Provisional Permit is Not Valid until:

(1) You obtain: _____ a Section 401 Water Quality Certification from (State Agency)

_____ A Coastal Zone Consistency determination concurrence from (State Agency)

(2) You sign and return the enclosed provisional permit with the State Section 401 Water Quality Certification and/or CZM concurrence and the appropriate permit fee as indicated below:

_____ $10.00
_____ $100.00
_____ No fee required

(3) The Corps signs the permit and returns it to you. Your permit is denied without prejudice, if the State denies your Section 401 Water Quality Certification and/or nonconcurs with your Coastal Zone Management consistency determination.

Do Not Begin Work

## Regulatory Guidance Letter, (RGL 93–2)

RGL 93–2 Date: 23 August 1993, Expires: 31 December 1998

Subject: Guidance on Flexibility of the 404(b)(1) Guidelines and Mitigation Banking.

1. Enclosed are two guidance documents signed by the Office of the Assistant Secretary of the Army (Civil Works) and the Environmental Protection Agency. The first document provides guidance on the flexibility that the U.S. Army Corps of Engineers should be utilizing when making determinations of compliance with the Section 404(b)(1) Guidelines, particularly with regard to the alternatives analysis. The second document provides guidance on the use of mitigation banks as a means of providing compensatory mitigation for Corps regulatory decisions.

2. Both enclosed guidance documents should be implemented immediately. These guidance documents constitute an important aspect of the President's plan for protecting the Nation's wetlands, ''Protecting America's Wetlands: A Fair, Flexible and Effective Approach'' (published on 24 August 1993).

3. This guidance expires 31 December 1998 unless sooner revised or rescinded.

For the Director of Civil Works.

2 Encls

John P. Elmore,

*Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.*

## Memorandum To the Field

Subject: Appropriate Level of Analysis Required for Evaluating Compliance With the Section 404(b)(1) Guidelines Alternatives Requirements

1. *Purpose:* The purpose of this memorandum is to clarify the appropriate level of analysis required for evaluating compliance with the Clean Water Act Section 404(b)(1) Guidelines' (Guidelines) requirements for consideration of alternatives. 40 CFR 230.10(a). Specifically, this memorandum describes the flexibility afforded by the Guidelines to make regulatory decisions based on the relative severity of the environmental impact of proposed discharges of dredged or fill material into waters of the United States.

2. *Background:* The Guidelines are the substantive environmental standards by which all Section 404 permit applications are evaluated. The Guidelines, which are binding regulations, were published by the Environmental Protection Agency at 40 CFR Part 230 on December 24, 1980. The fundamental precept of the Guidelines is that discharges of dredged or fill material into waters of the United States, including wetlands, should not occur unless it can be demonstrated that such discharges, either individually or cumulatively, will not result in unacceptable adverse effects on the aquatic ecosystem. The Guidelines

specifically require that ''no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.'' 40 CFR 230.10(a). Based on this provision, the applicant is required in every case (irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent) to evaluate opportunities for use of non-aquatic areas and other aquatic sites that would result in less adverse impact on the aquatic ecosystem. A permit cannot be issued, therefore, in circumstances where a less environmentally damaging practicable alternative for the proposed discharge exists (except as provided for under Section 404(b)(2)).

*3. Discussion:* The Guidelines are, as noted above, binding regulations. It is important to recognize, however, that this regulatory status does not limit the inherent flexibility provided in the Guidelines for implementing these provisions. The preamble to the Guidelines is very clear in this regard:

> Of course, as the regulation itself makes clear, a certain amount of flexibility is still intended. For example, while the ultimate conditions of compliance are ''regulatory'', the Guidelines allow some room for judgment in determining what must be done to arrive at a conclusion that those conditions have or have not been met.

Guidelines Preamble, ''Regulation versus Guidelines'', 45 FR 85336 (December 24, 1980).

Notwithstanding this flexibility, the record must contain sufficient information to demonstrate that the proposed discharge complies with the requirements of Section 230.10(a) of the Guidelines. The amount of information needed to make such a determination and the level of scrutiny required by the Guidelines is commensurate with the severity of the environmental impact (as determined by the functions of the aquatic resource and the nature of the proposed activity) and the scope/cost of the project.

*a. Analysis Associated With Minor Impacts*

The Guidelines do not contemplate that the same intensity of analysis will be required for all types of projects but instead envision a correlation between the scope of the evaluation and the potential extent of adverse impacts on the aquatic environment. The introduction to Section 230.10(a) recognizes that the level of analysis required may vary with the nature and complexity of each individual case:

> Although all requirements in § 230.10 must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities.

40 CFR 230.10

> Similarly, Section 230.6 (''Adaptability'') makes clear that the Guidelines: allow evaluation and documentation for a variety of activities, ranging from those with large, complex impacts on the aquatic environment to those for which the impact is likely to be innocuous. It is unlikely that the Guidelines will apply in their entirety to any one activity, no matter how complex. It is anticipated that substantial numbers of permit applications will be for minor, routine activities that have little, if any, potential for significant degradation of the aquatic environment. *It generally is not intended or expected that extensive testing, evaluation or analysis will be needed to make findings of compliance in such routine cases.*

40 CFR 230.6(9) (emphasis added)

Section 230.6 also emphasizes that when making determinations of compliance with the Guidelines, users:

> must recognize the different levels of effort that should be associated with varying degrees of impact and require or prepare commensurate documentation. *The level of documentation should reflect the significance and complexity of the discharge activity.*

40 CFR 230.6(b) (emphasis added)

Consequently, the Guidelines clearly afford flexibility to adjust the stringency of the alternatives review for projects that would have only minor impacts. Minor impacts are associated with activities that generally would have little potential to degrade the aquatic environment and include one, and frequently more, of the following characteristics: are located in aquatic resources of limited natural function; are small in size and cause little direct impact; have little potential for secondary or cumulative impacts; or cause only temporary impacts. It is important to recognize, however, that in some circumstances even small or temporary fills result in substantial impacts, and that in such cases a more detailed evaluation is necessary. The Corps Districts and EPA Regions will, through the standard permit evaluation process, coordinate with the U.S. Fish and Wildlife Service, National Marine Fisheries Service and other appropriate state and Federal agencies in evaluating the likelihood that adverse impacts would result from a particular proposal. It is not appropriate to consider compensatory mitigation in determining whether a proposed discharge will cause only minor impacts for purposes of the alternatives analysis required by Section 230.10(a).

In reviewing projects that have the potential for only minor impacts on the aquatic environment, Corps and EPA field offices are directed to consider, in coordination with state and Federal resource agencies, the following factors:

(i) Such projects by their nature should not cause or contribute to significant degradation individually or cumulatively. Therefore, it generally should not be necessary to conduct or require detailed analyses to determine compliance with Section 230.10(c).

(ii) Although sufficient information must be developed to determine whether the proposed activity is in fact the least damaging practicable alternative, the Guidelines do not require an elaborate search for practicable alternatives if it is reasonably anticipated that there are only minor differences between the environmental impacts of the proposed activity and potentially practicable alternatives. This decision will be made after consideration of resource agency comments on the proposed project. It often makes sense to examine first whether potential alternatives would result in no identifiable or discernible difference in impact on the aquatic ecosystem. Those alternatives that do not may be eliminated from the analysis since Section 230.10(a) of the Guidelines only prohibits discharges when a practicable alternative exists which would have *less adverse impact on the aquatic ecosystem*. Because evaluating practicability is generally the more difficult aspect of the alternatives analysis, this approach should save time and effort for both the applicant and the regulatory agencies.[1] By initially focusing the alternatives analysis on the question of impacts on the aquatic ecosystem, it may be possible to limit (or in some instances eliminate altogether) the number of alternatives that have to be evaluated for practicability.

(iii) When it is determined that there is no identifiable or discernible difference in adverse impact on the environment between the applicant's proposed alternative and all other practicable alternatives, then the applicant's alternative is considered as satisfying the requirements of Section 230.10(a).

[1] In certain instances, however, it may be easier to examine practicability first. Some projects may be so site-specific (e.g., erosion control, bridge replacement) that no offsite alternative could be practicable. In such cases the alternatives analysis may appropriately be limited to onsite options only.

(iv) Even where a practicable alternative exists that would have less adverse impact on the aquatic ecosystem, the Guidelines allow it to be rejected if it would have ''other significant adverse environmental consequences.'' 40 CFR 230.10(a). As explained in the preamble, this allows for consideration of ''evidence of damages to other ecosystems in deciding whether there is a 'better' alternative.'' Hence, in applying the alternatives analysis required by the Guidelines, it is not appropriate to select an alternative where minor impacts on the aquatic environment are avoided at the cost of substantial impacts to other natural environmental values.

(v) In cases of negligible or trivial impacts (e.g., small discharges to construct individual driveways), it may be possible to conclude that no alternative location could result in less adverse impact on the aquatic environment within the meaning of the Guidelines. In such cases, it may not be necessary to conduct an offsite alternatives analysis but instead require only any practicable onsite minimization.

This guidance concerns application of the Section 404(b)(1) Guidelines to projects with minor impacts. Projects which may cause more than minor impacts on the aquatic environment, either individually or cumulatively, should be subjected to a proportionately more detailed level of analysis to determine compliance or noncompliance with the Guidelines. Projects which cause substantial impacts, in particular, must be thoroughly evaluated through the standard permit evaluation process to determine compliance with all provisions of the Guidelines.

*b. Relationship Between the Scope of Analysis and the Scope/Cost of the Proposed Project*

The Guidelines provide the Corps and EPA with discretion for determining the necessary level of analysis to support a conclusion as to whether or not an alternative is practicable. Practicable alternatives are those alternatives that are ''available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.'' 40 CFR 230.10(a)(2). The preamble to the Guidelines provides clarification on how cost is to be considered in the determination of practicability:

> Our intent is to consider those alternatives which are *reasonable in terms of the overall scope/cost of the proposed project.* The term economic [for which the term ''cost'' was substituted in the final rule] might be construed to include consideration of the applicant's financial standing, or investment, or market share, a cumbersome inquiry which is not necessarily material to the objectives of the Guidelines.

Guidelines Preamble, ''Alternatives'', 45 FR 85339 (December 24, 1980) (emphasis added).

Therefore, the level of analysis required for determining which alternatives are practicable will vary depending on the type of project proposed. The determination of what constitutes an unreasonable expense should generally consider whether the projected cost is substantially greater than the costs normally associated with the particular type of project. Generally, as the scope/cost of the project increases, the level of analysis should also increase. To the extent the Corps obtains information on the costs associated with the project, such information may be considered when making a determination of what constitutes an unreasonable expense.

The preamble to the Guidelines also states that ''[i]f an alleged alternative is unreasonably expensive to the applicant, the alternative is not 'practicable.' '' Guidelines Preamble, ''Economic Factors'', 45 FR 85343 (December 24, 1980). Therefore, to the extent that individual homeowners and small businesses may typically be associated with small projects with minor impacts, the nature of the applicant may also be a relevant consideration in determining what constitutes a practicable alternative. It is important to emphasize, however, that it is not a particular applicant's financial standing that is the primary consideration for determining practicability, but rather characteristics of the project and what constitutes a reasonable expense for these projects that are most relevant to practicability determinations.

4. The burden of proof to demonstrate compliance with the Guidelines rests with the applicant; where insufficient information is provided to determine compliance, the Guidelines require that no permit be issued. 40 CFR 230.12(a)(3)(iv).

5. A reasonable, common sense approach in applying the requirements of the Guidelines' alternatives analysis is fully consistent with sound environmental protection. The Guidelines clearly contemplate that reasonable discretion should be applied based on the nature of the aquatic resource and potential impacts of a proposed activity in determining compliance with the alternatives test. Such an approach encourages effective decisionmaking and fosters a better understanding and enhanced confidence in the Section 404 program.

6. This guidance is consistent with the February 6, 1990 ''Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines.''

Signed August 23, 1993.

Robert H. Wayland, III,

*Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.*

Michael L. Davis,

*Office of the Assistant Secretary of the Army (Civil Works), Department of the Army.*

Memorandum to the Field

Subject: Establishment and Use of Wetland Mitigation Banks in the Clean Water Act Section 404 Regulatory Program

1. This memorandum provides general guidelines for the establishment and use of wetland mitigation banks in the Clean Water Act Section 404 regulatory program. This memorandum serves as interim guidance pending completion of Phase I of by the Corps of Engineers' Institute for Water Resources study on wetland mitigation banking,[2] at which time this guidance will be reviewed and any appropriate revisions will be incorporated into final guidelines.

2. For purposes of this guidance, wetland mitigation banking refers to the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands or other aquatic habitats expressly for the purpose of providing compensatory mitigation in advance of discharges into wetlands permitted under the Section 404 regulatory program. Wetland mitigation banks can have several advantages over individual mitigation projects, some of which are listed below:

(a) Compensatory mitigation can be implemented and functioning in advance of project impacts, thereby reducing temporal losses of wetland functions and uncertainty over whether the mitigation will be successful in offsetting wetland losses.

[2] The Corps of Engineers Institute for Water Resources, under the authority of Section 307(d) of the Water Resources Development Act of 1990, is undertaking a comprehensive two-year review and evaluation of wetland mitigation banking to assist in the development of a national policy on this issue. The interim summary report documenting the results of the first phase of the study is scheduled for completion in the fall of 1993.

(b) It may be more ecologically advantageous for maintaining the integrity of the aquatic ecosystem to consolidate compensatory mitigation for impacts to many smaller, isolated or fragmented habitats into a single large parcel or contiguous parcels.

(c) Development of a wetland mitigation bank can bring together financial resources and planning and scientific expertise not practicable to many individual mitigation proposals. This consolidation of resources can increase the potential for the establishment and long-term management of successful mitigation.

(d) Wetland mitigation banking proposals may reduce regulatory uncertainty and provide more cost-effective compensatory mitigation opportunities.

3. The Section 404(b)(1) Guidelines (Guidelines), as clarified by the ''Memorandum of Agreement Concerning the Determination of Mitigation under the Section 404(b)(1) Guidelines'' (Mitigation MOA) signed February 6, 1990, by the Environmental Protection Agency and the Department of the Army, establish a mitigation sequence that is used in the evaluation of individual permit applications. Under this sequence, all appropriate and practicable steps must be undertaken by the applicant to first avoid and then minimize adverse impacts to the aquatic ecosystem. Remaining unavoidable impacts must then be offset through compensatory mitigation to the extent appropriate and practicable. Requirements for compensatory mitigation may be satisfied through the use of wetland mitigation banks, so long as their use is consistent with standard practices for evaluating compensatory mitigation proposals outlined in the Mitigation MOA. It is important to emphasize that, given the mitigation sequence requirements described above, permit applicants should not anticipate that the establishment of, or participation in, a wetland mitigation bank will ultimately lead to a determination of compliance with the Section 404(b)(1) Guidelines without adequate demonstration that impacts associated with the proposed discharge have been avoided and minimized to the extent practicable.

4. The agencies' preference for on-site, in-kind compensatory mitigation does not preclude the use of wetland mitigation banks where it has been determined by the Corps, or other appropriate permitting agency, in coordination with the Federal resource agencies through the standard permit evaluation process, that the use of a particular mitigation bank as compensation for proposed wetland impacts would be appropriate for offsetting impacts to the aquatic ecosystem. In making such a determination, careful consideration must be given to wetland functions, landscape position, and affected species populations at both the impact and mitigation bank sites. In addition, compensation for wetland impacts should occur, where appropriate and practicable, within the same watershed as the impact site. Where a mitigation bank is being developed in conjunction with a wetland resource planning initiative (e.g., Special Area Management Plan, State Wetland Conservation Plan) to satisfy particular wetland restoration objectives, the permitting agency will determine, in coordination with the Federal resource agencies, whether use of the bank should be considered an appropriate form of compensatory mitigation for impacts occurring within the same watershed.

5. Wetland mitigation banks should generally be in place and functional before credits may be used to offset permitted wetland losses. However, it may be appropriate to allow incremental distribution of credits corresponding to the appropriate stage of successful establishment of wetland functions. Moreover, variable mitigation ratios (credit acreage to impacted wetland acreage) may be used in such circumstances to reflect the wetland functions attained at a bank site at a particular point in time. For example, higher ratios would be required when a bank is not yet fully functional at the time credits are to be withdrawn.

6. Establishment of each mitigation bank should be accompanied by the development of a formal written agreement (e.g., memorandum of agreement) among the Corps, EPA, other relevant resource agencies, and those parties who will own, develop, operate or otherwise participate in the bank. The purpose of the agreement is to establish clear guidelines for establishment and use of the mitigation bank. A wetlands mitigation bank may also be established through issuance of a Section 404 permit where establishing the proposed bank involves a discharge of dredged or fill material into waters of the United States. The banking agreement or, where applicable, special conditions of the permit establishing the bank should address the following considerations, where appropriate:

(a) location of the mitigation bank;

(b) goals and objectives for the mitigation bank project;

(c) identification of bank sponsors and participants;

(d) development and maintenance plan;

(e) evaluation methodology acceptable to all signatories to establish bank credits and assess bank success in meeting the project goals and objectives;

(f) specific accounting procedures for tracking crediting and debiting;

(g) geographic area of applicability;

(h) monitoring requirements and responsibilities;

(i) remedial action responsibilities including funding; and

(j) provisions for protecting the mitigation bank in perpetuity.

Agency participation in a wetlands mitigation banking agreement may not, in any way, restrict or limit the authorities and responsibilities of the agencies.

7. An appropriate methodology, acceptable to all signatories, should be identified and used to evaluate the success of wetland restoration and creation efforts within the mitigation bank and to identify the appropriate stage of development for issuing mitigation credits. A full range of wetland functions should be assessed. Functional evaluations of the mitigation bank should generally be conducted by a multi-disciplinary team representing involved resource and regulatory agencies and other appropriate parties. The same methodology should be used to determine the functions and values of both credits and debits. As an alternative, credits and debits can be based on acres of various types of wetlands (e.g., National Wetland Inventory classes). Final determinations regarding debits and credits will be made by the Corps, or other appropriate permitting agency, in consultation with Federal resource agencies.

8. Permit applicants may draw upon the available credits of a third party mitigation bank (i.e., a bank developed and operated by an entity other than the permit applicant). The Section 404 permit, however, must state explicitly that the permittee remains responsible for ensuring that the mitigation requirements are satisfied.

9. To ensure legal enforceability of the mitigation conditions, use of mitigation bank credits must be conditioned in the Section 404 permit by referencing the banking agreement or Section 404 permit establishing the bank; however, such a provision should not limit the responsibility of the Section 404 permittee for satisfying all legal requirements of the permit.

Signed August 23, 1993.

Robert H. Wayland, III,

*Director, Office of Wetlands, Oceans, and Watersheds, U.S. Environmental Protection Agency.*

Michael L. Davis,

*Office of the Assistant Secretary of the Army (Civil Works), Department of the Army.*

Regulatory Guidance Letter (RGL 93–3)

Issued: 13 September 1993, Expires: not applicable

Subject: Rescission of Regulatory Guidance Letters (RGL) 90–5, 90–7, and 90–8

1. On 25 August 1993 the final ''Excavation Rule'' was published in the Federal Register (58 FR 45008) and becomes effective on 24 September 1993. This regulation modifies the definition of ''Discharge of Dredged Material'' to address landclearing activities (see 33 CFR 323.2(d)); modifies the definitions of ''Fill Material'' and ''Discharge of Fill Material'' to address the placement of pilings (see 33 CFR 323.2 (e) and (f) and 323.3(c)); and modifies the definition of ''waters of the United States'' to address prior converted cropland (see 33 CFR 328. (a)(8)).

2. Therefore, RGL 90–5, Subject: ''Landclearing Activities Subject to Section 404 Jurisdiction''; RGL 90–7, Subject: ''Clarification of the Phrase 'Normal Circumstances' as it pertains to Cropped Wetlands''; and RGL 90–8, Subject: ''Applicability of Section 404 to Pilings''; are hereby rescinded effective 24 September 1993. Furthermore, although RGL 90–5, Subject: ''Landclearing Activities Subject to Section 404 Jurisdiction'' expired on 31 December 1992 it should continue to be applied until 24 September 1993.

3. In addition, RGL's 90–5, 90–7, and 90–8 as of 24 September 1993 will no longer be used for guidance since the guidance contained in those RGL's has been superseded by the regulation.

For the Director of Civil Works.

John P. Elmore,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

Regulatory Guidance Letter (RGL 94–1)

Issued: 23 May 1994, Expires: 31 December 1999

Subject: Expiration of Geographic Jurisdictional Determinations.

1. Regulatory Guidance Letter (RGL) 90–6, Subject: ''Expiration Dates for Wetlands Jurisdictional Delineations'' is extended until 31 December 1999, subject to the following revisions.

2. This guidance should be applied to all jurisdictional determinations for all waters of the United States made pursuant to Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, and Section 103 of the Marine Protection Research and Sanctuaries Act of 1972.

3. To be consistent with paragraph IV.A. of the 6 January 1994, interagency Memorandum of Agreement Concerning the Delineation of Wetlands for Purposes of Section 404 of the Clean Water Act and Subtitle B of the Food Security Act, all U.S. Army Corps of Engineers geographic jurisdictional determinations shall be in writing and normally remain valid for a period of five years. The Corps letter (see paragraph 4.(d) of RGL 90–6) should include a statement that the jurisdictional determination is valid for a period of five years from the date of the letter unless new information warrants revision of the determination before the expiration date.

4. For wetland jurisdictional delineations the ''effective date of this RGL'' referred to in paragraphs 4 and 5 of RGL 90–6 was and remains 14 August 1990. For jurisdictional determinations, other than wetlands jurisdictional delineations, the ''effective date of this RGL'' referred to in paragraphs 4 and 5 of RGL 90–6 will be the date of this RGL.

5. Previous Corps written jurisdictional determinations, including wetland jurisdictional delineations, with a validity period of three years remain valid for the stated period of three years. The district engineer is not required to issue new letters to extend such period from three years to a total of five years. However, if requested to do so, the district engineer will normally extend the three year period to a total of five years unless new information warrants a new jurisdictional determination.

6. Districts are not required to issue a public notice on this guidance but may do so at their discretion.

7. This guidance expires on 31 December 1999 unless sooner revised or rescinded.

For the Director of Civil Works.

John P. Elmore,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

Regulatory Guidance Letter (RGL 94–2)

Issued: 17 August 1994, Expires: 31 Dec 1999

Subject: Superfund Projects

1. Regulatory Guidance Letter (RGL) 85–07, subject: ''Superfund Projects'' is hereby reissued (copy enclosed).

2. This RGL was previously extended by RGL 89–2. Although the extension expired, RGL 85–07 has continued to be U.S. Army Corps of Engineers policy.

3. This guidance expires 31 December 1999 unless sooner revised or rescinded.

For the Director of Civil Works.

Encl

John P. Elmore,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

Regulatory Guidance Letter (RGL 85–7)

Issued: 5 July 1985, Expires 31 Dec 1987

Subject: Superfund Projects

1. Recently, the Chief Counsel, Mr. Lester Edelman, responded to a letter from Mr. William N. Hedeman, Jr., Director, Office of Emergency and Remedial Response, Environmental Protection Agency (EPA) which dealt with the need for Department of Army authorizations for the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) actions. This letter summarizes Mr. Edelman's opinion and provides operating guidance for field interaction with the EPA.

2. The EPA's basic position is that Congress did not intend for CERCLA response actions to be subject to other environmental laws. Rather, as a matter of sound practice, CERCLA response actions generally should meet the standards established by those laws. Consequently, it is the EPA's position that neither it nor the states, in pursuing response actions at the location of the release or threatened release under the authority of CERCLA, are required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act for those actions.

3. Mr. Edelman stated in part that he has some reservations about the position that the EPA has taken. Nevertheless, he recognizes that the EPA has the primary authority for the interpretation and application of CERCLA, and therefore would defer to the EPA's reading of its own statutory authorities, at least for the time being.

4. In light of this legal opinion, FOAs should not require applications for the EPA or state response actions at the location of the release or threatened release pursued under the authority of CERCLA. Any permit applications in process should be terminated.

5. Both the EPA and OCE believe that the FOAs' expertise in assessing the public interest factors for dredging and filling operations can contribute to the overall quality of the CERCLA response action. The Director of Civil Works will be establishing a group from his staff to work with the EPA staff to develop a

framework for integrating the Corps Section 10, Section 404 and, if appropriate, Section 103 concerns into the EPA's substantive Superfund reviews.

6. Until specific guidance is provided from OCE, FOAs should provide technical support to the EPA regions and/or the states on matters within their field of expertise.

For the Chief of Engineers.

C.E. Edgar III.

Regulatory Guidance Letter (RGL 95–1)

Issued: 31 March 1995, Expires: 31 December 2000

Subject: Guidance on Individual Permit Flexibility for Small Landowners

1. Enclosed is a memorandum for the field signed by the Acting Assistant Secretary of the Army (Civil Works) and the Environmental Protection Agency dated 6 March 1995. This memorandum provides guidance on flexibility that the U.S. Army Corps of Engineers should apply when making determinations of compliance with the Section 404(b)(1) Guidelines with regard to the alternatives analysis.

2. This memorandum should be implemented immediately. It constitutes an important aspect of the President's Plan for protecting the Nation's wetlands, ''Protecting America's Wetlands: A Fair, Flexible, and Effective Approach'' (published on 24 August 1993).

3. This guidance expires on 31 December 2000 unless sooner revised or rescinded.

For the Director of Civil Works.

Encl

Daniel R. Burns,

*Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.*

United States Environmental Protection Agency

Office of Water, Washington, DC 20460

United States Department of the Army

Office of the Assistant Secretary, Washington, DC 20310–0103

Memorandum for the Field: March 6, 1995

Subject: Individual Permit Flexibility for Small Landowners

In order to clearly affirm the flexibility afforded to small landowners under Section 404 of the Clean Water Act, this policy clarifies that for discharges of dredged or fill material affecting up to two acres of non-tidal wetlands for the construction or expansion of a home or farm building, or expansion of a small business, it is presumed that alternatives located on property not currently owned by the applicant are not practicable under the Section 404(b)(1) Guidelines.

Specifically, for those activities involving discharges of dredged or fill material affecting up to two acres into jurisdictional wetlands for:

(1) The construction or expansion of a single family home and attendant features, such as a driveway, garage, storage shed, or septic field;

(2) The construction or expansion of a barn or other farm building; or

(3) The expansion of a small business facility; which are not otherwise covered by a general permit, it is presumed that alternatives located on property not currently owned by the applicant are not practicable under the Section 404(b)(1) Guidelines. The Guidelines' requirements to appropriately and practicably minimize and compensate for any adverse environmental impacts of such activities remain.

*Discussion*

The Clean Water Act Section 404 regulatory program provides that the Army Corps of Engineers evaluate permit applications for the discharge of dredged or fill material into waters of the U.S., including wetlands, in accordance with regulatory requirements of the Section 404(b)(1) Guidelines (Guidelines). The Guidelines are substantive environmental criteria used in evaluating discharges of dredged or fill material.

The Section 404(b)(1) Guidelines establish a mitigation sequence that provides a sound framework to ensure that the environmental impacts of permitted actions are acceptable. Under this framework, there is a three-step sequence for mitigating potential adverse impacts to the aquatic environment associated with a proposed discharge—first avoidance, then minimization, and lastly compensation for unavoidable impacts to aquatic resources.

The Guidelines' mitigation sequence is designed to establish a consistent approach to be used in ensuring that all practicable measures have been taken to reduce potential adverse impacts associated with proposed projects in wetlands and other aquatic systems. The Guidelines define the term ''practicable'' as ''available and capable of being done [by the applicant] after taking into consideration cost, existing technology, and logistics in light of overall project purposes'' (40 CFR 230.3(q)). The first step in the sequence requires the evaluation of potential alternative sites under § 230.10(a) of the Guidelines, to locate the proposed project so that aquatic impacts are avoided to the extent practicable.

This policy statement clarifies that, for the purposes of the alternatives analysis, it is presumed that practicable alternatives are limited to property owned by the permit applicant in circumstances involving certain small projects affecting less than two acres of non-tidal wetlands. This presumption is consistent with the practicability considerations required under the Guidelines and reflects the nature of the projects to which the presumption applies—specifically, the construction or expansion of a single family home and attendant features, the construction or expansion of a barn or other farm building, or the expansion of a business. For such small projects that would solely expand an existing structure, the basic project purpose is so tied to the existing structures owned by the applicant, that it would be highly unusual that the project could be practicably located on other sites not owned by the applicant. In these cases, such as construction of driveways, garages, or storage sheds, or with home and barn additions, proximity to the existing structure is typically a fundamental aspect of the project purpose.

In the evaluation of potential practicable alternatives, the Guidelines do not exclude the consideration of sites that, while not currently owned by the permit applicant, could reasonably be obtained to satisfy the project purpose. However, it is the experience of the Army Corps of Engineers and EPA that areas not currently owned by the applicant have, in the great majority of circumstances, not been determined to be practicable alternatives in cases involving the small landowner activities described above. Cost, availability, and logistical and capability considerations inherent in the determination of practicability under the Guidelines have been the basis for this conclusion by the agencies.

The agencies recognize that the presumption characterized in this policy statement may be rebutted in certain circumstances. For example, a more thorough review of practicable alternatives would be warranted for individual sites comprising a subdivision of homes, if following issuance of this policy statement, a real estate developer subdivided a large, contiguous wetlands parcel into numerous parcels. In addition, the presumption is applicable to the expansion of existing small business facilities. Small businesses are typically confined to only one location and with

economic and logistical limitations that generally preclude the availability of practicable alternative locations to meet their expansion needs. Conversely, larger businesses with multiple locations and greater resources are expected to consider opportunities to practicably avoid adverse aquatic impacts by evaluating off-site alternatives. Finally, it is important to note that this presumption of practicable alternatives is intended to apply to the individual permit process. Alternatives are not evaluated for activities covered by general permits. Many activities related to the construction or expansion of a home, farm, or business, are already covered by a general permit. In addition, in conjunction with the issuance of this policy statement, a nationwide general permit authorizing discharges related to single family residential development is being proposed and will be available for public comment. If you have any questions regarding this memorandum, please contact Gregory Peck of EPA's Wetlands Division at (202) 260–8794 or Michael Davis of the Corps of Engineers Regulatory Branch at (202) 272–0199.

Robert Perciasepe,

*Assistant Administrator for Water, U.S. Environmental Protection Agency.*

John Zirschky,

*Acting Assistant Secretary of the Army (Civil Works).*

[FR Doc. 96–15224 Filed 6–17–96; 8:45 am]

**BILLING CODE 3710–92–P**

# Reader Aids

Federal Register

Vol. 61, No. 118

Tuesday, June 18, 1996

## CUSTOMER SERVICE AND INFORMATION

**Federal Register/Code of Federal Regulations**

| | |
|---|---|
| General Information, indexes and other finding aids | **202–523–5227** |
| Public inspection announcement line | **523–5215** |

**Laws**

| | |
|---|---|
| Public Laws Update Services (numbers, dates, etc.) | **523–6641** |
| For additional information | **523–5227** |

**Presidential Documents**

| | |
|---|---|
| Executive orders and proclamations | **523–5227** |
| **The United States Government Manual** | **523–5227** |

**Other Services**

| | |
|---|---|
| Electronic and on-line services (voice) | **523–4534** |
| Privacy Act Compilation | **523–3187** |
| TDD for the hearing impaired | **523–5229** |

## ELECTRONIC BULLETIN BOARD

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

## FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

## FEDERAL REGISTER PAGES AND DATES, JUNE

27767–27994 ..... 3
27995–28466 ..... 4
28467–28722 ..... 5
28723–29000 ..... 6
29001–29266 ..... 7
29267–29458 .....10
29459–29632 .....11
29633–29922 .....12
29923–30126 .....13
30127–30494 .....14
30495–30796 .....17
30797–31002 .....18

## CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Proclamations:**
6902 .....28465
6903 .....29633
6904 .....30797

**Executive Orders:**
October 22, 1854 (Revoked in part by PLO 7022) .....29758
February 1, 1886 (See PLO 7148) .....29129
April 13, 1912 (Revoked by PLO 7200) .....29758
December 31, 1912 (Revoked in part by PLO 7199) .....29128
12880 .....28721
12963 (Amended by EO 13009) .....30799
13008 .....28721
13009 .....30799

**Administrative Orders:**
Presidential Determinations:
96–27 of May 28, 1996 .....29001
96–28 of May 29, 1996 .....29453
96–29 of May 31, 1996 .....29455
96–30 of June 3, 1996 .....29457
96–31 of June 6, 1996 .....30127
Memorandums:
96–26 of May 22, 1996 .....27767

**5 CFR**

532 .....27995, 27996

**Proposed Rules:**
2429 .....28797
2470 .....28797
2471 .....28798
2472 .....28798
2473 .....28798

**7 CFR**

6 .....28723
10 .....30495
29 .....27997, 29923, 29924
610 .....27998
922 .....30495
928 .....28000
929 .....30497
948 .....29635
982 .....29924
985 .....2945
997 .....29926
998 .....29927
1208 .....30498
1230 .....28002
1240 .....29461

**Proposed Rules:**
457 .....27512

**8 CFR**

103 .....28003
299 .....28003

**Proposed Rules:**
214 .....30188
273 .....29323

**9 CFR**

**Proposed Rules:**
1 .....30545
3 .....30545
92 .....27797, 28073
95 .....30189
101 .....29462
112 .....29462

**10 CFR**

30 .....29636
40 .....29636
50 .....30129
51 .....28467
70 .....29636
71 .....28723
72 .....29636
1703 .....28725

**Proposed Rules:**
34 .....30837
150 .....30839
170 .....30839
430 .....28517

**12 CFR**

219 .....29638
336 .....28725
747 .....28021

**Proposed Rules:**
204 .....30545
229 .....27802
545 .....29976, 30190
556 .....30190
559 .....29976
560 .....29976, 30190
563 .....29976, 30190
567 .....29976
571 .....29976, 30190
703 .....29697
704 .....28085
709 .....28085
741 .....28085
1270 .....29592

**14 CFR**

25 .....28684
27 .....29928, 29931
29 .....29931
33 .....28430
39 .....28028, 28029, 28031, 28497, 28498, 28730, 28732,

28734, 28736, 28738, 29003, 29007, 29009, 29267, 29269, 29271, 29274, 29276, 29278, 29279, 29465, 29467, 29468, 29641, 29642, 29931, 29932, 29934, 30501, 30505, 30801
71 .....28033, 28034, 28035, 28036, 28037, 28038, 28039, 28040, 28041, 28042, 28043, 28044, 28045, 28740, 28741, 28742, 28743, 29472, 29645, 299336, 29937, 29938, 30507, 30670, 30803
73.....30508
91.....28416
95.....27769
97.....29015, 29016
119.....30432
121 .....28416, 30432, 30726, 30734
125.....28416
135 .....28416, 30432, 30734
302.....29282
373.....29284
399 .....29018, 29645, 29646
**Proposed Rules:**
Ch. I.....28803
39 .....28112, 28114, 28518, 28520, 29038, 29499, 29501, 29697, 29992, 29994, 29996, 30548
71 .....28803, 29449, 29699, 29700, 30550, 30842, 30843
121.....29000, 30551
135.....30551
250.....27818

**15 CFR**

Ch. XII.....30509
**Proposed Rules:**
902.....29628
946.....28804

**16 CFR**

305.....29939
1010.....29646
1019.....29646
**Proposed Rules:**
419.....29039

**17 CFR**

210.....30397
228.....30376, 30397
229.....30376, 30397
230.....30397
232.....30397
239.....30397
240 .....30376, 30396, 30397
249.....30376, 30397
**Proposed Rules:**
1.....28806
230.....30405
239.....30405
240.....30405
249.....30405
274.....30405

**18 CFR**

35.....30509
37.....30804
385.....30509

**19 CFR**

10.....28932
12.....28500, 28932
102.....28932
134.....28932
178.....28500
**Proposed Rules:**
19.....28808
101.....30552
113.....28808
122.....30552
132.....28522
144.....28808
151.....28522
351.....28821
353.....28821
355.....28821

**20 CFR**

404.....28046

**21 CFR**

14.....28047, 28048
70.....28525
73.....28525
74.....28525
80.....28525
81.....28525
82.....28525
100.....27771
101.....27771, 28525
103.....27771
104.....27771
105.....27771
109.....27771
137.....27771
161.....27771
163.....27771
172.....27771
175.....29474
177.....28049, 29474
178.....28051, 28525
182.....27771
186.....27771
189.....29650
197.....27771
200.....29476
201.....28525
250.....29476
310.....29476
520.....29477, 29650
522 .....29478, 29479, 29480
556.....29477
558 .....29477, 29481, 30133
700.....27771
701.....28525
**Proposed Rules:**
1.....28116
2.....28116
3.....28116
5.....28116
10.....28116
12.....28116
20.....28116
56.....28116
58.....28116
70.....29701
71.....29701
80.....29701
101 .....28525, 29701, 29708
107.....29701
170.....29701, 29711
171.....29701, 29711
172.....29701, 29711
173.....29701, 29711
174.....29701
175.....29701, 29711
176.....29711
177.....29701, 29711
178.....29701, 29711
182.....29711
184.....29701, 29711
200.....29502
250.....29502
310.....29502
343.....30002
730.....29708
864.....30197
1250.....29701

**22 CFR**

50.....29651
51.....29940
81.....29940
82.....29940
83.....29940
84.....29940
85.....29940
86.....29940
87.....29940
88.....29940
89.....29941
514.....29285
**Proposed Rules:**
603.....30009

**23 CFR**

1206.....28745
1215.....28747
1230.....28750
**Proposed Rules:**
655.....29234, 29624
777.....30553

**24 CFR**

3500 .....59238, 29255, 29258, 29264
**Proposed Rules:**
35.....29170
36.....29170
37.....29170

**25 CFR**

65.....27780
66.....27780
76.....27780
**Proposed Rules:**
1.....27821
150.....27822
154.....30559
161.....29285
162.....30560
166.....27824
175.....29040
217.....27831
271.....27833
272.....27833
274.....27833
277.....27833
278.....27833
290.....29044

**26 CFR**

1.....30133
26.....29653
40.....28053
48.....28053
602.....30133
**Proposed Rules:**
1 .....27833, 27834, 28118, 28821, 28823, 30845
26.....29714
31.....28823
35a.....28823
301 .....28823, 29653, 30012
502.....28823
503.....28823
509.....28823
513.....28823
514.....28823
516.....28823
517.....28823
520.....28823
521.....28823
602.....29653

**27 CFR**

9.....29949, 29952
70.....29954
71.....29954
200.....29956
**Proposed Rules:**
0.....30013
5.....30015
18.....30017
20.....30019
22.....30019
70.....30013
250.....30021

**28 CFR**

**Proposed Rules:**
74.....29715
74.....29716

**29 CFR**

1915.....29957
1952.....28053
2619.....30160
2676.....30160
**Proposed Rules:**
102.....30570
1904.....27850
1915.....28824
1952.....27850
2509.....29586

**30 CFR**

75.....29287
943.....30805
**Proposed Rules:**
218.....28829
250.....28525
256.....28528
935.....29504
946.....29506

**33 CFR**

3.....29958
62.....27780, 29449
100 .....27782, 28501, 28502, 28503, 29019
117.....29654, 29959
165 .....28055, 29020, 29021, 29022, 29655, 29656

**34 CFR**

600.....29898
668.....29898, 29960
685.....29898
**Proposed Rules:**
701.....27990

**36 CFR**

6.....28504
7.....28505, 28751
17.....28506
**Proposed Rules:**
7.....28530

**37 CFR**

201 ....30845

**Proposed Rules:**

202 ....28829

**38 CFR**

1 ....29023, 29024, 29481, 29657
2 ....27783
6 ....29024
7 ....29025
8 ....29289
8a ....29027
14 ....27783
17 ....29293
20 ....29027
21 ....28753, 28755, 29028, 29294, 29297, 29449
36 ....28057

**39 CFR**

233 ....28059

**40 CFR**

15 ....28755
32 ....28755
51 ....30162
52 ....28061, 29483, 29659, 29662 29659, 29961, 29963, 29965, 29970
55 ....28757
60 ....29485, 29876
62 ....29666
63 ....27785, 29485, 29876, 30814, 30816
73 ....28761
80 763
81 ....29667, 29970
82 ....29485
152 ....30163
180 ....29672 29674, 29676, 30163, 30165, 30167, 30170, 30171
186 ....30171
264 ....28508
265 ....28508
270 ....28508
271 ....28508
300 ....27788, 28511, 29678, 30510
799 ....29486

**Proposed Rules:**

35 ....30472
50 ....29719
52 ....28531, 28541, 29508, 29515, 29725, 30023, 30024
62 ....29725
63 ....30846
70 ....30570
73 ....28830, 28996
81 ....28541, 29508, 29515, 29726
180 ....28118, 28120, 30200, 30202, 30204
186 ....30204
270 ....30472
271 ....30472
300 ....30207, 30575

**41 CFR**

**Proposed Rules:**

101–20 ....30028

**42 CFR**

**Proposed Rules:**

72 ....29327
412 ....29449
413 ....29449
489 ....29449

**43 CFR**

2120 ....29030
4100 ....29030
4600 ....29030

**Proposed Rules:**

6000 ....28546
6100 ....28546
6200 ....28546
6300 ....28546
6400 ....28546
6500 ....28546
6600 ....28546
7100 ....28546
7200 ....28546
7300–9000 ....28546
8000 ....29678
8300 ....29679

**44 CFR**

64 ....28067
65 ....29488, 29489
67 ....29490

**Proposed Rules:**

67 ....29518

**46 CFR**

108 ....28260
110 ....28260
111 ....28260
112 ....28260
113 ....28260
161 ....28260

**47 CFR**

Ch. I ....30531
0 ....29311
15 ....29679, 30532
22 ....29679
24 ....29679
73 ....28766, 29311, 29491, 29492
74 ....28766
76 ....28698, 29312
95 ....28768
101 ....29679

**Proposed Rules:**

Ch. I ....30579
0 ....28122
36 ....30028, 30847
64 ....30581
69 ....30028, 30847
73 ....30584, 30585
76 ....29333, 29336
80 ....28122

**48 CFR**

911 ....30823
952 ....30823
970 ....30823

**Proposed Rules:**

45 ....27851
52 ....27851
1501 ....29314
1509 ....29314
1510 ....29314
1515 ....29314
1528 ....29493
1532 ....29314
1552 ....29314, 29493
1553 ....29314

**49 CFR**

Ch. I ....30444
106 ....30175
107 ....27948
130 ....30533
171 ....28666
172 ....28666
173 ....28666
174 ....28666
178 ....28666
179 ....28666
190 ....27789
191 ....27789
192 ....27789, 28770, 30824
193 ....27789
225 ....30940
541 ....29031
565 ....29031
567 ....29031
571 ....28423, 29031, 29493, 30824
574 ....29493
1039 ....29036
1150 ....29973
1312 ....30181

**Proposed Rules:**

6 ....28831
10 ....29522
223 ....30672
229 ....30672
232 ....30672
238 ....30672
391 ....28547
571 ....28123, 28124, 28550, 28560, 29337, 30209, 30586, 30848
581 ....30848

**50 CFR**

Ch. VI ....30543
36 ....29495
216 ....27793
230 ....29628
247 ....27793
285 ....30182, 30183
301 ....29695, 29975
620 ....27795
656 ....29321
663 ....28786, 28796
672 ....28069, 28070
675 ....27796, 28071, 28072, 29696, 30544
697 ....29321

**Proposed Rules:**

17 ....28834, 29047, 30209, 30588
20 ....30114, 30490
216 ....30212
217 ....30588
227 ....30588
285 ....30214
625 ....27851
641 ....29339
650 ....27862
651 ....27862, 27948, 30029
669 ....30589
675 ....29726
676 ....29729

## 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**

**Agricultural Marketing Service**

Fresh cut flowers and fresh cut greens promotion and information order; assessments payment postponement; published 6-17-96

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Tuna, Atlantic bluefin fisheries; published 6-14-96

**ENVIRONMENTAL PROTECTION AGENCY**

Air pollutants, hazardous; national emission standards:

Hazardous air pollutants list; additions and deletions--

Caprolactam; delisting; published 6-18-96

Drinking water:

National primary and secondary drinking water regulations--

Public water systems; monitoring and data reporting requirements; published 5-14-96

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Texas; published 6-18-96

**LIBRARY OF CONGRESS**

**Copyright Office, Library of Congress**

Digital audio recording devices and media; statements of account; verification; published 6-18-96

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Regattas and marine parades:

Miami Super Boat Race; published 6-3-96

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Jetstream; published 5-14-96

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:

Karnal bunt disease--

California; comments due by 6-24-96; published 4-25-96

Plant-related quarantine, foreign:

Fruits and vegetables; importation; comments due by 6-28-96; published 4-29-96

**ARMS CONTROL AND DISARMAMENT AGENCY**

Service of process, production of official information, and agency employees testimony; comments due by 6-28-96; published 5-28-96

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Alaska scallop; comments due by 6-28-96; published 5-3-96

Summer flounder; comments due by 6-24-96; published 5-7-96

**DEFENSE DEPARTMENT**

Federal Acquisition Regulation (FAR):

Federal Acquisition Streamlining Act of 1994; implementation--

Commercially available off-the-shelf item acquisition; comments due by 6-28-96; published 5-13-96

Late offers consideration; comments due by 6-24-96; published 4-25-96

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

North Carolina; comments due by 6-24-96; published 5-23-96

Pennsylvania; comments due by 6-28-96; published 6-11-96

Washington; comments due by 6-24-96; published 5-23-96

Clean Air Act:

State operating permits programs--

Vermont; comments due by 6-27-96; published 5-24-96

Hazardous waste program authorizations:

Kentucky; comments due by 6-24-96; published 5-23-96

Tennessee; comments due by 6-24-96; published 5-23-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Methyl esters of tall-oil fatty acids; comments due by 6-28-96; published 5-29-96

Metolachlor; comments due by 6-24-96; published 5-24-96

**FEDERAL COMMUNICATIONS COMMISSION**

Radio services, special:

Maritime services--

Large cargo and small passenger ships; radio installation inspection; comments due by 6-24-96; published 6-4-96

Radio stations; table of assignments:

Minnesota; comments due by 6-28-96; published 5-14-96

Nevada; comments due by 6-27-96; published 5-10-96

Virginia; comments due by 6-24-96; published 5-7-96

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Government securities sales practices:

Banks' conduct of business as government securities brokers or dealers; standards; comments due by 6-24-96; published 4-25-96

Securities transactions; recordkeeping and confirmation requirements; comments due by 6-24-96; published 5-24-96

**FEDERAL RESERVE SYSTEM**

Membership of State banking institutions and international banking operations (Regulations H and K):

Banks conduct of business as government securities brokers or dealers; standards; comments due by 6-24-96; published 4-25-96

Truth in lending (Regulation Z):

Creditor-liability rules for closed-end loans secured by real property or dwellings (consummated on or after September 30, 1995); comments due by 6-24-96; published 5-24-96

**GENERAL SERVICES ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Federal Acquisition Streamlining Act of 1994; implementation--

Commercially available off-the-shelf item acquisition; comments due by 6-28-96; published 5-13-96

Late offers consideration; comments due by 6-24-96; published 4-25-96

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Food for human consumption:

Food standards of identity, quality and container fill and common or unusual name for nonstandardized foods; comments due by 6-28-96; published 5-1-96

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Federal regulatory review:

Hearing procedures; streamlining; comments due by 6-24-96; published 4-23-96

Manufactured home construction and safety standards:

Transportation of manufactured homes; overloading of tires by up to 18 percent; comments due by 6-24-96; published 4-23-96

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:

Northern spotted owl; comments due by 6-27-96; published 6-17-96

**INTERIOR DEPARTMENT**

**Minerals Management Service**

Outer Continental Shelf; oil, gas, and sulphur operations:

Lessees; flexibility in keeping leases in force beyond primary term; comments due by 6-24-96; published 4-25-96

**JUSTICE DEPARTMENT**

**Prisons Bureau**

Inmate conrol, custody, care, etc.:

Intensive confinement center program; comments due by 6-25-96; published 4-26-96

**LIBRARY OF CONGRESS**

Procedures and services:

Library materials acquisition by non-purchase means and surplus library materials disposition; comments due by 6-24-96; published 5-23-96

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Federal Acquisition Regulation (FAR):

Federal Acquisition Streamlining Act of 1994; implementation--

Commercially available off-the-shelf item acquisition; comments due by 6-28-96; published 5-13-96

Late offers consideration; comments due by 6-24-96; published 4-25-96

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

Nixon administration presidential historical materials; preservation, protection, and access procedures; comments due by 6-24-96; published 4-23-96

**NATIONAL CREDIT UNION ADMINISTRATION**

Credit unions:

Investment and deposit activities; comments due by 6-26-96; published 3-5-96

**NUCLEAR REGULATORY COMMISSION**

Production and utilization facilities; domestic licensing:

Nuclear power plants--

Decommissioning; financial assurance requirements; comments due by 6-24-96; published 4-8-96

**SOCIAL SECURITY ADMINISTRATION**

Supplementary security income:

Aged, blind, and disabled--

Administration fees for making State supplementary payments and interest on such payment funds; comments due by 6-25-96; published 4-26-96

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Drawbridge operations:

Louisiana; comments due by 6-25-96; published 4-26-96

Regattas and marine parades:

Connecticut River Raft Race; comments due by 6-27-96; published 5-13-96

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Aerospace Technologies of Australia; comments due by 6-28-96; published 3-22-96

Boeing; comments due by 6-24-96; published 4-25-96

Fairchild; comments due by 6-24-96; published 4-26-96

Hamilton Standard; comments due by 6-24-96; published 4-24-96

Hartzell Propeller Inc.; comments due by 6-25-96; published 4-26-96

Learjet; comments due by 6-24-96; published 5-13-96

New Piper Aircraft, Inc.; comments due by 6-25-96; published 4-25-96

SAAB; comments due by 6-24-96; published 4-25-96

Class B airspace; comments due by 6-24-96; published 5-10-96

Class E airspace; comments due by 6-28-96; published 5-29-96

**TRANSPORTATION DEPARTMENT**

**Federal Highway Administration**

Motor carrier safety regulations:

Parts and accessories necessary for safe operation--

Manufactured homes transportation; overloading of tires by up to 18 percent; comments due by 6-24-96; published 4-23-96

Right-of-way and environment:

Right-of-way program administration; obsolete and redundant regulations removed; comments due by 6-24-96; published 4-25-96

**TREASURY DEPARTMENT**

**Comptroller of the Currency**

Government securities sales practices:

Banks' conduct of business as government securities brokers or dealers; standards; comments due by 6-24-96; published 4-25-96