

# Federal Register

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#### 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.

#### NEW YORK, NY

- WHEN:** September 17, 1996 at 9:00 am.
- WHERE:** National Archives—Northwest Region  
201 Varick Street, 12th Floor  
New York, NY
- RESERVATIONS:** 800-688-9889  
(Federal Information Center)

#### WASHINGTON, DC

- WHEN:** September 24, 1996 at 9:00 am.
- WHERE:** Office of the Federal Register  
Conference Room  
800 North Capitol Street, NW.  
Washington, DC  
(3 blocks north of Union Station Metro)
- RESERVATIONS:** 202-523-4538



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Executive Order 13015 of August 22, 1996

The President

White House Commission on Aviation Safety and Security

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1. *Establishment.*** There is established the White House Commission on Aviation Safety and Security (the "Commission"). The Commission shall consist of not more than 25 members, to be appointed by the President from the public and private sectors, each of whom shall have experience or expertise in some aspect of aviation safety or security. The Vice President shall serve as the Chair of the Commission.

**Sec. 2. *Functions.*** (a) The Commission shall advise the President on matters involving aviation safety and security, including air traffic control.

(b) The Commission shall develop and recommend to the President a strategy designed to improve aviation safety and security, both domestically and internationally.

(c) The Chair may, from time to time, invite experts to submit information to the Commission; hold hearings on relevant issues; and form committees and teams to assist the Commission in accomplishing its objectives and duties, which may include individuals other than members of the Commission.

**Sec. 3. *Administration.*** (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide the Commission such information with respect to aviation safety and security as the Commission requires to fulfill its functions.

(b) The Commission shall be supported, both administratively and financially, by the Department of Transportation and such other sources (including other Federal agencies) as may lawfully contribute to Commission activities.

**Sec. 4. *General.*** (a) I have determined that the Commission shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2). Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, shall be performed by the Secretary of Transportation in accordance with the guidelines and procedures established by the Administrator of General Services, except that of reporting to the Congress.

(b) The Commission shall exist for a period of 6 months from the date of this order, unless extended by the President.



THE WHITE HOUSE,  
August 22, 1996.

# Rules and Regulations

Federal Register

Vol. 61, No. 167

Tuesday, August 27, 1996

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 52

[FV-91-329]

#### United States Standards for Grades of Frozen Cauliflower

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

**ACTION:** Final rule.

**SUMMARY:** The purpose of this final rule is to revise the current voluntary U.S. Standards for Grades of Frozen Cauliflower. This rule was developed by the Department of Agriculture (USDA) at the request of the American Frozen Food Institute (AFFI) and the National Food Processors Association (NFPA). Its effect will be to improve the standards by: bringing the standards in line with current marketing practices and innovations in processing techniques; providing for the "individual attributes" procedure for product grading with sample sizes, acceptable quality levels (AQL's), tolerances and acceptance numbers (number of allowable defects) being published in the standards; replacing dual grade nomenclature with single letter grade designations, such as "U.S. Grade A" or "U.S. Fancy," with "U.S. Grade A;" and providing a uniform format consistent with other recently revised U.S. grade standards by adopting definitions for terms and replacing textual descriptions with easy-to-read tables. This rule also includes conforming and editorial changes.

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

**FOR FURTHER INFORMATION CONTACT:** James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709, South Building, Washington, DC 20090-6456, Telephone: (202) 720-4693.

**SUPPLEMENTARY INFORMATION:** The USDA is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, (5 U.S.C. 601 et seq.), the Agricultural Marketing Service, has considered the economic impact on small entities.

The Agricultural Marketing Service (AMS) has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. The proposed changes reflect current marketing practices. The use of these standards is voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect.

This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the regulatory review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The Western Technical Advisory Committee of the American Frozen Food Institute (AFFI) and the USDA Grade Standards Review Subcommittee of the National Food Processors Association (NFPA), requested that the USDA prepare a draft revision of the U.S. grade standards for frozen cauliflower in 1992. They requested that the draft allow for the use of mechanical trimming devices in cauliflower processing by de-emphasizing the importance of uniform shape and symmetry of cauliflower clusters in the standards because mechanical trimmers now perform processing operations previously done by hand. The mechanical trimming devices produce clusters which are less uniform in size, shape, and symmetry and remove, partially or completely, the bud portion of the unit. The absence of a uniform shape does not significantly affect the eating quality or nutritional value of frozen cauliflower.

They also requested that the revised standards assign individual tolerances to each individual quality factor. The system of grading, referred to as "individual attributes," will provide statistically derived acceptable quality levels (AQL's) based on the tolerances in the current grade standards.

The discussion draft incorporated the changes recommended by AFFI and NFPA. The draft also incorporated USDA's policy of replacing dual grade nomenclature with single letter grade designations.

In the revision, "U.S. Grade A" (or "U.S. Fancy") and "U.S. Grade B" (or "U.S. Extra Standard") will have simply become "U.S. Grade A," and "U.S. Grade B."

The USDA prepared a discussion draft, incorporating the requested and editorial changes, and submitted it to AFFI and NFPA for comment. Minor changes were recommended for the draft revision.

In addition to these changes, the revision will modify the standards to present them in a simplified easy-to-use format. Consistent with recent revisions of other U.S. grade standards, definitions of terms and easy-to-read tables will replace the textual descriptions. These changes were intended to facilitate better understanding and more uniform application of the grade standards.

#### Proposed Rule

A proposed rule to revise the U.S. Standards for Grades of Frozen Cauliflower was published in the Federal Register on November 24, 1995 (60 FR 57958). A proposal to revise the U.S. Standards for Grades of Frozen Cauliflower was previously published in the Federal Register on January 11, 1993 (58 FR 3816). A reopening and extension of the comment period to December 31, 1993, for the at proposal was published in the Federal Register on May 25, 1993 (58 FR 29985).

There were no public comments received during the comment period for the first proposal. However, USDA received comments from Patterson Frozen Foods, Inc. and AFFI regarding the proposal, after the extended comment period closed.

The two commenters suggested that the style name "Nuggets or Small Clusters" should be used instead of "Clusters for Limited Use" due to the terms familiarity in the industry and the

marketplace. USDA agreed with the comment to change in style names to incorporate familiar names.

Both commenting parties requested a change in the proposed method of determining style in frozen cauliflower and the requirements. Both agreed that the method for determining style should be based on "weight" instead of "count" and Patterson Frozen Foods also suggested that the six millimeter minimum requirement for "Nuggets or Small Clusters" style be removed since there is no maximum size requirement for "Clusters" style.

Both parties suggested that determining "style" by "weight" instead of by "count" will make the standards more compatible with the industry's practice of using mechanical trimming devices which produce clusters that are less uniform in size, shape, and symmetry.

USDA conducted a study using imported and domestic samples in 10, 16, 20, 32 and 35 ounce package sizes to determine the average counts and weights of cauliflower clusters.

Based on the information collected, USDA agreed with the suggested change to determine style "by weight" instead of "by count" for "Clusters Style" and with the recommended tolerance of 10 percent by weight to better reflect industry practices.

USDA disagreed with the elimination of the minimum size requirement in "Nuggets or Small Clusters" style. The prerequisite of "appearance" was incorporated into the reproposal to maintain present tolerances for small pieces of cauliflower (chaff) that affect the appearance and edibility of "Nuggets or Small Clusters" and "Clusters" style cauliflower. A definition for "chaff" was also incorporated into the reproposal.

The study conducted by USDA showed that the average unit weight of "Nuggets or Small Clusters" was closer to two grams per unit than to three grams per unit as published in the initial proposal. The AQL's and acceptance numbers in Table II were adjusted to reflect the finding.

AFFI and Patterson Frozen Foods asked that the definitions for "ricey" and "fuzzy" character in the current standards be retained in the revision. USDA agreed that maintaining the same definitions for "ricey" and "fuzzy" will reduce confusion within the industry. It was also requested that the term "mushy" character should be deleted and that its definition be incorporated into the definition for "soft" character. The industry believed this change will be less confusing and more accurate. USDA agreed and made these changes

to clarify the standards based on industry practices.

A change in the definition of "color defect" was recommended by the commenters. It was suggested that a definition differentiating "minor" and "major" color defects based on existing USDA inspection criteria should be incorporated into the "color defect" definition of the revision. USDA agreed with the change and incorporated it. The incorporated changes from the inspection criteria will accurately reflect the method used in the food industry to evaluate color defects.

Minor changes were suggested for the definitions of the terms "blemished, fragments, and mechanical damage" to help clarify their meaning. Both commenters suggested the term "discoloration" should be removed from the definition of "blemished," and the phrase, "in the aggregate," should be added to the "minor blemished and major blemished" definition.

AFFI and Patterson Frozen Foods also suggested that the words "tough or fibrous" should be added to the definition of "fragments" and the words "seriously" and "excessive or" should be deleted from the definition of "mechanical damage." USDA agreed with these changes and incorporated them into the revision.

It was requested that the classified quality factor, "mushy character," should be deleted from the standards since its definition has been incorporated into the definition of "soft character." The USDA deleted the classified quality factor for "mushy character" and adjusted the tolerance for the quality factor, "soft character" to reflect the change.

Changes in the tolerances of several "classified quality factors" were suggested. For the quality factor of "ricey character," tolerances of 15 percent for "Grade A" and 30 percent for "Grade B" were preferred by AFFI and Patterson Frozen Foods because this defect is more common and less objectionable. For "soft character", a tolerance of 5 percent rather than 10 percent was preferred because it is more preventable and more objectionable. The USDA has adjusted the tolerances for "soft character" and "ricey character" and incorporated them into the revision.

It was suggested that the quality factor of "color defect" be divided into "major color defects" and "total color defects." The comments suggested tolerances for the new factors should reflect this change with 3 percent for "major" and 8 percent for "total." We agreed with the changes in the quality factor for color defects and with the 8 percent

tolerance for "total color defects." We did not agree, however, with the change in the tolerance for "major color defects." Such a change will present a significant deviation from the tolerance in the existing U.S. Standards for Grades of Frozen Cauliflower without valid justification as to why it should be changed.

It was also suggested that the tolerance for mechanical damage, in Nuggets style, should be increased to 10 percent for "Grade A" and 20 percent for "Grade B" to better reflect the use of mechanical trimming devices. USDA agreed with this change and incorporated it in the revision.

A copy of the initial proposed rule was provided to the Agricultural Research Service (ARS) for help in identifying studies, data collection or other information relevant to the possible effect of the revision on pesticide use. ARS reported that they were unable to find much information on the subject. The information that was found by ARS proved not to be relevant.

The changes and issues raised by the comments regarding the first proposed rule supported publishing another proposed rule that was published in the Federal Register (60 FR 57958) on November 24, 1995, with a 60 day comment period. In response to that proposed rule the only comment received was from AFFI, which agreed with this revision. Accordingly, this final rule will modify the standards to a simplified easy-to-use format, consistent with recent revisions of other U.S. grade standards, with definitions of terms and easy-to-read tables that will replace the textual descriptions. This final rule is intended to facilitate better understanding and more uniform application of the grade standards.

#### List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, Vegetables.

For the reasons set forth in the preamble, 7 CFR part 52 is amended to read as follows:

#### **PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS<sup>1</sup>**

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

<sup>1</sup> Among such other processed food products are the following: Honey; molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); sirups (blended), sirups,

Authority: 7 U.S.C. 1621–1627.

2. In part 52, Subpart—United States Standards for Grades of Frozen Cauliflower, is revised to read as follows:

**Subpart—United States Standards for Grades of Frozen Cauliflower**

Sec.

- 52.721 Product description.
- 52.722 Styles.
- 52.723 Requirements for style.
- 52.724 Definitions of terms.
- 52.725 Grades.
- 52.726 Factors of quality.
- 52.727 Requirements for classified quality factors.
- 52.728 Sample size.
- 52.729 Acceptance criteria.

**Subpart—United States Standards for Grades of Frozen Cauliflower**

**§ 52.721 Product description.**

Frozen cauliflower is prepared from fresh flower heads of the cauliflower plant (*Brassica oleracea botrytis*) by trimming, washing, and blanching and is frozen and maintained at temperatures necessary for preservation of the product.

**§ 52.722 Styles.**

(a) *Clusters* mean individual segments of trimmed and cored cauliflower heads, which measure not less than 20 mm (0.75 in) in the greatest dimension across the top of the unit.

(b) *Nuggets or Small Clusters* mean individual segments of trimmed and cored cauliflower heads, which measure from 6 mm (0.25 in) to less than 20 mm (0.75 in) in the greatest dimension across the top of the unit.

**§ 52.723 Requirements for style.**

(a) *Clusters style*. A maximum of 10%, by weight, of clusters less than 20 mm (0.75 in) in the greatest dimension across the top of the unit are allowed.

(b) *Nuggets style*. A maximum of 20%, by weight, of clusters, 20 mm (0.75 in) or greater, and a maximum of 10%, by weight, of clusters less than 6 mm (0.25 in) in the greatest dimension across the top of the unit are allowed.

**§ 52.724 Definitions of terms.**

(a) *Acceptable quality level (AQL)* means the maximum percent of defective units or the maximum number of defects per hundred units of product that, for the purpose of acceptance sampling, can be considered satisfactory as a process average.

(b) *Appearance. Good appearance* means that the overall appearance or edibility of the cauliflower is not

except from grain; tea, cocoa, coffee, spices, condiments.

materially affected and; for clusters style, a maximum of 5%, by weight, of chaff is allowed for the sample unit. For nuggets style, a maximum of 10%, by weight, of chaff is allowed for the sample unit.

(c) *Blemished* means the cluster is affected or damaged by pathological injury, insect injury, or any other injury, which singly or in combination, affects the appearance or eating quality of the unit.

(1) *Minor blemished* means a unit with a dark blemish(s), which in the aggregate, exceeds the area of a circle 4 mm (0.16 in) in diameter but not 6 mm (0.25 in) or a light blemish(s), which in the aggregate, exceeds the area of a circle 6 mm (0.25 in) in diameter.

(2) *Major blemished* means a unit with a dark blemish(s), which in the aggregate, exceeds the area of a circle 6 mm (0.25 in) in diameter.

(d) *Chaff* mean individual segments of trimmed and cored cauliflower material, with and without head material, which measure less than 6 mm (0.25 in) in its greatest dimension.

(e) *Character* means the extent of firmness and compactness of the cluster and its degree of freedom from fuzzy, ricey and soft units.

(1) *Fuzzy character* means a cluster with sections of head that have elongated individual flowers (or pedicels) that result in a very fuzzy appearance.

(2) *Ricey character* means a cluster with sections of head on which the ultimate branches have become elongated, causing the flower clusters to separate and present a loose or open and sometimes granular appearance.

(3) *Soft character* means a cluster that is limp and flabby and the flesh yields readily when handled.

(f) *Color defect*.

(1) *Minor* means that after cooking, the cluster possesses a color that is more than slightly darker than light cream to dark cream.

(2) *Major* means that after cooking, the cluster possesses a color that is seriously darkened or discolored.

(g) *Core material* means the loose or attached center portion of the cauliflower head which is tough or fibrous.

(h) *Defect* means any nonconformance of a unit(s) of product from a specified requirement of a single quality characteristic.

(i) *Fragment* means a stem or other cauliflower material without head material that is 6 mm (0.25 in) or greater in the greatest dimension (excluding tough or fibrous core material, loose leaves, and chaff).

(j) *Loose leaves* mean leaf material, exclusive of small tender leaves, that are detached from the stem.

(k) *Mechanical damage* means that the appearance of the unit is affected by trimming, or the unit is crushed or broken to the extent that the appearance is materially affected.

(l) *Normal flavor and odor* means that the cauliflower, before and after cooking, has a flavor and odor that is normal and is free from objectionable flavors and odors.

(m) *Sample unit* means the amount of product specified to be used for grading. For varietal characteristics, flavor and odor and appearance, a sample unit is the entire container. For blemishes, character, color, core material, fragments, mechanical damage and loose leaves, a sample unit is 100 grams for Nuggets Style and 50 units for Clusters Style. It may be:

- (1) The entire contents of a container;
- (2) A portion of the contents of a container; or
- (3) A combination of the contents of two or more containers.

(n) *Tolerance (TOL.)* means the percentage of defective units allowed for each quality factor for a specific sample size.

(o) *Unit* means one cluster or piece of cauliflower.

**§ 52.725 Grades.**

(a) *U.S. Grade A* is the quality of frozen cauliflower that meets the following prerequisites in which the cauliflower:

- (1) Has similar varietal characteristics,
- (2) Has a normal flavor and odor;
- (3) Has a good appearance; and
- (4) Is within the limits for defects as specified in Tables I and II, of this subpart, as applicable for the style in § 52.727.

(b) *U.S. Grade B* is the quality of frozen cauliflower that meets the following prerequisites in which the cauliflower:

- (1) Has similar varietal characteristics;
- (2) Has a normal flavor and odor;
- (3) Has a good appearance; and
- (4) Is within the limits for defects as specified in Tables I and II, of this subpart as applicable for the style in § 52.727.

(c) *Substandard* is the quality of frozen cauliflower that fails to meet the requirements of U.S. Grade B.

**§ 52.726 Factors of quality.**

The grade of frozen cauliflower is based on meeting the requirements for the following factors:

- (a) Prerequisites;
  - (1) Varietal characteristics;
  - (2) Flavor and odor; and

- |  |  |                         |
|--|--|-------------------------|
| (3) Appearance.                        | (4) Ricey character;                       | (9) Fragments;          |
| (b) Classified Quality Factors:        | (5) Soft character;                        | (10) Loose leaves; and  |
| (1) Major blemished;                   | (6) Major color defects;                   | (11) Mechanical damage. |
| (2) Total blemished (Major and Minor); | (7) Total color defects (Major and Minor); |                         |
| (3) Fuzzy character;                   | (8) Core material;                         |                         |
- § 52.727 Requirements for classified quality factors.**

TABLE I.—AQL'S AND TOLERANCES (TOL.) FOR DEFECTS IN CLUSTERS STYLE BASED ON 50 UNITS OF PRODUCT FOR 13 SAMPLE UNITS, 50×13=650 UNITS

Sample Units × Sample Unit Size			1×50	3×50	6×50	13×50	21×50	29×50
Units of Product			50	150	300	650	1050	1450
Defects	AQL	TOL						
	Grade A		Acceptance numbers					
Major Blemished .....	3.8	5.0	4	9	17	33	50	67
Total Blemished (Major & Minor) .....	8.2	10.0	7	18	33	65	101	137
Fuzzy Character .....	1.3	2.0	2	4	7	13	20	26
Ricey Character .....	8.2	10.0	7	18	33	65	101	137
Soft Character .....	0.612	1.0	1	2	4	7	10	14
Major Color Defect .....	0.612	1.0	1	2	4	7	10	14
Total Color Defect (Major & Minor) .....	6.4	8.0	6	15	26	52	80	108
Core Material .....	2.17	3.0	3	6	11	20	31	41
Fragments .....	3.8	5.0	4	9	17	33	50	67
Mechanical Damage .....	8.2	10.0	7	18	33	65	101	137
Loose Leaves (each piece) .....	2.17	3.0	3	6	11	20	31	41
Defects	Grade B		Acceptance numbers					
Major Blemished .....	8.2	10.0	7	18	33	65	101	137
Total Blemished (Major & Minor) .....	13.0	15.0	10	26	48	98	154	209
Fuzzy Character .....	6.4	8.0	6	15	26	52	80	108
Ricey Character .....	13.0	15.0	10	26	48	98	154	209
Soft Character .....	2.9	4.0	3	8	13	26	39	53
Major Color Defect .....	3.8	5.0	4	9	17	33	50	67
Total Color Defect (Major & Minor) .....	13.8	16.0	11	27	51	104	163	221
Core Material .....	3.8	5.0	4	9	17	33	50	67
Fragments .....	8.2	10.0	7	18	33	65	101	137
Mechanical Damage .....	17.6	20.0	13	34	63	130	205	279
Loose Leaves (each piece) .....	6.4	8.0	6	15	26	52	80	108

TABLE II.—AQL'S AND TOLERANCES (TOL.) FOR DEFECTS IN NUGGETS OR SMALL CLUSTERS STYLE BASED ON 100 GRAMS OF PRODUCT FOR 13 SAMPLE UNITS, 100×13=1300 UNITS

Sample Units × Sample Unit Size			1×100	3×100	6×100	13×100	21×100	29×100
Grams of Product			100	300	600	1300	2100	2900
Defects	AQL	TOL						
	Grade A		Acceptance numbers (grams)					
Major Blemished .....	3.8	5.0	7	17	31	61	94	127
Total Blemished (Major & Minor) .....	8.2	10.0	13	33	61	123	194	263
Fuzzy Character .....	1.3	2.0	3	7	12	23	36	48
Ricey Character .....	8.2	10.0	13	33	61	123	194	263
Soft Character .....	0.612	1.0	2	4	7	12	19	24
Major Color Defect .....	2.17	3.0	4	11	19	37	56	76
Total Color Defect (Major & Minor) .....	8.2	10.0	13	33	61	123	194	263
Core Material .....	2.17	3.0	4	11	19	37	56	76
Fragments .....	3.8	5.0	7	17	31	61	94	127
Mechanical Damage .....	8.2	10.0	13	33	61	123	194	263
Loose Leaves (each piece) .....	3.8	5.0	7	17	31	61	94	127
Defects	Grade B		Acceptance numbers (grams)					
Major Blemished .....	8.2	10.0	13	33	61	123	194	263
Total Blemished (Major & Minor) .....	13.0	15.0	18	48	91	189	298	407
Fuzzy Character .....	6.4	8.0	10	26	48	98	153	208
Ricey Character .....	13.0	15.0	18	48	91	189	298	407
Soft Character .....	2.9	4.0	6	13	24	48	74	99
Major Color Defect .....	6.4	8.0	10	26	48	98	153	208

Total Color Defect (Major & Minor) .....	13.8	16.0	19	51	96	200	316	430
Core Material .....	2.17	3.0	4	11	19	37	56	76
Fragments .....	3.8	5.0	7	17	31	61	94	127
Mechanical Damage .....	17.6	20.0	24	63	121	251	398	544
Loose Leaves (each piece) .....	6.4	8.0	10	26	48	98	153	208

**§ 52.728 Sample size.**

The sample size used to determine whether the requirements of these standards are met shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Products" (7 CFR 52.1 through 52.83).

**§ 52.729 Acceptance criteria.**

(a) *Style.* A lot of frozen cauliflower, is considered as meeting the requirements for style if the requirements in § 52.723, as applicable, are not exceeded.

(b) *Quality Factors.* A lot of frozen cauliflower is considered as meeting the requirements for quality if:

(1) The prerequisites specified in § 52.726 are met; and

(2) The Acceptance Numbers in Table I or II in § 52.727, as applicable, are not exceeded.

(c) *Single Sample Unit.* Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting requirements for quality and style if:

(1) The prerequisites specified in § 52.726 are met; and

(2) The requirements for style in § 52.723 and the Acceptable Quality Levels (AQL's) in Tables I & II in § 52.727, as applicable, are not exceeded.

Dated: August 21, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-21783 Filed 8-26-96; 8:45 am]

BILLING CODE 3410-02-P

**Farm Service Agency**

**Commodity Credit Corporation**

**7 CFR Parts 704 and 1410**

RIN 0560-AE84

**1986-1990 Conservation Reserve Program; 1991-2002 Conservation Reserve Program**

**AGENCY:** Farm Service Agency and Commodity Credit Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule modifies provisions for the Conservation Reserve

Program (CRP) which were addressed in rules published on May 8, 1995 (60 FR 22456) and March 15, 1996 (61 FR 10671) concerning the opportunity for early release of certain acreage from the CRP. The modifications reflect new provisions enacted in the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). This rule also sets out other modifications to reflect new provisions in the 1996 Act and to make technical corrections and other minor modifications to the rule. These additional modifications include: revisions of the "contour grass strip" and "filterstrip" definitions to remove size limitations; a correction of a landlord-tenant reference in the rule; a reassignment of provisions dealing with the preservation of cropland bases; and technical changes to reflect a Department of Agriculture (USDA) reorganization. Further, this rule also updates the base period for the cropping history needed to enter cropland into the CRP.

**DATES:** This rule is effective August 27, 1996. Comments concerning this rule should be received by October 28, 1996, to be assured consideration.

**ADDRESSES:** Comments and requests for additional information should be directed to Cheryl Zavodny, Conservation and Environmental Protection Division, FSA, P.O. Box 2415, STOP Box 0513, Room 4768-S, Washington, DC 20013-2415, telephone 202-720-7333.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Zavodny, (202) 720-7333.

**SUPPLEMENTARY INFORMATION:**

Executive Order 12866

This interim rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because neither FSA nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this rule

does not have a significant impact on the environmental, historical, social or economic resources of the Nation. Therefore, it has been determined that these actions will not require an Environmental Assessment or an Environmental Impact Statement.

**Executive Order 12372**

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

**Federal Domestic Assistance Program**

The title and number of the Federal Domestic Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, is the Conservation Program-10.069.

**Paperwork Reduction Act**

The previous information collection under OMB control number 0560-0125 has been reinstated with changes and has received emergency clearance. A regular information collection submission will be submitted pursuant to the Paperwork Reduction Act of 1995.

**Executive Order 12778**

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule are not retroactive and preempt State and local laws to the extent such laws are inconsistent with the provisions of this rule. Before any action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded program participants at 7 CFR parts 11, 624, and 780 must be exhausted.

**Background**

Current regulations in 7 CFR part 704 and 7 CFR part 1410 implement the CRP, which was first authorized by Title XII of the Food Security Act of 1985 (1985 Act). Acreage enrolled in signups held from 1986 through 1990 are controlled by regulations in 7 CFR part 704 whereas acreage enrolled in subsequent signups is controlled under part 1410. In the CRP, the CCC pays owners and operators of highly erodible and other environmentally sensitive cropland to convert the land to a

conserving use cover for a period of at least 10 years. Because of a desire to redirect CRP to more sensitive land, interim rules published May 8, 1995, and March 15, 1996, allowed for an early release of some acreage from some contracts. Subsequently, in the 1996 Act, enacted on April 4, 1996, CRP enrollments were re-authorized through 2002, and with respect to existing contracts it was provided that certain CRP participants could unilaterally obtain an early release of contracts entered into before January 1, 1995, if the contract had been in effect for at least 5 years. Under the statute, there is a 60 day waiting period before the application to terminate is effective. That termination will not relieve the participant of liability for a pre-existing contract violation. The 1996 Act provides that land which is not eligible for the early termination includes filterstrips, grass waterways, riparian areas, field windbreaks, shelterbelts, shallow water areas, acreage with an erodibility index of more than 15, and other lands of high environmental value (including wetlands), as may be determined by the Secretary. This rule implements those provisions and modifies the May 1995, and March 1996, interim rules accordingly. In addition, Title III of the 1996 Act (which covers a number of conservation issues for the CRP and other programs) allows for the Secretary to permit technical assistance in connection with the creation of new enrollments to be obtained from private sources. That provision has also been incorporated into the regulations. Other changes to reflect the new legislation include modifications in the 1996 rule which change the CRP statute to reduce from 3 to 1 the number of years which an owner or operator of cropland must have that status prior to offering land for enrollment in the CRP.

In addition, this rule makes certain technical changes to the rule. These include: (1) Affording more flexibility in enrollments by removing size limits in the definitions of filterstrip and contour grass strip; (2) correcting the reference to the general regulations governing landlord-tenant matters and assignments and moving the reference concerning the preservation of cropland bases from its former position in part 719, and; (3) changing references from SCS to Natural Resources Conservation Service.

Further, the rule is amended to change the 1986-1990 base period previously used to determine whether land qualifies as cropland for CRP purposes. The new base period will be a 1992-1996 base period. This is to

insure that the limitations of the program to cropland are applied as fully as possible consistent with the goals of the program.

The Department seeks public comment regarding the acreage determined ineligible for early release. The Secretary determined, in addition to the acreage excluded by statute, acreage enrolled under wetland criteria during signup periods 8 and 9 and acreage on which a CRP useful life easement is filed will not be eligible. A cost/benefit analysis was conducted to evaluate two options concerning the types of enrolled acreage that would not be eligible for early release under this rule. The first (selected) option included the acreage and cover types listed in sections 704.20 and 1410.116. The second option added wetland not enrolled in the eighth and ninth signups, buffer acreage for all wetland, wellhead protection acres, and acres affected by scour erosion to the list. About 1.7 million fewer acres would be eligible for early release under the second option and almost 110,000 fewer acres would have been released early. The increased plantings from the higher amount of early release acreage under the first option would have minimal impacts on farm prices and income. CRP payments would be \$6 million lower under the second option, if none of the withdrawn acres are replaced with new enrollments until after they would have normally expired. The loss of environmental benefits under the first option would be only slightly larger than under the second option. For additional information or to obtain a copy of the cost/benefit analysis, contact Tom Browning, USDA/FSA/EPAS, P.O. Box 2415 STOP 0519, Washington, D.C. 20013-2415.

This interim rule had a statutory requirement to be issued within 90 days following enactment of the Federal Agriculture Improvement and Reform Act of 1996 on April 4, 1996, as required by Section 1243(c) of the 1985 Act, as amended by the 1996 Act. Because the modifications in this rule are required by law, technical in nature, do not limit any entitlement, and/or involve the provisions of immediate benefits provided for in the 1996 Act, it has been determined that the delay of this rule pending comment would be contrary to both the law and the public interest.

List of Subjects

7 CFR Part 704

Administrative practices and procedures, Base protection, Conservation plan, Contracts,

Environmental indicators, Natural resources, and Technical assistance.

7 CFR Part 1410

Administrative practices and procedures, Base protection, Conservation plan, Contracts, Environmental indicators, Natural resources, and Technical assistance.

Accordingly, 7 CFR parts 704 and 1410 are amended as follows:

#### **PART 704—1986-1990 CONSERVATION RESERVE PROGRAM**

1. The authority citation for 7 CFR Part 704 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801-3847.

##### **§ 704.1 [Amended]**

2. Section 704.1 is amended by adding “, as amended” after “(Pub. L. 99-198).”

##### **§ 704.2 [Amended]**

3. Section 704.2(a)(23) is amended by adding the words “or as otherwise authorized by the Secretary” after the word “Department.”

##### **§ 704.3 [Amended]**

4. Section 704.3 is amended in paragraph (a) by removing the words “State ASC Committees (STC) and County ASC Committees (COC)” and adding in their place the words “State FSA committees (STC) and county FSA committees (COC)”; in paragraph (b) by removing the words “Soil Conservation Service (SCS)” and adding in their place the words “Natural Resources Conservation Service (NRCS)”; in paragraph (d) by removing the words “Extension Service (ES)” and adding in their place “Cooperative State Research, Education and Extension Service”.

##### **§ 704.7 [Amended]**

5. Section 704.7 is amended in paragraph (a)(3)(ii) by removing “SCS” and adding in its place “NRCS”; in paragraph (d)(4) by removing the word “exceeded” and adding the word “adjusted” in its place and by removing “SCS” and adding “NRCS” in its place; in paragraphs (e)(1) and (e)(8) by removing “SCS” and adding “NRCS” in its place.

##### **§ 704.9 [Amended]**

6. Section 704.9 is amended in paragraph (a) by removing the words “Soil Conservation Service (SCS)” and adding the words “NRCS or another source as approved by the NRCS, in consultation with FSA” in its place; in paragraphs (b) and (d) by removing “SCS” and adding in its place “NRCS.”

**§ 704.18 [Amended]**

7. Section 704.18 is amended by removing the words "part 709, Assignment of Payment" and adding in their place the words "part 1404, Assignment of Payments."

8. Section 704.20 is amended in paragraph (b) by removing "SCS" and adding in its place "NRCS", and paragraph (a)(4) is revised to read as follows:

**§ 704.20 Contract modifications.**

(a) \* \* \*

(4) Terminate contracts enrolled in CRP before January 1, 1995, which have been in effect for at least 5 years as determined by CCC. Contract acreage located within an average of 100 feet of a perennial stream or other permanent waterbody, on which a CRP easement is filed, that was enrolled under the wetland eligibility criteria established in signup periods eight and nine, and contract acreage on which there exist the following practices installed or developed as a result of participation in the CRP or are otherwise required by the NRCS local Field Office Technical Guide are not eligible for termination prior to the expiration date of the contract as provided in this paragraph: grass waterways; filter strips; shallow water areas for wildlife; bottomland timber established on wetlands; field windbreaks; and, shelterbelts. In addition, for any land for which an early termination is sought, the land must have an EI of 15 or less. With respect to any terminations made under this paragraph (a)(4):

(i) The termination shall become effective 60 days from the date the participant(s) submits notification to CCC of the participant's desire to terminate the contract;

(ii) Acreage terminated under this provision is eligible to be re-offered for CRP during future signup periods providing the acreage otherwise meets the eligibility criteria established for that signup; and,

(iii) Participants shall be required to meet conservation compliance requirements of 7 CFR part 12 to the extent applicable to other land.

\* \* \* \* \*

**§ 704.24 [Amended]**

9. Section 704.24 is amended by removing all references therein to "SCS" and adding in their place "NRCS."

**§ 704.26 [Amended]**

10. Section 704.26 is amended by removing "713.109 and 713.150" and adding in its place "1413.150."

**§ 704.27 [Amended]**

11. Section 704.27 is amended in paragraph (b) by removing "SCS" and adding in its place "NRCS."

12. Section 704.30 is amended by adding paragraph (c) as follows:

**§ 704.30 Miscellaneous.**

\* \* \* \* \*

(c) Cropland acreage established and maintained in vegetative cover under CRP, including approved volunteer cover, shall retain its cropland classification for the period of time that the cover is maintained or as otherwise established by the Deputy Administrator.

**PART 1410—1991—1995  
CONSERVATION RESERVE PROGRAM**

13. The authority citation for 7 CFR Part 1410 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3831-3847.

14. The title of Part 1410 is amended by removing "1991-95" and adding "1991-2002" in its place.

**§ 1410.1 [Amended]**

15. Section 1410.1 is amended by adding, "as amended" after "Food Security Act of 1985."

**§ 1410.2 [Amended]**

16. Section 1410.2 is amended by: removing the words "Soil Conservation Service (SCS)" in paragraph (f)(2) and adding "NRCS" in their place; in paragraph (h) removing the words "Extension Service (ES)" and adding in their place the words "Cooperative State Research, Education, and Extension Service (CSREES)"; and redesignating paragraphs (g) and (h) as (h) and (i) respectively.

17. Section 1410.2 is further amended by revising paragraphs (a) and (f)(1) and adding a new paragraph (g), to read as follows:

**§ 1410.2 Administration.**

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, Commodity Credit Corporation (CCC), and the Administrator, Farm Service Agency (FSA), through the Deputy Administrator for Farm Programs, FSA. In the field, the regulations in this part will be administered by the State and county FSA committees ("State committees" and "county committees," respectively).

\* \* \* \* \*

(f)(1) The erosion index (EI), suitability of land for permanent vegetative or water cover, factors for

determining the likelihood of improved water quality, and adequacy of the planned practice to achieve desired objectives, shall be determined by the Natural Resource Conservation Service (NRCS) in accordance with the local field office technical guide or other guidelines deemed appropriate by the NRCS, except that no such determination by the NRCS shall compel CCC to execute a contract which CCC does not believe will serve the purposes of the program established by this part.

\* \* \* \* \*

(g) State FSA committees, with NRCS, may develop a State ranking process to evaluate acreage based on State specific goals and objectives. Such STC's may choose between developing a State ranking process or utilizing a national ranking process. States' ranking processes shall be developed based on recommendations from State Technical committees, follow national guidelines, and be approved by the Deputy Administrator."

\* \* \* \* \*

**§ 1410.3 [Amended]**

18. Section 1410.3(b) is amended by: removing the definition of "SCS"; placing the definition of "FSA" in its correct alphabetical position; and in the definition of "Highly erodible land" removing "SCS" and adding "NRCS" in its place.

19. Section 1410.3(b) is further amended by adding, at its appropriate alphabetical location, a new definition for "NRCS" and by revising the definitions of "Contour grass strip", "Filterstrip", and "FSA", to read as follows:

\* \* \* \* \*

"Contour grass strip means a vegetation area that follows the contour of the land, whose width is determined by the NRCS local office Field Office Technical Guide and whose designation is included as a contour grass strip by a conservation plan required under this part;"

\* \* \* \* \*

"Filterstrip means a strip or area of vegetation of a width determined appropriate for the purpose by the NRCS local office Field Office Technical Guide;"

"FSA means the Farm Service Agency of the United States Department of Agriculture;"

\* \* \* \* \*

"NRCS means the Natural Resources Conservation Service of the United States Department of Agriculture;"

\* \* \* \* \*

20. Section 1410.13 is amended by adding paragraph (d) to read as follows:

**§ 1410.13 Miscellaneous.**

\* \* \* \* \*

(d) Cropland acreage established and maintained in vegetative cover under CRP, including approved volunteer cover, shall retain its cropland classification for the period of time that the cover is maintained or as otherwise established by the Deputy Administrator.

**§ 1410.102 [Amended]**

21. Section 1410.102 is amended in paragraphs (a) and (b) by removing "3 years" and adding in its place "1 year."

**§ 1410.103 [Amended]**

22. Section 1410.103 is amended: In paragraph (a)(1) by removing "1986 through 1990" and adding in its place "1992 through 1996";

In paragraph (b)(4) by removing the word "exceeded" and adding in its place the word "adjusted" and by removing "SCS" and adding in its place "NRCS";

In paragraph (c) by removing "SCS" wherever it appears and adding in its place "NRCS"; and

In paragraph (f)(2) by removing "part 703" and adding in its place "part 620".

**§ 1410.111 [Amended]**

23. Section 1410.111 is amended: In paragraph (a) by adding after the words "conservation district," the words "or another source as approved by the NRCS," and

In paragraph (a) removing "SCS" and adding in its place "NRCS".

24. Section 1410.116 is amended by revising paragraph (a)(5) to read as follows:

**§ 1410.116 Contract modifications.**

(a) \* \* \*

(5) Terminate contracts enrolled in CRP before January 1, 1995, which have been in effect for at least 5 years. Contract acreage located within an average of 100 feet of a perennial stream or other permanent waterbody, on which a CRP easement is filed, that was enrolled under the wetland eligibility criteria established in signup periods 8 and 9, and contract acreage on which there exist the following practices, installed or developed as a result of participation in the CRP or as otherwise required by the NRCS local Field Office Technical Guide, are not eligible for termination prior to the expiration date of the contract as provided in this paragraph: grass waterways; filter strips; shallow water areas for wildlife; bottomland timber established on wetlands; field windbreaks; and, shelterbelts. In addition, for any land for

which an early termination is sought, the land must have an EI of 15 or less. With respect to terminations under this paragraph:

(i) The termination shall become effective 60 days from the date the participant(s) submit notification to CCC of the participant's desire to terminate the contract;

(ii) Acreage terminated under this provision is eligible to be re-offered for CRP during future signup periods providing the acreage otherwise meets the eligibility criteria established for that signup; and,

(iii) Participants shall be required to meet conservation compliance requirements of 7 CFR part 12 to the extent applicable to other land.

\* \* \* \* \*

Signed at Washington, DC, on August 19, 1996.

Bruce R. Weber,

*Acting Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 96-21624 Filed 8-26-96; 8:45 am]

BILLING CODE 3410-05-P

**Agricultural Marketing Service**

**7 CFR Part 948**

[Docket No. FV96-948-1 FIR]

**Irish Potatoes Grown in Colorado; Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, with a correction, the provisions of an interim final rule that established an assessment rate for the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) (Committee) under Marketing Order No. 948 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of Irish potatoes grown in Colorado. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. **EFFECTIVE DATE:** Effective on July 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, FAX 202-720-5698, or Dennis L. West, Marketing

Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503-326-2724, FAX 503-326-7440. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-2491, FAX 202-720-5698.

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1, 1996, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the

Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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

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

The Colorado potato marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado Area III potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

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

The Committee met on April 11, 1996, and unanimously recommended 1996-97 expenditures of \$24,462.50 and an assessment rate of \$0.01 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were \$27,362.50. The assessment rate of \$0.01 is \$0.01 less than last year's established rate. Major expenditures recommended by the

Committee for the 1996-97 year include \$11,500 for the manager's salary, \$2,400 for rent, and \$1,500 for office supplies, the same as in 1995-96.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado Area III potatoes. Potato shipments for the year are estimated at 1,450,750 hundredweight which should provide \$14,507.50 in assessment income. Income derived from handler assessments, interest, and rent from the sublease of office space to the State inspection service, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the June 12, 1996, issue of the Federal Register (61 FR 29635). That interim final rule added § 948.215 to establish an assessment rate for the Committee. That rule provided that interested persons could file comments through July 12, 1996. No comments were received.

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

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at those meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1996-97 budget and those for subsequent fiscal periods will be reviewed and, as

appropriate, approved by the Department.

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

This final rule also adds a new subpart heading—Handling Regulations to the Code of Federal Regulations immediately preceding § 948.386 Handling regulation.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 fiscal period began on July 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period, and no comments were received.

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

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 948 which was published at 61 FR 29635 on June 12, 1996, is adopted as a final rule with the following change:

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

1. The authority citation for 7 CFR part 947 continues to read as follows:

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

2. Part 948 is amended by adding a new subpart heading immediately preceding § 948.386 to read as follows:

#### **Subpart—Handling Regulations**

Dated: August 21, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 96-21750 Filed 8-26-96; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****8 CFR Part 301**

[INS No. 1736-95]

RIN 1115-AE19

**Acquisition of Citizenship; Equal Treatment of Women in Conferring Citizenship on Children Born Abroad****AGENCY:** Immigration and Naturalization Service, Justice.**ACTION:** Correction to the interim rule.

**SUMMARY:** This regulation contains corrections to the interim regulation, published Friday, July 5, 1996, at 61 FR 35111, establishing procedures for certain United States citizen women to confer citizenship on their children born outside of the United States before noon (Eastern Standard Time) May 24, 1934.

**EFFECTIVE DATES:** July 5, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jane B. Barker, Adjudications Officer, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

**SUPPLEMENTARY INFORMATION:** The Immigration and Naturalization Service (Service) published an interim rule in the Federal Register on July 5, 1996, at 61 FR 35111 which became effective upon date of publication. In the interim rule persons residing outside the United States are directed to "take the oath of allegiance abroad before any diplomatic or consular officer of the United States \* \* \*" This reference has been removed because the Department of State does not require an oath of allegiance in connection with passport applications.

**Corrections**

1. On page 35112, in the first column, in the second paragraph, in the fourth and fifth lines, remove the phrase: "for an interview under oath concerning" and insert the phrase: "to make".

2. On page 35112, in the second column, in Part 301—Nationals and Citizens of the United States at Birth, in the table of contents, under "Sec.", the reference to "301.0 Procedures." is corrected to "301.1 Procedures."

**§ 301.1 [Corrected]**

3. On page 35112, in the second column, in § 301.1(a)(2), in the fourth line, the reference to "301(H)" is corrected to read: "301(h)".

4. On page 35112, in the third column, in paragraph (b)(2), in the

fourth and fifth lines, remove the phrase "take the oath of allegiance" and insert the phrase: "make his or her claim".

Dated: August 22, 1996.

Doris Meissner,

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 96-21804 Filed 8-26-96; 8:45 am]

BILLING CODE 4410-10-M

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency****12 CFR Part 30**

[Docket No. 96-19]

RIN 1557-AB17

**FEDERAL RESERVE SYSTEM****12 CFR Part 208**

[Docket No. R-0766]

**FEDERAL DEPOSIT INSURANCE CORPORATION****12 CFR Part 364**

RIN 3064-AB13

**DEPARTMENT OF THE TREASURY****Office of Thrift Supervision****12 CFR Part 570**

[No. 96-53]

RIN 1550-AA97

**Interagency Guidelines Establishing Standards for Safety and Soundness**

**AGENCIES:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

**ACTION:** Final guidelines.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board of Governors), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) are amending the Interagency Guidelines Establishing Standards for Safety and Soundness (Guidelines) to include asset quality and earnings standards. The Guidelines were adopted pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act).

**EFFECTIVE DATE:** October 1, 1996.**FOR FURTHER INFORMATION CONTACT:***OCC:* Emily R. McNaughton, National

Bank Examiner (202/874-5170), Office of the Chief National Bank Examiner; David Thede, Senior Attorney (202/874-5210), Securities and Corporate Practices Division; or Mark Tenhundfeld, Senior Attorney (202/874-5090), Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

*Board of Governors:* David Wright, Project Manager (202/728-5854), Division of Banking Supervision and Regulation; Gregory A. Baer, Managing Senior Counsel (202/452-3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

*FDIC:* Robert W. Walsh, Manager, Planning and Program Development (202/898-6911) or Michael D. Jenkins, Examination Specialist (202/898-6896), Division of Supervision; or Susan vandenToorn, Counsel (202/898-8707), or Nancy L. Alper, Counsel (202/736-0828), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

*OTS:* William Magrini, Senior Project Manager (202/906-5744), Supervision Policy; or Kevin Corcoran, Assistant Chief Counsel (202/906-6962), or Teri M. Valocchi, Counsel (Banking and Finance) (202/906-7299), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:****I. Background****A. Statutory Framework**

Section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Pub. L. 102-242, amended the Federal Deposit Insurance Act (FDI Act) by adding a new section (section 39, codified at 12 U.S.C. 1831p-1) that requires each Federal banking agency to establish by regulation certain safety and soundness standards for the insured depository institutions and depository institution holding companies for which it is the primary Federal regulator. As enacted in FDICIA, section 39(b) of the FDI Act required the agencies to establish standards by regulation specifying a maximum ratio of classified assets to capital and minimum earnings sufficient to absorb losses without impairing capital.

Section 318(a) of the Riegle Community Development and Regulatory Improvement Act of 1994

(CDRIA), Pub. L. 103-325, which was enacted on September 23, 1994, eliminated the application of section 39 to depository institution holding companies and replaced the requirement that the agencies "specify" quantitative asset quality and earnings standards with a requirement that the agencies prescribe standards, by regulation or by guideline, relating to asset quality and earnings that the agencies determine to be appropriate.

#### B. Agencies' Proposals

The agencies published a joint notice of proposed rulemaking in the Federal Register on November 18, 1993 (59 FR 60802) that solicited comment on specific standards that would govern numerous facets of a depository institution's operations, including quantitative standards governing a depository institution's asset quality and earnings. On July 10, 1995 (60 FR 35674), the agencies adopted: (1) final guidelines in all areas except asset quality and earnings; and (2) a final rule establishing deadlines for submission and review of safety and soundness compliance plans which may be required for failure to meet one or more of the safety and soundness standards adopted in the Guidelines.<sup>1</sup> On the same day (60 FR 35688), the agencies also proposed revised guidelines concerning asset quality and earnings standards to address problems noted by many commenters with the quantitative standards. The primary concern of these commenters was that it was impossible to design quantitative standards that would be appropriate for every regulated institution. Because the CDRIA clarified that quantitative standards were not required, the agencies proposed to replace the quantitative standards with more comprehensive qualitative standards that emphasize monitoring, reporting, and preventive or corrective action appropriate to the size of the institution and the nature and scope of its activities.

The proposed asset quality standards required an institution to identify problem assets and estimate inherent losses. The proposal also required an institution to: (1) consider the size and potential risks of material concentrations of credit risk; (2) compare the level of problem assets to the level of capital and establish reserves sufficient to absorb anticipated

losses on those and other assets; (3) take appropriate corrective action to resolve problem assets; and (4) provide periodic asset quality reports to the board of directors to assess the level of asset risk. The proposal noted that the complexity and sophistication of an institution's monitoring, reporting systems, and corrective actions should be commensurate with the size, nature, and scope of the institution's operations.

The agencies proposed earnings standards requiring monitoring and reporting systems similar to those required in the standards for asset quality. The proposed earnings standards were intended to enhance early identification and resolution of problems. The standards required an institution to compare its earnings trends, relative to equity, assets, and other common benchmarks, with its historical experience and with the earnings trends of its peers. The proposed standards also provided that an institution should: (1) evaluate the adequacy of earnings given the institution's size, and complexity, and the risk profile of the institution's assets and operations; (2) assess the source, volatility, and sustainability of earnings; (3) evaluate the effect of nonrecurring or extraordinary income or expense; (4) take steps to ensure that earnings are sufficient to maintain adequate capital and reserves after considering asset quality and the institution's rate of growth; and (5) provide periodic reports with adequate information for management and the board of directors to assess earnings performance.

#### II. Discussion of Comments

The agencies received a total of 31<sup>2</sup> comments, some of which were sent to more than one agency. Commenters were overwhelmingly supportive of the proposal, particularly its reliance on qualitative and flexible standards in lieu of the quantitative standards originally proposed. Commenters noted that the more flexible guidelines embodied in the second proposed rule built upon a depository institution's own procedures for monitoring, reporting, and taking action with respect to asset quality and earnings conditions. Commenters agreed that well run institutions would not have to alter their practices in order to comply with the proposed standards.

Some commenters suggested amendments to the proposal. One commenter asked the agencies to clarify how the proposed standards interact with the examination process and the

determination of CAMEL ratings. Another commenter emphasized that institutions need flexibility in determining earnings benchmarks and defining the appropriate peer group. A third commenter suggested that the agencies eliminate the earnings standard directing each institution to evaluate the effect of nonrecurring or extraordinary income or expense. This commenter believed such an evaluation was effectively required by the separate standard requiring the institution to assess the source, volatility, and sustainability of earnings. Finally, one commenter asked that institutions be given the option of complying with quantitative standards.

#### III. Final Guidelines

The agencies are adopting the asset quality and earnings standards substantially as proposed. These qualitative standards are sufficiently flexible to permit an institution to adopt practices that are consistent with safe and sound banking practices and that are appropriate for the institution. Moreover, the standards are designed to prompt a depository institution to take steps that will help identify emerging problems in the institution.

The final rule makes two minor changes to the asset quality standards. First, the order of the steps a depository institution is to take is rearranged to reflect more accurately the appropriate sequence of these steps. Second, the final rule deletes the word "quality" in the standard requiring periodic asset reports (asset quality standard 6 in the final guidelines). This change was made to emphasize that the report is to address each of the asset quality standards, as appropriate, and not focus solely on problem assets. In response to the comment about the redundant earnings standards, the final rule combines the two standards concerning the nonrecurring income and sustainability of income. The agencies agree that these standards need not be listed separately, given the significant overlap in what they address. A discussion of the remaining comments follows.

*Impact on examinations and ratings.* The guidelines will not change the examination process or the determination of CAMEL ratings. These guidelines represent the agencies' longstanding expectation regarding an institution's management of asset quality and earnings, and, as such, will not require a change in the agencies' examination procedures or the determination of an institution's rating.

*Definition of peer group.* The agencies recognize that defining a peer group

<sup>1</sup> For the OCC, these Guidelines appear as Appendix A to part 30; for the Board of Governors, these Guidelines appear as Appendix D to part 208; for the FDIC, these Guidelines appear as Appendix A to part 364; and for the OTS, these Guidelines appear as Appendix A to part 570.

<sup>2</sup> The Board of Governors received 14 comments, while the OCC, FDIC, and OTS received 8, 6, and 3, respectively.

necessarily entails making decisions about which criteria to use. The guidelines identify equity and asset data as two commonly used benchmarks in defining a peer group and expressly state that an institution may use other commonly used benchmarks. The agencies will be flexible in permitting institutions to select criteria reasonably designed to provide a meaningful peer group comparison.

*Quantitative standards.* The agencies have decided against returning to quantitative standards in lieu of, or in addition to, the standards proposed. The agencies believe the standards contained in the final guidelines will encourage the adoption of practices that are consistent with safe and sound banking practices and that are appropriate for a given institution. Moreover, the agencies believe that these standards will be more effective than quantitative standards would be in helping identify emerging problems in a financial institution. However, even though the agencies are not adopting quantitative standards, the agencies will continue to analyze asset quality ratios and earnings levels, and trends thereof, in assessing an institution.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the agencies hereby certify that these guidelines will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. As is explained more fully in the preamble to these guidelines, the guidelines are designed to illustrate what the agencies consider to be steps that are consistent with safe and sound banking practices while preserving flexibility for an institution to adopt a system that is appropriate for its circumstances.

V. Executive Order 12866

The OCC and OTS have determined that these final guidelines are not significant regulatory actions for purposes of Executive Order 12866.

VI. OCC and OTS: Unfunded Mandates Reform Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year. If a budgetary impact

statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC and OTS have determined that the final guidelines will not result in expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, the OCC and the OTS have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives. As discussed in the preamble, the final guidelines represent the standards applied by the agencies in examining insured depository institutions, and, therefore, represent no change in the agencies' policies and impose minimal new Federal requirements.

List of Subjects

12 CFR Part 30

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Safety and soundness, Securities.

12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 570

Accounting, Administrative practices and procedures, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Savings associations, Safety and soundness.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, part 30 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

**PART 30—SAFETY AND SOUNDNESS STANDARDS**

1. The authority citation for part 30 is revised to read as follows:

Authority: 12 U.S.C. 93a, 1831p-1.

2. The table of contents of appendix A to part 30 is amended by adding

entries for II.G. and II.H. to read as follows:

Appendix A to Part 30—Interagency Guidelines Establishing Standards for Safety and Soundness

Table of Contents

\* \* \* \* \*

II. \* \* \*

G. Asset quality.

H. Earnings.

\* \* \* \* \*

3. Item II of appendix A to part 30 is amended by adding paragraphs G and H to read as follows:

\* \* \* \* \*

II. Operational and Managerial Standards

\* \* \* \* \*

G. *Asset quality.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to identify problem assets and prevent deterioration in those assets. The institution should:

1. Conduct periodic asset quality reviews to identify problem assets;
2. Estimate the inherent losses in those assets and establish reserves that are sufficient to absorb estimated losses;
3. Compare problem asset totals to capital;
4. Take appropriate corrective action to resolve problem assets;
5. Consider the size and potential risks of material asset concentrations; and
6. Provide periodic asset reports with adequate information for management and the board of directors to assess the level of asset risk.

H. *Earnings.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to evaluate and monitor earnings and ensure that earnings are sufficient to maintain adequate capital and reserves. The institution should:

1. Compare recent earnings trends relative to equity, assets, or other commonly used benchmarks to the institution's historical results and those of its peers;
2. Evaluate the adequacy of earnings given the size, complexity, and risk profile of the institution's assets and operations;
3. Assess the source, volatility, and sustainability of earnings, including the effect of nonrecurring or extraordinary income or expense;
4. Take steps to ensure that earnings are sufficient to maintain adequate

capital and reserves after considering the institution's asset quality and growth rate; and

5. Provide periodic earnings reports with adequate information for management and the board of directors to assess earnings performance.

\* \* \* \* \*

Dated: May 21, 1996.

Eugene A. Ludwig,  
Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, part 208 of chapter II of title 12 of the Code of Federal Regulations is amended as follows:

**PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)**

1. The authority citation for part 208 continues to read as follows:

Authority: 12 U.S.C. 36, 248 (a) and (c), 321–338, 461, 481, 486, 601, 611, 1814, 1823(j), 1831o, 1831p–1, 3906, 3909, 3310, 3331–3351, 15 U.S.C. 78b, 78o–4(c)(5), 78q, 78q–1, 78w, 781(b), 781(i), and 1781(g).

2. The table of contents of appendix D to part 208 is amended by adding entries for II.G. and II.H. to read as follows:

Appendix D to Part 208—Interagency Guidelines Establishing Standards for Safety and Soundness

Table of Contents

\* \* \* \* \*

II. \* \* \*

G. Asset quality.

H. Earnings.

\* \* \* \* \*

3. Item II of appendix D to part 208 is amended by adding paragraphs G and H to read as follows:

\* \* \* \* \*

II. Operational and Managerial Standards

\* \* \* \* \*

G. *Asset quality.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to identify problem assets and prevent deterioration in those assets. The institution should:

1. Conduct periodic asset quality reviews to identify problem assets;
2. Estimate the inherent losses in those assets and establish reserves that are sufficient to absorb estimated losses;

3. Compare problem asset totals to capital;

4. Take appropriate corrective action to resolve problem assets;

5. Consider the size and potential risks of material asset concentrations; and

6. Provide periodic asset reports with adequate information for management and the board of directors to assess the level of asset risk.

H. *Earnings.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to evaluate and monitor earnings and ensure that earnings are sufficient to maintain adequate capital and reserves. The institution should:

1. Compare recent earnings trends relative to equity, assets, or other commonly used benchmarks to the institution's historical results and those of its peers;
2. Evaluate the adequacy of earnings given the size, complexity, and risk profile of the institution's assets and operations;
3. Assess the source, volatility, and sustainability of earnings, including the effect of nonrecurring or extraordinary income or expense;
4. Take steps to ensure that earnings are sufficient to maintain adequate capital and reserves after considering the institution's asset quality and growth rate; and
5. Provide periodic earnings reports with adequate information for management and the board of directors to assess earnings performance.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, June 14th, 1996.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, part 364 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

**PART 364—STANDARDS FOR SAFETY AND SOUNDNESS**

1. The authority citation for part 364 continues to read as follows:

Authority: 12 U.S.C. 1819 (Tenth), 1831p–1.

2. The table of contents of appendix A to part 364 is amended by adding entries for II.G. and II.H. to read as follows:

Appendix A to Part 364—Interagency Guidelines Establishing Standards for Safety and Soundness

Table of Contents

\* \* \* \* \*

II. \* \* \*

G. Asset quality.

H. Earnings.

\* \* \* \* \*

3. Item II of appendix A to part 364 is amended by adding paragraphs G and H to read as follows:

\* \* \* \* \*

II. Operational and Managerial Standards

\* \* \* \* \*

G. *Asset quality.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to identify problem assets and prevent deterioration in those assets. The institution should:

1. Conduct periodic asset quality reviews to identify problem assets;
2. Estimate the inherent losses in those assets and establish reserves that are sufficient to absorb estimated losses;
3. Compare problem asset totals to capital;
4. Take appropriate corrective action to resolve problem assets;
5. Consider the size and potential risks of material asset concentrations; and

6. Provide periodic asset reports with adequate information for management and the board of directors to assess the level of asset risk.

H. *Earnings.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to evaluate and monitor earnings and ensure that earnings are sufficient to maintain adequate capital and reserves. The institution should:

1. Compare recent earnings trends relative to equity, assets, or other commonly used benchmarks to the institution's historical results and those of its peers;
2. Evaluate the adequacy of earnings given the size, complexity, and risk profile of the institution's assets and operations;
3. Assess the source, volatility, and sustainability of earnings, including the effect of nonrecurring or extraordinary income or expense;
4. Take steps to ensure that earnings are sufficient to maintain adequate capital and reserves after considering the institution's asset quality and growth rate; and

5. Provide periodic earnings reports with adequate information for management and the board of directors to assess earnings performance.

\* \* \* \* \*

By order of the Board of Directors.

Dated at Washington, D.C. this 13th day of August 1996.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

*Executive Secretary.*

Office of Thrift Supervision

12 CFR CHAPTER V

Authority and Issuance

For the reasons set forth in the joint preamble, part 570 of chapter V of title 12 of the Code of Federal Regulations is amended as follows:

**PART 570—SUBMISSION AND REVIEW OF SAFETY AND SOUNDNESS COMPLIANCE PLANS AND ISSUANCE OF ORDERS TO CORRECT SAFETY AND SOUNDNESS DEFICIENCIES**

1. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1831p-1.

2. The table of contents of appendix A to part 570 is amended by adding entries for II.G. and II.H. to read as follows:

Appendix A to Part 570—Interagency Guidelines Establishing Standards for Safety and Soundness

Table of Contents

\* \* \* \* \*

II. \* \* \*

G. Asset quality.

H. Earnings.

\* \* \* \* \*

3. Item II of appendix A to part 570 is amended by adding paragraphs G and H to read as follows:

\* \* \* \* \*

*II. Operational and Managerial Standards*

\* \* \* \* \*

G. *Asset quality.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to identify problem assets and prevent deterioration in those assets. The institution should:

1. Conduct periodic asset quality reviews to identify problem assets;
2. Estimate the inherent losses in those assets and establish reserves that are sufficient to absorb estimated losses;
3. Compare problem asset totals to capital;
4. Take appropriate corrective action to resolve problem assets;

5. Consider the size and potential risks of material asset concentrations; and

6. Provide periodic asset reports with adequate information for management and the board of directors to assess the level of asset risk.

H. *Earnings.* An insured depository institution should establish and maintain a system that is commensurate with the institution's size and the nature and scope of its operations to evaluate and monitor earnings and ensure that earnings are sufficient to maintain adequate capital and reserves. The institution should:

1. Compare recent earnings trends relative to equity, assets, or other commonly used benchmarks to the institution's historical results and those of its peers;
2. Evaluate the adequacy of earnings given the size, complexity, and risk profile of the institution's assets and operations;
3. Assess the source, volatility, and sustainability of earnings, including the effect of nonrecurring or extraordinary income or expense;
4. Take steps to ensure that earnings are sufficient to maintain adequate capital and reserves after considering the institution's asset quality and growth rate; and
5. Provide periodic earnings reports with adequate information for management and the board of directors to assess earnings performance.

\* \* \* \* \*

Dated: June 3, 1996.

John F. Downey,

*Executive Director, Supervision.*

[FR Doc. 96-21590 Filed 8-26-96; 8:45 am]

BILLING CODE 4810-33-P, 6210-01-P, 6714-01-P, 6720-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 27 and 29**

[Docket No. 28008; Amdt. 27-33, 29-40]

RIN 2120-AF65

**Rotorcraft Regulatory Changes Based on European Joint Airworthiness Requirement; Correction**

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

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final rule published in the Federal Register on May 10, 1996 (61 FR 21904). That final rule amended the airworthiness standards for normal

and transport category rotorcraft under parts 27 and 29 of Title 14, Code of Federal Regulations (CFR) relating to performance systems, propulsion and airframes.

**FOR FURTHER INFORMATION CONTACT:** Carroll Wright, (817) 222-5120.

Need for Correction

In the final rule document (FR Doc. 96-11493) published in the Federal Register on May 10, 1996, (61 FR 21904), on page 21908, at the end of the first column, Item No. 14 is corrected to read as follows:

14. Section 29.1305 is amended by redesignating existing paragraphs (a)(6) through (a)(25) as paragraphs (a)(7) through (a)(26), by adding a new paragraph (a)(6), and by changing the words "paragraph (a)(13)" in the text of redesignated paragraph (a)(13) to read as "paragraph (a)(14)".

**§ 29.1305 [Corrected]**

(a) \* \* \*

(6) An oil pressure indicator for each pressure-lubricated gearbox.

\* \* \* \* \*

(13) A tachometer for each engine that, if combined with the applicable instrument required by paragraph (a)(14) of this section, indicates rotor r.p.m. during autorotation.

\* \* \* \* \*

Issued in Washington, DC, on August 22, 1996.

Donald P. Byrne,

*Assistant Chief Counsel for Regulations.*

[FR Doc. 96-21853 Filed 8-26-96; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Part 622**

[Docket No. 950316075-6222-03; I.D. 022696A]

RIN 0648-AH86

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Golden Crab Fishery Off the Southern Atlantic States; Initial Regulations; OMB Control Numbers**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the approved measures of

the Fishery Management Plan for the Golden Crab Fishery of the South Atlantic Region (FMP) and to revise the definition of fish trap applicable in the exclusive economic zone (EEZ) off the southern Atlantic states. This rule restricts the harvest or possession of golden crab in or from the EEZ off the southern Atlantic states and controls access to the fishery. In addition, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule and publishes the OMB control numbers for these collections. The intended effect of this rule is to conserve and manage the golden crab fishery.

**EFFECTIVE DATES:** September 26, 1996; except that the amendments to 15 CFR part 902, 50 CFR 622.1, 622.2, 622.4(d), and 622.7(b) and the additions 50 CFR 622.17 (b) through (f) and (h) are effective August 27, 1996; and the amendments to 50 CFR 622.4(a)(4), 622.5, 622.6, 622.7 (a) and (c), and 622.40(a)(3) and the additions 50 CFR 622.7(z), 622.17 (a), (g), (i), and (j), and 622.45(f) (2) through (4) are effective October 28, 1996.

**ADDRESSES:** Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Peter J. Eldridge, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The FMP was prepared by the South Atlantic Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The background and rationale for the measures in the FMP, and the rationale for the disapproval at the proposed rule stage of the measure that would have required 100 percent of the owners or operators of permitted vessels to maintain and submit vessel logbook information, were contained in the preamble to the proposed rule (61 FR 16076, April 11, 1996) and are not repeated here.

#### Comments and Responses

*Comment:* The U.S. Fish & Wildlife Service stated that it had participated in the development of the golden crab FMP and recommends its approval and implementation.

*Response:* NMFS agrees.

*Comment:* The Council reiterated its support for the FMP. The Council

emphasized that the FMP was necessary to protect the biological integrity of the golden crab resource and to maintain economic and social benefits from the fishery by establishing a controlled access program. The Council remains concerned about the potential for overfishing this resource. Finally, the Council disagrees with NMFS concerning the mandatory 100 percent logbook action that NMFS disapproved.

*Response:* NMFS agrees with the Council concerning the need for the FMP. As stated in the proposed rule, NMFS intends to select 100 percent of vessels for sampling until circumstances change. NMFS believes that the Southeast Regions' Science and Research Director (SRD) should determine the sampling protocol for this fishery.

*Comment:* Four fishing companies and one seafood retailer, located in Florida, strongly supported the golden crab FMP. They noted that this is a new fishery and they prefer that NMFS act before overfishing occurs or conflicts arise among user groups.

*Response:* NMFS agrees.

*Comment:* Five golden crab fishermen strongly supported the FMP. They noted the opportunity to manage a resource from the fishery's inception. They are concerned about the golden crab resource and strongly support management to prevent future problems.

*Response:* NMFS agrees.

*Comment:* One golden crab consumer reported she supports the FMP because it will prevent depletion of the resource.

*Response:* NMFS agrees.

*Comment:* A citizen concerned about overfishing strongly supported the FMP. He noted the importance of protecting the golden crab resource and biodiversity. He also stated that the FMP would protect fishermen by minimizing the possibility of overfishing.

*Response:* NMFS agrees.

An early participant in the golden crab fishery made a number of comments, summarized as follows:

*Comment:* The 18-month transition period for evaluation of the use of wire cable for mainlines and buoy lines is needed. Eliminating wire cable may actually increase, rather than decrease, the risk of habitat damage.

*Response:* NMFS supports the evaluation period to determine the effects of wire cable.

*Comment:* The requirement that all golden crabs be landed whole is too restrictive. Specifically, taking females and undersized males is an unlikely problem because processing them would not be profitable. Also, it would not be profitable to operate large processing vessels in this fishery; thus,

the Council should allow at-sea processing. Finally, the quality and value of golden crab processed at sea would be greater than crabs landed alive and whole.

*Response:* NMFS agrees with the Council's position that landing crabs whole is necessary to ensure that females and undersized crabs are not taken.

*Comment:* The commenter questioned the necessity of owning a vessel in order to obtain a permit.

*Response:* Among the factors considered by the Council in determining the criteria for initial permits is current participation in the fishery. NMFS concurs in the Council's use of the requirement as an indication of current participation in the fishery.

*Comment:* The middle zone should be combined with the northern zone for fishing purposes.

*Response:* The Council decided to establish three zones based on historical fishing patterns, an estimate of the potential number of fishermen that would select each zone, and the probable abundance of golden crab in each zone. The southern zone is the Florida Keys area which has a very narrow shelf. Consequently, most fishermen in this area have relatively small vessels. These fishermen exploit a number of species including golden crab, which is taken most often during the warmer months of the year. The potential for user conflict is greatest in this area because the narrow shelf concentrates users in the same area. Fishermen in the Florida Keys were particularly concerned about unfair competition with large vessels.

The middle zone is the east coast of Florida north of Miami. The shelf is also relatively narrow in this area. In addition, fewer fishing opportunities exist here than in the southern zone. The relatively small vessels that fish in this zone are heavily dependent upon the golden crab resource. Again, fishermen in this zone were concerned about unfair competition with larger vessels.

The northern zone is much larger than either the southern or middle zones and fishing grounds are much further offshore. Sea and weather conditions are more severe in this zone. Consequently, larger vessels are required for fishing operations in this area. Because of the sparse catch data for the northern zone, less is known concerning the abundance of golden crab. However, if abundance is proportional to area, there may be more crabs available in this zone.

The Council wishes to minimize user conflict, especially between smaller and larger vessels. Since fishermen in the

southern and middle zones have relatively small vessels and a narrow area to fish, separating the southern and middle zones from the northern zone will minimize user conflict and avoid unfair competition. Because historical fishing patterns (and opportunities) are substantially different between the southern and middle zones, separating these areas is appropriate.

In the spring of 1995, an analysis of the Florida golden crab catch data revealed that most vessels in the golden crab fishery were small and fished either in the middle or southern zones. At that time, several owners of large vessels had expressed their intent to conduct preliminary fishing operations in the northern zone. Because of this possibility, the Council established the September 1, 1995, qualifying criterion. The Council did not constrain any vessel concerning selection of a fishing zone because of the low number of large vessels involved, although it was hoped that the large vessels would select the northern zone. If this occurs, user conflict will be minimized in the other zones and additional catch data will be obtained from the northern zone. For the reasons summarized above, NMFS agrees with the Council's separation of the middle and northern zones.

*Comment:* A minimum size limit could be required in the future.

*Response:* The Council and NMFS agree. If required, a minimum size limit may be implemented under the FMP's framework procedure for new management measures.

*Comment:* A quota is not necessary at this time.

*Response:* The Council and NMFS agree and note that, if necessary, a quota may be implemented under the framework procedure.

*Comment:* The commenter supports the FMP.

*Response:* NMFS agrees.

*Comment:* Another commenter believes that NMFS will not require vessel logbooks for the golden crab fishery. Specifically, NMFS has disapproved the mandatory vessel logbook action and logbooks are necessary to determine the status of the fishery.

*Response:* NMFS agrees that logbooks are necessary to monitor the fishery, but disagrees that the sampling levels are an appropriate matter for the Council to decide. NMFS intends initially to select 100 percent of vessels for logbook reporting and continue this level of sampling as long as necessary. If circumstances change, or a better sampling procedure is developed, NMFS needs the flexibility to

implement a more efficient sampling protocol.

*Comment:* A fisherman reported that he had caught golden crabs since the control date but implied that he would not qualify for a permit because he did not catch sufficient crabs prior to September 1, 1995, to obtain a permit. He believes his exclusion from the fishery is unfair.

*Response:* The Council originally announced a control date of April 7, 1995. However, during the public hearing process it became evident that the number of participants was increasing rapidly off the east coast of Florida, but only a few vessels were fishing north of Florida (northern zone). The Council relaxed the original control date by adding a second criterion for entry; namely, a vessel owner who documents landings of 2,500 lb by September 1, 1995, would be eligible for a commercial vessel permit for the fishery. This was designed to provide vessel owners an additional 5 months to qualify for entry. The Florida fish trip ticket records indicate that most golden crab fishermen can catch one to several thousand pounds per trip (average trips run 3 to 4 days). Accordingly, such fishermen could easily catch the required 2,500 lbs within the additional five months allowed by the Council's extended qualifying date.

#### Changes From the Proposed Rule

Since the proposed rule was published, NMFS, as part of the President's Regulatory Reinvention Initiative, consolidated most of its fishery regulations for the Southeast Region into 50 CFR part 622 (61 FR 34930, July 3, 1996). Accordingly, this final rule, instead of adding a new part to title 50 of the CFR to implement the FMP as proposed by the Council and approved by NMFS, implements the FMP by amending 50 CFR part 622. As a result, general provisions that are common to all federally managed fisheries in the Southeast Region, already contained in part 622, are not included in this final rule. In addition, minor changes in language have been made to conform to the standards in part 622. Substantive changes from the proposed rule are as follows.

The proposed rule would have allowed 90 days from the date of publication of the final rule before vessel permits would be required in the fishery. NMFS now finds that it can issue initial vessel permits earlier than previously anticipated. Accordingly, the final rule requires that vessel permits be obtained within 60 days after the date of publication of this final rule.

Because the eligibility requirements for initial vessel permits can be met only by owners, the option for either the owner or the operator to apply for a permit is removed—only vessel owners may apply for a permit.

At § 622.17(b), the final rule clarifies that the use of landings records to establish qualifications for an initial vessel permit is restricted to either the owner of a vessel at the time of the landings or to a subsequent owner of that vessel. That is, landings records may be transferred only in connection with a change of ownership of the harvesting vessel.

Language is added to clarify the time frame during which the Director, Southeast Region, NMFS (RD), will advise an applicant for a vessel permit that he or she has not met the eligibility criteria.

For consistency and clarification, NMFS extends the prohibition at § 622.7(b), regarding falsification of information on or submitted with a permit application, to information on or submitted with a request for transfer of a permit.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the Federal Register.

#### Classification

The RD, with concurrence by the NOAA Assistant Administrator for Fisheries, determined that the FMP is necessary for the conservation and management of the golden crab fishery off the southern Atlantic states and that it is consistent with the Magnuson Act and other applicable laws, with the exception of the measure that was previously disapproved. See the proposed rule for a discussion of the disapproved measure.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasons for this certification were published in the preamble to the proposed rule (61 FR 16076, April 11, 1996) and are not repeated here. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond

to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA—namely, (1) initial vessel permit applications, (2) vessel permit renewals, (3) vessel permit appeals, (4) dealer permit applications, (5) vessel reports, (6) dealer reports, (7) notification requirements for purposes of accommodating observer coverage, (8) notification requirements for vessels transiting golden crab zones, (9) gear identification, and (10) vessel identification. The existing vessel identification requirements contained in 50 CFR 622.6(a)(1)(i) and (a)(2) are made applicable to a vessel in the golden crab fishery by requiring such vessel to obtain a permit—each vessel for which a permit has been issued under 50 CFR 622.4 or 622.17 is required to comply with those requirements. These collections have been approved by OMB under OMB control numbers as follows: Items (1) through (4), (7), and (8)—0648-0205; item (5)—0648-0016; item (6)—0648-0013; item (9)—0648-0305, and item (10)—0648-0306. The public reporting burdens for these collections of information are estimated to average 20, 20, 30, 15, 10, 15, 3, 2, 7, and 45 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES).

The publication of the OMB control numbers for approved collection-of-information requirements at 15 CFR part 902, and the addition to the table of FMPs implemented under part 622 are not substantive rules within the meaning of 5 U.S.C. 553 and, pursuant

to 5 U.S.C. 553(d), are not subject to a delay in effective date. The revision of the definition of “fish trap,” while a substantive rule, relieves a restriction and, pursuant to 5 U.S.C. 553(d)(1), is not subject to a delay in effective date. The addition to the regulations at 50 CFR 622.17(b) through (f) and (h), and the amendments to the associated provisions at 50 CFR 622.4(d) and 622.7(b), set forth administrative procedures and authority necessary for timely implementation of the controlled access program for commercial vessel permits. Consistent with the FMP, these regulations require that applications for initial vessel permits be submitted within 30 days after the date of publication of this rule in the Federal Register. The class of persons affected by the controlled access program is very small, and all such affected persons should be aware of the provisions of the controlled access system, including the vessel permit requirements and, in particular, the time provided for permit application. Virtually all affected commercial golden crab fishermen have been involved fully in the Council process of developing the FMP, which included numerous public hearings with opportunities for being informed of and commenting on the Council’s proposed management measures. It is extremely unlikely that any persons affected by the controlled access program are unaware of the terms of the FMP, or the timing aspects of its implementation. It is also unlikely that any affected persons will require additional time to adjust to this regulation. Rather, virtually all industry participants are anticipating implementation of the FMP and are ready to apply for their vessel and dealer permits. Furthermore, NMFS can identify virtually all eligible fishermen for this golden crab fishery and will give actual notice to those individuals immediately upon filing of this final rule with the Office of the Federal Register. Accordingly, a period of delayed effectiveness for the administrative procedures for implementing the controlled access system in this instance is unnecessary.

It is noted that the administrative procedures for implementing the controlled access system involve references to the definitions added to 50 CFR 622.2. For these reasons, the Assistant Administrator for Fisheries, NOAA, finds that, pursuant to 5 U.S.C. 553(d)(3), good cause exists to waive the 30-day delay in effective date of the amendments to 50 CFR 622.2, 622.4(d) and 622.7(b) and the addition of 50 CFR 622.17(b) through (f) and (h). To allow time for determination of permit eligibility and issuance of permits, NMFS makes the provisions of this final rule that require permits, or that are dependent on the possession of a permit, effective October 28, 1996.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 21, 1996.

C. Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. Effective August 27, 1996, in § 902.1, paragraph (b) table, in the entries for 50 CFR, the following entries are added in numerical order to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

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

CFR part or section where the information collection requirement is located

Current OMB control number (all numbers begin with 0648-)

	*	*	*	*	*	*	*
50 CFR							
	*	*	*	*	*	*	*
622.10 .....							

CFR part or section where the information collection requirement is located

Current OMB control number (all numbers begin with 0648-)

\* \* \* \* \*  
622.17 ..... -0205  
\* \* \* \* \*

**PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC**

Authority: 16 U.S.C. 1801 *et seq.*

**§ 622.1 Purpose and Scope**

3. The authority citation for part 622 continues to read as follows:

4. In § 622.1, table 1, effective August 27, 1996, the following entry is added in alphabetical order to read as follows:

TABLE 1.—FMPs IMPLEMENTED UNDER PART 622

FMP title	Responsible Fishery Management council(s)	Geographical area
FMP for the Golden Crab Fishery of the South Atlantic Region	SAFMC	South Atlantic

5. In § 622.2, effective August 27, 1996, in the definition of "Fish trap", paragraph (3) is revised and definitions of "Golden crab" and "Golden crab trap" are added in alphabetical order to read as follows:

**§ 622.2 Definitions and acronyms.**

\* \* \* \* \*

Fish trap \* \* \*

(3) In the South Atlantic EEZ, a trap and its component parts (including the lines and buoys), regardless of the construction material, used for or capable of taking fish, except a sea bass pot, a golden crab trap, or a crustacean trap (that is, a type of trap historically used in the directed fishery for blue crab, stone crab, red crab, jonah crab, or spiny lobster and that contains at any time not more than 25 percent, by number, of fish other than blue crab, stone crab, red crab, jonah crab, and spiny lobster).

\* \* \* \* \*

*Golden crab* means the species *Chaceon feneri*, or a part thereof.

*Golden crab trap* means any trap used or possessed in association with a directed fishery for golden crab in the South Atlantic EEZ, including any trap that contains a golden crab in or from the South Atlantic EEZ or any trap on

board a vessel that possesses golden crab in or from the South Atlantic EEZ.

\* \* \* \* \*

6. In § 622.4, effective October 28, 1996, the first sentence of paragraph (a)(4) and, effective August 27, 1996, the first sentence of paragraph (d) are revised to read as follows:

**§ 622.4 Permits and fees.**

(a) \* \* \*

(4) \* \* \* For a dealer to receive Gulf reef fish, golden crab harvested from the South Atlantic EEZ, South Atlantic snapper-grouper, or wreckfish, a dealer permit for Gulf reef fish, golden crab, South Atlantic snapper-grouper, or wreckfish, respectively, must be issued to the dealer. \* \* \*

\* \* \* \* \*

(d) \* \* \* A fee is charged for each permit application submitted under paragraph (b) of this section or under § 622.17(d) and for each fish trap or sea bass pot identification tag required under § 622.6(b)(1)(i). \* \* \*

\* \* \* \* \*

7. In § 622.5, effective October 28, 1996, the text of paragraph (a)(2) is redesignated as paragraph (a)(2)(i); the heading of paragraph (a)(2) is revised; and paragraphs (a)(1)(v), (a)(2)(ii), and (c)(6) are added to read as follows:

**§ 622.5 Recordkeeping and reporting.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(v) *South Atlantic golden crab.* The owner or operator of a vessel for which a commercial permit for golden crab has been issued, as required under § 622.17(a), who is selected to report by the SRD must maintain a fishing record on a form available from the SRD.

(2) *Reporting deadlines.* \* \* \*

(ii) Reporting forms required in paragraph (a)(1)(v) of this section must be submitted to the SRD postmarked not later than 30 days after sale of the golden crab offloaded from a trip. If no fishing occurred during a calendar month, a report so stating must be submitted on one of the forms postmarked not later than 7 days after the end of that month. Information to be reported is indicated on the form and its accompanying instructions.

\* \* \* \* \*

(c) \* \* \*

(6) *South Atlantic golden crab.* A dealer who receives from a fishing vessel golden crab harvested from the South Atlantic EEZ and who is selected by the SRD must provide information on receipts of, and prices paid for, South Atlantic golden crab to the SRD at monthly intervals, postmarked not later than 5 days after the end of each month.

Reporting frequency and reporting deadlines may be modified upon notification by the SRD.

\* \* \* \* \*

8. In § 622.6, effective October 28, 1996, in paragraph (a)(1)(i) introductory text, the reference “§ 622.4” is removed and the reference “§ 622.4 or § 622.17” is added in its place; in the first sentence of paragraph (c) and in paragraph (d), the phrase “a golden crab trap,” is added after “a fish trap,”; a sentence is added at the end of paragraph (b)(1)(ii); and a sentence is added at the end of paragraph (b)(2)(ii) to read as follows:

**§ 622.6 Vessel and gear identification.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \* A golden crab trap used or possessed in the South Atlantic EEZ or on board a vessel with a commercial permit for golden crab must have the commercial vessel permit number permanently affixed so as to be easily distinguished, located, and identified; an identification tag issued by the RD may be used for this purpose but is not required.

(2) \* \* \*

(i) \* \* \* However, no color code is required on a buoy attached to a golden crab trap.

\* \* \* \* \*

9. In § 622.7, effective August 27, 1996, paragraph (b) is revised; effective September 26, 1996, paragraphs (w), (x), and (y) are added; and effective October 28, 1996, paragraphs (a) and (c) are revised and paragraph (z) is added to read as follow:

**§ 622.7 Prohibitions.**

(a) Engage in an activity for which a valid Federal permit is required under § 622.4 or § 622.17 without such permit.

(b) Falsify information on a permit application or submitted with such application, as specified in § 622.4 (b) or (g) or § 622.17.

(c) Fail to display a permit or endorsement, as specified in § 622.4(i) or § 622.17(g).

\* \* \* \* \*

(w) Fail to comply with the requirements for observer coverage as specified in § 622.10.

(x) Assault, resist, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(y) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

(z) Fish for or possess golden crab in or from a designated fishing zone of the

South Atlantic EEZ other than the zone for which the vessel is permitted, as specified in § 622.17(h).

10. Effective September 26, 1996, § 622.8 is added to subpart A to read as follows:

**§ 622.8 At-sea observer coverage.**

(a) If a vessel’s trip is selected by the SRD for observer coverage, the owner or operator of a vessel for which a commercial permit for golden crab has been issued, as required under § 622.17(a), must carry a NMFS-approved observer.

(b) When notified in writing by the SRD that his or her vessel has been selected to carry an NMFS-approved observer, an owner or operator must advise the SRD in writing not less than 5 days in advance of each trip of the following:

(1) Departure information (port, dock, date, and time).

(2) Expected landing information (port, dock, and date).

(c) An owner or operator of a vessel on which a NMFS approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel’s communications equipment and personnel upon request for the transmission and receipt of messages related to the observer’s duties.

(3) Allow the observer access to and use of the vessel’s navigation equipment and personnel upon request to determine the vessel’s position.

(4) Allow the observer free and unobstructed access to the vessel’s bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store golden crab.

(5) Allow the observer to inspect and copy the vessel’s log, communications logs, and any records associated with the catch and distribution of golden crab for that trip.

11. Effective August 27, 1996, § 622.17, is added to subpart B to read as follows:

**§ 622.17 South Atlantic golden crab controlled access.**

(a) [Reserved]

(b) *Initial eligibility.* A vessel is eligible for an initial commercial vessel permit for golden crab if the owner meets the documentation requirements described in paragraph (c) of this section substantiating his or her landings of golden crab harvested from the South Atlantic EEZ in quantities of at least 600 lb (272 kg) by April 7, 1995,

or at least 2,500 lb (1,134 kg) by September 1, 1995. Only the owner of a vessel at the time landings occurred may use those landings to meet the eligibility requirements described in this paragraph, except if that owner transferred the right to use those landings to a subsequent owner in writing as part of the vessel’s sales agreement. If evidence of such agreement is provided to the RD, the subsequent owner may use those landings to meet the eligibility requirements instead of the owner of the vessel at the time the landings occurred.

(c) *Documentation of eligibility.* The documentation requirements described in this paragraph are the only acceptable means for an owner to establish a vessel’s eligibility for an initial permit. Failure to meet the documentation requirements, including submission of data as required, will result in failure to qualify for an initial commercial vessel permit. Acceptable sources of documentation include: Landings documented by the trip ticket systems of Florida or South Carolina as described in paragraph (c)(1) of this section and data substantiating landings that occurred prior to establishment of the respective trip ticket systems or landings that occurred in North Carolina or Georgia as described in paragraph (c)(2) of this section.

(1) *Trip ticket data.* NMFS has access to records of golden crab landings reported under the trip ticket systems in Florida and South Carolina. No further documentation or submission of these records is required if the applicant was the owner of the harvesting vessel at the time of the landings documented by these records. An applicant will be given printouts of trip ticket records for landings made when the applicant owned the harvesting vessel, and an applicant will have an opportunity to submit records of landings he or she believes should have been included on such printouts or to clarify allocation of landings shown on such printouts. Landings reported under these trip ticket systems and received by the respective states prior to December 31, 1995, with such adjustments/clarifications for landings for which there is adequate documentation that they should have been included on the printouts, are conclusive as to landings in the respective states during the period that landing reports were required or voluntarily submitted by a vessel. For such time periods, landings data from other sources will not be considered for landings in these states.

(2) *Additional landings data.* (i) An owner of a vessel that does not meet the criteria for initial eligibility for a

commercial vessel permit based on landings documented by the trip ticket systems of Florida or South Carolina may submit documentation of required landings that either occurred prior to the implementation of the respective trip ticket systems or occurred in North Carolina or Georgia. Acceptable documentation of such landings consists of trip receipts or dealer records that definitively show the species known as golden crab; the vessel's name, official number, or other reference that clearly identifies the vessel; and dates and amounts of South Atlantic golden crab landings. In addition, a sworn affidavit may be submitted to document landings. A sworn affidavit is a notarized written statement wherein the individual signing the affidavit affirms under penalty of perjury that the information presented is accurate to the best of his or her knowledge, information, and belief.

(ii) Documentation by a combination of trip receipts and dealer records is acceptable, but duplicate records for the same landings will not result in additional credit.

(iii) Additional data submitted under paragraph (c)(2) of this section must be attached to a Golden Crab Landings Data form, which is available from the RD.

(3) *Verification.* Documentation of golden crab landings from the South Atlantic EEZ and other information submitted under this section are subject to verification by comparison with state, Federal, and other records and information. Submission of false documentation or information may disqualify a person from initial participation under the South Atlantic golden crab controlled access program.

(d) *Application procedure.* Permit application forms are available from the RD. An application for an initial commercial vessel permit that is postmarked or hand-delivered after September 26, 1996, will not be accepted.

(1) An application for a commercial vessel permit must be submitted and signed by the vessel owner (in the case of a corporate-owned vessel, an officer or shareholder who meets the requirements of paragraph (b) of this section; in the case of a partnership-owned vessel, a general partner who meets these requirements).

(2) An owner must provide the following:

(i) A copy of the vessel's valid U.S. Coast Guard certificate of documentation or, if not documented, a copy of its valid state registration certificate.

(ii) Vessel name and official number.

(iii) Name, address, telephone number, and other identifying information of the vessel owner.

(iv) Documentation of initial eligibility, as specified in paragraphs (b) and (c) of this section.

(v) The fishing zone in which the vessel will fish, as specified in paragraph (h) of this section.

(vi) Any other information concerning the vessel, gear characteristics, principal fisheries engaged in, or fishing areas, as specified on the application form.

(vii) Any other information that may be necessary for the issuance or administration of the permit, as specified on the application form.

(e) *Issuance.* (1) The RD will mail an initial commercial vessel permit to an applicant no later than October 28, 1996, if the application is complete and the eligibility requirements specified in paragraph (b) of this section are met.

(2) Upon receipt of an incomplete application that is postmarked or hand-delivered on or before September 26, 1996, the RD will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the date of the RD's notification, the application will be considered abandoned.

(3) The RD will notify an applicant, in writing, no later than October 28, 1996, if the RD determines that the applicant fails to meet the eligibility requirements specified in paragraph (b) of this section.

(f) *Appeals.* (1) An appeal of the RD's decision regarding initial permit eligibility may be submitted to an ad hoc appeals committee appointed by the SAFMC.

(2) The appeals committee is empowered only to deliberate whether the eligibility criteria specified in paragraph (b) of this section were applied correctly to the appellant's application. In making that determination, the appeals committee members will consider only disputed calculations and determinations based on documentation provided as specified in paragraph (c) of this section, including transfers of landings records. The appeals committee is not empowered to consider whether a person should have been eligible for a commercial vessel permit because of hardship or other factors.

(3) A written request for consideration of an appeal must be submitted within 30 days of the date of the RD's notification denying permit issuance and must provide written documentation supporting the basis for the appeal. Such a request must contain the appellant's acknowledgment that the confidentiality provisions of the

Magnuson Act at 16 U.S.C. 1853(d) and subpart E of part 600 of this chapter are waived with respect to any information supplied by the RD to the SAFMC and its advisory bodies for purposes of receiving the recommendations of the appeals committee members on the appeal. An appellant may also make a personal appearance before the appeals committee.

(4) The appeals committee will meet only once to consider appeals submitted within the time period specified in paragraph (f)(3) of this section. Members of the appeals committee will provide their individual recommendations for each appeal to the RD. Members of the appeals committee may comment upon whether the eligibility criteria, specified in the FMP and in paragraph (b) of this section, were correctly applied in each case, based solely on the available record, including documentation submitted by the appellant. The RD will decide the appeal based on the initial eligibility criteria in paragraph (b) of this section and the available record, including documentation submitted by the appellant and the recommendations and comments from members of the appeals committee. The RD will notify the appellant of the decision and the reason therefore, in writing, normally within 30 days of receiving the recommendation from the appeals committee members. The RD's decision will constitute the final administrative action by NMFS on an appeal.

(g) [Reserved]

(h) *Fishing zones.* (1) The South Atlantic EEZ is divided into three fishing zones for golden crab. A vessel owner must indicate on the initial application for a commercial vessel permit the zone in which the vessel will fish. A permitted vessel may fish for golden crab only in the zone shown on its permit. A vessel may possess golden crab only in that zone, except that other zones may be transited if the vessel notifies NMFS, Office of Enforcement, Southeast Region, St. Petersburg, FL, by telephone (813-570-5344) in advance and does not fish in an unpermitted zone. The designated fishing zones are as follows:

(i) Northern zone—the South Atlantic EEZ north of 28 N. lat.

(ii) Middle zone—the South Atlantic EEZ from 25 N. lat. to 28 N. lat.

(iii) Southern zone—the South Atlantic EEZ south of 25 N. lat.

(2) An owner of a permitted vessel may have the zone specified on a permit changed only when the change is from the middle or southern zone to the northern zone. A request for such change must be submitted to the RD with the existing permit.

12. In § 622.17, effective October 28, 1996, paragraphs (a), (g), (i), and (j) are added to read as follows:

**§ 622.17 South Atlantic golden crab controlled access.**

(a) *Applicability.* For a person aboard a vessel to fish for golden crab in the South Atlantic EEZ, possess golden crab in or from the South Atlantic EEZ, off-load golden crab from the South Atlantic EEZ, or sell golden crab in or from the South Atlantic EEZ, a commercial vessel permit for golden crab must be issued to the vessel and must be on board. It is a rebuttable presumption that a golden crab on board or off-loaded from a vessel in the South Atlantic was harvested from the South Atlantic EEZ.

\* \* \* \* \*

(g) *Display.* A commercial vessel permit issued under this section must be carried on board the vessel. The operator of a vessel must present the permit for inspection upon the request of an authorized officer.

\* \* \* \* \*

(i) *Transfer.* (1) A valid golden crab permit may be transferred for use by another vessel by returning the existing permit(s) to the RD along with an application for a permit for the replacement vessel.

(2) To obtain a commercial vessel permit via transfer, the owner of the replacement vessel must submit to the RD a valid permit for a vessel with a documented length overall, or permits for vessels with documented aggregate lengths overall, of at least 90 percent of the documented length overall of the replacement vessel.

(j) *Renewal.* (1) In addition to the procedures and requirements of § 622.4(h) for commercial vessel permit renewals, for a golden crab permit to be renewed, the SRD must have received reports for the permitted vessel, as required by § 622.5(a)(1)(v), documenting that at least 5,000 lb (2,268 kg) of golden crab were landed from the South Atlantic EEZ by the permitted vessel during at least one of the two 12-month periods immediately prior to the expiration date of the vessel permit.

(2) An existing permit for a vessel meeting the minimum golden crab landing requirement specified in paragraph (j)(1) of this section may be renewed by following the procedure specified in paragraph (d) of this section. However, documentation of the vessel's initial eligibility need not be resubmitted.

13. In § 622.32, effective September 26, 1996, paragraphs (b)(4)(v) and (vi) are added to read as follows:

**§ 622.32 Prohibited and limited-harvest species.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(v) It is intended that no female golden crabs in or from the South Atlantic EEZ be retained on board a vessel and that any female golden crab in or from the South Atlantic EEZ be released in a manner that will ensure maximum probability of survival. However, to accommodate legitimate incidental catch and retention, the number of female golden crabs in or from the South Atlantic EEZ retained on board a vessel may not exceed 0.5 percent, by number, of all golden crabs on board. See § 622.45(f)(1) regarding the prohibition of sale of female golden crabs.

(vi) South Atlantic snapper-grouper may not be possessed in whole, gutted, or filleted form by a person aboard a vessel fishing for or possessing golden crab in or from the South Atlantic EEZ or possessing a golden crab trap in the South Atlantic. Only the head, fins, and backbone (collectively the "rack") of South Atlantic snapper-grouper may be possessed for use as bait.

\* \* \* \* \*

14. In § 622.35, effective September 26, 1996, paragraph (f) is added to read as follows:

**§ 622.35 South Atlantic EEZ seasonal and/or area closures.**

\* \* \* \* \*

(f) *Golden crab trap closed areas.* In the golden crab northern zone, a golden crab trap may not be deployed in waters less than 900 ft (274 m) deep. In the golden crab middle and southern zones, a golden crab trap may not be deployed in waters less than 700 ft (213 m) deep. See § 622.17(h) for specification of the golden crab zones.

15. In § 622.38, effective September 26, 1996, paragraph (f) is added to read as follows:

**§ 622.38 Landing fish intact.**

\* \* \* \* \*

(f) A golden crab in or from the South Atlantic EEZ must be maintained in whole condition through landing ashore. For the purposes of this paragraph, whole means a crab that is in its natural condition and that has not been gutted or separated into component pieces, e.g., clusters.

16. In § 622.40, effective October 28, 1996, paragraph (a)(3) is revised; and, effective September 26, 1996, paragraph (d)(2) existing text is redesignated as paragraph (d)(2)(i) and paragraphs (b)(3)(ii), (c)(3)(ii), and (d)(2)(ii) are added to read as follows:

**§ 622.40 Limitations on traps and pots.**

(a) \* \* \*

(3) *South Atlantic EEZ.* A sea bass pot or golden crab trap in the South Atlantic EEZ may be pulled or tended only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot or trap or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel so permitted. For golden crab only, a vessel with written consent on board must also possess a valid commercial vessel permit for golden crab.

(b) \* \* \*

(3) \* \* \*

(ii) A golden crab trap that is used or possessed in the South Atlantic EEZ must have at least one escape gap or escape ring on each of two opposite vertical sides. The minimum allowable inside dimensions of an escape gap are 2.75 by 3.75 inches (7.0 by 9.5 cm); the minimum allowable inside diameter of an escape ring is 4.5 inches (11.4 cm). In addition to the escape gaps—

(A) A golden crab trap constructed of webbing must have an opening (slit) at least 1 ft (30.5 cm) long that may be closed (relaced) only with untreated cotton string no larger than 3/16 inch (0.48 cm) in diameter.

(B) A golden crab trap constructed of material other than webbing must have an escape panel or door measuring at least 12 by 12 inches (30.5 by 30.5 cm), located on at least one side, excluding top and bottom. The hinges and fasteners of such door or panel must be made of either ungalvanized or uncoated iron wire no larger than 19 gauge (0.04 inch (1.0 mm) in diameter) or untreated cotton string no larger than 3/16 inch (4.8 mm) in diameter.

(c) \* \* \*

(3) \* \* \*

(ii) A golden crab trap deployed or possessed in the South Atlantic EEZ may not exceed 64 ft<sup>3</sup> (1.8 m<sup>3</sup>) in volume in the northern zone or 48 ft<sup>3</sup> (1.4 m<sup>3</sup>) in volume in the middle and southern zones. See § 622.17(h) for specification of the golden crab zones.

(d) \* \* \*

(2) \* \* \*

(ii) Rope is the only material allowed to be used for a mainline or buoy line attached to a golden crab trap, except that wire cable is allowed for these purposes through January 31, 1998.

17. In § 622.41, effective September 26, 1996, paragraph (e) is added to read as follows:

**§ 622.41 Species specific limitations.**

\* \* \* \* \*

(e) *South Atlantic golden crab.* Traps are the only fishing gear authorized in

directed fishing for golden crab in the South Atlantic EEZ. Golden crab in or from the South Atlantic EEZ may not be retained on board a vessel possessing or using unauthorized gear.

18. In § 622.45, effective September 26, 1996, paragraph (f)(1) is added and, effective October 28, 1996, paragraphs (f)(2) through (4) are added to read as follows:

**§ 622.45 Restrictions on sale/purchase.**

\* \* \* \* \*

(f) *South Atlantic golden crab.* (1) A female golden crab in or from the South Atlantic EEZ may not be sold or purchased.

(2) A golden crab harvested in the South Atlantic EEZ on board a vessel that does not have a valid commercial permit for golden crab, as required under § 622.17(a), may not be sold or purchased.

(3) A golden crab harvested on board a vessel that has a valid commercial permit for golden crab may be sold only to a dealer who has a valid permit for golden crab, as required under § 622.4(a)(4).

(4) A golden crab harvested in the South Atlantic EEZ may be purchased by a dealer who has a valid permit for golden crab, as required under § 622.4(a)(4), only from a vessel that has a valid commercial permit for golden crab.

19. In § 622.48, effective September 26, 1996, paragraph (g) is added to read as follows:

**§ 622.48 Adjustment of management measures.**

\* \* \* \* \*

(g) *South Atlantic golden crab.* MSY, ABC, TAC, quotas (including quotas equal to zero), trip limits, minimum sizes, gear regulations and restrictions, permit requirements, seasonal or area closures, time frame for recovery of golden crab if overfished, fishing year (adjustment not to exceed 2 months), observer requirements, and authority for the RD to close the fishery when a quota is reached or is projected to be reached.

[FR Doc. 96-21814 Filed 8-26-96; 8:45 am]

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**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 12**

[T.D. 96-64]

RIN 1515-AB94

**Emissions Standards for Imported Nonroad Engines**

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

**ACTION:** Final rule.

**SUMMARY:** This document sets forth amendments to the Customs Regulations which conform to regulations that have already been adopted by the Environmental Protection Agency (EPA), in order to ensure the compliance of imported nonroad engines with applicable EPA emissions standards required by law.

**EFFECTIVE DATE:** August 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Leo Wells, Trade Compliance Division, (202-927-0771).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Clean Air Act, as amended, (42 U.S.C. 7401 *et seq.*), which has long authorized the Environmental Protection Agency (EPA) to regulate on-highway motor vehicle and engine emissions, was amended in 1990 to extend EPA's regulatory authority to include as well nonroad engines and related vehicles and 2 equipment (see 42 U.S.C. 7521-7525, 7541-7543, 7547, 7549, 7550, 7601(a)). In brief, EPA was given authority, *inter alia*, to regulate those categories or classes of new nonroad engines and associated vehicles and equipment that contribute to air pollution, if such nonroad emissions have been determined to be significant.

To this end, the EPA has since conducted the requisite studies, and issued regulations in 40 CFR parts 89 and 90, which set emission standards for certain nonroad engines, specifically new nonroad compression-ignition engines at or above 50 horsepower (37 kilowatts) (nonroad large CI engines) as well as new nonroad spark-ignition engines at or below 25 horsepower (19 kilowatts) (nonroad small SI engines). For a complete discussion of the background and development of EPA's regulations concerning emissions standards for nonroad large CI and small SI engines, see 59 FR 31306 (June 17, 1994) and 60 FR 34582 (July 3, 1995), respectively. The Customs Regulations set forth in this document are applicable to all nonroad engines incorporated into

nonroad vehicles or nonroad equipment imported into the United States.

Nonconforming nonroad large CI engines may only be imported by independent commercial importers (ICIs) who hold valid certificates of conformity issued by the EPA (see § 12.74(c)(2), *infra*), unless an exemption or exclusion otherwise applies thereto. The ICI will be responsible for assuring that subsequent to importation, the nonroad engine is properly modified and/or tested to comply with EPA emission and other requirements over its useful life.

By contrast, no ICI program exists for nonconforming nonroad small SI engines. However, an individual may import on a single occasion up to three nonconforming nonroad small SI engines, vehicles or equipment items for personal use (and not for purposes of resale). In fact, with specific exceptions, nonconforming nonroad small SI engines, vehicles and equipment are generally not permitted to be imported for resale. After an individual's limit of three, or after the first importation, additional small SI engines, vehicles, or equipment are not permitted importation, unless an exception or exclusion otherwise so provides.

Exemptions or exclusions to the general restrictions on importing nonconforming nonroad engines are similar to those contained in § 12.73, Customs Regulations (19 CFR 12.73) for nonconforming motor vehicles and their engines, and include exemptions for repair and alteration, testing, precertification, display, national security, hardship, use in competition, and certain nonroad engines proven to be identical, in all material respects, to their corresponding U.S. versions. Furthermore, foreign diplomatic or military personnel on assignment in the U.S. may import a nonconforming nonroad engine exempt from emissions requirements. In addition, nonroad engines greater than 20 original production years old are not subject to EPA emissions requirements.

Accordingly, Customs is amending its regulations to add a new § 12.74 which conforms to the regulations that have already been adopted by EPA, in order to ensure the compliance of imported nonroad engines with applicable EPA emissions standards required by law.

Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Inasmuch as these amendments merely conform the Customs Regulations to existing law and

regulation as noted above, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor do these amendments meet the criteria for a "significant regulatory action" under E.O. 12866.

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

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Imports, Motor vehicles, Motor vehicle safety, Nonroad engines, Reporting and recordkeeping requirements.

Amendments to the Regulations

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

**PART 12—SPECIAL CLASSES OF MERCHANDISE**

1. The general authority citation for part 12 continues to read as follows, and the specific authority for § 12.73 is revised by adding a reference to § 12.74 to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

\* \* \* \* \*

2. Part 12 is amended by revising the undesignated centerhead preceding § 12.73, and by adding a new § 12.74 following § 12.73, to read as follows:

Entry of Motor Vehicles, Motor Vehicle Engines and Nonroad Engines Under the Clean Air Act, As Amended

\* \* \* \* \*

**§ 12.74 Nonroad engine compliance with Federal antipollution emission requirements.**

(a) *Applicability of EPA requirements.* This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and found in 40 CFR parts 89 and 90. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations. Those regulations should be consulted for

more detailed information concerning EPA emission requirements. These requirements apply to nonroad combustion-ignition engines at or above 37 kilowatts (kW), and nonroad spark-ignition engines at or below 19 kW. For the purpose of this section, the term "nonroad engine" includes all nonroad engines incorporated into nonroad equipment or nonroad vehicles when imported into the United States.

(b) *Importation of complying nonroad engines.* (1) *Labeled engines.* Nonroad engines which in their condition as imported are covered by an EPA certificate of conformity and which bear the manufacturer's label showing such conformity and other EPA-required information shall be deemed in compliance with applicable emission requirements for the purpose of Customs admissibility and entry liquidation determinations. This paragraph does not apply to importations by independent commercial importers covered by paragraph (c) of this section.

(2) *Pending certification.* Nonroad engines otherwise covered by paragraph (b)(1) of this section which were manufactured for compliance with applicable emission requirements, but for which an application for a certificate of conformity is pending with the EPA may be conditionally released from Customs custody pending production of the certificate of conformity within 120 days of release.

(c) *Importation of nonconforming engines.*

(1) *By other than an independent commercial importer (ICI).* Except for nonroad engines imported in the particular circumstances covered by paragraphs (d)–(m) of this section, an individual or business, other than an independent commercial importer (ICI) holding a currently valid EPA certificate of conformity for the same nonroad engine class and fuel type as the engine being imported, may not enter into the United States a nonconforming nonroad engine to which EPA emissions requirements apply. Individuals and businesses may, however, arrange for the importation of nonconforming nonroad engines through an ICI. In these circumstances, the ICI will not act as an agent or broker for Customs transaction purposes unless otherwise licensed or authorized to do so.

(2) *By an ICI.* (i) *Definition.* Generally, an ICI is an importer that holds a certificate of conformity from EPA, but that lacks a contract with a foreign or domestic nonroad engine manufacturer for distributing nonroad engines into the United States market and cannot therefore export as an original

equipment manufacturer. Further specific discussion of who qualifies as an ICI is set forth in the EPA regulations.

(ii) *Procedure.* An ICI may enter into the United States certain nonroad engines, only if it holds a currently valid EPA certificate of conformity for the same nonroad engine class and fuel type as the nonroad engines being entered. A "certificate of conformity" is the document which is issued by the Administrator, EPA, to the ICI, and which entitles the ICI to import nonconforming nonroad engines into the United States, and ensure that such nonroad engines are brought into conformance with applicable EPA emissions standards. 40 CFR 89.602–96.

(d) *Importation of nonconforming spark-ignition engines at or below 19 kW.* (1) *General.* A nonconforming engine at or below 19 kW may not be imported by any person, business or ICI, except for purposes other than resale under paragraph (d)(2) of this section, or unless an exemption or exclusion applies as provided in paragraphs (e)–(m) of this section.

(2) *Importation for purposes other than resale.* Any individual may import on a one-time basis 3 or fewer nonconforming spark-ignition engines at or below 19 kW for purposes other than resale under 40 CFR 90.611. Such an engine may be conditionally admitted without prior EPA approval and without bond.

(e) *Exemptions and exclusions from emissions requirements based on age of engine.* The following nonroad engines may be imported by any person and do not have to be shown to be in compliance with emissions requirements before being entitled to admissibility:

(1) All spark-ignition engines greater than 19 kW, unless regulated under 19 CFR 12.73;

(2) All compression-ignition engines less than 37 kW;

(3) Spark-ignition engines less than or equal to 19 kW originally manufactured before the 1997 model year;

(4) Compression-ignition engines greater than or equal to 37 kW but less than 75 kW originally manufactured before January 1, 1998;

(5) Compression-ignition engines greater than or equal to 75 kW but less than 130 kW originally manufactured before January 1, 1997;

(6) Compression-ignition engines greater than or equal to 130 kW but less than or equal to 560 kW originally manufactured before January 1, 1996;

(7) Compression-ignition engines greater than 560 kW originally

manufactured before January 1, 2000; and

(8) Engines not otherwise exempt from EPA emission requirements and more than 20 years old. (Age is determined by subtracting the calendar year of production (as opposed to model year) from the calendar year of importation.)

(f) *Exemption for exports.* Nonroad engines which will be used in nonroad vehicles or equipment intended solely for export to a country which does not have in force emissions standards identical to EPA standards are exempt from applicable EPA emissions requirements if both the engine and its container bear a label or tag indicating that it is intended solely for export. 40 CFR 89.909 and 90.909. The EPA publishes in the Federal Register a list of foreign countries that have emissions standards identical to EPA standards.

(g) *Exemptions for diplomats, foreign military personnel and nonresidents.*

Subject to the conditions that they are not resold in the United States and are subsequently exported or destroyed or brought into conformity with EPA emissions requirements, the following nonroad engines are exempt from EPA emission requirements:

(1) A nonroad engine imported solely for the personal use of a nonresident importer or consignee where the use will not exceed one year and the engine subsequently will be exported; and

(2) A nonroad engine of a member of the armed forces of a foreign country on assignment in the United States, or of a member of the personnel of a foreign government on assignment in the United States or other individual who comes within the class of persons for whom free entry of nonroad engines has been authorized by the Department of State. For special documentation requirements, see paragraph (n)(4) of this section.

(h) *Exemption for repairs or alterations.* An engine may be imported by anyone solely for repairs or alterations. Under this exemption, the engine may not be sold or leased in the United States. 40 CFR 89.611-96(b)(1) and 90.612(b)(1).

(i) *Testing exemption.* An engine may be imported by anyone solely for testing. Such engine may only be operated as an integral part of the test. 40 CFR 89.611-96(b)(2) and 90.612(b)(2). This exemption is limited to a period not exceeding one year from the date of importation unless a request is made under 40 CFR 89.905(f) or 90.905(f), as applicable, for a one-year extension.

(j) *Precertification exemption.* An engine may be imported by an

individual as well as by an ICI for use as a prototype in applying for EPA certification, unless otherwise specified. 40 CFR 89.611-96(b)(3) and 89.906. Unless the engine is brought into conformity within 180 days from the date of entry, it shall be exported or otherwise disposed of subject to paragraph (q) of this section.

(k) *Display exemption.* An engine may be imported by anyone solely for display in relation to a business or the public interest, as determined by EPA, if the engine will not be sold in the United States. This exemption is limited to a period of 12 months or for the duration of the display, whichever is shorter. Two extensions are available of up to 12 months each, if approved by EPA, but, in no case may the total extension period exceed 36 months. 40 CFR 89.611-96(b)(4) and 90.612(b)(3).

(l) *Exemption for engines identical to U.S.-certified versions.* An engine may be imported by its owner other than for resale if it is proven to be identical, in all material respects, to an engine certified by the original manufacturer for sale in the United States. 40 CFR 89.611-96(c)(3) and 90.612(c)(3).

(m) *Exemptions and exclusions based on prior EPA approval.* The following exemptions or exclusions from EPA emission standards apply to nonroad engines, if prior approval has been obtained in writing from EPA:

(1) *Competition exemption.* An engine may be imported for use to propel a vehicle or to power equipment used solely for competition. 40 CFR 89.611-96(e) and 90.612(e);

(2) *National security exemption.* An engine that received a national security exemption in writing from EPA may be imported. 40 CFR 89.611-96(c)(1), 89.908, 90.612(c)(1) and 90.908; and

(3) *Hardship exemption.* An engine that received a hardship exemption in writing from EPA may be imported. 40 CFR 89.911-96(c)(2) and 90.612(c)(2).

(n) *Documentation requirements.* (1) *Exception for conforming engines.* The special documentation requirements of paragraphs (n)(2) and (n)(3) of this section do not apply to the entry into the United States of any nonroad engines shown to be in compliance with applicable emission requirements under paragraph (b)(1) of this section relating to labeling.

(2) *Declarations of other importers.* Release from Customs custody shall be refused with respect to all entries of nonconforming nonroad engines into the United States unless there is filed with the entry in duplicate a declaration in which the importer or consignee declares or affirms its status as an original equipment manufacturer, an ICI

holding a relevant certificate of conformity, an individual importer, or other status, and further declares or affirms the status or condition of the imported engines and the circumstances concerning importation including a citation to the specific paragraph in this section upon which application for conditional or final release from Customs custody is made.

(3) *Other documentation and information.* The EPA requires, pursuant to its regulations at 40 CFR 89.604(a) and 40 CFR 90.604(c), that the following information shall be included or submitted with the importer's declaration:

(i) The importer's name, address and telephone number;

(ii) Identification of the engine, including the unique engine number, the engine owner's taxpayer identification number, and his or her current address and telephone number in the United States if different from that provided in paragraph (n)(3)(i) of this section;

(iii) Identification, where applicable, of the place where the engine will be stored until EPA approval of the importer's application to EPA for final admission;

(iv) Authorization for EPA enforcement officers to conduct inspections or testing otherwise permitted by the Clean Air Act and regulations promulgated thereunder;

(v) Identification, in the case of importation by an ICI, of the certificate of conformity by means of which the engine is being imported;

(vi) The date of manufacture of the engine;

(vii) The date of entry;

(viii) Identification of the vessel or carrier on which the merchandise was shipped;

(ix) The entry number, where applicable;

(x) Where prior written approval from EPA is required for an exemption or exclusion, a statement to the effect that such EPA approval has been given; and

(xi) Such other further information as may be required by the EPA.

(4) *Documentation from diplomats or foreign military personnel.* For entries for which an exemption is claimed under paragraph (g)(2) of this section, a statement must also be included with the declaration, identifying and describing the engine importer's official orders, if any, or, giving the name of the embassy to which the importer is accredited if the importer is a qualifying member of the personnel of a foreign government on assignment in the United States.

(5) *Retention and submission of records to Customs.* Documents supporting the information contained in or accompanying the declaration as set forth in paragraphs (n) (2)–(4) of this section must be retained by the importer for a period of at least 5 years from the date of entry, or withdrawal from warehouse, for consumption of the nonroad engine (see § 162.1c of this chapter), and shall be provided to Customs upon request.

(o) *Release under bond.* If a declaration filed in accordance with paragraph (n)(2) of this section states that the entry is being filed under circumstances described in either paragraph (h), (i), (j), or (k) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of an EPA statement that the engine is in conformity with Federal emission requirements. Within the period in paragraph (i) or (j) of this section, or in the case of paragraph (h) or (k) of this section, the period specified by EPA in its authorization for an exemption, or such additional period as the port director of Customs may allow for good cause shown, the importer or consignee shall deliver to the port director the prescribed statement. If the statement is not delivered to the director of the port of entry within the specified period, the importer or consignee shall deliver or cause to be delivered to the port director those engines which were released under a bond required by this paragraph. In the event that the engine is not redelivered within 5 days following the specified period, liquidated damages shall be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond. Liquidated damages under the bond generally would be equal to 3 times the value of the merchandise involved in the default (see § 113.62(k) of this chapter).

(p) *Notice of inadmissibility or detention.* If an engine is determined to be inadmissible before release from Customs custody, or inadmissible after release from Customs custody, the importer or consignee shall be notified in writing of the inadmissibility determination and/or redelivery requirement. However, if an engine cannot be released from Customs custody merely because the importer has failed to furnish with the entry the information required by paragraph (n) of this section, the engine shall be held in detention by the port director for a

period not to exceed 30 days after filing of the entry at the risk and expense of the importer pending submission of the missing information. An additional 30-day extension may be granted by the port director upon application for good cause shown. If at the expiration of a period not over 60 days the required documentation has not been filed, a notice of inadmissibility will be issued.

(q) *Disposal of engines not entitled to admission.* An engine denied admission under any provision of this section shall be disposed of in accordance with applicable Customs laws and regulations. However, an engine will not be disposed of in a manner in which it may ultimately either directly or indirectly reach a consumer in a condition in which it is not in conformity with applicable EPA emission requirements.

(r) *Prohibited importations.* The importation of nonroad engines otherwise than in accordance with this section and the regulations of EPA in 40 CFR parts 89 and 90 is prohibited.

George J. Weise,  
Commissioner of Customs.

Approved: June 24, 1996.  
Dennis M. O'Connell,  
Acting Deputy Assistant Secretary of the Treasury.  
[FR Doc. 96-21843 Filed 8-26-96; 8:45 am]  
BILLING CODE 4820-02-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 105

[Docket No. 95N-310F]

#### Revocation of Certain Regulations Affecting Food

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

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of July 3, 1996, of the final rule published in the Federal Register of June 3, 1996 (61 FR 27771), that revoked regulations on diabetic labeling and on sodium intake labeling. These regulations were among those regulations identified by the agency for revocation as a result of a page-by-page review of its regulations that cover food and cosmetics. This regulatory review was in response to the administration's "Reinventing Government" initiative that seeks to streamline government and

to ease the burden on regulated industry and consumers.

**DATES:** Effective date confirmed: July 3, 1996. This revocation is applicable for all products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Any labels or labeling that require revision as a result of this revocation shall comply no later than January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5099.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of June 3, 1996 (61 FR 27771), FDA issued a final rule entitled "Revocation of Certain Regulations Affecting Food" that, among other things, revoked regulations on diabetic labeling in § 105.67 (21 CFR 105.67) and on sodium intake labeling in § 105.69 (21 CFR 105.69).

FDA gave interested persons until July 3, 1996, to file written objections to the revocation of these regulations and to request a hearing on the specific provisions to which there were objections. No objections or requests for hearing were received in response to the final regulation.

#### List of Subjects in 21 CFR Part 105

Dietary foods, Food grades and standards, Food labeling, Infants and children.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 401, 403, 409, 411, 701, 721 of (21 U.S.C. 321, 341, 343, 348, 350, 371, 379e)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is hereby given that no objections were received, and that the removal of § 105.67 on diabetic labeling and § 105.69 on sodium intake labeling became effective on July 3, 1996. Any labels or labeling that require revision as a result of this revocation shall comply no later than January 1, 1998.

Dated: August 15, 1996.

William K. Hubbard,  
Associate Commissioner for Policy Coordination.

[FR Doc. 96-21528 Filed 8-26-96; 8:45 am]  
BILLING CODE 4160-01-F

#### 21 CFR Part 520

#### Oral Dosage Form New Animal Drugs; Ivermectin Tablets and Chewable Cubes; Correction

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

**ACTION:** Final rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of July 31, 1996 (61 FR 39867). The document amended the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Merck Research Laboratories, Division of Merck & Co., Inc. The document was published with a typographical error in the title. This document corrects that error.

**EFFECTIVE DATE:** July 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0137.

In FR Doc. 96-19410, appearing on page 39867 in the Federal Register of Wednesday, July 31, 1996, the following correction is made: On page 39867, in the second column, the title of the document is corrected to read "Oral Dosage Form New Animal Drugs; Ivermectin Tablets and Chewable Cubes."

Dated: August 19, 1996.

Robert C. Livingston,

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*  
[FR Doc. 96-21848 Filed 8-26-96; 8:45 am]  
BILLING CODE 4160-01-F

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### 23 CFR Part 667

[FHWA Docket No. 95-28]

RIN 2125-AD69

#### Elimination of Regulations Concerning the Public Lands Highways Discretionary Funds Program

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FHWA is eliminating its regulations outlining the procedures to be followed in administering the Public Lands Highways (PLH) discretionary funds program. These provisions have become outdated and unnecessary as a result of amendments made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914) to the statutory provisions in title 23 of the United States Code (U.S.C.) which authorize distribution of some of the funds appropriated for Public Lands Highways

among the States on the basis of need. These amendments to title 23, U.S.C., significantly modify and clarify the eligibility criteria and selection process of the PLH discretionary program; as a result, the FHWA regulations concerning the PLH discretionary program have become obsolete. Consequently, in the interests of streamlining FHWA regulations and providing more flexibility in the administration of this program in accordance with the President's Regulatory Reinvention Initiative, the FHWA is eliminating these regulations.

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

**FOR FURTHER INFORMATION CONTACT:** Mr. Mohan P. Pillay, Office of Engineering, HNG-12, (202) 366-4655 or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC-32, (202) 366-1397, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Through the PLH Discretionary Program, the FHWA administers the allocation of Federal funds in the manner authorized by § 202(b) of title 23 of the U.S.C. "among those States having unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations." Approximately \$50 million was made available to the States for the PLH Discretionary Program in FY 1996. The statute directs that 34 percent of the sums appropriated for public lands highways in a given fiscal year is to be allocated on the basis of need among qualifying States that apply for such funds through their State highway departments. 23 U.S.C. 202(b). The statute also provides that these PLH funds are available for any kind of transportation project eligible for assistance under title 23, U.S.C., that is within or adjacent to or provides access to public lands areas. 23 U.S.C. 204(b).

Although Congress did not direct that regulations be promulgated to implement the funding scheme established by this statute, the FHWA did promulgate regulations which outline the procedures for administering the PLH Discretionary Program. These regulations, for the most part, merely reiterate the application process and selection criteria outlined in the statute. For instance, the statute establishes that PLH discretionary funds are to be distributed on the basis of need among the States that apply through their State highway departments and that preference is to be given to those projects which are significantly impacted by Federal land and resource

management activities. Part 667 restates these provisions, but it also supplements the statutory provisions with overly detailed descriptions of factors to be considered in the selection process and of the steps taken in the application and selection procedure. In addition, part 667 restates some of the factors established in the statute as defining the eligibility of certain projects for these funds.

The eligibility criteria and selection process of the PLH discretionary program were modified and greatly clarified by amendments to title 23, U.S.C., that were enacted as part of the ISTEA (Pub. L. 102-240, 105 Stat. 1914). One change resulting from these amendments is that title 23, U.S.C., now provides a more detailed explanation of the kinds of projects which are eligible for PLH discretionary funds. The regulation delineating eligibility criteria in part 667 states that funds may be used for "engineering and construction of the mainline roadway including adjacent vehicular parking areas and construction elements related to scenic easements." (§ 667.7.) After the ISTEA amendments, title 23, U.S.C., now includes a provision entitled "Eligible Projects" which lists adjacent vehicular parking areas and acquisition of necessary scenic easements as two of seven types of projects qualifying for PLH funds.

These PLH regulations have also now become inconsistent with title 23, U.S.C., as a result of the ISTEA amendments. Section 667.7 of the regulations states that "funds may not be used for right-of-way costs, maintenance or other ancillaries such as sanitary, water and fire control facilities"; however, the list of eligible projects added to title 23, U.S.C., by the ISTEA includes, "construction and reconstruction of roadside rest areas including sanitary and water facilities." Thus, in general, the provisions regarding eligibility for PLH discretionary funds currently included in the FHWA regulations have become both outdated and unnecessary.

Amendments to title 23, U.S.C., added by the ISTEA also modify the selection process and the factors that will be taken into account in allocating PLH discretionary funds among the States. As a result of the ISTEA amendments, title 23, U.S.C., now states that preference will still be given to projects which are significantly impacted by Federal land and resource management activities, but now such preference will be given only if these projects are proposed by a State which contains at least 3 percent of the total public lands in the Nation. In light of this statutory

change, the regulations in part 667 have become outdated because they provide that all projects which significantly benefit or improve Federal land and resource management will be given preference.

Consequently, as this examination of part 667 reveals, these regulations concerning the PLH Discretionary Program are unnecessary and in many instances either straightforwardly redundant or outdated because they have become inconsistent with the authorizing statute. Therefore, the FHWA is eliminating part 667 as opposed to amending it to account for the changes brought about by the ISTEA amendments. Elimination of these regulations will provide more flexibility in administration of the PLH discretionary program. In addition, elimination of part 667 will have the effect of further streamlining FHWA regulations in accordance with the objectives of the President's Regulatory Reinvention Initiative.

#### Discussion of Comments

A notice of proposed rulemaking (NPRM) proposing the elimination of part 667 was published in the December 6, 1995, Federal Register at 60 FR 62359. Interested persons were invited to participate in this rulemaking by submitting written comments on the NPRM to Docket No. 95-28 on or before February 5, 1996. Comments were received from two State highway agencies and one Indian tribe. All comments received in response to the NPRM were considered during the drafting of this final rule eliminating the PLH Discretionary Program regulations.

One State had no comments concerning elimination of the existing regulation; however, two changes in the law were recommended. One such recommendation proposed a change to the provision in 23 U.S.C. 202(b) dealing with the preference in PLH discretionary allocations to projects in a State which contains at least 3 percent of the total public lands in the Nation. The commenting State recommended that the percentage of public lands required for giving preference in PLH discretionary allocation be reduced from 3 percent to 1.5 percent or deleted entirely. The State also recommended that the "Hold Harmless" clause in section 1015(a)(1) of the ISTEA not include apportionment adjustments tied to allocations made to States under the PLH Discretionary Program. Both of these recommendations require statutory amendments and are beyond the scope of a rulemaking action.

Two commenters suggested that the FHWA retain the project selection

criteria presented in 23 CFR 667.3 (c) and (d) as these criteria are valuable in determining appropriate projects to be selected for funding. For example, these criteria cover matters such as route continuity, capacity, and safety and benefits of projects to Federal lands and resource management. Although these criteria are not expressed in definitive terms of measurement and their application is subjective, the FHWA agrees that use of these criteria can produce information which is valuable for purposes of the selection process. It is noted that FHWA's annual solicitation for candidate projects which is publicized via a memorandum to the FHWA regional offices, requests information on most of these criteria as part of each State's proposal. The FHWA call for fiscal year (FY) 1997 PLH candidates contains these selection criteria. The elimination of part 667 will not impact FHWA's use of these selection criteria, and the FHWA fully intends to include them in future solicitations for candidate projects if this discretionary program is reauthorized after FY 1997.

One commenter recommended that the selection criteria, as previously discussed, also be applied to the non-discretionary portion of the PLH funding allocated to the States. The non-discretionary PLH funding (66 percent of PLH funds) is set aside by statute for Forest Highways and is distributed in accordance with a hybrid formula. Funds set aside for Forest Highways are not discretionary, and the selection criteria for PLH discretionary funds cannot be used to allocate the remaining 66 percent of the PLH funding.

#### Rulemaking Analyses and Notices

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

The FHWA has considered the impact of this document and has determined that it is neither a significant rulemaking action within the meaning of Executive Order 12866 nor a significant rulemaking under the regulatory policies and procedures of the Department of Transportation. This rulemaking eliminates FHWA regulations regarding administration of the PLH Discretionary Program. These regulations have become outdated and are unnecessary in light of the fact that the statutory provisions authorizing allocation of these funds adequately delineate the procedures to be used and the factors to be considered in selecting the States that will receive funding. This rulemaking eliminating these obsolete regulations would not cause any

significant changes to the amount of funding available under the PLH Discretionary Program or to the process by which applicants are selected to receive funding. Thus, it is anticipated that the economic impact of this rulemaking will be minimal. In addition, it will not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs; nor will elimination of these regulations raise any novel legal or policy issues. Therefore, a full regulatory evaluation is not required.

##### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities and has determined that elimination of the FHWA regulations regarding administration of PLH discretionary funds will not have a significant economic impact on a substantial number of small entities. Elimination of these regulations will not affect the amount of funding available to the States through the PLH Discretionary Program or the procedures used to select the States eligible to receive these funds. Furthermore, States are not included in the definition of "small entity" set forth in 5 U.S.C. 601. Therefore, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

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

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not raise sufficient federalism implications to warrant the preparation of a federalism assessment. Elimination of these obsolete FHWA regulations concerning the PLH Discretionary Program would not preempt any State law or State regulation. No additional costs or burdens would be imposed on the States as a result of this action, and the States' ability to discharge traditional State governmental functions would not be affected by this rulemaking.

##### *Executive Order 12372*

Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

**Paperwork Reduction Act**

This action does not create a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520.

**National Environmental Policy Act**

The FHWA has analyzed this rulemaking for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action would not have any effect on the quality of the environment. Therefore an environmental impact statement is not required.

**Regulatory Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 667**

Highways and roads, Public lands highway funds.

Issued on: August 20, 1996.

Rodney E. Slater,

*Federal Highway Administrator.*

In consideration of the foregoing and under the authority of 23 U.S.C. 202, 204, and 315, the FHWA removes and reserves part 667 of title 23, Code of Federal Regulations, as set forth below.

**PART 667—PUBLIC LANDS HIGHWAYS FUNDS [REMOVED AND RESERVED]**

1. Part 667 is removed and reserved.

[FR Doc. 96-21852 Filed 8-26-96; 8:45 am]

BILLING CODE 4910-22-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 291**

[Docket No. FR-3814-N-03]

RIN 2502-AG42

**Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Sale of HUD-Held Single Family Mortgages; Notice of Extension of Effective Period of Interim Rule**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Interim rule; Postponement of expiration date.

**SUMMARY:** On August 31, 1995, HUD published an interim rule to establish policies and procedures for the sale of HUD-held single family mortgages. The interim rule provided that its provisions would expire and not be in effect after September 30, 1996, unless prior to that date HUD publishes a document to extend the effective date. This document extends the effective period of the interim rule until HUD issues a final rule for the sale of HUD-held single family mortgages.

**DATES:** Effective August 27, 1996 the September 30, 1996 expiration date for the interim rule adding 24 CFR 291.300 through 291.307 (subpart D) is postponed until a final rule is published and made effective.

**FOR FURTHER INFORMATION CONTACT:** Joseph McCloskey, Director, Single Family Servicing Division, Office of Housing, Room 9178, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, D.C. 20410, telephone (202) 708-1672. (This telephone number is not toll-free.) Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at (800) 877-8339.

**SUPPLEMENTARY INFORMATION:** HUD published an interim rule to establish policies and procedures for the sale of HUD-held single family mortgages on August 31, 1995 (60 FR 45331). (Note: HUD published a correction to this interim rule on October 6, 1995 (60 FR 52296).) The August 31, 1995 interim rule explained that HUD had adopted a policy of setting an expiration date for an interim rule so that the regulatory provisions would expire unless a final rule is published before that date (60 FR 45332). This "sunset" provision appears in § 291.300 of the interim rule, which provides that §§ 291.300 through 291.307 shall expire and shall not be in effect after September 30, 1996, unless prior to September 30, 1996 HUD publishes a final rule adopting the interim rule with or without changes, or publishes a notice in the Federal Register to extend the effective date of the interim rule.

The final rule for the sale of HUD-held single family mortgages is currently in its final stages of development, and HUD anticipates that it will publish the final rule in the fall of 1996. However, in order to prevent a period in which the single family mortgage sale program is without effective regulations, HUD is extending the effective period of the August 31,

1995 interim rule until the final rule is published and made effective.

Accordingly, the expiration date of the interim rule published in the Federal Register on August 31, 1995 (60 FR 45331) is postponed until a final rule is published and made effective.

Dated: August 20, 1996.

Nicolas P. Retsinas,

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 96-21762 Filed 8-26-96; 8:45 am]

BILLING CODE 4210-27-M

**DEPARTMENT OF THE INTERIOR****Office of Surface Mining Reclamation and Enforcement****30 CFR Part 950**

[SPATS No. WY-026]

**Wyoming 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 Wyoming regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of the revision of statutory provisions pertaining to research and development testing licenses for coal in situ processing operations. The amendment was intended to revise the Wyoming program to be consistent with SMCRA and the corresponding Federal regulations.

**EFFECTIVE DATE:** August 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Guy V. Padgett, Director, Casper Field Office, Telephone: (307) 261-5824, Internet address: GPADGETT@CWYGW.OSMRE.GOV.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program can be found in the November 26, 1980, Federal Register (45 FR 78637). Subsequent actions concerning Wyoming's program and program

amendments can be found at 30 CFR 950.12, 950.15, 950.16, and 950.20.

## II. Proposed Amendment

By letter dated April 18, 1996, Wyoming submitted a proposed amendment to its program (administrative record No. WY-32-2) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming submitted the proposed amendment in response to a January 27, 1995, letter from OSM that was sent in accordance with the Federal regulations at 30 CFR 732.17(c) (administrative record No. WY-32-1). The provisions of the Wyoming Environmental Quality Act that Wyoming proposed to revise were: Wyoming Statute (W.S.) 35-11-426, concerning in situ mineral mining permits and testing licenses, and W.S. 35-11-431, concerning applications for research and development testing licenses.

OSM announced receipt of the proposed amendment in the May 10, 1996, Federal Register (61 FR 20773), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. WY-32-7). Because no one requested a public hearing or meeting, none was held.

## III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Wyoming on April 18, 1996, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

### *Public Notice and Performance Standards Applicable to Research and Development Testing Licenses for Coal In Situ Processing Activities*

In accordance with the Federal regulations at 30 CFR 732.17(c), by letter dated January 27, 1995 (administrative record No. WY-032-1), OSM required that Wyoming revise its approved program to (1) require public notice for research and development testing of coal in situ processing activities and (2) clarify that the underground mining performance standards apply to coal in situ research and development testing licenses.

In response to OSM's letter, Wyoming proposed to revise the Wyoming Environmental Quality Act at Wyoming Statute (W.S.) 35-11-426, concerning in situ mineral mining permits and testing licenses, and W.S. 35-11-431,

concerning applications for research and development testing licenses.

Specifically, Wyoming proposed to revise W.S. 35-11-426 (a) and (b) to clarify that all provisions of the act applicable to surface coal mining operations apply to coal in situ operations, including research and development testing licenses, regardless of whether such operations are connected with existing surface or underground coal mines. In addition, Wyoming proposed to revise W.S. 35-11-431(a)(vi) to specify that the public notice requirements applicable to surface coal mining operations at W.S. 35-11-406 (j) and (k) apply to an application for a research and development testing license.

The provisions at W.S. 35-11-406 (j) and (k) include, among other things, (1) the requirement that the applicant provide public notice in a newspaper of general circulation in the locality of the proposed mining site once a week for four consecutive weeks, (2) the right of any interested party to file written objections to the application within thirty days after the last publication of the notice and request an informal conference, and (3) Wyoming's obligation to publish notice of and hold either an informal conference or a public hearing within twenty days after the final date for filing objections. The provision at W.S. 35-11-406(k) also specifies that the hearing shall be conducted in accordance with the Wyoming Administrative Procedure Act with the right to judicial review.

Chapter XVIII of the Wyoming Coal Rules and Regulations, includes, among other things, permit application requirements pertaining to coal in situ mining. Section 5, concerning coal in situ research and development testing license applications, references the requirements of W.S. 35-11-431. The Wyoming Coal Rules and Regulations at Chapter III, Section 3, and Chapter V, Section 5, concerning respectively permits and performance standards for coal in situ processing activities, require by reference to Chapters IV and VII, compliance with applicable performance standards for surface and underground mining operations.

The Federal regulations at 30 CFR 785.22 require that any application for a permit for in situ operations shall be made according to all requirements applicable to underground mining activities and that the operations shall be conducted in compliance with the performance standards for in situ mining at 30 CFR Part 828. Applications for underground mining activities are subject to the public notice requirements for surface coal mining

and reclamation operations at 30 CFR 773.17 and the performance standards pertaining to underground mining operations at 30 CFR Part 817.

Because Wyoming's proposed revisions at W.S. 35-11-426 (a) and (b), concerning in situ mineral mining permits and testing licenses, and W.S. 35-11-431(a)(vi), concerning applications for research and development testing licenses, respectively, (1) clarify that the underground mining operation performance standards apply to coal in situ research and development testing licenses, and (2) require public notice for research and development testing of coal in situ processing activities, the Director finds that proposed W.S. 35-11-426 (a) and (b) and W.S. 35-11-431(a)(vi), in concert with the existing Wyoming regulations at Chapters III, V, and XVIII, are no less effective than the Federal regulations at 30 CFR 773.17, 785.22, 817, and 828, concerning, among other things, public notice requirements and applicable performance standards for coal in situ operations. The Director finds that Wyoming has satisfied the requirements of OSM's January 27, 1995, 30 CFR 732 letter, and approves Wyoming's proposed revisions at W.S. 35-11-426 (a) and (b) and W.S. 35-11-431(a)(vi).

## IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

### 1. Public Comments

*University of Wyoming.*—By letter dated May 10, 1996, the Associate Dean and Director of the Agricultural Experiment Station, University of Wyoming, commented that the proposed revisions of W.S. 35-11-426 and 431(a) should not impact research being conducted and should not present any additional requirements in conducting future research projects (administrative record No. WY-32-9).

### 2. Federal Agency Comments

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

*U.S. Rural Development.*—By letter dated April 26, 1996, the Rural Development, responded that the revisions appeared to be reasonable (administrative record No. WY-32-8).

*U.S. Natural Resources Conservation Service.*—By letter dated May 22, 1996,

the Natural Resources Conservation Service responded that it had no comments (administrative record No. WY-32-10).

*U.S. Geological Survey.*—By letter dated May 23, 1996, the Geological Survey responded that, because the term “in situ mineral mining” may refer to coal bed methane extraction or coal gasification, a clear definition of “in situ mineral mining” would be very helpful to avoid the possibility of confusion about its meaning (administrative record No. WY-32-11).

The Federal regulations, at 30 CFR 701.5, define “in situ processes” to mean

Activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining borehole mining, and fluid recovery mining.

Wyoming, at W.S. 35-11-103(f)(iv), defines “in situ mining” to mean

A method of in-place surface mining in which limited quantities of overburden are disturbed to install a conduit or well and the mineral is mined by injecting or recovering a liquid, solid, sludge or gas that causes the leaching, dissolution, gasification, liquefaction or extraction of the mineral. In situ mining does not include the primary or enhanced recovery of naturally occurring oil and gas or any related process regulated by the Wyoming oil and gas conservation commission.

Because in situ literally means in-place, it includes any process for in-place coal extraction. All coal in situ extraction processes would be required to meet the applicable performance standards.

*U.S. Bureau of Land Management.*—By letter dated May 28, 1996, the Bureau of Land Management, Wyoming State Office, responded that it had no comments (administrative record No. WY-32-13).

*U.S. Bureau of Reclamation.*—By letter dated June 17, 1996, the Bureau of Reclamation responded that it had no comments (administrative record No. WY-32-14).

### 3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of 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 Wyoming proposed

to make in its amendment pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendment and pursuant to 30 CFR 732.17(h)(11)(i), solicited comments on the proposed amendment (administrative record No. WY-32-6).

By letter dated May 13, 1996, EPA responded that it had no comments on the amendment and that it concurred with the proposed revisions (administrative record No. WY-32-12).

### 4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. WY-32-5). Neither the SHPO nor ACHP responded to OSM's request.

### V. Director's Decision

Based on the above finding, the Director approves Wyoming's proposed amendment as submitted on April 18, 1996.

The Director approves, as discussed in the above finding, revision of W.S. 35-11-426(a) and (b), concerning rules and regulations applicable to coal in situ mineral mining permits and testing licenses, and W.S. 35-11-431(a)(vi), concerning public notice of applications for coal in situ research and development testing licenses.

### VI. Procedural Determinations

#### 1. Executive Order 12866

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

#### 2. 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 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.

### 3. National Environmental Policy Act

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

### 4. Paperwork Reduction Act

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

### 5. Regulatory Flexibility Act

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

### 6. 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 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 25, 1996.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, part 950 of the Code of Federal Regulations is amended as set forth below:

**PART 950—WYOMING**

1. The authority citation for part 950 continues to read as follows:

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

2. Section 950.15 is amended by adding paragraph (y) to read as follows:

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

\* \* \* \* \*

(y) The following statutory provisions, as submitted to OSM on April 18, 1996, are approved effective August 27, 1996: revision of W.S. 35–11–426 (a) and (b), concerning in situ mineral mining permits and testing licenses; and W.S. 35–11–431(a)(vi), concerning applications for research and development testing licenses.

[FR Doc. 96–21676 Filed 8–26–96; 8:45 am]

BILLING CODE 4310–05–M

**DEPARTMENT OF DEFENSE****Department of the Army****Corps of Engineers****33 CFR Part 334****Pamlico Sound and Adjacent Waters, North Carolina, Danger Zones; Alligator Bayou off St. Andrew Bay, Florida; and Suisun Bay, West of Carquinez Straits at the Naval Weapons Station, Concord, California, Restricted Areas**

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Corps is amending the regulations which establish several danger zones in Pamlico Sound and the Neuse River in North Carolina to delete one of the danger zones and make minor editorial changes to the regulations. The danger zone as it exists, protrudes into and interferes with navigation in Turnagain Bay and will not be used again by the Government for a use that precludes free use by the public. The Corps is also making minor editorial amendments to the regulations which establish a restricted area in the waters of Alligator Bayou, a tributary of St. Andrews Bay and the Gulf of Mexico, Florida and a restricted area in the waters of Suisun Bay, west of Carquinez Straits at the Naval Weapons Station, Concord, California, to clarify that persons, as well as vessels, are not allowed within the restricted areas. This amendment will not affect the size, location or further restrict the public's use of the restricted areas. The restricted

areas continue to be essential to the safety and security of Government facilities, vessels and personnel and protect the public from the hazards associated with the operations at Government facilities.

**EFFECTIVE DATE:** October 28, 1996.

**ADDRESSES:** HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783, or questions concerning the Pamlico Sound, NC danger zone revocation may be directed to Mr. David Franklin of the Wilmington District at (910) 251–44952. Questions concerning the Alligator Bayou restricted area may be directed to Mr. Larry Evans of the Jacksonville District at (904) 232–3943. Any questions concerning the Suisun Bay, California restricted area may be directed to Mr. Mark D'Avignon of the San Francisco District at (415) 977–8446.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the regulations in 33 CFR Part 334.420, 334.760 and 334.1110.

The Commanding Officer, Marine Corps Air Bases, Eastern Area, Cherry Point, North Carolina, has requested an amendment to the regulations in 33 CFR 334.420(b)(1)(ii), to disestablish a danger zone in the waters off Mulberry Point in Pamlico Sound. The area will be opened to public use upon the effective date of these final rules. The remaining danger zones established in 33 CFR 334.420 remain in effect. We are also making an editorial change to clarify that these danger zone regulations apply to personnel as well as vessels. The Commanding Officer, Coastal Systems Station, Dahlgren Division, Naval Surface Warfare Center, Panama City, Florida, and the Commanding Officer, Naval Weapons Station Concord, Concord, California have also requested that the word "person" be inserted into the regulations in 33 CFR 334.760(b)(1) and 33 CFR 334.1110(2), respectively, to clarify that restrictions apply not only to vessels, but to personnel as well. Other minor editorial changes are being made to 33 CFR 334.1110 to correct paragraph designations in the regulations. These amendments to the danger zones in 33 CFR 334.420 and the restricted areas in 33 CFR 334.760 and 334.1110 are being promulgated without being published as proposed rules with opportunity for public comment because the changes

are editorial in nature and since the revisions do not change the boundaries or increase the restrictions on the public's use or entry into the designated areas, the changes will have practically no effect on the public. Accordingly, we have determined that public comment is unnecessary and impractical.

**Procedural Requirements****a. Review under Executive Order 12866**

This final rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

**b. Review under the Regulatory Flexibility Act**

These rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 86–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the economic impact of the changes to the restricted areas will have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

**c. Review under the National Environmental Policy Act**

An environmental assessment has been prepared for each of these actions. We have concluded, based on the minor nature of these proposed amendments that these amendments to danger zones and restricted areas will not have a significant impact to the human environment, and preparation of a environmental impact statement is not required. The environmental assessment for the appropriate area may be reviewed at the District Offices listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

**d. Submission to Congress and the GAO**

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended, by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army has submitted a report containing this rule to the U.S. Senate, House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in the Federal Register. This rule is not a major rule within the meaning of section 804(2) of the Administrative Procedure Act, as amended.

*e. Unfunded Mandates Act*

This rulemaking does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger Zones, Navigation (water), Transportation.

For the reasons set out in the preamble, 33 CFR Part 334 is amended as follows:

**PART 334—DANGER ZONE AND RESTRICTED REGULATIONS**

1. The authority citation for Part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.420 is amended by revising the first sentence of paragraph (a)(2), removing paragraph (b)(1)(ii), redesignating paragraphs (b)(1)(iii), (iv) and (v) as (b)(1)(ii), (iii) and (iv), respectively, and revising paragraph (b)(2) to read as follows:

**§ 334.420 Pamlico Sound and adjacent waters, N.C.; danger zones for Marine Corps operations.**

(a) \* \* \*

(2) *The regulations.* The area shall be closed to navigation and personnel at all times except for vessels engaged in operational and maintenance work as directed by the enforcing agency. \* \* \*

(b) *Bombing, rocket firing, and strafing areas in Pamlico Sound and Neuse River—(1) The areas.* \* \* \*

(2) *The regulations.* (i) The area described in paragraph (b)(1) of this section will be used as bombing, rocket firing, and strafing areas. Live and dummy ammunition will be used. The area shall be closed to navigation and all persons at all times except for such vessels as may be directed by the enforcing agency to enter on assigned duties. The area will be patrolled and vessels “buzzed” by the patrol plane prior to the conduct of operations in the area. Vessels or personnel which have inadvertently entered the danger zone shall leave the area immediately upon being so warned.

(ii) The areas described in paragraphs (b)(1)(ii), (iii) and (iv) of this section shall be used for bombing, rocket firing, and strafing areas. Practice and dummy ammunition will be used. All operations will be conducted during daylight hours, and the areas will be open to

navigation at night. No vessel or person shall enter these areas during the hours of daylight without special permission from the enforcing agency. The areas will be patrolled and vessels “buzzed” by the patrol plane prior to the conduct of operations in the areas. Vessels or personnel which have inadvertently entered the danger zones shall leave the area immediately upon being warned.

\* \* \* \* \*

3. Section 334.760 is amended by revising paragraph (b)(1) to read as follows:

**§ 334.760 Alligator Bayou, a tributary of St. Andrew Bay, Fla.; restricted area.**

\* \* \* \* \*

(b) *The regulations.* (1) No vessel or person shall enter the area or navigate therein without permission of the Commanding Officer, Naval Ship Research and Development Laboratory, Panama City, Fla., or her/his authorized representative.

\* \* \* \* \*

4. Section 334.1110 is amended by revising the heading for paragraph (a); revising the paragraph (a)(1) designation and heading; and redesignating paragraph (a)(2) as (b), and revising it to read as follows:

**§ 334.1110 Suisun Bay at Naval Weapons Station, Concord; restricted area.**

(a) *The area.* \* \* \*

(b) *The regulations.* (1) No person, vessel, watercraft, conveyance or device shall enter or cause to enter or remain in this area. No person shall refuse or fail to remove any person or property in his custody or under his control from this area upon the request of the Commanding Officer of the Naval Weapons Station Concord or his/her authorized representative.

(2) The regulations in this section shall be enforced by the Commanding Officer, Naval Weapons Station Concord, and such agencies as he/she shall designate.

Dated: August 2, 1996.  
Stanley G. Genega,  
Major General, U.S. Army, Director of Civil Works.

[FR Doc. 96-21841 Filed 8-26-96; 8:45 am]

BILLING CODE 3710-92-M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[W167-01-7276; FRL-5550-6]

**Approval and Promulgation of Implementation Plan; Wisconsin**

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

**ACTION:** Final rule.

**SUMMARY:** On May 10, 1996, the Environmental Protection Agency (EPA) proposed approval of a Wisconsin State Implementation Plan (SIP) revision. The purpose of the revision was to meet the requirements of the EPA transportation conformity rule set forth at 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. Conformity is the process, defined in the Clean Air Act, used to assure that transportation planning activities meet the SIP’s purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards. The proposed approval was subject to a 30 day public comment period during which no comments were received.

**EFFECTIVE DATE:** This final rule will be effective on September 26, 1996.

**ADDRESSES:** Copies of the SIP revision are available for inspection at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.)

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260-7548.

**FOR FURTHER INFORMATION CONTACT:** Michael G. Leslie, Regulation Development Section (AR-18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353-6680.

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

Section 176(c) of the Clean Air Act (Act), 42 U.S.C 7506(c), provides that no Federal department, agency, or instrumentality shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to a SIP which has been approved or promulgated pursuant to the Act. Conformity is defined as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

Section 176(c)(4)(A) of the Act requires EPA to promulgate criteria and procedures for determining conformity of all Federal actions (transportation and general) to applicable SIPs. The EPA published the final transportation conformity rules in the November 24, 1993, Federal Register and codified them at 40 CFR part 51 subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act. The conformity rules require States and local agencies to adopt and submit to the EPA a transportation conformity SIP revision not later than November 24, 1994. The State of Wisconsin submitted a SIP revision to EPA on November 23, 1994, and supplemented this submittal on June 14, 1995.

**II. EPA Action**

The EPA is approving the transportation conformity SIP revision for the State of Wisconsin. The EPA has previously evaluated this SIP revision and has determined that the State has fully adopted the provisions of the Federal transportation conformity rules in accordance with 40 CFR part 51, subpart T. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision.

**III. Administrative Requirements****A. Executive Order 12866**

This action has been classified as a Table 3 action for signature by the

Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

**B. Regulatory Flexibility Act**

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

**C. Unfunded Mandates**

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a

Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

Under 5 U.S.C. 801(a)(1)(A) as added 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 5 U.S.C. 804(2).

**E. Petitions for Judicial Review**

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

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

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: July 24, 1996.

Barry C. Degraff,

*Acting Regional Administrator.*

40 CFR part 52 is amended as follows:

**PART 52—[AMENDED]**

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

Authority: 42 U.S.C 7401–7671q.

**Subpart YY—Wisconsin**

2. Section 52.2585 is amended by adding paragraph (j) to read as follows:

**§ 52.2585 Control strategy: Ozone.**

\* \* \* \* \*

(j) Approval—On June 14, 1995, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a plan for the implementation and enforcement of the Federal transportation conformity requirements at the State or local level in accordance with 40 CFR part 51, subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act.

[FR Doc. 96-21696 Filed 8-26-96; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 52**

[TN-176-1-9641a; TN-177-1-9642a; FRL-5547-1]

**Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee SIP Regarding Volatile Organic Compounds**

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

**ACTION:** Direct final rule.

**SUMMARY:** In this document, EPA is acting on revisions to the Tennessee State Implementation Plan (SIP) which were submitted to EPA by Tennessee, through the Tennessee Department of Air Pollution Control (TDAPC), to amend the Tennessee chapter regulating volatile organic compounds (VOC). The revisions amending the TDAPC's VOC chapter were submitted on June 3, 1996, and June 4, 1996, and add rules which regulate surface coating of plastic parts operations, commercial and motor vehicle and mobile equipment refinishing operations, and volatile organic liquid storage tanks. Additionally, the State submitted revisions to the existing definition for exempt VOCs and to the existing chapter regulating handling, storage, use and disposal of volatile organic compounds. These revisions provide emission reductions for maintenance of the ozone standard in the Nashville ozone nonattainment area.

**DATES:** This final rule is effective October 11, 1996, unless adverse or critical comments are received by September 26, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Written comments on this action should be addressed to William

Denman at the Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference files TN-176-1-9641a and TN-177-1-9642a. The Region 4 office may have additional background documents not available at the other locations.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365, William Denman, 404/347-3555 extension 4208.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243-1531, 615/532-0554.

**FOR FURTHER INFORMATION CONTACT:**

William Denman, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555 extension 4208. Reference files TN-176-1-9641a and TN-177-1-9642a.

**SUPPLEMENTARY INFORMATION:** On June 3, 1996, the Tennessee Department of Air Pollution Control (TDAPC) submitted a request to the EPA to incorporate revisions to section 1200-3-18-.01 "Definitions" into the Tennessee SIP. Paragraph 26 of this rule contains the definition of exempt compounds and was revised to correct typographical errors and add the recently exempted compounds acetone, parachlorobenzotrifluoride (PCBTF), and cyclic, branched or linear completely methylated siloxanes (VMS). Paragraph 87 of this rule contains the definition of volatile organic compounds and was also revised as described above.

On June 4, 1996, the TDAPC submitted a new rule 1200-3-18-.06 "Handling, Storage, Use, and Disposal of Volatile Organic Compounds (VOCs)" to replace the current rule 1200-3-18-.06. The new rule was expanded to

cover the use of VOCs as well as handling, storage and disposal.

On June 3, 1996, the TDAPC submitted three new VOC rules; 1200-3-18-.44 "Surface Coating of Plastic Parts", 1200-3-18-.45 "Standards of Performance for Commercial Motor Vehicle and Mobile Equipment Refinishing Operations", and 1200-3-18-.48 "Volatile Organic Liquid Storage Tanks". Rules 1200-3-18-.44 and 1200-3-18-.45 were submitted to obtain VOC reductions for which credit was taken in the ozone redesignation maintenance plan for the Nashville ozone nonattainment area. Rule 1200-3-18-.44 "Surface Coating of Plastic Parts" applies to sources with potential emissions greater than 25 tons per year (tpy) in the Nashville ozone nonattainment area. Rule 1200-3-18-.45 "Standards of Performance for Commercial Motor Vehicle and Mobile Equipment Refinishing Operations" applies to sources whose potential emissions are greater than 15 pounds per day. Rule 1200-3-18-.48 "Volatile Organic Liquid Storage Tanks" applies to sources with potential emissions greater than 100 tpy.

**Final Action**

The EPA is approving these revisions to the Tennessee SIP as measures for maintenance of the ozone standard in the Nashville nonattainment area. This rulemaking is being published without a prior proposal for approval because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 11, 1996, unless, by September 26, 1996, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective [Insert date 45 days from date of publication].

Under section 307(b)(1) of the Clean Air Act (CAA), 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by October 11, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).)

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427

U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2) and 7410(k)(3).

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

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 182 of the CAA. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. EPA has examined whether the rules being approved by this action will impose any new requirements. Since such sources are already subject to these regulations under State law, no new requirements are imposed by this approval. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action, and therefore there will be no significant impact on a substantial number of small entities.

Under section 801(a)(1)(A) of the Administrative Procedure 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 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: July 22, 1996.

A. Stanley Meiburg,  
*Acting Regional Administrator.*

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

#### **PART 52—[AMENDED]**

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

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

#### **Subpart RR—Tennessee**

2. Section 52.2220 is amended by adding (c)(143) to read as follows:

#### **§ 52.2220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(143) Revisions to chapter 1200-3-18 "Volatile Organic Compounds" were submitted by the Tennessee Department of Air Pollution Control (TDAPC) to EPA on June 3, 1996, and June 4, 1996.

(i) Incorporation by reference.

(A) Rule 1200-3-18-.01, paragraphs (26) and (87), effective on August 10, 1996.

(B) Rule 1200-3-18-.06 "Handling, Storage, Use, and Disposal of Volatile Organic Compounds (VOCs)", effective on August 11, 1996.

(C) Rule 1200-3-18-.44 "Surface Coating of Plastic Parts", effective on August 10, 1996.

(D) Rule 1200-3-18-.45 "Standards of Performance for Commercial Motor Vehicle and Mobile Equipment Refinishing Operations", effective on January 17, 1996.

(E) Rule 1200-3-18-.48 "Volatile Organic Liquid Storage Tanks", effective on August 2, 1996.

(ii) Other material. None.

[FR Doc. 96-21694 Filed 8-26-96; 8:45 am]

BILLING CODE 6560-50-P

#### **40 CFR Part 52**

[MA-46-1-7194a; A-1-FRL-5552-9]

#### **Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Marine Vessel Transfer Operations**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is conditionally approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision contains a regulation to reduce volatile organic compound (VOC) emissions from marine vessel loading operations. The intended effect of this action is to conditionally approve this regulation into the Massachusetts SIP. This action is being taken in accordance with the Clean Air Act.

**DATES:** This action will become effective October 28, 1996, unless notice is received by September 26, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th Floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW. (LE-131), Washington, D.C. 20460; and the Division of Air Quality Control, Commonwealth of Massachusetts, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Anne E. Arnold, (617) 565-3166.

**SUPPLEMENTARY INFORMATION:** On January 11, 1995, the Massachusetts Department of Environmental Protection submitted a formal State Implementation Plan (SIP) submittal containing a new regulation 310 CMR 7.24(8) "Marine Volatile Organic Liquid Transfer" as well as amendments to 310 CMR 7.00 "Definitions." These regulations had been recently adopted pursuant to the reasonable further progress requirements and the volatile organic compound reasonable available control technology (VOC RACT) requirements of the Clean Air Act (CAA) [Sections 182(b)(1) and 182(b)(2)(C)]. In addition, on March 25, 1995, DEP submitted additional documentation indicating that these regulations became effective on January 27, 1995.

#### Background

Under the pre-amended Clean Air Act (i.e., the Clean Air Act before the enactment of the amendments of November 15, 1990), ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guideline (CTG) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under Section 172(a)(1), ozone nonattainment areas were generally required to attain the

ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under Section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

On November 15, 1990, amendments to the Clean Air Act were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401-7671q. Pursuant to the 1990 Amendments, all of Massachusetts was classified as serious nonattainment for ozone (56 FR 56694 (Nov. 6, 1991)).

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the Section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the 1990 amendments to the Act; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources. Also, under Section 182(c) of the Act, the major source definition for serious nonattainment areas was lowered to include sources that have a potential to emit 50 tons or greater of VOCs per year.

In response to the Act's requirement to regulate major non-CTG VOC sources, Massachusetts adopted 310 CMR 7.24(8) "Marine Vessel Transfer Operations" and submitted this rule to EPA as a SIP revision on January 11, 1995. Massachusetts' marine vessel rule is briefly summarized below.

#### *310 CMR 7.24(8) "Marine Vessel Transfer Operations"*

This regulation contains requirements for reducing VOC emissions from loading events in which organic liquid is loaded onto marine tank vessels or in which any liquid is loaded into a marine tank vessel which previously held an organic liquid. Massachusetts' rule prohibits a loading event to occur unless:

(1) marine tank vessel VOC emissions are limited to 2 lbs per 1,000 bbls of organic liquid transferred; or

(2) marine tank vessel VOC emissions are reduced at least 95 percent by weight from uncontrolled conditions when using a recovery device or at least 98 percent by weight from uncontrolled conditions when using a combustion device.

This regulation also limits the loading of marine tank vessels to those vessels that are vapor tight.

Massachusetts' marine vessel rule will reduce VOC emissions. VOCs contribute to the production of ground level ozone and smog. This regulation was adopted as part of an effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following is EPA's evaluation of 310 CMR 7.24(8).

#### *EPA's Evaluation of Massachusetts' Submittal*

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in Section 110 and Part D of the Act and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents. The specific guidance relied on for this action is referenced within the technical support document and this notice. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of CTG documents. The CTGs are based on the underlying requirements of the Act and specify presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in, but not limited to, the following: (1) the proposed Post-1987 ozone and carbon monoxide policy, 52 FR 45044 (November 24, 1987); (2) the document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice," otherwise known as the "Blue Book" (notice of availability was published in the Federal Register on May 25, 1988); and (3) the "Model Volatile Organic Compound Rules for Reasonably Available Control Technology," (Model VOC RACT Rules) issued as a staff working draft in June of 1992. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

In addition, Section 183(f) of the amended Act specifically requires EPA to promulgate RACT standards to reduce VOC emissions from the loading and unloading of marine tank vessels. Furthermore, on November 12, 1993 (58 FR 60021), marine vessels were added to the list of those categories for which EPA will promulgate a maximum achievable control technology (MACT) standard. On September 19, 1995 (60 FR

48388), EPA promulgated both RACT and MACT standards for marine tank vessels.

EPA has evaluated Massachusetts' marine vessel rule and has found that it is generally consistent with EPA's national marine vessel rule and current EPA guidance. There are, however, two outstanding issues associated with the Commonwealth's regulation.

#### Outstanding Issues

##### 1. Lack of Monitoring Requirements

Massachusetts' regulation requires that, upon initial startup of the control equipment, the owner or operator of a marine terminal conduct an initial performance test in order to demonstrate compliance. However, as was stated in EPA's public hearing comments on Massachusetts' proposed version of this rule, the regulation should also require the facility to demonstrate continued compliance as is required under EPA's national marine vessel rule (40 CFR § 63.564).

Specifically, the regulation should require that certain parameters be monitored continuously while marine vessel loading or ballasting operations are occurring and that records be kept of all measurements needed to demonstrate compliance with the applicable standard including all data collected in any periods of operation during which the previously established parameter boundaries are exceeded.

##### 2. Emission Limits for Ballasting Operations

Massachusetts' marine vessel rule applies to the loading of an organic liquid and to ballasting operations. However, the emissions limitations stated in Section 7.24(8)(c)(1) of the rule only apply to "loading events." This term, as defined in 310 CMR 7.00, does not include ballasting operations. Although Sections 7.24(8)(c)(2) and 7.24(8)(d) of Massachusetts' marine vessel rule do require control equipment to be used during ballasting, these sections do not require specific emission limitations to be met during ballasting operations.

EPA's national marine vessel rule does not apply to ballasting operations. The absence of emission limitations for ballasting operations in Massachusetts' rule, however, is inconsistent with the information contained in Massachusetts' reasonable further progress (RFP) plan regarding the reduction in VOC emissions that is expected to result from the implementation of this rule. Specifically, Massachusetts' 1990 base year inventory shows that uncontrolled marine vessel transfer operations result

in 3.2 tons of VOC per summer day (tpsd), which includes 2.8 tpsd from ballasting and 0.4 tpsd from loading operations. Massachusetts' marine vessel rule SIP submittal states that ballasting emissions will be reduced by 2.1 tpsd. This statement assumes that ballasting operations are subject to a 95 percent control efficiency requirement (i.e.,  $0.95 \text{ control efficiency} \times 0.8 \text{ rule effectiveness} \times 2.8 \text{ tpsd uncontrolled} = 2.1 \text{ tpsd reduction}$ ). Therefore, Massachusetts' marine vessel rule should require that ballasting operations be subject to the emission limitations stated in Section 7.24(8)(c)(1)(B) of the rule.

Massachusetts' regulation and EPA's evaluation are detailed in a memorandum, dated April 23, 1996, entitled "Technical Support Document—Massachusetts—Marine Vessel Rule." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this notice.

EPA is publishing this action without prior proposal and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective October 28, 1996, unless adverse or critical comments are received by September 26, 1996.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on October 28, 1996.

#### Final Action

EPA is conditionally approving 310 CMR 7.24(8) "Marine Vessel Transfer Operations" and the associated 310 CMR 7.00 "Definitions" into the Massachusetts SIP.

Under Section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. On February 1, 1996, Massachusetts submitted a written commitment to address the issues outlined above (i.e., the lack of monitoring requirements and

the lack of emission limits for ballasting operations) within one year of the date of publication of EPA's conditional approval. If the Commonwealth fails to do so, this approval will become a disapproval on October 28, 1997. EPA will notify the Commonwealth by letter that this action has occurred. At that time, the conditionally approved submittal will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a notice in the notice section of the Federal Register notifying the public that the conditional approval automatically converted to a disapproval. If the Commonwealth meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved submittal will also be disapproved at that time. If EPA approves the new submittal, the newly submitted regulations will be fully approved and will replace the conditionally approved regulations in the SIP.

If the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under Section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the Commonwealth fails to meet its commitment. In the latter case, EPA will notify the Commonwealth by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the federal implementation plan (FIP) requirement under Section 110(c).

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

Conditional approvals of SIP submittals under Section 110 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Moreover, due to the nature of the federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

If the conditional approval is converted to a disapproval under Section 110(k), based on the Commonwealth's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing State requirements nor does it substitute a new federal requirement.

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

Through submission of this State Implementation Plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Sections 182(b) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

Under 5 U.S.C. 801(a)(1)(A) as added 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 5 U.S.C. 804(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 1996. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

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

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Dated: July 22, 1996.

John P. DeVillars,  
*Regional Administrator, Region I.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

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

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

#### **Subpart W—Massachusetts**

2. Section 52.1119 is amended by adding paragraph (a)(2) to read as follows:

#### **§ 52.1119 Identification of plan-conditional approval.**

\* \* \* \* \*

(a) \* \* \*

(2) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on January 11, 1995 and March 29, 1995.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection dated January 11, 1995 and March 29, 1995 submitting a revision to the Massachusetts State Implementation Plan.

(B) 310 CMR 7.24(8) "Marine Vessel Transfer Operations" effective in the Commonwealth of Massachusetts on January 27, 1995.

(C) Definitions of "combustion device," "leak," "leaking component," "lightering or lightering operation," "loading event," "marine tank vessel," "marine terminal," "marine vessel," "organic liquid," and "recovery device" in 310 CMR 7.00 "Definitions" effective in the Commonwealth of Massachusetts on January 27, 1995.

(ii) Additional materials.

(A) Letter from the Massachusetts Department of Environmental Protection dated February 1, 1996 committing to address the outstanding issues associated with 310 CMR 7.24(8) as identified by EPA in a letter dated September 19, 1995.

(B) Nonregulatory portions of the submittal.

[FR Doc. 96-21692 Filed 8-26-96; 8:45 am]  
BILLING CODE 6560-50-P

#### **40 CFR Part 52**

[CA 014-0014; FRL-5553-5]

#### **Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, El Dorado County Air Pollution Control District, Kern County Air Pollution Control District, Placer County Air Pollution Control District, Santa Barbara County Air Pollution Control District, and the South Coast Air Quality Management District; Withdrawal**

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

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

**SUMMARY:** Due to an adverse comment, EPA is withdrawing the direct final rule

for the approval of revisions to the California State Implementation Plan. EPA published the direct final rule on June 12, 1996 (61 FR 29659), approving revisions to rules from the following air pollution control districts: El Dorado County Air Pollution Control District (EDCAPCD), Kern County Air Pollution Control District (KCAPCD), Placer County Air Pollution Control District (PCAPCD), Santa Barbara County Air Pollution Control District (SBCAPCD), and the South Coast Air Quality Management District (SCAQMD). As stated in that Federal Register document, if adverse or critical comments were received by July 12, 1996, the effective date would be delayed and notice would be published in the Federal Register. EPA subsequently received adverse comments on that direct final rule. EPA will address the comments received in a subsequent final action in the near future. EPA will not institute a second comment period on this document.

**EFFECTIVE DATE:** Withdrawal of the direct final rule is effective on August 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Erik Beck, Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Internet: beck.erik@epamail.epa.gov Telephone: (415) 744-1202.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule located in the final rules section of the June 12, 1996 Federal Register, and in the Federal Register document located in the proposed rule section of the June 12, 1996 (61 FR 29725) Federal Register.

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

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

Dated: August 8, 1996.

Alexis Strauss,  
Acting Regional Administrator.

Subpart F of part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### **PART 52—[AMENDED]**

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

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

#### **Subpart F—California**

##### **§ 52.220 [Amended]**

2. Section 52.220 is amended by removing paragraphs (c)(185)(i)(A)(9), (194)(i)(G), (198)(i)(K), (207)(i)(B)(2), and (225)(i)(B)(3).

[FR Doc. 96-21691 Filed 8-26-96; 8:45 am]

BILLING CODE 6560-50-P

#### **FEDERAL COMMUNICATIONS COMMISSION**

##### **47 CFR Parts 20 and 22**

[CC Docket No. 94-54; FCC 96-284]

##### **Provision of Roaming Services by Commercial Mobile Radio Service Providers**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Communications Commission adopts a *Second Report and Order and Third Notice of Proposed Rulemaking* regarding the offering of roaming services by commercial mobile radio service providers. The *Third Notice of Proposed Rulemaking* portion of this decision is summarized elsewhere in this edition of the Federal Register. The *Second Report and Order* expands the scope of the Commission's existing "manual" roaming rule. As a result of this action, cellular, broadband personal communications services and certain specialized mobile radio licensees must, as a condition of their licenses, provide service upon request to any individual roamer whose handset is technically capable of accessing their networks. This decision is needed to ensure that customers of all providers competing in the mass market for two-way, real-time, interconnected switched voice service have an equal opportunity to obtain manual roaming service if they are using technically compatible equipment, thus promoting competition.

**EFFECTIVE DATE:** October 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Steinberg, Wireless Telecommunications Bureau, (202) 418-1310.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Second Report and Order (Second R&O)* portion of the Commission's *Second Report and Order and Third Notice of Proposed Rulemaking* in CC Docket No. 94-54, FCC 96-284, adopted June 27, 1996, and released August 13, 1996. The summary of the *Third Notice of Proposed Rulemaking* portion of this decision may be found elsewhere in this edition

of the Federal Register. The complete text of this *Second R&O* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC, 20037.

#### **Synopsis of the Second Report and Order**

1. In this *Second R&O*, the Commission extends its existing rule under which cellular licensees are required to provide manual roaming service upon request to subscribers in good standing of any cellular carrier.

2. "Roaming" occurs when the subscriber of one commercial mobile radio service (CMRS) provider utilizes the facilities of another CMRS provider with which the subscriber has no direct pre-existing service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call. Typically, although not always, roaming occurs when the subscriber is physically located outside the service area of the provider to which he or she subscribes. Under § 22.901 of the Commission's rules, cellular system licensees "must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing, including roamers, while such subscribers are located within any portion of the authorized cellular geographic service area \* \* \* where facilities have been constructed and service to subscribers has commenced."

3. The Commission initiated this proceeding in a *Notice of Proposed Rulemaking and Notice of Inquiry*, 59 FR 35664, July 13, 1994, which requested comment regarding whether the obligation to permit roaming should be extended to all CMRS, what regulatory standards are appropriate to promote roaming, and what technical issues or requirements are implicated. In the *Second Notice of Proposed Rulemaking (Second NPRM)*, 60 FR 20949, April 28, 1995, the Commission tentatively concluded that roaming service is important to the development of a seamless CMRS "network of networks." The *Second NPRM* also tentatively concluded that uncertainties concerning the technological development of non-cellular CMRS and the likelihood that market forces would adequately promote the availability of roaming counseled regulatory caution. Therefore, the Commission proposed, in lieu of a rule, to monitor the development of roaming service and to intercede as appropriate. In addition,

the Commission requested comment on several other issues related to roaming, including the technical feasibility of cross-service roaming, the necessity of direct physical interconnection to facilitate roaming, the necessity of access to subscriber databases and any privacy or proprietary issues raised, and the technical and contractual arrangements that are currently used to provide roaming in the cellular service.

4. At the outset, the Commission notes that Sections 201(b) and 202(a) of the Communications Act apply to CMRS providers and govern the provision of common carrier communications services.<sup>1</sup> The Commission agrees with those commenters that argue that roaming is a common carrier service because it gives end users access to a foreign network in order to communicate messages of their own choosing. The Commission also notes that it has authority to impose a roaming requirement in the public interest pursuant to its license conditioning authority under sections 303(r) and 309 of the Communications Act.

5. The record submitted in response to the *Second NPRM* demonstrates that roaming capability is widely available to cellular subscribers, is highly valued by those subscribers, and is one of the industry's fastest growing sources of revenue. Thus, roaming capability may be a key competitive consideration in the wireless marketplace, and newer entrants may be at a competitive disadvantage vis-a-vis incumbent wireless carriers if their subscribers have no ability to roam on other networks. Having said that, the Commission recognizes that roaming regulation may impose significant costs and burdens on CMRS providers and that it should narrowly tailor its actions to avoid placing an undue burden on such providers.

6. Based on comments in the record and the experience of the first broadband PCS licensee to begin service, the Commission concludes that the public interest will be served by extending its existing manual roaming rule, which is part of the Commission's cellular service rules,<sup>2</sup> to obligate all CMRS licensees competing in the mass market for real-time, two-way voice services and to protect the subscribers of all carriers offering such services. That group consists of cellular, broadband PCS and covered SMR providers. These "covered SMR providers" include two classes of SMR licensees. The first

consists of 800 MHz and 900 MHz SMR licensees that hold geographic area licenses. The second covers incumbent wide area SMR licensees, defined as licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR service, either by waiver or under § 90.629 of the Commission's rules. Within each of these classes, "covered SMR providers" includes only licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services. This is the same group of SMR licensees to which the Commission applied its recently adopted rule governing restrictions on resale.

7. Under the rule adopted in this *Second R&O*, cellular, broadband PCS, and covered SMR licensees are required to provide manual roaming to any subscriber of any of these services who is using a handset that is technically capable of accessing the licensee's system. The rule does not require licensees to modify their systems in order to provide service to any end user. To avoid any uncertainty, this decision clarifies that any subscriber to any covered service with a technically cellular-compatible handset has the same right as a cellular subscriber to manually roam on cellular systems. Furthermore, the existing rule is extended to obligate broadband PCS and covered SMR, as well as cellular, licensees. Because this *Second R&O* furthers the public interest by facilitating the widespread availability of roaming, the Commission makes compliance with this rule a condition of cellular, broadband PCS and covered SMR licenses under sections 303(r) and 309 of the Communications Act.

8. By contrast, the record does not establish that ubiquitous roaming capability is important to the competitive success or utility of mobile services other than those offered by cellular, broadband PCS and covered SMR providers. The Commission therefore concludes that its action shall be limited to such licensees. In particular, because they do not compete substantially with cellular and broadband PCS providers, local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, as well as licensees offering only data, one-way, or stored voice services on an interconnected basis, are not covered by the roaming rule. Of course, any SMR provider that is not interconnected to the public switched network does not offer CMRS, and therefore is not subject

to the roaming rule. Allegations that particular practices by non-covered CMRS providers are unjust, unreasonable or otherwise in violation of the Communications Act would be grounds for complaint under section 208 of that Act.

#### Final Regulatory Flexibility Analysis

9. As required by section 603 of the Regulatory Flexibility Act, 5 USC 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Second NPRM* in this proceeding. The Commission sought written public comments on the proposals in the *Second NPRM*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Second R&O* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) (CWAAA).<sup>3</sup>

#### I. Need for and Purpose of this Action

10. In this decision, the Commission extends its existing rule under which cellular licensees are required to provide manual roaming service upon request to subscribers in good standing of any cellular carrier. Under the rule adopted in this decision, cellular, broadband personal communications services (PCS), and certain specialized mobile radio (SMR) licensees must provide manual roaming service upon request to subscribers in good standing of all such carriers, provided the subscriber is using a handset that is technically capable of accessing the licensee's system. This action will ensure that customers of all providers competing in the mass market for two-way, real-time, interconnected switched voice service have an equal opportunity to obtain manual roaming service, if they are using technically compatible equipment. In this way, the rule will promote the development of competition by ensuring that newer entrants to the market, as well as competitors without extensive affiliations, are not competitively disadvantaged by the inability of their subscribers to roam.

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

11. No comments were filed in direct response to the IRFA. In general comments on the *Second NPRM*, however, several commenters raised issues that might affect small entities. Some of these commenters argued that

<sup>1</sup> See 47 U.S.C. 332(c)(1) (CMRS providers are subject to duties of common carriers, including Sections 201 and 202).

<sup>2</sup> See 47 CFR 22.901.

<sup>3</sup> Subtitle II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), codified at 5 USC 601 *et seq.*

the Commission should adopt a roaming rule in order to protect the ability of carriers without a nationwide footprint or extensive affiliations to compete. Other commenters, however, expressed concern that compliance with a requirement to offer roaming could be technically infeasible or unduly costly under some circumstances. In particular, several commenters urged the Commission not to require carriers to adopt particular technologies or modify their networks in order to facilitate roaming. Some commenters also argued that a roaming requirement could expose carriers to financial losses due to fraud. Two alliances of rural cellular carriers argued that, in drafting any roaming rule, the Commission should consider the technical obstacles faced by providers that do not have SS7 capability, as well as rural cellular licensees' alleged lack of market power.

### III. Description and Estimate of the Small Entities Subject to the Rules

12. The rule adopted in this *Second R&O* will apply to cellular, broadband PCS, and geographic area 800 MHz and 900 MHz SMR licensees, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under § 90.629 of the Commission's rules. However, the rule will apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network.

#### A. Estimates for Cellular Licensees

13. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.<sup>4</sup> Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small cellular businesses and is unable at this time to determine the precise number of cellular firms which are small businesses.

14. The size data provided by the SBA does not enable the Commission to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or

more employees.<sup>5</sup> The Commission therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.<sup>6</sup> Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes of its evaluations and conclusions in this FRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, the Commission does not know the number of cellular licensees, since a cellular licensee may own several licenses.

15. Two alliances of rural cellular licensees filed comments in which they argued that a roaming rule may have an especially large impact on rural licensees. In its comments, the Rural Cellular Coalition states that it has 12 members which serve licensed cellular areas encompassing approximately 3 million people; the Rural Cellular Association states that its members serve areas with a cumulative population of more than 6 million. The Commission does not have information, however, sufficient to support a meaningful estimate regarding the total number of rural licensees, nor does it have specific information regarding how many rural cellular licensees are small entities. For purposes of this FRFA, the Commission assumes that all rural cellular licensees are small entities, as that term is defined by the SBA.

#### B. Estimates for Broadband PCS Licensees

16. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 CFR 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of not more than \$40 million in the three previous calendar years. This regulation defining "small entity" in the context of

<sup>5</sup> U.S. Small Business Administration 1992 Economic Census Employment Report, Bureau of the Census, U.S. Department of Commerce, SIC Code 4812 (radiotelephone communications industry data adopted by the SBA Office of Advocacy).

<sup>6</sup> U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC Code 4812 (issued May 1995).

broadband PCS auctions has been approved by the SBA.<sup>7</sup>

17. The Commission has auctioned broadband PCS licenses in Blocks A, B, and C. The Commission does not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the Block C auctions. Based on this information, the Commission concludes that the number of broadband PCS licensees affected by the rule adopted in this *Second R&O* includes the 90 winning bidders that qualify as small entities in the Block C broadband PCS auctions.

18. At present, no licenses have been awarded for Blocks D, E, and F of broadband PCS spectrum. Therefore, there are no small businesses currently providing these services. However, a total of 1,479 licenses will be awarded in the D, E, and F Block broadband PCS auctions, which are scheduled to begin on August 26, 1996. Eligibility for the 493 F Block licenses is limited to entrepreneurs with average gross revenues of not more than \$125 million. However, the Commission cannot estimate how many of these licenses will be won by small entities, nor how many small entities will win D and E Block licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective D, E, and F Block licensees can be made, the Commission assumes, for purposes of its evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

#### C. Estimates for SMR Licensees

19. Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average gross revenues of not more than \$15 million in the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.<sup>8</sup>

<sup>7</sup> See Implementation of section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 59 FR 37566 (July 22, 1994).

<sup>8</sup> See Amendment of parts 2 and 90 of the Commission's rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 60

<sup>4</sup> 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

20. The rule adopted in this *Second R&O* applies to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses in this category. The Commission does know that one of these firms has over \$15 million in revenues. The Commission assumes, for purposes of its evaluations and conclusions in this FRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

21. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, the Commission concludes that the number of geographic area SMR licensees affected by the rule adopted in this *Second R&O* includes these 60 small entities.

22. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, the Commission assumes, for purposes of its evaluations and conclusions in this FRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

#### *IV. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements*

23. The rule adopted in this *Second R&O* imposes no reporting or recordkeeping requirements. The only compliance requirement is that licensees subject to the rule (*i.e.*, cellular licensees, broadband PCS licensees, and geographic area 800 MHz and 900 MHz SMR licensees that offer real-time, two-way, interconnected switched voice service) must provide manual roaming service upon request to subscribers in good standing of covered services who are using technically compatible equipment.

#### *V. Steps Taken to Minimize the Economic Impact on Small Entities*

24. The rule adopted in this *Second R&O* only requires certain CMRS licensees to provide manual roaming service to eligible subscribers upon request. The Commission determines on the present record not to promulgate any rule governing roaming agreements between carriers, but instead to request further comment regarding the need for any such rule and the costs that it would impose. Thus, the Commission in this *Second R&O* avoids potential burdens that a rule governing intercarrier roaming agreements might impose on small entities, including questions regarding the feasibility and cost of offering automatic roaming under certain circumstances, the administrative costs of entering into roaming agreements, and possible exposure to fraud. Furthermore, the rule requires covered licensees to provide service only to subscribers who are using equipment that is technically capable of accessing their systems. The rule therefore does not require carriers to adopt particular technologies or to modify their networks to accommodate roamers using different technologies. Because the rule neither requires carriers to enter into roaming agreements nor impacts their technological choices, it does not implicate the concerns raised by rural carriers.

25. The Commission also determines not to apply its roaming rule to CMRS providers other than cellular, broadband PCS and certain SMR licensees. Many of the providers that are thereby excluded from the rule are small entities, including paging, narrowband PCS, air-ground, public coast service, and non-covered SMR providers. In addition, the Commission requests comment on whether it should sunset the rule adopted herein five years after it awards

the last group of initial licenses for currently allotted broadband PCS spectrum.

26. Finally, the Commission believes that the rule adopted in this *Second R&O* will benefit certain small entities by ensuring that subscribers of providers that do not have a nationwide presence or affiliations will have the same right to obtain roaming service as subscribers to competing larger carriers, provided they are using technically compatible equipment.

#### *VI. Significant Alternatives Considered and Rejected*

27. The Commission considered and rejected the alternative of not extending its existing manual roaming rule beyond cellular licensees and cellular subscribers. Instead, the Commission concluded that the rule should extend to broadband PCS and covered SMR services in order to protect smaller and newer providers of these services from likely competitive disadvantage. At the same time, the Commission rejected the alternative of extending the rule to other CMRS services because the record did not establish that ubiquitous roaming capability is important to the competitive success or utility of these services. The Commission also rejected the alternative of promulgating a rule governing intercarrier roaming agreements in this *Second R&O* because the record did not sufficiently illuminate the costs and benefits of any such rule. Finally, the Commission rejected any alternative that would require carriers to adopt particular technologies or modify their physical networks.

#### *VII. Report to Congress*

28. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Second Report and Order*, in a report to Congress pursuant to SBREFA, 5 U.S.C. 801(a)(1)(A).

#### Ordering Clause

29. Accordingly, it is ordered that the rule amendments appearing below are adopted and shall be effective October 28, 1996.

#### List of Subjects

##### *47 CFR Part 20*

Communications common carriers

##### *47 CFR Part 22*

Communications common carriers

FR 48913 (September 21, 1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 61 FR 6212 (February 16, 1996).

Federal Communications Commission.

William F. Caton,  
Acting Secretary.

#### Rule Changes

Parts 20 and 22 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

#### **PART 20—COMMERCIAL MOBILE RADIO SERVICES**

1. The authority citation for part 20 continues to read as follows:

Authority: Sec. 4, 303, and 332, 48 Stat. 1066, 1092, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 20.12 is amended by revising the section heading and adding new paragraph (c) to read as follows:

#### **§ 20.12 Resale and roaming.**

\* \* \* \* \*

(c) *Roaming.* Each licensee subject to this section must provide mobile radio service upon request to all subscribers in good standing to the services of any carrier subject to this Section, including roamers, while such subscribers are located within any portion of the licensee's licensed service area where facilities have been constructed and service to subscribers has commenced, if such subscribers are using mobile equipment that is technically compatible with the licensee's base stations.

#### **PART 22—PUBLIC MOBILE SERVICES**

1. The authority citation for part 22 continues to read as follows:

Authority: Sec. 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 22.901 is amended by revising the introductory paragraph to read as follows:

#### **§ 22.901 Cellular service requirements and limitations.**

Cellular system licensees must provide cellular mobile radiotelephone service upon request to subscribers in good standing, including roamers, as provided in § 20.12 of this chapter. A cellular system licensee may refuse or terminate service, however, subject to any applicable requirements for timely notification, to anyone who operates a cellular telephone in an airborne aircraft in violation of § 22.925 or otherwise fails to cooperate with the licensee in exercising operational control over mobile stations pursuant to § 22.927.

\* \* \* \* \*

[FR Doc. 96-21797 Filed 8-26-96; 8:45 am]

BILLING CODE 6712-01-P

#### **47 CFR Part 73**

[MM Docket No. 93-48; FCC 96-335]

#### **Broadcast Services; Children's Television**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This *Report and Order* amends the children's television educational and informational programming requirements to strengthen our enforcement of the Children's Television Act of 1990 ("CTA"). First, we adopt requirements designed to provide better information to the public about the shows broadcasters air to fulfill their obligation under the CTA to air educational and informational programming for children. Such information will assist parents to guide their children's television viewing, may ultimately increase the amount of educational programming available in the market, and will help parents and others to work with broadcasters in their community to improve educational programming without government intervention. Second, we adopt a definition of programming "specifically designed" to educate or inform children (or "core" programming) that provides better guidance to broadcasters concerning their specific obligation under the CTA to air such programming. Third, we adopt a processing guideline that will provide certainty for broadcasters about how to comply with the CTA, counteract market disincentives to air children's educational and informational programming, and facilitate staff processing of the children's educational programming portion of renewal applications. The purpose of these new rules is to improve public access to information about "core" programs, provide better clarity to broadcasters about their obligation to air such programs, and facilitate our application processing efforts. This proceeding was initiated by a *Notice of Inquiry* and a *Notice of Proposed Rule Making*.

**DATES:** *Effective date:* The rule changes to §§ 73.673, 73.3526(a)(8)(iii), and 73.3500, will become effective on January 2, 1997, subject to OMB approval under the Paperwork Reduction Act. Notice in the Federal Register will be given upon OMB's action to confirm this effective date. The rule changes to §§ 73.671 and 73.672, 47 CFR §§ 73.671, 73.672, will become effective on September 1, 1997. Written comments by the public on the new

and/or modified information collections are due October 28, 1996.

**ADDRESSES:** Comments on the information collections contained herein should be submitted to Secretary, Federal Communications Commission, Room 222, 1919 M Street, NW., Washington, DC 20554, and a copy submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Charles Logan, Kim Matthews, or Jane Gross, Mass Media Bureau, Policy and Rules Division, (202) 418-2130. For additional information concerning the information collections contained in this *Report and Order* contact Dorothy Conway at 202-418-0217, or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order* in MM Docket No. 93-48, adopted August 8, 1996, and released August 8, 1996. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's duplicating contractor, ITS, at (202) 857-3800, 1919 M Street, NW., Room 246, Washington, DC 20554. This *Report & Order* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Synopsis of Report and Order

#### I. Introduction

In this *Report and Order*, the Commission takes action to strengthen its enforcement of the Children's Television Act of 1990 ("CTA"). The CTA requires the Commission, in its review of each television broadcast license renewal application, to "consider the extent to which the licensee \* \* \* has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." Our initial regulations implementing the CTA have not been fully effective in prompting broadcasters to increase the amount of educational and informational broadcast television

programming available to children. Some broadcasters are carrying very little regularly scheduled standard length programming specifically designed to educate and inform children, and some broadcasters are claiming to have satisfied their statutory obligations with shows that, by any reasonable benchmark, cannot be said to be "specifically designed" to educate and inform children within the meaning of the CTA. In addition, parents and others frequently lack timely access to information about the availability of programming in their communities specifically designed to educate and inform children, exacerbating market disincentives.

2. We refine our policies and rules to remedy these problems. First, we adopt a number of proposals designed to provide better information to the public about the shows broadcasters air to fulfill their obligation to air educational and informational programming under the CTA. Second, we adopt a definition of programming "specifically designed" to educate and inform children (or "core" programming) that provides better guidance to broadcasters concerning programming that fulfills their statutory obligation to air such programming. In order to qualify as core programming, a show must have serving the educational and informational needs of children as a significant purpose, be a regularly scheduled, weekly program of at least 30 minutes, and be aired between 7:00 a.m. and 10:00 p.m. The program must also be identified as educational and informational for children when it is aired and must be listed in the children's programming report placed in the broadcaster's public inspection file. Third, we adopt a processing guideline that will provide certainty for broadcasters about how to comply with the CTA and facilitate our processing efforts.

## II. Background

3. *The Importance of Children's Educational TV.* Congress has recognized that television can benefit society by helping to educate and inform our children. In enacting the CTA, Congress cited research demonstrating that television programs designed to teach children specific skills are effective. There is substantial evidence in this proceeding that children can benefit greatly from viewing educational television. That television has the power to teach is important because nearly all American children have access to television and spend considerable time watching it. The significance of over-the-air television for children is reinforced by

the fact that fewer children have access to cable television than to over-the-air television. In the United States, 38 percent of children from ages 12 to 17 and 37 percent of children from ages 2 to 11 live in homes that are not connected to cable television. Hence, over-the-air broadcasting is an important source of video programs for children and for all members of low income families, including children.

4. *Previous Implementation of the CTA.* For over 30 years, the Commission has recognized that, as part of their obligation as trustees of the public's airwaves, broadcasters must provide programming that serves the special needs of children. In 1990, Congress enacted the CTA both to impose limitations on the number of commercials shown during children's programs and to make clear that the FCC could not rely solely on market forces to increase the educational and informational programming available to children on commercial television. In enacting the CTA Congress intended to increase the amount of educational and informational broadcast television available to children. Congress sought to accomplish this objective by placing on each and every licensee an obligation to provide educational and informational programming, including programming specifically designed to educate and inform children, and by requiring the FCC to enforce that obligation.

5. In 1991, the Commission adopted regulations to implement the CTA. In response to concerns expressed by a number of parties that our rules provide insufficient guidance for broadcasters seeking to comply with the CTA, we initiated this proceeding with a *Notice of Inquiry* ("NOI"), 58 FR 14367 (March 17, 1993), in 1993. Based on comments responding to our NOI, as well as comments received in connection with our 1994 *en banc* hearing on the subject of children's educational television programming, we proposed in the *Notice of Proposed Rule Making* ("NPRM"), 60 FR 20586 (April 26, 1995), to make a number of changes to our rules to achieve the goals of the CTA. In response to the NPRM, we received a substantial number of formal and informal comments from interested parties.

6. *The Economics of Children's Educational Programming.* In enacting the CTA, Congress found that market forces were not sufficient to ensure that commercial stations would provide children's educational and information programming. A number of factors explain the marketplace constraints on providing such programming. Over-the-air commercial broadcast television

stations earn their revenues from the sale of advertising time. Revenues received from the sale of advertising depend on the size and the socio-demographic characteristics of the audience reached by the broadcaster's programming. Broadcasters thus have a reduced economic incentive to promote children's programming because children's television audiences are smaller than general audiences. Broadcasters have even less economic incentive to provide educational programs for children because the market for children's educational television may be segmented by age in ways that do not characterize children's entertainment programming or adult programming. If stations are required to provide some educational programming for children, we believe that the same incentives could cause station owners to prefer to show such programming when relatively few adults would likely be in the audience. Furthermore, small audiences with little buying power, such as children's educational television audiences, are unlikely to be able to signal the intensity of their demand for such programming in the broadcasting market. Therefore, broadcasters will have little incentive to provide such programming because the small audiences and small resulting advertising revenues means that there will be a substantial cost to them (the so-called "opportunity cost") of forgoing larger revenues from other types of programs not shown. The combination of all these market forces consequently can create economic disincentives for commercial broadcasters with respect to educational programming. Broadcasters who desire to provide substantial children's educational programming may face economic pressure not to do so because airing a substantial amount of educational programming may place that broadcaster at a competitive disadvantage compared to those who do very little.

7. *The amount of educational programming on broadcast television.* A number of parties have submitted studies in this proceeding examining the amount of regularly scheduled, standard length educational programming aired on commercial television stations since passage of the CTA. These studies are inconclusive in establishing the exact amount of educational programming that currently is being provided by broadcasters. They arrive at different conclusions on this question in part because they define the programming to be measured and select their samples of broadcast stations in different ways. Despite their

deficiencies, however, the studies (particularly the study submitted by Dr. Dale Kunkel) do allow us to conclude that some broadcasters are providing a very limited amount of programming specifically designed to educate and inform children and that broadcasters vary widely in their understanding of the type of programming that the CTA requires. The conclusion that some stations are airing very little educational programming for children is also supported by our experience in implementing the CTA.

8. *Availability of educational programming on nonbroadcast media.* A number of broadcasters submitted comments arguing that the Commission should assess not just the educational programming being provided over-the-air by broadcast stations, but rather the overall availability of educational programming in the video marketplace. We believe, however, that the proper focus in this proceeding should be on the provision of children's educational programming by broadcast stations, not by cable systems and other subscription services such as direct broadcast satellite systems that, in contrast to broadcast service, require the payment of a subscription fee. The CTA itself expressly focuses on broadcast licensees. Thus, the statute focuses on the provision of children's educational programming through broadcasting, a ubiquitous service, which may be the only source of video programming for some families that cannot afford, or do not have access to, cable or other subscription services. While noting an increase in the number of nonbroadcast outlets available for children to receive video programming, the House Report at 6 states that "the new marketplace for video programming does not obviate the public interest responsibility of individual broadcast licensees to serve the child audience."

9. *Conclusion.* We conclude, on the basis of the studies before us that while some broadcasters are providing educational and informational programming as Congress intended, some are not. Congress was dissatisfied with commercial broadcasters' performance in 1990 when, according to National Association of Broadcasters ("NAB"), commercial broadcasters were devoting an average of two hours per week of airtime to educational programming, and in the CTA Congress provided that *each* broadcaster has a duty to serve the educational and informational needs of children through its overall programming, including programming specifically designed to serve children's educational and informational needs. Yet it appears that,

six years after the enactment of the CTA, at least some broadcasters are providing less than that amount. Given the Commission's duty to treat similarly situated broadcasters in a similar manner, by approving the performance under the CTA of broadcasters providing very little educational programming we would signal that all broadcasters may provide a minimal amount of such programming. The effect of that would be contrary to our effort to counter the economic disincentive to provide children's programming described above. Moreover, in light of the greater value to advertisers of entertainment programs for adults, those broadcasters providing very little educational programming for children may receive an unfair economic advantage, a result that only exacerbates the economic disincentive to provide children's programming that Congress identified in enacting the CTA. Thus unless we modify our approach to implementing the CTA, broadcasters will be able to provide extremely little educational programming for children. That would be contrary to Congress' intent in enacting the CTA.

10. The record also shows that our definition of programming fulfilling the requirements of the CTA should be modified to provide a clear definition of "specifically designed" programming, we will give better guidance and greater incentives for broadcasters' compliance with the CTA. Finally, the record in this proceeding also supports the conclusion that parents and others would profit from additional information concerning the educational programming available in their community.

### III. Public Information Initiatives

11. We conclude that the market inadequacies that led Congress to pass the Children's Television Act can be addressed, in part, by enhancing parents' knowledge of children's educational programming. One way to encourage licensees to provide such programming is to encourage and enable the public, especially parents, to interact with broadcasters. Easy public access to information permits the Commission to rely more on marketplace forces to achieve the goals of the CTA and facilitates enforcement of the statute by allowing parents, educators, and others to actively monitor a station's performance.

12. In considering the options to improve the information available regarding educational programming, we seek to maximize the access to such information by the public while minimizing the cost to the licensee. In response to the comments to the *NPRM*,

we have focused on three basic methods, described below, to improve the public's access to information. We will continue to exempt noncommercial television licensees from children's programming reporting requirements, and we will also exempt them from the other public information initiatives we adopt today. In light of Congressional intent to avoid unnecessary constraints on broadcasters, and in view of the commitment demonstrated by noncommercial stations in general to serving children, we believe it is inappropriate to impose reporting obligations on such stations. We nonetheless encourage noncommercial stations voluntarily to comport with these initiatives to the extent feasible as a means of providing parents and other members of the public with additional information about the availability of children's educational and informational programming on all broadcast stations.

13. *On-Air Identification.* We will require broadcasters to provide on-air identification of core programs, in a manner and form that is at the sole discretion of the licensee, at the beginning of the program. We believe the on-air identification of core programs will greatly assist parents in planning their children's viewing and improve the children's programming marketplace at minimal cost to stations. On-air identifiers are likely to reach a larger audience than information printed in programs guides. Moreover, we note that there is no certainty that published guides will include such information. Identifiers will improve broadcaster accountability by publicizing the programs licensees identify as contributing to their obligation to air core programming. An on-air identification requirement will make broadcasters more accountable to the public and further the goal of minimizing the possibility that the Commission would be forced to decide whether particular programs serve the educational and informational needs of children.

14. Some commenter speculated that on-air identifiers could deter children from watching educational programs. No commenter, however, presented evidence that such an effect will occur. We will revisit our decision to require on-air identification if, after some experience, parties present us with evidence that they in fact have a deterrent effect. In the meantime, broadcasters will have full discretion to design their identifiers to minimize or avoid any such effect.

15. *Program Guides.* We will require each commercial television broadcast

station licensee to provide information identifying programming specifically designed to educate and inform children, and an indication of the age group for which the program is intended, to publishers of program guides. It is industry practice for broadcasters to provide programming information to program guides, which publish such information without cost to the broadcasters. Further, it has become a well-established practice to provide specialized information about programs, such as which programs are closed captioned for the hearing impaired. As broadcasters routinely provide such information about their programming to program guides and designate core programs for their public records, we believe it would require a minimum of effort, but have a major positive effect, for broadcasters to provide publishers of program guides and listings, information identifying core programs, and the age group for which, in the opinion of the broadcaster, the program is intended.

16. We recognize broadcasters cannot require guides to print this information. The information, however, is more likely to be in the program listings if broadcasters routinely provide it. We believe program guides are an effective means of providing parents with advance notice of scheduling of educational programs. This information will assist parents in finding suitable programs for their children and be useful to parents and others who wish to monitor station performance in complying with the CTA. We note that a number of broadcasters supported this proposal, and that the major networks now employ a voluntary parental advisory plan pursuant to which they provide to program guide services information indicating whether programs contain material that may be unsuitable for children. We believe that a universal symbol for educational programming would also be useful in readily identifying such programming to the public, and encourage broadcasters to adopt such a symbol.

17. *Public File Proposals.* Our rules currently require commercial licensees to compile reports containing information about the children's programming they air, including the time, date, duration, and description of the programs. Licensees maintain these reports in the station's public inspection file. We identify several ways, discussed below, to enhance public access to and use of the information in these reports that can be made without materially increasing any burden on the licensee.

18. *Children's liaison.* We will require stations to identify the person at the

station responsible for collecting comments on the station's compliance with the CTA. We believe it is reasonable to require licensees to designate a liaison for children's programming and to include the name and method of contacting that individual in the station's children's programming reports, since someone at each station must, as a practical matter, be responsible for carrying out the broadcaster's responsibilities under the CTA. This requirement also will facilitate public access to information on stations' educational programming efforts, and assist stations in responding to comments and complaints from the public. Moreover, because licensees are currently required to maintain children's programming reports and letters received from the public in their public inspection file, this requirement should not impose a significant additional burden on licensees.

19. *Explanation of how programming meets definition of core programming.* We will require licensees to provide a brief explanation in their children's programming reports of how particular programs meet the definition of "core" programming. Such descriptions assist parents and others who wish to monitor station performance in complying with the CTA. Having a broadcaster identify those programs it relies upon to meet its CTA obligation on an ongoing basis, rather than the end of the term, will increase broadcaster accountability. With regard to a qualifying regular series, we will consider a general description to be sufficient so long as the description is adequate to provide the public with enough information about how the series is specifically designed to meet the educational and informational needs of children.

20. *Physically separate reports.* We will require licensees to separate the children's programming reports from other reports they maintain in their public inspection files. This will enable interested parties to review the information without having to search through unrelated materials. This is our current practice with a licensee's political file. Facilitating access to children's programming reports will facilitate public monitoring and increase broadcaster accountability under the CTA; requiring broadcasters to keep their children's programming reports separate from other portions of their public inspection files will ensure such ease of access.

21. *Publicizing children's programming reports.* We will require that licensees publicize the children's programming reports in an appropriate manner. We remain concerned that the

public is generally unaware of these reports and agree with commenters who contend that publicizing the children's programming reports will heighten awareness of the CTA and invite members of the public to take an active role in monitoring compliance.

22. *Quarterly reports.* We will require licensees to prepare children's programming reports on a quarterly basis. Commenters noted that a quarterly reporting requirement provides more current information about station performance and encourages more consistent focus on educational programming efforts and that, because quarterly production of children's programming reports will coincide with the quarterly issues/programs reports that broadcasters currently prepare, this requirement will not impose a significant additional burden on licensees. For an experimental period of three years, we will also require broadcasters to file such quarterly reports with the Commission on an annual basis, *i.e.*, four quarterly reports filed jointly once a year. We encourage stations to file quarterly, in electronic form, when the reports are prepared. We will evaluate whether to continue this requirement as part of our review of broadcasters' annual reports at the end of this three-year period.

23. *Standardized reporting form.* We will provide licensees with a standardized form for the quarterly children's programming reports. A standardized form should lessen the burden on broadcasters by clarifying the information to be included and providing a ready format. A standardized form will facilitate consistency of reporting among all licensees, assist in efforts by the public and the Commission to monitor station compliance with the CTA, and lessen the burden on the public and Commission staff. This form—a Children's Educational Television Report—will be designed so licensees can complete the report on a computer and file it electronically with the Commission for purposes of the experimental three-year annual filing requirement. We encourage licensees to file the form with us electronically, although we will accept filings either on computer diskette or a paper copy of the report form.

24. This form will request information to identify the individual station and the programs it airs to meet its obligation under the CTA. The form will also request information on educational programs that the station plans to air in the next quarter and ask whether the licensee has complied with other

requirements described in this *Report and Order*. We plan to issue the reporting form by Public Notice and make it available on the Internet.

#### IV. Definition of Programming "Specifically Designed" to Serve Children's Educational and Informational Needs

25. The CTA requires every television broadcaster to air programming "specifically designed" to serve the educational and informational needs of children. Our current definition of educational and informational programming—"programming that furthers the positive development of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs"—is very broad and does not further delineate criteria for programs that are "specifically designed" to educate and inform children. To remedy this situation, we have decided to adopt a more particularized definition of programming specifically designed to serve children's educational and informational needs, or "core" programming. We intend that this definition will identify programming that clearly meets the statutory obligation to air programming "specifically designed" to meet the educational and informational needs of children. We emphasize that licensees should not regard our definition of core programming as imposing a limit on their ability to air other programming that teaches and informs children even if that programming does not square with each element of our definition of core programming.

26. The evidence in the record supports our general proposal to adopt a definition of core educational and informational programming. Several of the studies submitted in this proceeding suggest that some licensees are uncertain about what to classify as programming specifically designed to meet children's educational and informational needs. This conclusion is supported by our experience in reviewing renewal applications and in evaluating licensees' efforts to meet their CTA obligation to air programming "specifically designed" to educate and inform children. We agree with those commenters who believe that a particularized definition will assist broadcasters and will avoid potentially misplaced reliance on general audience and entertainment programs as specifically designed to educate and inform. By more precisely defining "specifically designed" programming, we increase the likelihood that such

programs will be aired, concomitantly increasing the likelihood children will benefit as Congress intended, from such programs.

27. We will retain, with a slight modification, our existing definition of "educational and informational programming" to provide a description of the broad variety of programs that can serve to comply with a licensee's overall requirement to air programming that meets children's educational and informational needs. In order to track more closely the express language of the CTA, we will modify this definition somewhat so that the broad category of "educational and informational television programming" is defined as "any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including children's intellectual/cognitive or social/emotional needs."

28. The definition of core programming that we adopt is designed to provide licensees with clear guidance regarding how we will evaluate renewal applications. The elements of our proposed definition are also designed to be as objective as possible so that they are more easily understood by licensees and the Commission staff and to avoid injecting the Commission unnecessarily into sensitive decisions regarding program content. As we stated in the *NPRM*, programming specifically designed to serve children's educational and informational needs is the only category of programming the CTA expressly requires each licensee to provide. We believe that the definition we adopt today will continue to provide broadcasters ample discretion in designing and producing such programming. We emphasize that the test of whether programming qualifies as core does not depend in any way on its topic or viewpoint. We now turn to the specific elements of the new definition of core programming.

#### *Significant Purpose*

29. With respect to the first element of our definition, we believe that, to qualify as core programming, a show must have served the educational and informational needs of children ages 16 and under as a significant purpose. The "significant purpose" standard appropriately acknowledges the point advanced by broadcasters and others that to be successful, and thus to serve children's needs as mandated by the CTA, educational and informational programming must also be entertaining and attractive to children. Accordingly, as proposed in the *NPRM*, we will require that core programming be

specifically designed to meet the educational and informational needs of children ages 16 and under and have educating and informing children as a significant purpose.

30. The CTA speaks of programming specifically designed to serve "the educational and informational needs of children." It does not draw a distinction between educational and informational programming that furthers children's cognitive and intellectual development and educational and informational programming that furthers children's social and emotional development. We decline to draw that distinction ourselves and accordingly conclude that both fall within the scope of our definition. The test of whether programming qualifies as core does not depend in any way on its viewpoint, but solely on whether it is "specifically designed" to serve children's educational and informational needs. In this regard, we note that entertainment programming with a minor or wrap-around educational and informational message cannot correctly be said to have serving the educational and informational needs of children as a significant purpose.<sup>1</sup> We anticipate that any attempt to incorrectly characterize programming as core will elicit significant opposition from the community, about which the FCC will be apprised.

31. In determining whether programming has a significant purpose of educating and informing children, we will ordinarily rely on the good faith judgment of broadcasters, who will be subject to increased community scrutiny as a result of the public information initiatives described above. We consequently will rely primarily on such public participation to ensure compliance with the significant purpose prong of the definition of core programming, with Commission review taking place only as a last resort.

32. One suggested rule revision discussed in the *NPRM* was to require that educational and informational programming specifically designed for children be produced with the assistance of independent educational advisors. We continue to believe that it would not be appropriate to require the use of educational experts in developing core programming. Although some broadcasters may find that experts can provide worthwhile assistance in developing educational programming, as we stated in the *NPRM* we prefer to

<sup>1</sup> The term "wrap-around" refers to messages inserted at the beginning or end of an entertainment program in an effort to make the program qualify as specifically designed to educate or inform.

minimize the burdens and potential intrusions on programming decisions of broadcasters and provide them the flexibility to select the means by which their educational programming is created.

*Educational and Informational Objective and Target Child Audience Specified in Writing*

33. With respect to the second element of our core programming definition, we are persuaded that we should adopt our proposal to require that the educational and informational objective of core programming be specified in writing. Requiring a statement of educational and informational purpose will ensure that broadcasters devote attention to the educational and informational goals of core programming and how those goals may be achieved. A written statement of educational and information purpose should also assist licensees to distinguish programs specifically designed to serve children's educational and informational needs from programs whose primary purpose is to entertain children. Moreover, this requirement can, as noted, allow parents and other interested parties to participate more actively in monitoring licensee compliance with the CTA, and thus is consistent with our public information initiatives.

34. The description of a program's educational and informational objective, which should be included in the licensee's children's programming report, does not have to be lengthy. It should state the educational and informational objective of the program and the expected educational and informational effects. To satisfy this requirement, broadcasters need not describe the viewpoint of the program or opinions expressed on it. The description must be adequate to demonstrate that a significant purpose of the program is to educate and inform children.

35. We will also require licensees to indicate a specific target age group for core programs. In enacting the CTA, Congress found that "[c]hildren's educational programming is most effective when it is designed to focus on particular age groups and address specific skills." Research has demonstrated that the ability of young children to comprehend television content varies as a function of age, and that educational programming should be targeted to an age range of no more than three to four years to ensure that its content is appropriate to the developmental level of the intended audience. Requiring licensees to specify

the age group a core program is intended to encourage them to consider whether the content of the program is suited to the interests, knowledge, vocabulary, and other abilities of that group. In addition, this requirement will provide information to parents regarding the appropriate age for core programs, thereby facilitating increased program audience and ratings. We decline, however, to identify particular age ranges of children to which core programs may be directed. We prefer to leave broadcasters the discretion to develop programs suited to children with similar educational and informational needs and to counterprogram to distinct portions of the child audience as they believe appropriate.

36. In addition, we decline to require broadcasters to serve particular segments of the child audience. We adhere to our view that we should not at this time require broadcasters to serve particular segments of the child audience, particularly in light of the significant new steps we have adopted to promote the overall availability of children's educational and informational programming.

*Times Core Programming May Be Aired*

37. As for the third element of our definition of core programming, we tentatively proposed in the *NPRM* to credit as core programming children's educational programs broadcast between the hours of 6:00 a.m. and 11:00 p.m. After considering the evidence, we will limit the hours within which programming may qualify as core to a narrower time frame than that proposed in the *NPRM*. To qualify as core, a program must air between the hours of 7:00 a.m. and 10:00 p.m. In specifying this time period, our intention is to encourage broadcasters to air educational programming at times the maximum number of child viewers will be watching. With respect to the morning time limit, recent data show that during four sample weeks in November 1995, less than 5 percent of children 2 to 17 nationwide were watching television at 6:00 a.m. Monday through Friday, and less than 10 percent of this age group was in the audience at 6:30 a.m. By 7:00 a.m., however, between 12.5 percent and 14 percent of children 2 to 11 were watching television, and by 8:00 a.m. more than 20 percent of children 2 to 5, close to 12 percent of children 6 to 8, and just under 9 percent of children 9 to 11, were in the audience. Thus, at 7:00 a.m. Monday through Friday, nearly four times as many young children are watching television than at 6:00 a.m. In

other words, at 6:00 a.m. on weekdays, 1.3 million children are watching television. By 7:00 a.m., the number of children watching television is 5.1 million. Data also show that roughly as many (i.e., very few) young children are watching television at 6:00 a.m. as are watching at midnight. With respect to weekend viewing, the same data show that less than 4 percent of children 2 to 17 were watching television from 6:00 a.m. to 6:30 a.m. on Saturday. By 7:00 a.m. on Saturday, however, the percentage of children 2 to 11 in the audience had risen to between about 5 percent and 7 percent, and continued to increase sharply to about 16 percent or more by 8:00 a.m. Figures for Sunday showed a comparable low rate of viewership for all children prior to 7:00 a.m. followed by a sharp increase between 7:00 a.m. and 8:00 a.m. for children 2 to 11.

38. Despite the relatively small percentage of children in the audience prior to 7:00 a.m. as compared to after that hour, a number of studies confirm that broadcasters air a significant percentage of their educational programming before 7:00 a.m. For example, studies indicate that approximately 20 percent of educational programs are aired before 7:00 a.m. In light of the evidence demonstrating that only 5 to 10 percent of children are watching television before 7:00 a.m., broadcasters appear to be airing a disproportionately large amount of educational programming during early morning hours in relation to the relatively few children watching television at that time. As noted in the *NPRM*, broadcasters have an incentive to air educational programming during very early morning hours as this is a less costly time for them to comply with their educational programming obligation. In view of these circumstances, we believe it is appropriate to specify that core programming air no earlier than 7:00 a.m. rather than 6:00 a.m. as proposed in the *NPRM*. An early time limit of 7:00 a.m. will ensure that core programming is shown when more children are likely to be watching television, especially young children, thus maximizing the benefit of such programming. In addition, a 7:00 a.m. cut-off will help counter the economic incentive of broadcasters to air educational and informational programming to time periods when few children are in the audience.

39. With regard to the evening limit, we believe it is appropriate to require that core programming air no later than 10:00 p.m. rather than 11:00 p.m. as proposed in the *NPRM*. Recent data

show that the number of children 2 to 17 watching television drops off considerably from 10:00 p.m. to 11:00 p.m. For all seven nights combined (Monday–Sunday), the average number of children 2 to 17 drops from 13 million at 10:00 p.m. to 8 million at 11:00 p.m. According to these figures, the number of children 2 to 8 watching television Monday through Friday peaks at approximately 30 percent at 8:00 p.m., and then declines sharply to approximately 16 percent by 10:00 p.m. and less than 10 percent by 11:00 p.m. For older children 9 to 17 Monday through Friday, viewership peaks somewhat later, between 8:30 and 9:00 p.m. at approximately 30 percent to 35 percent, and then falls off to approximately 20 percent to 25 percent at 10:00 p.m. and approximately 12 percent to 19 percent by 11:00 p.m. The data for these age groups for Saturday and Sunday also show a sharp decline in viewership from 10:00 p.m. to 11:00 p.m. We agree with those commenters who argued that core programming should be aired before 10:00 p.m. when a larger proportion of children are awake and watching television. We do not expect this evening limit to impose a burden on broadcasters, or impede their program scheduling strategies, as they typically schedule adult entertainment programming for the 10:00 p.m. to 11:00 p.m. time period. We therefore will require that, in order to qualify as core, educational and informational children's programming be aired between the hours of 7:00 a.m. and 10:00 p.m. We believe that this time period effectuates the language of the CTA that licensees air programming "specifically designed" to serve children's educational and informational needs, as children are best served by programming that airs during times more children are watching television.

40. We do not believe that the time period for core programming must be consistent with the indecency safe harbor (10:00 p.m. to 6:00 a.m.). The indecency safe harbor is intended to provide for the airing of indecent material when the risk of children in the audience is minimized, while our purpose in this context is to promote the availability of children's educational programs when substantial numbers of children are watching. Nevertheless, the data recited above indicate that because there is an appreciable drop in the number of children in the audience after 10:00 p.m. the time frame for purposes of the core programming definition should be 10:00 p.m. rather than 11:00 p.m.

#### *Regularly Scheduled*

41. Turning to the fourth element of our definition of core programming, we continue to believe that qualifying core programming should be regularly scheduled, particularly in view of our emphasis on improving the flow of information to parents through published program guides and other means to enable them to select educational and informational programs for their children. Programming that is aired on a regular basis is more easily anticipated and located by viewers, and can build loyalty that will improve its chance for commercial success. A large proportion of television programming, including children's programming, consists of shows that air on a routine basis. We agree with those commenters who argue that programs that air regularly can reinforce lessons from episode to episode. We also believe that regularly scheduled programs can develop a theme which enhances the impact of the educational and informational message. Accordingly, to be considered as core, we will require that educational and informational programs air on a regular basis. Furthermore, to count as regularly scheduled programming, such programs must be scheduled to air at least once a week. Regularly scheduled weekly programming is the dominant form of television programming. It is more likely to be anticipated by parents and children, to develop audience loyalty, and to build successfully upon and reinforce educational and informational messages, thereby better serving the educational and informational needs of children. It is also our view that programs that air at less frequent intervals are less likely to attract a regular audience and to be anticipated by parents.

42. Television series typically air in the same time slot for 13 consecutive weeks, although some episodes may be preempted for programs such as breaking news or live sports events. Indeed, evidence suggests that a significant number of educational and informational programs, particularly those that air on Saturday, are preempted by sports and other programming. Although a program must be regularly scheduled on a weekly basis to qualify as core, we will leave to the staff to determine, with guidance from the full Commission as necessary, what constitutes regularly scheduled programming and what level of preemption is allowable.

43. Specials, including those scheduled to appear on a regular nonweekly basis, will not be credited as

core. As stated above, we believe that programs that are aired more frequently (*i.e.*, at least once a week) are more likely to build upon and reinforce educational and informational messages, more likely to develop audience loyalty, and more likely to be anticipated by children and parents and thus attract a regular audience. Nonetheless, we recognize that educational and informational specials with a significant purpose of serving the educational and informational needs of children ages 16 and under can help accomplish the objectives of the CTA and thus can count toward the second track of our three-hour processing guideline as described below. The value of such programming is enhanced if parents are informed in advance of the program and the time it is scheduled to air. We encourage broadcasters to promote educational and informational specials and to schedule them far enough in advance to permit information about the program to be included in program guides.

#### *Substantial Length*

44. As to the fifth element of our definition of core programming, we believe that core programming should be at least 30 minutes in length. In enacting the CTA, Congress identified a number of examples of worthwhile educational and informational programs, all of which are at least one half-hour in length. Although we do not mean to suggest that these examples in the legislative history are equivalent to statutory requirements, we believe they reflect the fact that the dominant broadcast television format is 30 minutes or longer in length. We believe it reasonable that our rules, which are intended to promote the accessibility of children's educational and informational programming, reflect this current industry practice. Programs in these standard formats are more likely than shorter programming to be regularly scheduled and to be listed in program guides, and thus are easier for parents to identify for their child's viewing. In addition, programs that are 30 minutes or longer allow more time for educational and informational material to be presented, and a number of commenters stated that shows of this length can be particularly beneficial to children. There was no evidence presented in response to the *NPRM* to support claims by some parties that children have short attention spans and thus will not benefit from substantial length programming.

45. We will not credit educational and informational PSAs, interstitials, or other short segments as core

programming. The CTA does not preclude broadcasters from counting such programming as educational and informational; indeed, we recognize that some short segments have significant public interest benefits. Nevertheless, while we have previously found that short segment programming may qualify as specifically designed educational and informational programming, for the reasons stated above we believe that programs that are 30 minutes or more in length are a more appropriate focus of our definition of "core" programming. We also note that short segments and PSAs are less likely to be regularly scheduled or listed in program guides, and consequently are not easily located and anticipated by parents and children.

46. We emphasize that programming with a significant purpose of educating and informing children that is less than 30 minutes in length, although not credited as core programming, can contribute to serving children's needs pursuant to the CTA. Such programming can count toward meeting the three-hour processing guideline when broadcasters air somewhat less than 3 hours per week of core programming, as described below. We encourage all broadcasters to continue to provide a diverse mix of educational and informational programming, including short segments and PSAs, toward their overall obligation to provide programming for children.

#### *Identified as Educational and Informational*

47. With respect to the sixth element of our definition, we proposed that stations be required to identify core programs as educational and informational at the beginning of the program, and to make available the necessary information for listing these programs as educational and informational in program guides. As discussed above, we will adopt both of these proposals in order to improve the information available to parents regarding programming specifically designed for children's educational and informational needs, and to assist them in selecting these programs for their children. We also believe this measure will make broadcasters more accountable in classifying programming as specifically designed to educate and inform. Thus, as with the other aspects of our definition of core programming, we believe that the identification requirements provide an appropriate regulatory incentive for licensees to comply with their statutory obligation to air programming specifically designed

to serve children's educational and informational needs.<sup>2</sup>

#### *Assessment Guidelines*

48. In view of our adoption of a definition of core educational and informational programming that provides licensees with clearer guidance regarding the types of programming required to meet their obligation under the CTA, we believe that our permissive assessment guidelines are no longer necessary and should be eliminated.

#### *V. Processing Guideline*

49. Based on our review of the record, as well as our experience in enforcing the CTA over the past five years, we have decided to adopt a three-hour processing guideline. Under this guideline, the Mass Media Bureau will be authorized to approve the CTA portions of a broadcaster's renewal application where the broadcaster has aired three hours per week (averaged over a six month period) of educational and informational programming that has as a significant purpose serving the educational and informational needs of children ages 16 and under. A broadcaster can demonstrate that it has aired three hours per week of such programming in either of two ways: (A) By checking a box on its renewal application and providing supporting information indicating that it has aired three hours per week of regularly scheduled, weekly shows that are 30 minutes or longer and that otherwise meet the definition of "core programming" (repeats and reruns of core programming may be counted toward fulfillment of the three-hour guideline); or (B) By showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. (By "package" we do not mean to imply that the programming is in any way related by topics or purchased from a single source.) A broadcaster seeking to secure staff approval under Category B must show that any reasonable observer would recognize its commitment to educating and informing children to be at least equivalent to the commitment reflected in Category A.

50. Broadcasters that do not fall within Category A or B will have their

renewal applications referred to the full Commission. Licensees referred to the Commission should be on notice by this order that they will not necessarily be found to have complied with the CTA. Given the modest nature of the guideline described in Categories A and B, we expect few broadcasters will fail to meet this benchmark. However, even if a licensee did not meet the guideline for staff approval, it will have an opportunity to make a showing before the Commission that it has satisfied its CTA obligations in other ways. Broadcasters will have a full opportunity to make this demonstration by, for example, relying in part on sponsorship of core educational and informational programs on other stations in the market that increases the amount of core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming. It is also possible that a licensee might seek to demonstrate that it suffered such serious economic hardship—such as bankruptcy—that might excuse noncompliance with the CTA.

51. If we find that a broadcaster has not complied with the CTA, we will apply the same remedies that we use in enforcing our other rules. These remedies will vary depending on the severity of the deficiency based on objective criteria. For less serious deficiencies, we will consider letters of admonition or reporting requirements. We may also consider using a "promise versus performance" approach. This would be a prospective remedy under which a licensee would detail its plan for coming into full compliance with CTA programming obligations; if this plan meets with Commission approval, the station's license would be renewed on the condition that the licensee adheres to the plan absent special circumstances. For more serious violations, we will consider other sanctions, including forfeitures and short-term renewals. In extreme cases, we will consider designating the license for hearing to determine whether the licensee's violations of the CTA and our implementing rules warrant nonrenewal under the standards set forth in Section 309(k) of the Communications Act.

52. We believe that a three hour per week processing guideline is a reasonable benchmark for all broadcast television stations to meet six years after enactment of the CTA given long-term performance improvement Congress intended when it passed the Act. The inferences that we can draw from the

<sup>2</sup> As we noted above, we will exempt noncommercial stations from these identification requirements.

entire record in this proceeding, including the studies that were submitted, suggest that this benchmark is a reasonable, achievable guideline. In the context of the CTA, a processing guideline is clear, fair and efficient. Our experience in reviewing the children's programming portions of renewal applications teaches us that a processing guideline is desirable as a matter of administrative efficiency in enforcing the CTA and provides desirable clarity about the extent of a broadcaster's programming responsibilities under the statute. The guideline will also help ameliorate the inequities that may arise from the economic disincentives that lead some stations to air little core programming. Although some broadcasters are airing a significant amount of educational and informational programming, the evidence suggests that others are not. A processing guideline will help minimize the inequities and reduce the disincentives created by below-average performers by subjecting all broadcasters to the same scrutiny for CTA compliance by the Commission at renewal time. Moreover, the greater certainty provided by the processing guideline we adopt should create a more stable and predictable demand for such programming, and thus further the CTA's goal of increasing the availability of programs that teach and inform the nation's children.

53. The processing guideline we adopt is consistent with the CTA in that it provides a measure of flexibility for licensees in meeting the requirements of the CTA. We further believe the processing guideline we adopt is consistent with the text of the CTA, which requires us to "consider the extent" to which licensees serve the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs.

54. We thus conclude that the public interest and the interests Congress sought to promote through the CTA will be better served by this processing guideline approach. We recognize that this is contrary to our earlier interpretation of the CTA as precluding quantification of the CTA obligation. In reaching a contrary conclusion, we begin with the fact that nothing in the statutory language of the CTA forbids the use of a processing guideline. Furthermore, although there is specific language in the legislative history, cited in our 1991 *Report and Order* and by parties in this proceeding, stating the "Committee does not intend that the FCC interpret this section as requiring

or mandating a quantification standard," this language does not prohibit us from seeking to provide greater clarity and guidance through a processing guideline. Rather, this language simply makes clear that the CTA does not *require* quantitative standards or guidelines.

55. We will continue our policy of exempting noncommercial television stations from specific record- compilation, filing and submission requirements. As is our current practice, we will require noncommercial broadcast television stations to maintain documentation sufficient to show compliance at renewal time with the Act's programming obligations in response to a challenge or to specific complaints. Any such showing that a noncommercial station may need to make will be governed by the definition of core programming and the processing guideline we adopt.

56. We will monitor the broadcast industry's children's educational programming performance for three years based upon the children's programming reports that licensees will file with us annually on an experimental basis. We will conduct a review of these reports at the end of this three-year period and take appropriate action as necessary to ensure that stations are complying with the rules and guidelines we adopt. To supplement this review, Commission staff will also conduct selected individual station audits during the next three years to assess station performance under our new children's educational and informational programming rules once they go into effect.

57. We invited comment in the *NPRM* on whether we should sunset any processing guideline or program standard that we adopt on December 1, 2004, unless affirmatively extended by the Commission. Based on the record, we do not believe that an automatic expiration of the rules, absent further Commission action, is appropriate. One of our principal objectives in implementing the safe harbor processing guideline is to provide broadcasters and the public with fair notice and certainty regarding the level of performance at which a licensee can be assured it is complying with the CTA. Automatic elimination of the processing guideline is inconsistent with this important objective.

#### VI. Renewal Procedures

58. We have decided not to require members of the public to communicate with a licensee prior to filing a petition to deny, as proposed in the *NPRM*. Such a requirement could be unduly

burdensome to the public, prevent legitimate complaints from being heard, and deny the FCC an important source of information. We will nonetheless encourage parties to seek to resolve CTA programming concerns with the station before filing a complaint with the Commission, and will consider whether a petitioner has engaged in such conciliation efforts as a factor in assessing a petition to deny.

59. We sought comment in the *NPRM* on whether we should permit licensees to certify whether they have aired the prescribed amount of core programming. We decline to adopt this proposal. The parties that addressed this proposal opposed it on the ground that it would inhibit public monitoring of broadcaster compliance and was contrary to Congress' intent that the Commission review a licensee's children's programming records. Given these concerns, and our decision to require broadcasters to file children's programming reports with the Commission for an experimental three-year period, we do not believe a certification approach is workable.

#### VII. First Amendment Issues

60. The First Amendment arguments raised by opponents of our proposed CTA regulations essentially fall into two categories—arguments that attack the CTA obligation and arguments that attack the quantification of the CTA obligation. To the extent that some commenters argue that the CTA is unconstitutional, Congress itself specifically concluded that "it is well within the First Amendment strictures to require the FCC to consider, during the license renewal process, whether a television licensee has provided information specifically designed to serve the educational and informational needs of children in the context of its overall programming." Even more specifically, as the FCC, the courts, and Congress have concluded, a broadcaster's public interest obligation properly includes an obligation to serve the educational and informational needs of children. The question in this proceeding is not *whether* the Commission should give effect to the CTA, but *how* it should do so.

61. The course we adopt today—defining what qualifies as programming "specifically designed" to serve the educational needs of children and giving broadcasters clear but nonmandatory guidance on how to guarantee compliance—is a constitutional means of giving effect to the CTA's programming requirement. "It does not violate the First Amendment to treat licensees given the privilege of

using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 394 (1969). Congress's authority to order "suitable time and attention to matters of great public concern" includes the authority to require broadcasters to air programming specifically designed to further the educational needs of children. The airwaves belong to the public, not to any individual broadcaster. As the Supreme Court observed in *CBS, Inc. v. FCC*, "a licensed broadcaster is 'granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations.'" 453 U.S. 367, 395 (1981). The fact that Congress elected to retain public ownership of the broadcast spectrum and to lease it for free to private licensees for limited periods carries significant First Amendment consequences.

62. We have chosen to adopt a processing guideline that requires broadcasters to show us how they have served the educational and informational needs of children, and which provides guidance to them about ways in which they can meet that obligation. We are not, however, telling licensees what topics to discuss. The Supreme Court has reaffirmed that "broadcast programming, unlike cable programming, is subject to certain limited content restraints imposed by statute and FCC regulation." If the equal-time and personal attack rules and the rules channeling indecent programming away from times when children are most likely to be in the viewing audience survive constitutional scrutiny, then so, *a fortiori*, would the Commission's considerably less intrusive proposal for giving meaningful effect to the CTA by defining "core" educational programming and establishing a procedure that broadcasters can use to assure routine staff processing of the CTA portion of their renewal applications.

63. Our new regulations, like the CTA itself, impose reasonable, viewpoint-neutral conditions on a broadcaster's free use of the public airwaves. The CTA and our regulations directly advance the government's substantial, and indeed compelling, interest in the education of America's children. As Congress recognized, "[i]t is difficult to think of an interest more substantial than the promotion of the welfare of children who watch so much television and rely upon it for so much of the

information they receive." If Congress and the Commission may ban broadcast of certain material during specified hours, even under standards of strict scrutiny, it should follow that the Commission's adoption of less restrictive measures to encourage the airing of material beneficial to children is consistent with the First Amendment. That is particularly true because the Children's Television Act is designed to promote programming that *educates and informs* children. It is entirely consistent with the First Amendment to ask trustees of the public airwaves to pursue reasonable, viewpoint-neutral measures designed to increase the likelihood that children will grow into adults capable of fully participating in our deliberative democracy.

64. The measures we adopt today to advance the Nation's interest in the intellectual development of our children are sustainable under the analysis in *FCC v. Pacifica Foundation*, 438 U.S. 726 (1978) as they are significantly less burdensome than the measure upheld there. *Pacifica* upheld a complete ban on a particular type of programming (indecent programming) during hours when children are likely to be in the audience, a period which the Commission was later upheld in defining as 16 hours per day (6:00 a.m.–10:00 p.m.) in *Action for Children's Television v. FCC*. The measures we adopt today do not ban programming of any type, they simply notify broadcasters that compliance with the CTA can be achieved with, on average, less than half an hour a day of programming expressing any viewpoint on any topic that broadcasters desire.

65. For those reasons, our implementing rules are constitutional under the traditional First Amendment standard. But even if evaluated under a heightened standard, our rules would pass muster because the interest advanced is compelling and our regulations are narrowly tailored. As detailed above, our regulations are no more burdensome than necessary to ensure that children will be able to watch educational and informational programming. As we explain above, any programming specifically designed to meet the educational and informational needs of children can "count" for purposes of meeting the processing guideline. In addition, a broadcaster can rely on other more general programming and related non-programming efforts to satisfy its CTA obligation—albeit after full Commission review.

66. We declined to adopt quantitative processing guidelines in 1991 on the ground that they would "infringe on broadcaster discretion regarding the

appropriate manner in which to meet children's educational and informational needs." Upon further consideration, we reject that position. Processing guidelines give broadcasters an option for *guaranteeing* routine staff processing of the CTA portion of their renewal applications, but broadcasters remain free to find other ways to fulfill their obligation. In any event, our initial reluctance to adopt any form of processing guideline derived in large part from our wish to *initiate* implementation of the CTA with as little regulation as possible. As described above, our subsequent experience has persuaded us that we should alter our course in the interests of fairness and efficiency by clarifying ways in which broadcasters can ensure compliance.

67. Together, the new measures that we adopt today will help parents, children, and the general public understand the programming benefits that the CTA is intended to guarantee. That understanding is necessary to ensure that the public, in exercising informal influence over the programming choices of broadcasters, can play an important role in effectuating Congress's intent to increase the amount of educational children's programming on television. Similarly, both the clearer definition and the processing guidelines give broadcasters reasonable notice of nonmandatory ways to guarantee compliance with their statutory programming obligations. Such clarity is desirable and helps to narrowly tailor our regulations.

#### VIII. Effective Dates and Transition Period

68. Our rules regarding on-air identification, program guides, public file, and reporting requirements will become effective on January 2, 1997, subject to OMB approval under the Paperwork Reduction Act, and we will begin to evaluate compliance with these requirements in renewal applications filed after that date. With respect to our newly adopted definition of programming specifically designed to serve the educational and informational needs of children, as well as our safe harbor processing guideline relating to such programming, we believe that a longer transition period is appropriate. Accordingly, we adopt an effective date for these rules of September 1, 1997, and will begin to evaluate compliance with these provisions in renewal applications filed after that date. As with all of the provisions adopted today, these provisions will be applied on a purely prospective basis.

69. Thus, renewal applications filed earlier than September 1, 1997 will be assessed for compliance with the program-related provisions of the CTA based exclusively on the rules and criteria set forth in our 1991 CTA rulemaking proceeding. Beginning September 1, 1997, we will begin to evaluate renewal applications to determine the extent to which licensees are providing educational programming that complies with the new definition of core programming using the new processing guideline. In this renewal cycle (i.e. for applications filed through April 1999) such renewals will cover licensee performance that both pre-dates and post-dates these new rules. Licensee performance during the term that predates the relevant effective dates will be evaluated under existing standards and performance that post-dates the rules will be judged under the new provisions.

#### Administrative Matters

##### *Paperwork Reduction Act Statement*

70. This *Report and Order* contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public, and other Federal agencies to comment on the information collections contained in this *Report and Order* as required by the PRA. Public and agency comments are due October 28, 1996. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* 3060-0214.

*Title:* Section 73.3526 Local public inspection file of commercial stations.

*Form No.:* None.

*Type of Review:* Revision of existing collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 10,250 commercial radio licensees recordkeepers ; 1,200 commercial TV licensees recordkeepers; 1,200

commercial TV stations making must-carry/retransmission consent elections; 1,200 commercial TV stations publicizing existence and location of children's public inspection file.

*Estimated time per response:* 104 hours per year for radio recordkeeping; 130 hours per year for TV recordkeeping; 1 hour per election statement to 150 cable systems per TV station; 5 minutes per TV station for revising station identification publicizing the existence and location of children's public inspection file.

*Total annual burden:* 1,282,100 hours.

*Needs and Uses:* Section 73.3526 requires that each licensee/permittee of a commercial broadcast station maintain a file for public inspection. The contents of the file vary according to type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports and annual employment reports, statements certifying compliance with filing announcements in connection with renewal applications, letters received from members of the public, etc. On August 8, 1996, the Commission adopted this *Report and Order* in MM Docket No. 93-49 which, among other things, modifies the requirements currently in Section 73.3526(a)(8)(iii) by removing the requirement to keep records of educational and informational programming specifically designed to serve children's needs. This requirement was replaced with a requirement that commercial television stations place in their public inspection file, on a quarterly basis, a Children's Television Programming Report, maintained in a physically separate file from the other material kept in the public inspection file. Licensees must also publicize the existence and location of these Reports and file the Report annually with the Commission for three years. The data are used by the public and FCC to evaluate information about broadcast licensees' performance, to ensure that broadcast stations are addressing issues concerning the community they are licensed to serve, and to ensure that radio stations entering into time brokerage agreements comply with Commission policies pertaining to licensee control and to the Communications Act and the antitrust laws. Broadcasters are required to send each cable operator in the station's market a copy of the election statement applicable to that particular cable operator. Placing these retransmission consent/must-carry elections in the

public file provides public access to documentation of station's elections which are used by cable operators in negotiations with television stations and by the public to ascertain why some stations are/are not carried by the cable systems. The information contained in the separate children's television file will be used by the general public, interested parties, and FCC staff to facilitate public monitoring of broadcasters' educational programming and to ensure compliance with the CTA. The requirement that children's television material be kept in a separate file will provide easier access to such material.

*OMB Approval Number:* None.

*Title:* Section 73.673 Public information initiatives regarding educational and informational programming for children.

*Form No.:* None.

*Type of Review:* New Collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents:* 1,200 commercial television broadcast licensees.

*Estimated Time Per Response:* 1 minute per program to ensure that on-the-air identification is provided; 5 minutes per program to convey children's television information to publishers of program guides.

*Total annual burden:* 37,440 hours.

*Needs and Uses:* This new Section 73.673 will require commercial TV broadcasters to identify programs specifically designed to educate and inform children at the beginning of those programs, in a form that is at the discretion of the licensee, and to provide information identifying such programs and the age groups for which they are intended to publishers of program guides. These requirements will provide better information to the public about the shows broadcasters air to fulfill their obligation to air educational and informational programming under the CTA. This information will assist parents who wish to guide their children's television viewing. In addition, if large numbers of parents use that information to choose educational programming for their children, it will increase the likelihood that the market will respond with more educational programming. Better information should help parents and others to have an effective dialogue with broadcasters in their community about children's programming and, where appropriate, to urge programming improvements without resorting to government intervention.

### Final Regulatory Flexibility Analysis

71. As required by the Regulatory Flexibility Act, as amended ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA"), 5 U.S.C. § 603, was incorporated in the *Notice of Proposed Rule Making* in MM Docket No. 93-48 ("NPRM"). The Commission sought written public comments on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA")<sup>3</sup> in this *Report and Order* is as follows:

#### A. Need for and Objectives of the Rules

72. The rulemaking proceeding was initiated to explore ways to implement the Children's Television Act of 1990 ("CTA") more effectively by facilitating broadcasters' compliance with their obligation to air educational and informational programming for children, including programming specifically designed for this purpose, and by furthering the CTA's goal of increasing the amount of educational and informational programming available to children. In ¶¶ 9-13 of the *Report and Order*, we discuss the importance of children's educational television programming, and in ¶¶ 25-46 and throughout this order, we discuss the basis of our concerns that our prior rules to implement the CTA were not producing a level of performance consistent with the long-term goals of the statute. The rules adopted herein meet these objectives by giving licensees clear, efficient, and fair guidance regarding their children's programming obligation under the CTA. They do this by increasing the flow of programming information to the public to facilitate enforcement of the CTA and improve the functioning of the children's programming marketplace; by adopting a definition of programming that is clearly "specifically designed" to educate and inform children (which we refer to as "core programming") to provide licensees guidance in fulfilling their statutory obligation to air this programming; and by adopting a three-hour processing guideline to facilitate review at renewal time by the Commission, as required by the CTA, of licensees' compliance with the Act.

<sup>3</sup>This FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Subtitle II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

### B. Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

73. There were no comments submitted specifically in response to the IRFA. We have, however, taken into account all issues raised by the public in response to the proposals raised in this proceeding. In certain instances, we have modified the rules adopted in response to those comments.

#### C. Description and Number of Small Entities to Which the Rules Will Apply

##### 1. Definition of a "Small Business"

74. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). *Id.* According to the SBA's regulations, entities engaged in television broadcasting (Standard Industrial Classification ("SIC") Code 4833—Television Broadcasting Stations) may have a maximum of \$10.5 million in annual receipts in order to qualify as a small business concern.<sup>4</sup> 13 CFR §§ 121.101 *et seq.* This standard also applies in determining whether an entity is a small business for purposes of the RFA.

75. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." While we tentatively believe that the foregoing definition of "small business" greatly

<sup>4</sup> This revenue cap appears to apply to noncommercial educational television stations, as well as to commercial television stations. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

overstates the number of television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small television stations, we did not propose an alternative definition in the IRFA.<sup>5</sup> Accordingly, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to television broadcast stations and to consider further the issue of the number of small entities that are television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this *Report and Order*.

##### 2. Issues in Applying the Definition of a "Small Business"

76. As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

77. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We were unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any television station from the

<sup>5</sup> We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our *Notice of Inquiry* in GN Docket No. 96-113 (In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), 61 FR 33066 (June 26, 1996), we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. The comment and reply comment deadlines in that proceeding have not yet elapsed. Additionally, in our *Order and Notice of Proposed Rule Making* in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 61 FR 9964 (March 12, 1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, *e.g.*, 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force. We have not concluded the foregoing rule making.

definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We attempted to factor in this element by looking at revenue statistics for owners of television stations. However, as discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

78. With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 CFR § 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

79. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR § 121.104(d)(1). The SBA defines affiliation in 13 CFR § 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR § 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR § 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the data bases available to us to provide us with that information.

### 3. Estimates Based on Census and BIA Data

80. According to the Census Bureau, in 1992, there were 1,155 out of 1,478 operating television stations with revenues of less than ten million dollars. This represents 78 percent of all television stations, including non-commercial stations. See *1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size*, May 1995, at 1-25. The Census Bureau does not separate the revenue data by commercial and non-commercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of 10.5 million dollars in annual receipts. Census data also indicates that 81 percent of operating firms (that owned at least one television station) had revenues of less than 10 million dollars.<sup>6</sup>

81. We have also performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database,<sup>7</sup> which lists a total of 1,141 full-power commercial television stations. We have excluded Low Power Television (LPTV) stations or translator stations, which will not be subject to the new requirements, from our calculations.<sup>8</sup> It should be noted that, using the SBA definition of small business concern, the percentage figures derived from the BIA data base may be underinclusive because the data base does not list revenue estimates for noncommercial educational stations, and these are therefore excluded from our calculations based on the data base.<sup>9</sup>

<sup>6</sup> Alternative data supplied by the U.S. Small Business Administration Office of Advocacy indicate that 65 percent of TV owners (627 of 967) have less than \$10 million in annual revenue and that 39 percent of TV stations (627 of 1,591) have less than \$10 million in annual revenue. These data were prepared by the U.S. Census Bureau under contract to the Small Business Administration. U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Receipts Report, Table 2D (U.S. Census Bureau data adopted by SBA). These data show a lower percentage of small businesses than the data available directly from the Census Bureau. Therefore, for purposes of our worst case analysis, we will use the data available directly from the Census Bureau.

<sup>7</sup> BIA Publications, Inc., Chantilly, VA.

<sup>8</sup> It should be noted that the Commission has attempted to minimize the burden on small entities by not applying the rules to LPTV stations and television translators. As of June 30, 1996, there were 1,903 LPTV stations and 4,910 television translators licensed in the United States. FCC News Release, *Broadcast Station Totals as of June 30, 1996*, Mimeo No. 63298, released July 10, 1996.

<sup>9</sup> In the Joint Comments of the Association of America's Public Television Stations and the Public Broadcasting Service (p. 6), it is reported that there are 38 public television stations with annual operating budgets of less than \$2 million. As of June 30, 1996, there were 364 public television stations

While noncommercial stations are not subject to the new reporting or recordkeeping requirements adopted in the *Report and Order*, the new definition (except for the reporting requirements) and the processing guideline will apply to them. The BIA data indicate that, based on 1995 revenue estimates, 440 full-power commercial television stations had an estimated revenue of 10.5 million dollars or less. That represents 54 percent of commercial television stations with revenue estimates listed in the BIA program. The data base does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of 10.5 million dollars or less, representing approximately 68 percent of the 1,141 commercial television stations listed in the BIA data base.

82. Alternatively, if we look at owners of commercial television stations as listed in the BIA data base, there are a total of 488 owners. The data base lists estimated revenues for 60 percent of these owners, or 295. Of these 295 owners, 158 or 54 percent had annual revenues of 10.5 million dollars or less. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, the total of small entities would constitute 72 percent of owners.

83. In summary, based on the foregoing worst case analysis using census data, we estimate that our rules will apply to as many as 1,155 commercial and non-commercial television stations (78 percent of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as approximately 771 commercial television stations (about 68 percent of all commercial television stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we tentatively believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliated businesses that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Therefore, these estimates overstate the number of small entities since the revenue figures on which they are based do not include or

licensed. FCC News Release, *Broadcast Station Totals as of June 30, 1996*, released July 10, 1996.

aggregate such revenues from non-television affiliated companies.

84. It should also be noted that the foregoing estimates do not distinguish between network-affiliated<sup>10</sup> stations and independent stations. As of April, 1996, the BIA data base indicates that about 73 percent of all commercial television stations were affiliated with the ABC, CBS, NBC, Fox, UPN, or WB networks. Moreover, seven percent of those affiliates have secondary affiliations.<sup>11</sup> We assume that compliance with the requirements adopted in the *Report and Order* will be less burdensome for network affiliates than for independent stations, as the networks may provide some core programming to network affiliates at lower costs than the network affiliates might otherwise be able to obtain. The networks might also otherwise assist with the fulfillment of additional requirements.

#### 4. Alternative Classification of Small Stations

85. An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity ("EEO") rule for broadcasting.<sup>12</sup> Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.<sup>13</sup> We estimate that the

<sup>10</sup> In this context, "affiliation" refers to any local broadcast television station that has a contractual arrangement with a programming network to carry the network's signal. This definition of affiliated station includes both stations owned and operated by a network and stations owned by other entities.

<sup>11</sup> Secondary affiliations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

<sup>12</sup> The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. See *Report and Order* in Docket No. 18244, 35 FR 8825 (June 6, 1970).

<sup>13</sup> See, e.g., 47 CFR § 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 44 FR 6722 (Feb. 2, 1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on

total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.<sup>14</sup>

86. Size of the station based on the number of employees is only one factor in assessing the impact of the compliance requirements on small stations. For example, as discussed below, the resources that may often be provided from the networks to network affiliates and from program syndicators to broadcasters showing their programming should ease the compliance requirements by providing educational program descriptions which can be used in public information dissemination. Small group-owned stations may also receive similar benefits from their parent companies when programs have been produced or acquired for multiple stations in the group. However, we do not have the necessary information at this time to determine the number of small group-owned stations, either under the SBA's definition or based on those stations that have fewer than five full-time employees.

#### D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

87. The rules adopted in the *Report and Order* require commercial television broadcasters, regardless of size, but not including LPTV or translator stations, to identify programs specifically designed to educate and inform children at the time those programs are aired (at the beginning of the program), in a form that is at the discretion of the licensee, and to provide information identifying such programs and the age groups for which, in the opinion of the broadcaster, they are intended, to publishers of program guides.

88. Our rules currently require commercial licensees to complete reports containing information about the children's programming they air,

small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making* in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 61 FR 9964 (March 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. *Id.* at ¶ 21.

<sup>14</sup> We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

including time, date, duration, and description of the programs. These reports may be produced either quarterly or annually at the licensee's discretion. Licensees maintain these reports in their public inspection file.

89. The new rules will require commercial television licensees to provide a brief explanation in their children's programming reports of how particular programs meet the definition of programming specifically designed to meet children's educational and informational needs that is adopted in the *Report and Order*. Licensees will be required to produce their children's reports quarterly. For an experimental period of three years, broadcasters will be required to file these reports with the Commission on an annual basis (*i.e.*, four quarterly reports filed jointly once a year). Broadcasters will also be required to separate their children's programming reports from other materials in their public files and to publicize in an appropriate manner the existence and location of the children's programming reports. The Commission will, at a later date, adopt a standardized form for the programming reports. We will also permit, but not require, electronic filing of children's programming reports. Finally, the Commission will, at a later date, revise its license renewal form to reflect the new three hour core programming processing guideline, discussed below.

90. While licensees remain ultimately responsible for ensuring compliance with our rules, we anticipate that they may be able to refer to information provided by the broadcast networks and program suppliers in assessing the educational and informational purpose of programming. Further, we anticipate that station programming and clerical staff will continue to be able to perform the other reporting and recordkeeping functions required under the rules.

91. Under the new rules, commercial television licensees will also be required to designate a liaison at the station for children's programming and to include the name and method of contacting that person in the children's programming reports. In order to minimize burdens, the *Report and Order* exempts noncommercial educational television stations from this requirement. With respect to the liaison, the rules do not require that a new or additional employee be hired to perform this function, and we believe that it is reasonable to require licensees to designate a liaison for children's programming since someone at each station must, as a practical matter, be responsible for carrying out the broadcaster's responsibility under the

CTA to air children's educational television programming and since licensees are currently required to maintain children's programming reports and letters received from the public in their public inspection file.

92. To minimize regulatory burdens, the new rules exempt noncommercial educational television stations from the foregoing reporting, filing, and submission requirements and public information initiatives.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

93. In general, we have attempted to keep burdens on television broadcast stations to a minimum, as discussed below. The regulatory burdens we have imposed are necessary to ensure compliance with the CTA.

##### 1. Public Information Initiatives

94. We adopted the requirements that commercial television broadcasters identify children's educational and informational programs and designate a liaison for children's programming, as well as the revised public file requirements, based on the goal of affording the public sufficient information to play an active role in assuring that the goals of the CTA are met. We will also make information obtained from the children's programming reports available on our Internet World Wide Web site if it is feasible so that it will be accessible by the public. Allowing the public to play an active role will, in turn, allow the Commission to minimize its involvement in evaluating the quality of children's programming and to rely more on the marketplace to achieve the goals of the CTA, thereby minimizing regulatory burdens.

95. We determined that these information requirements should not impose significant additional burdens on licensees, and, in adopting the rules, the Commission has attempted to minimize regulatory and significant economic burdens on small businesses and facilitate compliance with reporting rules wherever possible.

##### a. Identification of Core Programming

96. The burden of the on-air identification requirement on all commercial television broadcast stations, including small stations, is minimized because the form of the identification is at their discretion. The rules adopted provide greater discretion to television stations and are thus less burdensome than if we had adopted a requirement that broadcasters use an icon for such identification, as

suggested in the *NPRM*. Further, such an identification requirement may benefit small stations by affording a potential increase in audience size. An on-air identification requirement will make broadcasters more accountable to the public and further the goal of minimizing the possibility that the Commission would be forced to decide whether particular programs serve the educational and informational needs of children. We note that it is standard practice in the broadcast industry for stations to make various on-air announcements promoting their programming. We further note that under longstanding Commission rules, stations must make station identification and sponsorship announcements. See 47 CFR §§ 73.1201, 73.1212.

##### b. Program Guides

97. Television stations currently submit programming information to programming guides, which publish such information without cost to the broadcasters. See ¶ 60 *supra*. Our current rules do not require broadcasters to provide this information to the guides. However, it has become a well-established practice to provide specialized information about programs, such as which programs are closed captioned for the hearing impaired. Our new rules will require commercial television broadcasters to provide to publishers of program guides information identifying core programs, and the age group for which, in the opinion of the broadcaster, the program is intended.<sup>15</sup> This information will assist parents in finding suitable programs for their children and be useful to parents and others who wish to monitor station performance in complying with the CTA. We recognize that broadcasters cannot require publishers to print this information. The information, however, is more likely to be in the program listings if broadcasters routinely provide it. This requirement is a minor extension of what small stations already do for their standard programming. Stations are not required to purchase advertising space in TV Guide or local TV weekly publications, only to provide information to them. As broadcasters routinely provide such information about their programming to program guides and designate core programs for their public records, we believe it would require a minimum of

<sup>15</sup> As described above in Section IV of the *Report and Order*, we will require that commercial broadcasters indicate the age of the target child audience in their program description.

effort, but have a major positive effect, for them to do so.

##### c. Public File Requirements

98–99. Our rules currently require commercial television licensees to compile reports, containing information about the children's programming they air, including the time, date, duration, and description of the programs. Licensees maintain these reports in the station's public inspection file. Our new rules will require commercial television licensees to prepare these reports using a standardized format on a quarterly basis. The reports will describe their efforts to comply with the CTA-related programming requirements outlined in this decision. Licensees will be required to provide a brief explanation of how particular programs meet the definition of "core" programming. Commercial television licensees will be required to separate the children's programming reports from the other reports they maintain in their public files.

100. The impact of this requirement will depend on the specific class into which a small station falls. Network-affiliated stations, regardless of staff size, may have network support in fulfilling aspects of the reporting requirement for the programs that are broadcast by the network. For example, we assume that, in developing the educational and informational programming they furnish to affiliates, networks will have prepared program information about the educational and informational benefits to children that can be disseminated to affiliated stations.<sup>16</sup> Assuming that the network furnishes such material, a small station may be able to rely on it in preparing its programming report, with respect to the network programs that it airs. In addition, program syndicators may also provide the information needed for a small station to complete its children's programming reports with respect to the programs furnished by the syndicator, further lessening any burden on small stations.

101. A small station that wishes to produce its own children's educational programming will not have the benefit of any such material provided by a network or syndicator in fulfilling the program report requirements. However, assuming a determination of the

<sup>16</sup> See e.g., NBC Comments at 7, 19; NBC Reply Comments at 9 (written articulation of the educational theme or goal of each educational segment furnished to affiliates for inclusion in their children's programming reports); see also ABC Comments at 12 (ABC currently provides to its affiliates a brief explanation of how particular programs meet the definition of educational and informational programming for children).

educational and informational attributes of the program has been made at the pre-production/development stage, additional analysis may not be necessary in preparing the programming report. It is not required, nor should it be necessary, for a small station to hire additional personnel or a children's educational expert to prepare such reports. The Commission considered but specifically rejected such a requirement in order to minimize regulatory burdens on licensees.

102. A number of broadcasters and other commenters requested that the Commission develop a standardized form to facilitate their assembly of children's programming reports, which they are required to do under our current rules. *See Report and Order*, ¶¶ 69 and n. 174 *supra*. So that the reporting burden will be minimized, the Commission will develop a standardized form to be used for preparing the quarterly children's programming reports. We believe that the standardized form will make compliance with the reporting requirements easier and less burdensome for all entities, including small entities. *See Report and Order*, ¶¶ 69–72.

103. With regard to licensees publicizing the availability and location of the programming reports, we believe that this requirement should not be burdensome on small entities because we do not prescribe the manner in which licensees are to publicize the availability and location of the reports, but allow the licensees flexibility to do so in an appropriate manner. Therefore, licensees may choose to fulfill the requirement in a manner that is least burdensome to them, provided they do so in an appropriate manner.

104. Our new rules also require commercial television licensees to designate a liaison for children's programming and to include the name and method of contacting that individual in the station's children's programming reports.<sup>17</sup> Licensees already employ sufficient staff in order to maintain the children's programming reports<sup>18</sup> and letters received from the public in their public inspection files, as required by our current regulations.<sup>19</sup> Thus, we do not expect that the new requirement for designation of a liaison will impose a significant additional

burden on licensees. The rules do not require that a new or additional employee be hired to perform this function, and we believe that it is reasonable to require licensees to designate a liaison for children's programming since someone at each station must, as a practical matter, be responsible for carrying out the broadcaster's responsibility under the CTA to air children's educational television programming. In addition, our rules place no limitations on the licensee's discretion in assigning the liaison function and determining how it will be carried out.

## 2. Definition of "Specifically Designed" Programming

105. The CTA requires the Commission to consider the extent to which a broadcaster has "served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." We determined that we should adopt a definition of programming specifically designed to serve children's educational and informational needs (or "core programming") because our current definition is very broad, does not distinguish between general audience/entertainment programs and programs that are specifically designed to educate and inform, and does not provide licensees with sufficient guidance regarding their obligation to air "specifically designed" programming as required by the CTA. The definition is designed to be sensitive to our concerns that the rules be explicit, clear, simple, and fair and that they afford clear guidance to licensees as to their obligations under the CTA.

106. In adopting the definition, we attempted to minimize regulatory burdens and economic impact on small entities. For example, the Commission rejected a proposal advanced by several commenters that licensees be required to consult with educational experts in order for a program to qualify as core programming. *Report and Order*, ¶ 90. The Commission rejected this proposal in order to minimize burdens on our licensees. An element of our core programming definition is the requirement that commercial television licensees specify in writing in their children's programming report the educational and informational objective of a core program as well as its target child audience. While we recognize this element of the revised definition may impose an additional paperwork burden on commercial licensees, we conclude that the burden is outweighed by the

benefits of the proposal. *See Report and Order*, ¶¶ 91–95. The description of a program's educational objective does not have to be lengthy, and we do not require that the description be prepared by an expert.

## 3. Processing Guideline

107. We adopt a three-hour per week safe harbor processing guideline. A processing guideline is consistent with the text of the CTA and with the First Amendment, and we conclude that our current *ad hoc* approach provides inadequate guidance to licensees and Commission staff. Under the new processing guideline adopted, we would permit staff approval of the children's programming portion of the renewal application where the three-hour benchmark is met. A measure of flexibility is afforded to licensees, including small businesses, since a licensee falling somewhat short of this benchmark could still receive staff approval based on a showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. In this regard, specials, PSAs, short-form programs and regularly scheduled non-weekly shows with a significant purpose of educating and informing children can count toward the three hour per week processing guideline. Renewal applications that do not meet these criteria will be referred for consideration to the Commission, where they will have a full opportunity to demonstrate compliance with the CTA. Such applicants may be able to demonstrate compliance, for example, by relying in part on sponsorship of core educational and informational programs on other stations in the market that increases the amount of core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts that enhance the value of children's educational and informational television programming. A processing guideline is consistent with the text of the CTA that the Commission "consider the extent" to which licensees serve the "educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." *Report and Order*, ¶¶ 120–130.

108. In adopting this guideline, the Commission seeks to minimize the

<sup>17</sup> As noted earlier, noncommercial educational television licensees are exempt from this requirement.

<sup>18</sup> *NPRM*, 60 FR 20586; 47 CFR § 73.1202.

<sup>19</sup> 47 CFR § 73.1202. Commercial stations are required to maintain a number of other reports, records, and applications in their public inspection file as well. *See id.* at § 73.3526.

regulatory burdens and economic impact on licensees, including small businesses, by delegating authority to the Mass Media Bureau to approve Category A or Category B renewal applications. *See Report and Order*, ¶¶ 120–34. Additionally, the Commission allows broadcasters scheduling flexibility by adopting a per-week rather than a per-day safe harbor and by permitting the three-hour benchmark to be averaged over a six-month period, and further attempts to minimize the economic impact by allowing repeats and reruns of core programming to be counted toward fulfillment of the three-hour guideline.

109. With respect to network affiliates, we expect that networks, as they have in the past, will provide programming and compliance information to their affiliates so that, regardless of revenues, the burden on network-affiliated stations will be minimized. Indeed, as noted in ¶ 132 of the *Report and Order*, Westinghouse Electric Corporation has announced that it will provide three hours per week of children's educational programming over the CBS network and on its owned and operated stations by the fall 1997 season. Further, we assume that the three-hour per week guideline will not be burdensome because, as the National Association of Broadcasters ("NAB") reports, broadcasters today air an average of more than four hours per week of total educational and informational programming under the CTA. *See Report and Order*, ¶ 40. Even though that figure may be inflated by the inclusion of some programming that may not qualify under the definition of core programming, it suggests that a three-hour processing guideline is a reasonable level that should not be particularly difficult for broadcasters to achieve.

110. The Commission considered but did not adopt two alternative options to the processing guideline: (1) Commission monitoring of the amount of educational and informational programming on the air during a period of time following the adoption of measures to improve the flow of programming information to the public and a definition of core programming; and (2) adoption of a programming standard that would require broadcasters to air a specified average number of hours of programming specifically designed to serve the educational and informational needs of children. The rule adopted furthers the goal of making the Commission's rules and processes as clear, efficient, and fair as possible, while affording licensees discretion to augment their core

programming responsibility with program sponsorship or other exceptional programming efforts.

111. The Commission concludes that the option chosen strikes the appropriate balance between the need for certainty and flexibility in enforcing the CTA and is thus preferable to both the monitoring and programming standard proposals set forth in the *NPRM*. It should be noted that the option chosen, a processing standard, is less burdensome and affords licensees, including small businesses, greater flexibility than if the Commission had imposed a programming standard. Based on the record, the Commission does not believe that three hours of educational programming would be difficult for most broadcasters to achieve. While mere monitoring might be less burdensome than a processing guideline, the Commission concludes in the *Report and Order* that it is inadvisable to process renewals under the CTA without some quantitative guidelines that are published in advance to provide licensees notice as to means by which they can fulfill their CTA obligations.

112. Finally, the Commission will revise its license renewal form to reflect the new three hour core programming processing guideline. To minimize the regulatory burden and economic impact on broadcasters, including small businesses, they will be able to demonstrate compliance either by checking a box and providing supporting information indicating that they have aired an average of three hours per week of core programming or by showing that they have aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. In revising the renewal form, we will seek to minimize the reporting burden on licensees, including small businesses, by, for example, permitting them to rely on the children's programming reports they have previously prepared.

#### *F. Report to Congress*

113. The Secretary shall send a copy of this Final Regulatory Flexibility Analysis along with this *Report and Order* in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. Section 801(a)(1)(A). A copy of this FRFA will

also be published in the Federal Register.

#### Ordering Clauses

114. Accordingly, *it is Ordered that*, pursuant to the authority contained in Sections 4 (i) & (j), 303(r), 308, and 403 of the Communications Act of 1934, 47 U.S.C. 154 (i) & (j), 303(r), 308, 403, as amended, and the Children's Television Act of 1990, 47 U.S.C. 303b(a), 303b(b), and 394, Part 73 of the Commission's Rules, 47 CFR Part 73 IS AMENDED as set forth below. The rule changes to Sections 73.673, 73.3526(a)(8)(iii), and 73.3500, 47 CFR §§ 73.673, 73.3526(a)(8)(iii), 73.3500, shall take effect on January 2, 1997, subject to OMB approval under the Paperwork Reduction Act. Appropriate public notice will be given upon OMB's action to confirm this effective date. The rule changes to Sections 73.671 and 73.672, 47 CFR §§ 73.671, 73.672, shall take effect on September 1, 1997.

115. *It is further ordered* that the new or modified paperwork requirements contained in this Report and Order (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

116. *It is further ordered* that the Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

117. *It is further ordered* that this proceeding is terminated.

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

##### Television.

Federal Communications Commission  
William F. Caton,  
*Acting Secretary.*

##### Rule Changes

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

#### **PART 73—RADIO BROADCAST SERVICES**

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

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.671 is amended by removing the Note following the section, revising paragraph (a), and by adding paragraph (c) and Notes 1 and 2 to read as follows:

**§ 73.671 Educational and informational programming for children.**

(a) Each commercial and noncommercial educational television broadcast station licensee has an obligation to serve, over the term of its license, the educational and informational needs of children through both the licensee's overall programming and programming specifically designed to serve such needs.

\* \* \* \* \*

(c) For purposes of this section, educational and informational television programming is any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs. Programming specifically designed to serve the educational and informational needs of children ("Core Programming") is educational and informational programming that satisfies the following additional criteria:

- (1) It has serving the educational and informational needs of children ages 16 and under as a significant purpose;
- (2) It is aired between the hours of 7:00 a.m. and 10:00 p.m.;
- (3) It is a regularly scheduled weekly program;
- (4) It is at least 30 minutes in length;
- (5) The educational and informational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report, as described in § 73.3526(a)(8)(iii); and
- (6) Instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides, as described in § 73.673(b).

Note 1 to § 73.671: For purposes of determining under this section whether programming has a significant purpose of serving the educational and informational needs of children, the Commission will ordinarily rely on the good faith judgments of the licensee. Commission review of compliance with that element of the definition will be done only as a last resort.

Note 2 to § 73.671: The Commission will use the following processing guideline in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA"). A licensee that has aired at least three hours per week

of Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) will be deemed to have satisfied its obligation to air such programming and shall have the CTA portion of its license renewal application approved by the Commission staff. A licensee will also be deemed to have satisfied this obligation and be eligible for such staff approval if the licensee demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming. In this regard, specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the three hour per week processing guideline. Licensees that do not meet these processing guidelines will be referred to the Commission, where they will have full opportunity to demonstrate compliance with the CTA (e.g., by relying in part on sponsorship of core educational/informational programs on other stations in the market that increases the amount of core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming).

**§ 73.672 [Removed and Reserved]**

- 3. Section 73.672 is removed and reserved.
- 4. New Section 73.673 is added to read as follows:

**§ 73.673 Public information initiatives regarding educational and informational programming for children.**

(a) Each commercial television broadcast licensee shall identify programs specifically designed to educate and inform children at the beginning of the program, in a form that is in the discretion of the licensee.

(b) Each commercial television broadcast station licensee shall provide information identifying programming specifically designed to educate and inform children to publishers of program guides. Such information shall include an indication of the age group for which the program is intended.

5. Section 73.3526(a)(8)(iii) is revised to read as follows:

**§ 73.3526 Local public inspection file of commercial stations.**

(a) \* \* \*

(8)(i) \* \* \*

(ii) \* \* \*

(iii) For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. Licensees shall publicize in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, i.e., four quarterly reports filed jointly each year, preferably in electronic form. These Reports shall be filed with the Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

\* \* \* \* \*

6. Section 73.3500 is amended by adding entry 398 in numerical order to read as follows:

**§ 73.3500 Application and report forms.**

\* \* \* \* \*

Form number	Title
* * * * *	
398 ...	Children's Television Programming Report.

# Proposed Rules

Federal Register

Vol. 61, No. 167

Tuesday, August 27, 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.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB52

#### Common Crop Insurance Regulations; ELS Cotton Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Extra Long Staple (ELS) Cotton Crop Insurance Provisions. The intended effect of this action is to provide policy changes to better meet the needs of the insured.

**DATES:** Written comments, data, and opinions on this proposed rule will be accepted until close of business September 26, 1996 and will be considered when the rule is to be made final. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through October 25, 1996.

**ADDRESSES:** Interested persons are invited to submit written comments to the Chief, Product Development Branch, Federal Crop Insurance Corporation, U.S. Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Written comments will be available for public inspection and copying in room 0324, South Building, 14th and Independence Avenue, S.W., Washington, D.C., 8:15 a.m.-5:45 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Stephen Hoy, Program Analyst, Research and Development Division, Product Development Branch, FCIC, at 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512-1

This action has been reviewed under United States Department of Agriculture

(USDA) procedures established by Executive Order No. 12866 and Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is March 1, 1999.

This rule has been determined to be significant for the purposes of Executive Order No. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

#### Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that the expected benefits of this action outweigh the costs. Clarification of the provisions and administrative changes that simplify program operations will benefit producers, FCIC, and insurance providers.

#### Paperwork Reduction Act of 1995

The information collection requirements contained in these regulations were previously approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0563-0003 through September 30, 1998.

The amendments set forth in this proposed rule do not contain additional information collections that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35.

The title of this information collection is "Catastrophic Risk Protection Plan and Related Requirements including, Common Crop Insurance Regulations; ELS Cotton Crop Provisions." The information to be collected includes: a crop insurance acreage report, an insurance application, and a continuous contract. Information collected from the acreage report and application is electronically submitted to FCIC by the reinsured companies. Potential respondents to this information collection are producers of ELS cotton that are eligible for Federal crop insurance.

The information requested is necessary for the insurance company and FCIC to provide insurance and reinsurance, determine eligibility, determine the correct parties to the agreement or contract, determine and

collect premiums or other monetary amounts, and pay benefits.

All information is reported annually. The reporting burden for this collection of information is estimated to average 16.9 minutes per response for each of the 3.6 responses from approximately 1,755,015 respondents. The total annual burden on the public for this information collection is 2,676,932 hours.

FCIC is soliciting comments for the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information gathering technology.

Comments regarding paperwork reduction should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Bonnie Hart, Advisory and Corporate Operations Staff, Regulatory Review Group, Farm Service Agency, P.O. Box 2415, Ag Box 0570, U.S. Department of Agriculture, Washington, D.C. 20013-2415. Telephone (202) 690-2857. Copies of the information collection may be obtained from Bonnie Hart at the above stated address.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, FCIC generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures of state, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires

FCIC to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

#### Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. If the insured elects to use actual records of acreage and production as the basis for the production guarantee, the insured may elect to report this information on a yearly basis. This regulation does not alter those requirements. Therefore, the amount of work required of the insurance companies and FSA offices delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the insured. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

#### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR

part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### Executive Order No. 12778

The Office of the General Counsel has determined that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order No. 12778. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt state and local laws to the extent such state and local laws are inconsistent herewith. The administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted before action for judicial review may be brought.

#### Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

#### Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR § 457.105 effective for the 1997 and succeeding crop years. The principal changes to the provisions for insuring ELS cotton are as follows:

1. Section 1—Specify that the yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other *spring* crop. Current regulations specify that the yield conversion factor cannot be applied if the land between the rows of cotton is planted to *any* crop. This conflicts with the definition of "skip-row" in section 1(o)(1), which allows a planting pattern of alternating rows of cotton and land planted to another crop planted the previous fall. Change "Agricultural Stabilization and Conservation Service" to "Farm Service Agency (FSA)" to conform with the United States Department of Agriculture Reorganization Act of 1994. Amend the definition of "written agreement" to remove the substantive provisions.

2. Section 2(d)(1) and (2)—change "ASCS" to "FSA".

3. Section 2(d)(2)—Clarify unit division for non-irrigated corners of center pivot irrigation systems.

4. Section 5—Change the cancellation and termination dates of March 15 to February 28 for all states except New Mexico. This change is necessary to comply with the requirement of the Federal Crop Insurance Reform Act of 1994 that moved the sales closing dates for spring planted crops 30 days earlier. The present cancellation and termination dates of March 15 for New Mexico will remain the same because the date has already been moved 30 days earlier in the 1995 crop year.

5. Section—Move the substantive provisions for providing insurance coverage by written agreement from section 1(q) to this new section for clarification.

#### List of Subjects in 7 CFR Part 457

Crop insurance, ELS Cotton, Reporting and recordkeeping requirements.

#### Proposed Rule

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the Common Crop Insurance Regulations, (7 CFR part 457), effective for the 1997 and succeeding crop years, to read as follows:

#### PART 457—[AMENDED]

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

2. Section 457.105 is amended by revising subsection 1(j) as follows:

#### § 457.105 Extra long staple cotton crop insurance provisions.

\* \* \* \* \*

#### 1. Definitions

\* \* \* \* \*

(j) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Cotton must be planted in rows to be considered planted. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the Special Provisions or by written agreement to insure such crop. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring planted crop.

\* \* \* \* \*

3. In § 457.105, Section 1(o)(2) is revised to read as follows:

\* \* \* \* \*

(o) \* \* \*

(1) \* \* \*

(2) Qualifies as a skip-row planting pattern as defined by the Farm Service Agency (FSA).

\* \* \* \* \*

4. In § 457.105, Section 1(q) is revised to read as follows:

\* \* \* \* \*

(q) *Written agreement*—A written document that alters designated terms of a policy in accordance with section 13.

\* \* \* \* \*

5. In § 457.105, Section 2(d)(1) is amended by removing "ASCS" and inserting in its place "FSA."

6. In § 457.105, Section 2(d)(2) is revised to read as follows:

2. Unit Division

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based, except that the corners of a field in which a center pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be considered part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all other requirements of this section are met.

\* \* \* \* \*

7. In § 457.105, Section 5 is revised to read as follows:

\* \* \* \* \*

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Common Crop Insurance Policy (§ 457.8), the cancellation and termination dates are:

States	Cancellation and termination—dates
New Mexico .....	March 15
All other States .....	February 28

\* \* \* \* \*

8. In § 457.105, Section 13 is added to read as follows:

\* \* \* \* \*

13. Written Agreement

Designated terms of this policy may be altered by written agreement. The following conditions will apply:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 13(e).

(b) The application for written agreement must contain all terms of the contract between the insurance provider and the insured that will be in effect if the written agreement is not approved.

(c) If approved, the written agreement must include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election.

(d) Each written agreement will only be valid for one year. If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington D.C., on August 20, 1996.

Kenneth D. Ackerman,  
*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 96-21623 Filed 8-26-96; 8:45 am]

BILLING CODE 3410-FA-P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

RIN 1904-AA83

Energy Conservation Program for Consumer Products

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Notice of Availability.

**SUMMARY:** The Department of Energy today gives notice that copies of the draft "Product Data Sheets for Standards Rulemakings Priority Setting" are available for comment. The draft data sheets provide the priority level and rationale, schedule, and pertinent information on the products covered by the Office of Codes and Standards (OCS). Comments will be used to set the priority and schedule for the appliance standards program, which will be published in the Administration's Regulatory Agenda. The priorities will help OCS allocate resources to meet its mission.

**DATES:** Written comments in response to this notice must be received by September 9, 1996.

**ADDRESSES:** A copy of the data sheets entitled "Product Data Sheets for Standards Rulemakings Priority Setting" may be obtained from: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, EE-43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-7574. This document may be read at the DOE Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6020, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Written comments, 10 copies, are to be submitted to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, "Product Data Sheets for Standards Rulemakings Priority Setting," Forrestal Building, EE-43, Room 1J-018, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandy Beall, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE-43, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-7574.

**SUPPLEMENTARY INFORMATION:** The Department of Energy's appliance standards program is conducted pursuant to Title III, Part B of the Energy Policy and Conservation Act, as amended (EPCA). 42 U.S.C. §§ 6291-6309. In 1987, EPCA was amended to establish by law national efficiency standards for certain appliances and a schedule for DOE to conduct rulemakings to periodically review and update these standards. National Appliance Energy Conservation Act, Pub. L. 100-12 (1987). The products covered by these standards included refrigerators and freezers, room air conditioners, central air conditioners and heat pumps, water heaters, furnaces, dishwashers, clothes washers and dryers, direct heating equipment, ranges and ovens, and pool heaters. In 1988, EPCA was amended to include fluorescent lamp ballasts. National Appliance Energy Conservation Act Amendments of 1988, Pub. L. 100-357 (1988). In conducting the rulemakings to update the standards, the Secretary of Energy is to set standards at levels that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified.

The Energy Policy Act of 1992 (EPACT) further amended EPCA to expand the coverage of the standards program to include certain commercial and industrial equipment, including commercial heating and air-conditioning equipment, water heaters, certain incandescent and fluorescent lamps, distribution transformers, and electric motors. Energy Policy Act of 1992, Pub. L. 102-486 (1992). EPACT also established maximum water flow-rate requirements for certain plumbing products and provided for voluntary testing and consumer information programs for office equipment, luminaires, and windows.

EPCA also provides for DOE to establish test procedures to be used in determining compliance with efficiency standards. These test procedures are revised periodically to reflect new product designs or technologies.

As prescribed by EPCA, energy efficiency standards are established by a three-phase public process: Advance Notice of Proposed Rulemaking (ANOPR), Notice of Proposed Rulemaking (NOPR), and Final Rule. The process to develop test procedures is similar, except that an Advance Notice is not required.

On July 15, 1996, the Department published a final rule that outlines the procedures, and policies that will guide DOE as it works with stakeholders to establish new or revised energy efficiency standards for consumer products. The new process provides for greater public input, improved analytical approaches and encourages consensus-based standards that streamline the regulatory process and reduce the time and cost of developing standards. A key element of the new process is the involvement of stakeholders in the priority setting of the products to increase the predictability of the rulemaking timetable.

A workshop was held on June 14, 1996, to discuss the criteria to be used in planning and prioritizing future rules, and review of the draft product data sheets to be used to develop a priority ranking for the products. To assist in the development of the priorities, DOE developed data sheets for each product. Once DOE has received input from stakeholders, the priorities and schedule for the appliance standards program will be determined. The schedule will then be published in the Administration's Regulatory Agenda in October 1996.

Based on the comments from the workshop and written comments received, DOE has revised the draft product data sheets and is making

available a copy of said sheets for standards rulemakings priority setting. DOE will use the revised data sheets to determine the priority of various rulemakings in the next year. These revised sheets provide a priority, schedule and rationale for each product. The Department would like your further input on the priorities before preparing the Administration's Regulatory Agenda. The Regulatory Agenda will provide stakeholders with the actions and a schedule for those actions that DOE plans to accomplish in the next year.

The priority levels will provide DOE with guidance on which products to focus and allocate resources towards. For the high priority products, DOE plans to pursue actively (meetings and workshops) and publish notices (Determinations, Advance Notices of Proposed Rules, Notices of Proposed Rules and/or Final Rules) in the next year. For the medium priority products, DOE plans to initiate work in support of rulemakings in the next year, for example, conducting a screening workshop for a standards rulemakings. For the low priority products, DOE does not plan to actively pursue rulemakings in the next two years. Work would be limited to basic technology investigation and monitoring of voluntary programs.

Issued in Washington, DC, on August 21, 1996.

Joseph Romm,

*Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 96-21785 Filed 8-26-96; 8:45 am]

BILLING CODE 6450-01-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 96-NM-53-AD]

RIN 2120-AA64

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

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes. This proposal would require visual/dye penetrant and ultrasonic inspections to detect cracks in the

vertical leg of the rear spar lower cap of the wings, and various follow-on actions. This proposal is prompted by reports that, due to improper torque tightening of the attach studs of the flap hinge fitting, fatigue cracks were found in the vertical leg of the rear spar lower cap of the wing. The actions specified by the proposed AD are intended to prevent such fatigue cracking, which, if not detected and corrected in a timely manner, could result in loss of the spar cap, and consequent damage to the spar cap web and adjacent wing skin structure; this condition could lead to reduced structural integrity of the wing.

**DATES:** Comments must be received by October 7, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-53-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Brent Bandle, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5237; fax (310) 627-5210.

#### **SUPPLEMENTARY INFORMATION:**

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-53-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-53-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

The FAA has received reports of fatigue cracks found in the vertical leg of the rear spar lower cap of the wing on two McDonnell Douglas Model MD-81 airplanes. One of the airplanes had accumulated 17,354 total landings, and the other airplane had accumulated approximately 24,000 total landings. These fatigue cracks ran out of the lower inboard attach stud hole for the inboard flap hinge fitting of the outboard flap at station Xrs=164.000 on the left or right wings. This fatigue cracking apparently is the result of applying less than the required torque on the attach studs of the flap hinge fitting, during production of these airplanes. Fatigue cracking in the vertical leg of the rear spar lower cap of the wings, if not detected and corrected in a timely manner, could result in loss of the spar cap, and consequent damage to the spar cap web and adjacent wing skin structure; this condition could lead to reduced structural integrity of the wing.

#### Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas MD-80 Service Bulletin 57-184, Revision 1, dated December 22, 1994. The service bulletin describes procedures for performing visual/dye penetrant and ultrasonic inspections to detect cracks in the vertical leg of the rear spar lower cap of the wings below and in the adjacent area of the two lower attaching stud holes for the inboard hinge fitting of the outboard flap at station Xrs=164.000. For cases where no cracks are detected during inspection, the service bulletin

describes procedures for either tightening the four mounting studs of the flap hinge fitting in the rear spar caps (two studs in the upper cap and two studs in the lower cap) to applicable torque value, or conducting repetitive visual/dye penetrant and ultrasonic inspections. For cases where any crack is detected during the inspection, the service bulletin describes procedures for performing a high frequency eddy current inspection to confirm existence of cracking, and various follow-on actions. (These follow-on actions include, among other actions, replacement of the entire spar cap, permanent splice repair of the spar cap, temporary repair of the spar cap, and repetitive inspections.)

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require visual/dye penetrant and ultrasonic inspections to detect cracks in the vertical leg of the rear spar lower cap of the wings below and in the adjacent area of the two lower attaching stud holes for the inboard hinge fitting of the outboard flap at station Xrs=164.000, and various follow-on actions. The actions would be required to be accomplished in accordance with the service bulletin described previously. If any crack progression is found during any repetitive eddy current inspection, the repair/replacement would be required to be accomplished in accordance with a method approved by the FAA.

#### Cost Impact

There are approximately 489 McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 306 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 26 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be \$477,360, or \$1,560 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### Regulatory Impact

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

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

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

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

#### **§ 39.13 [Amended]**

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

McDonnell Douglas: Docket 96-NM-53-AD.

*Applicability:* Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), DC-9-87 (MD-87) series airplanes and Model MD-88 airplanes, as listed in McDonnell Douglas MD-80 Service Bulletin 57-184, Revision 1, dated December 22, 1994; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

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

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

To prevent fatigue cracking in the vertical leg of the rear spar lower cap of the wing, which could lead to reduced structural integrity of the wing, accomplish the following:

(a) Perform visual/dye penetrant and ultrasonic inspections to detect cracks in the vertical leg of the rear spar lower cap of the wings below and in the adjacent area of the two lower attaching stud holes for the inboard hinge fitting of the outboard flap at station Xrs=164.000, in accordance with McDonnell Douglas MD-80 Service Bulletin 57-184, Revision 1, dated December 22, 1994; at the time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD, as applicable.

(1) For airplanes that have accumulated less than 8,000 total landings as of the effective date of this AD: Perform the inspection prior to the accumulation of 10,000 landings or within 3,000 landings after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 8,000 or more total landings but less than 10,000 total landings as of the effective date of this AD: Perform the inspection within 3,000 landings after the effective date of this AD.

(3) For airplanes that have accumulated 10,000 or more total landings but less than 15,000 total landings as of the effective date of this AD: Perform the inspection within 2,400 landings after the effective date of this AD.

(4) For airplanes that have accumulated 15,000 or more total landings as of the effective date of this AD: Perform the inspection within 1,800 landings after the effective date of this AD.

(b) Condition 1. If no crack is detected during any inspection required by paragraph (a) of this AD, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas MD-80 Service Bulletin 57-184, Revision 1, dated December 22, 1994.

(1) *Condition 1, Option 1.* Prior to further flight, tighten the four mounting studs of the flap hinge fitting in the rear spar caps (2 studs in the upper cap and 2 studs in the lower cap) to the applicable torque value, in accordance with the service bulletin. Accomplishment of this tightening of the mounting studs of the flap hinge fitting constitutes terminating action for the repetitive inspection requirements of paragraph (b)(2) of this AD.

(2) *Condition 1, Option 2.* Repeat the visual/dye penetrant and ultrasonic inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 3,000 landings until paragraph (b)(1) of this AD is accomplished.

(c) Condition 2. If any crack is detected during any inspection required by paragraph (a) or (b)(2) of this AD, prior to further flight, perform a high frequency eddy current inspection to confirm the existence of cracking, in accordance with McDonnell Douglas MD-80 Service Bulletin 57-184, Revision 1, dated December 22, 1994. After this inspection, accomplish the requirements of either paragraph (c)(1), (c)(2), or (c)(3) of this AD, as applicable.

(1) If no cracking is confirmed, accomplish the requirements of either paragraph (b)(1) ["Condition 1, Option 1"] or (b)(2) ["Condition 1, Option 2"] of this AD.

(2) *Condition 2, Option 1.* If any cracking is confirmed, prior to further flight, replace the entire spar cap or accomplish the permanent splice repair of the spar cap, and tighten the four mounting studs of the flap hinge fitting in the rear spar caps (2 studs in the upper cap and 2 studs in the lower cap) to the applicable torque value, in accordance with the service bulletin. Accomplishment of this tightening of the mounting studs constitutes terminating action for the repetitive inspection requirements of paragraph (c)(3) of this AD.

(3) *Condition 2, Option 2.* If cracking is confirmed and it does not extend beyond the location limits and does not exceed the maximum permissible crack length of 2 inches, prior to further flight, accomplish the temporary repair modification of the spar cap in accordance with the service bulletin. Thereafter, repeat the eddy current inspection at intervals not to exceed 3,000 landings until paragraph (c)(2) of this AD is accomplished.

(i) If any crack progression is found during any repetitive eddy current inspection following accomplishment of the temporary repair, prior to further flight, contact the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, telephone (310) 627-5237, fax (310) 627-5210, to establish the appropriate repair or replacement interval.

Note 2: Operators should note that, unlike the recommended compliance time of "within 3,000 landings after discovery of cracking," which is specified in the service bulletin as the time for accomplishing the permanent splice repair or replacement of the spar cap, this AD requires that operators contact the FAA prior to further flight. The FAA finds that the repair/replacement interval should be established based on the crack progression. Where there are differences between the AD and the service bulletin in this regard, the AD prevails.

(ii) If any new crack is found during any repetitive eddy current inspection following accomplishment of the temporary repair, prior to further flight, accomplish the permanent repair in accordance with the service bulletin.

(d) Within 10 days after accomplishing the initial visual/dye penetrant and ultrasonic inspections required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles ACO, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 627-5237; fax (310) 627-5210. Information collection requirements

contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

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

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

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

Issued in Renton, Washington, on August 20, 1996.

Darrell M. Pederson,

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

[FR Doc. 96-21743 Filed 8-26-96; 8:45 am]

BILLING CODE 4910-13-U

## 14 CFR Part 39

[Docket No. 96-NM-80-AD]

RIN 2120-AA64

### Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposal would require replacement of certain rudder horn assemblies with a new assembly. For certain airplanes, the proposed AD also would require replacement of certain rudder control rods with a new rod. This proposal is prompted by reports of cracked rudder horns and a cracked rudder control rod, caused by impact overload. The actions specified by the proposed AD are intended to prevent such an overload and consequent cracking of the subject parts, which could result in reduced structural integrity of the rudder horn assembly or loss of rudder control; this condition could lead to reduced controllability of the airplane.

**DATES:** Comments must be received by October 7, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-80-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Ruth Harder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1721; fax (206) 227-1149.

**SUPPLEMENTARY INFORMATION:**  
Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-80-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-80-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The RLD advises it has received reports of cracked rudder horns and a cracked rudder control rod found on these airplanes. Investigation revealed the cause of such cracking has been attributed to an impact overload on the rudder horn assembly. The existing design of the rudder horn assembly allows the rudder to swing around in heavy gust conditions. The inertia of the rudder swinging movement can cause an impact overload when one of the rudder limit stops is hit. This condition, if not corrected, could result in reduced structural integrity of the rudder horn assembly or loss of rudder control, and, consequently, lead to reduced controllability of the airplane.

#### Explanation of Relevant Service Information

Fokker has issued Service Bulletin F27/27-131, Revision 1, dated June 15, 1994, which describes procedures for replacement of the rudder horn assembly, having part number (P/N) 3401-042-901 or -401, with a new rudder horn assembly, having P/N F3402-070-407. The new rudder horn is made of a stronger aluminum alloy material. Additionally, for certain airplanes, the service bulletin recommends replacement of the rudder control rod, having P/N 5233-018-xxx, with a new rudder control rod, having P/N F8507-052-403. The new control rod contains regreasable bearings which are less sensitive to seizure. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 94-105 (A), dated August 5, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

#### FAA's Conclusion

This airplane model is manufactured in the Netherlands 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. Pursuant to this bilateral

airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, the proposed AD would require replacement of certain rudder horn assemblies with a new rudder horn assembly. For certain airplanes, the proposed AD also would require replacement of certain rudder control rods with a new rudder control rod. The actions would be required to be accomplished in accordance with the service bulletin described previously.

#### Cost Impact

The FAA estimates that 34 Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 7 work hours per airplane to accomplish the proposed replacement of the rudder horn assembly, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$2,565 per airplane. Based on these figures, the cost impact of the replacement of the rudder horn assembly proposed by this AD on U.S. operators is estimated to be \$101,490, or \$2,985 per airplane.

There currently are no Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, or 700 series airplanes on the U.S. Register that would require the replacement of the rudder control rod. The only airplanes that would require this replacement currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that inclusion of that requirement in this proposed rule is necessary to ensure that the unsafe condition is addressed in the event that any of these airplanes are imported and placed on the U.S. Register in the future.

Should any of those airplanes (having serial numbers 10102, and 10105 through 10165, inclusive) be imported and placed on the U.S. Register in the future, it would take approximately 5 work hours per airplane to accomplish the proposed replacement of the rudder control rod, at an average labor rate of \$60 per work hour. Required parts would cost approximately \$635 per

airplane. Based on these figures, the cost impact of the replacement of the rudder control rod proposed by this AD on U.S. operators is estimated to be \$935 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

#### Regulatory Impact

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

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

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

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

#### **§ 39.13 [Amended]**

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

Fokker: Docket 96-NM-80-AD.

*Applicability:* All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, certificated in any category.

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

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

To prevent an impact overload and consequent cracking of the subject parts, which could result in reduced structural integrity of the rudder horn assembly or loss of rudder control, and, consequently, lead to reduced controllability of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish paragraph (a)(1) and (a)(2) of this AD, as applicable, in accordance with Fokker Service Bulletin F27/27-131, Revision 1, dated June 15, 1994.

(1) For all airplanes: Replace the rudder horn assembly, having part number (P/N) 3401-042-901 or 3401-042-401, with a new rudder horn assembly, having P/N F3402-070-407, in accordance with Part 1 of the Accomplishment Instructions of the service bulletin.

(2) For airplanes having serial numbers 10102, and 10105 through 10165 inclusive: Replace the rudder control rod, having P/N 5233-018-xxx, with a new rudder control rod, having P/N F8507-052-403, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin.

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

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

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

Issued in Renton, Washington, on August 20, 1996.

Darrell M. Pederson,

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

[FR Doc. 96-21745 Filed 8-26-96; 8:45 am]

BILLING CODE 4910-13-U

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

[Docket No. 96-NM-48-AD]

RIN 2120-AA64

#### **Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes and Model Avro 146-RJ Series Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 series airplanes and Model Avro 146-RJ series airplanes. This proposal would require inspections to detect leakage of hydraulic fluid from the lock jack assemblies of the main landing gear (MLG), and eventual replacement of those assemblies with new or serviceable assemblies. This proposal is prompted by reports of leakage of hydraulic fluid from lock jack assemblies due to a manufacturing forging defect that extends through the wall of the lock jack assembly. The actions specified by the proposed AD are intended to prevent leakage of hydraulic fluid from the lock jack assemblies of the MLG, which, in conjunction with a hot brake, could cause a fire in the MLG bay.

**DATES:** Comments must be received by October 7, 1996.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-48-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Holding, Inc., Avro International Aerospace Division, P.O. Box 16039, Dulles International Airport, Washington, DC 20041-6039. This information may be examined at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-48-AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-48-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146 series airplanes and Model Avro 146-RJ series airplanes. The CAA advises that a batch of lock jack assemblies of the main landing gear (MLG) has been manufactured with a forging defect as a result of the use of

defective material in the bodies of the lock jack assemblies. This defect extends through the wall of the lock jack assembly, and allows the lock jack assembly to leak hydraulic fluid. The discrepant lock jack assemblies are identifiable by serial number. Hydraulic fluid leaking from the lock jack assembly, occurring concurrently with a hot brake, could result in a fire in the MLG bay.

The lock jack assemblies of the MLG installed on British Aerospace Model BAe 146 series airplanes are identical to those installed on British Aerospace Model Avro 146-RJ series airplanes; therefore, both of these models may be subject to this same unsafe condition.

**Explanation of Relevant Service Information**

British Aerospace has issued Inspection Service Bulletin SB 32-103, Revision 1, dated February 22, 1991. This service bulletin describes procedures for identifying affected lock jack assemblies by serial number, and provides procedures to repetitively inspect certain of those assemblies to detect leakage of hydraulic fluid, and replace the assemblies with a new or serviceable assembly, if necessary. The service bulletin also describes procedures to eventually replace the lock jack assemblies with a new or serviceable assembly that does not require accomplishment of the inspections specified in this service bulletin. The CAA classified those procedures in this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

**FAA's Conclusions**

These airplane models are manufactured in the United Kingdom and are 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. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United

States, this AD is being issued to prevent leakage of hydraulic fluid from the lock jack assemblies of the main landing gear (MLG), which, in conjunction with a hot brake, could cause a fire in the MLG bay. This AD would require an inspection to identify affected lock jack assemblies by serial number. This AD also would require repetitive inspections of certain lock jack assemblies to detect leakage of hydraulic fluid from the lock jack assemblies, and, if leakage is detected, replacement of the lock jack assemblies with new or serviceable assemblies. This AD also would require eventual replacement of the lock jack assemblies with new or serviceable assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

**Cost Impact**

The FAA estimates that 52 airplanes of U.S. registry would be affected by this proposed AD.

To accomplish the proposed inspections would take approximately 1 work hour per airplane, per inspection, at an average labor rate of \$60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be \$3,120, or \$60 per airplane, per inspection cycle.

To accomplish the proposed replacement of the lock jack assembly would take approximately 1 work hour per airplane, at an average labor rate of \$60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be \$3,120, or \$60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

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

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

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

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

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

#### **§ 39.13 [Amended]**

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

British Aerospace Regional Aircraft Limited, Avro International Aerospace Division (formerly British Aerospace, plc; British Aerospace Commercial Aircraft Limited): Docket 96-NM-48-AD.

*Applicability:* Model BAe 146 series airplanes and Model Avro 146-RJ series airplanes having lock jack assemblies of the main landing gear as listed in British Aerospace Inspection Service Bulletin SB 32-103, Revision 1, dated February 22, 1991; certified in any category.

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

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

To prevent leakage of hydraulic fluid from the lock jack assemblies of the main landing gear (MLG), which, in conjunction with a hot brake, could cause a fire in the MLG bay; accomplish the following:

(a) Within 30 days after the effective date of this AD, verify the serial number of all lock jack assemblies, part number 104275001, of the MLG.

Note 2: Verification may be accomplished by a review of appropriate records.

(1) If no lock jack assembly has a serial number as listed in British Aerospace Inspection Service Bulletin SB 32-103, Revision 1, dated February 22, 1991, no further action is required by this paragraph.

(2) If any lock jack assembly has a serial number as listed in British Aerospace Inspection Service Bulletin SB 32-103, Revision 1, dated February 22, 1991, prior to further flight, perform a visual inspection to detect any leakage of hydraulic fluid from the lock jack assembly, in accordance with the service bulletin.

(i) If no leakage of hydraulic fluid is detected, thereafter, repeat the inspection at intervals not to exceed 30 days, until the requirements of paragraph (b) of this AD are accomplished.

(ii) If any leakage of hydraulic fluid is detected, prior to further flight, replace the lock jack assembly with a new or serviceable unit that does not have one of those serial numbers, in accordance with the service bulletin.

(b) Within 6 months after the effective date of this AD, replace any lock jack assembly having a serial number listed in British Aerospace Inspection Service Bulletin SB 32-103, Revision 1, dated February 22, 1991, with a new or serviceable assembly that does not have one of those serial numbers, in accordance with the service bulletin.

(c) As of the effective date of this AD, no person shall install a lock jack assembly, having any serial number listed in British Aerospace Inspection Service Bulletin SB 32-103, Revision 1, dated February 22, 1991, on any airplane.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

Issued in Renton, Washington, on August 20, 1996.

Darrell M. Pederson,

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

[FR Doc. 96-21744 Filed 8-26-96; 8:45 am]

BILLING CODE 4910-13-U

#### **14 CFR Part 71**

[Airspace Docket No. 96-AWP-19]

#### **Proposed Revocation of Class D Airspace; Alameda, CA**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revoke the Class D airspace area at Alameda, CA. The base closure of Alameda Naval Air Station (NAS) has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the surface area no longer exist at Alameda NAS (Nimitz Field), CA.

**DATES:** Comments must be received on or before September 20, 1996.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP-530, Docket No. 96-AWP-19, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California, 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may also be examined during normal business at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

**FOR FURTHER INFORMATION CONTACT:** William Buck, Airspace Specialist, Operations Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725-6556.

#### **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 above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 96-AWP-19." The postcard will be date/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 light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, 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

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. 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, which describes the application procedures.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revoking the Class D airspace area at Alameda, CA. The base closure of Alameda Naval Air Station (NAS) has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the surface area no longer exist at Alameda NAS (Nimitz Field), CA. Class D airspace designations are published in paragraph 5000 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 D airspace designations

listed in this document would be removed subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 10034; 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 proposed rule would 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).

#### 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. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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 5000 Class D airspace.*

\* \* \* \* \*

AWP CA D Alameda NAS, CA [Removed]

\* \* \* \* \*

Issued in Los Angeles, California, on August 12, 1996.

James H. Snow,

*Acting Manager, Air Traffic Division,  
Western-Pacific Region.*

[FR Doc. 96-21855 Filed 8-26-96; 8:45 am]

**BILLING CODE 4910-13-M**

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

#### Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Futures Trading Commission (the "Commission") today is proposing technical changes to its rules requiring filing and distribution of Disclosure Documents by commodity pool operators ("CPOs") and commodity trading advisors ("CTAs"). These proposals are intended to clarify certain rule provisions that are premised upon the filing and distribution of paper documents, in light of the interpretations set forth in a recent interpretative release "Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors" (61 FR 42146 (August 14, 1996)) outlining the Commission's views concerning the use of electronic media by CPOs and CTAs.

**DATES:** Comments must be received on or before October 28, 1996.

**ADDRESSES:** Comments should be submitted to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to FAX number (202) 418-5521, or by electronic mail to secretary@cftc.gov.

**FOR FURTHER INFORMATION CONTACT:** Susan C. Ervin, Deputy Director/Chief Counsel, or Christopher W. Cummings, Attorney/Advisor, or Gary L. Goldsholle, Attorney/Advisor, or Tina Paraskevas Shea, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone number: (202) 418-5450. FAX number: (202) 418-5536.

**SUPPLEMENTARY INFORMATION:** In order to clarify certain rules in light of the interpretations relating to electronic distribution of information under the Commodity Exchange Act (the "Act")<sup>1</sup> and the Commission's regulations promulgated under the Act,<sup>2</sup> published

<sup>1</sup> 7 U.S.C. 1 *et seq.* (1994).

<sup>2</sup> Commission rules are found at 17 CFR Ch. I (1996). The rules governing CPO and CTA disclosure, reporting and recordkeeping requirements are found at 17 CFR part 4 (1996).

in a recent interpretative release (61 FR 42146 (August 14, 1996)) (the "Interpretative Release"), the Commission is proposing minor technical amendments to the following rules: 4.1; 4.2; 4.21; 4.26; 4.31; and 4.36. The proposed rule changes are intended to facilitate, among other things, a pilot program for electronic filing of Disclosure Documents with the Commission by CPOs and CTAs.

### I. Proposed Amendments

In the Interpretative Release, the Commission states its views with respect to the use of electronic media by CPOs and CTAs to disseminate certain information in compliance with the Act and the Commission's rules. Part 4 of the Commission's rules sets forth the disclosure and filing requirements for CPOs and CTAs. The rules that are the subject of the proposals set forth herein relate to the required filing with the Commission and distribution to current and prospective pool participants and managed account clients of Disclosure Documents by CPOs and CTAs. These rules were adopted on the assumption that Disclosure Documents would be filed and distributed in paper "hard copy" form. The Commission believes that it is appropriate to modify these rules in light of the views set forth in the Interpretative Release, in order to clarify that the Commission's rules do not limit a CPO's or a CTA's means of document delivery and filing to paper documents, to the exclusion of electronic media, and to facilitate the implementation of a pilot program for electronic filing of Disclosure Documents, as more fully described in the Interpretative Release.

#### A. General formatting

Commission Rule 4.1(a) requires that each document distributed pursuant to Part 4 must be clear and legible, paginated and fastened in a secure manner. These requirements presume that the document is composed of one or more sheets of paper. Their application to a document that is transmitted electronically, and that exists only as data stored on electronic media, may be subject to question. Similarly, Rule 4.1(b) states that information required to be "prominently" disclosed, as provided in various Part 4 rules, must be displayed in boldface capital letters. The increased emphasis attained by boldface capital letters in a paper format may be lost on a computer screen, where the only difference may be an insignificant color change. Further, paper and electronic versions of a particular document may differ because graphic, pictorial or audio

material in one version of the document may not be readily included in the other version.

The Commission believes that the same critical information can be presented in electronic communication as in paper form. However, presentation adjustments may be required in the context of electronic media to assure that all versions of a CPO or CTA Disclosure Document convey the same information with equivalent emphasis, whether or not identical presentation of the information is possible. Proposed new paragraph (c) to Rule 4.1 states that in lieu of the paper-based formatting requirements of Rule 4.1(a), electronically distributed documents must present all required information in a format "readily communicated" to the recipient. Electronically delivered information is readily communicated for purposes of Part 4 if it is accessible in a single "package" or by a single data retrieval process, without the need to download and assemble multiple files, and preferably without the need to use special "viewer" software. Moreover, an electronically transmitted document must be organized in substantially the same manner as a paper document with respect to the order of presentation and relative prominence of information. Where a table of contents is required, the electronic document should retain page numbers or employ an equivalently user-friendly cross reference or indexing tool. The Commission requests comment as to whether greater specificity should be provided in the rule as to the meaning of "readily communicated" or whether this type of simple performance standard is preferable.

Where information is required to be "prominently" disclosed, electronically distributed documents must present such information in a manner reasonably calculated to draw the recipient's attention to it and must accord it greater emphasis than other portions of the text. For example, underlining that appears as such onscreen, color changes that contrast with the surrounding text without decreasing legibility, and pictorial characters designed to call attention (e.g., an arrow or a pointing hand), may serve to highlight portions of text sufficiently to give the desired level of prominence. Finally, if graphic, image or audio material is included in one version of a document but not in the version filed with the Commission, whether for technological reasons or otherwise, the filed version of the document must contain a fair and accurate description or transcript of the omitted material. As noted in the

Interpretative Release, audio, video, graphic or other enhancements must be used in a manner that is consistent with Commission requirements as to the order of presentation of information and the relative prominence of various types of information. Thus, if video or audio material, for example, is used to convey content that would constitute supplemental information under Rule 4.24(v) or 4.34(n) (e.g., a video comparison of trading program rates of return to the movement of the Standard & Poor's 500 Index over time, or an audio discussion of modern portfolio theory), such material must be presented after all required information, and it must not overwhelm or obscure required information.

Comment is solicited as to whether more specific requirements as to formatting of electronically distributed documents are appropriate and, if so, as to what specific standards should be established. For example, should electronically-transmitted documents be required to retain page breaks and page numbers corresponding to paper-based documents?

#### B. Filing

Rule 4.2 states that material required to be filed with the Commission is considered filed when received at the Commission's postal address specified in Rule 4.2(a). In order to facilitate electronic filing of Disclosure Documents, the proposed amendment to Rule 4.2(a) states that such documents may be filed at the Commission's electronic mail address designated for that purpose.<sup>3</sup> Rule 4.2 is otherwise unchanged.

Currently, Rules 4.26(d) and 4.36(d) require CPOs and CTAs to file two copies of each Disclosure Document and each amendment to a Disclosure Document with the Commission. Where a document is filed electronically, this requirement for two copies is unnecessary and potentially confusing. Proposed amendments to Rules 4.26(d) and 4.36(d) would clarify that only one copy of the Disclosure Document and of each amendment is required to be filed if the registrant elects to file electronically with the Commission.

#### C. Acknowledgments

Rule 4.21(b) for CPOs and Rule 4.31(b) for CTAs currently provide that a CPO may not accept or receive funds, securities or other property from a prospective pool participant, and a CTA may not enter into an agreement to guide or direct a prospective client's

<sup>3</sup> Currently, this address is tm-pilot-program@cftc.gov.

account, unless the CPO or CTA first obtains a signed and dated acknowledgement stating that a Disclosure Document has been received by the prospective participant or client. As discussed in the Interpretative Release, the Commission believes that adequate evidence of receipt of a Disclosure Document may be obtained in ways other than a manually signed paper receipt. Accordingly, the proposed amendments to Rules 4.21(b) and 4.31(b) will permit registrants to obtain acknowledgments by such electronic means as the Commission may approve, in each case subject to the requirement that an acknowledgment be received before a CPO accepts property from a prospective pool participant or a CTA contracts to direct or guide a prospective client's account. At the present time, the only approved alternative to a signed paper receipt is the use of a personal identification or "PIN" number in lieu of the manual signature, as described in the Interpretative Release. CPOs and CTAs remain obligated under Rules 4.23(a)(3) and 4.33(a)(2), respectively, to retain all acknowledgments, and the proposed amendments permit retention in hard copy form or by other Commission-approved means.

Comment is sought as to whether the Commission should specify in the rules the acceptable means by which registrants can establish receipt of Disclosure Documents, or whether a more flexible approach is advisable.

## II. Solicitation of Comments

Any interested persons wishing to submit written comments relating to the rule proposals, as explained above, are invited to do so by submitting them by postal mail to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Comments may be sent by facsimile transmission to FAX number (202) 418-5521, or by electronic mail to secretary@cftc.gov.

## III. Cost-Benefit Analysis

Although the Commission anticipates that increased use of electronic media by registrants will benefit market participants by making disclosure more efficient and expeditious, it does not expect the rule amendments proposed herein, in and of themselves, to result in substantial economic costs or benefits. The proposed amendments are intended to clarify the application of existing requirements under the Act and Commission rules in the context of newly developed information technology. Use of electronic media by

CPOs and CTAs for document filing or delivery of information is optional, and registrants can weigh for themselves the relative costs and benefits of using electronic media in specific circumstances. Nevertheless, commenters are invited to identify any costs or benefits associated with the proposed amendments that the Commission may have overlooked. Commenters are also invited to describe any additional actions that they believe that the Commission should take in connection with the proposed amendments to reduce compliance burdens and to maximize the benefits of Disclosure Document delivery while minimizing unnecessary costs.

## IV. Related Matters

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect registered CPOs and CTAs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.<sup>4</sup> The Commission previously determined that registered CPOs are not small entities for the purpose of the RFA.<sup>5</sup> With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.<sup>6</sup>

The amendments proposed herein do not impose any new burdens upon CPOs or CTAs. The proposed amendments facilitate the use of alternative media to meet existing requirements, and they clarify the application of existing regulations to the use of such media. As a result, the Commission anticipates that adoption of the proposed amendments will in many cases reduce the burden of compliance by CPOs and CTAs. Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Acting Chairman, on behalf of the Commission, certifies that these proposed amendments would not have a significant economic impact on a substantial number of small entities. The Commission nonetheless invites comment from any registered CPO or

CTA who believes that these rules would have a significant impact on its operations.

### B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (Act), 44 U.S.C. 3501 *et. seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While these proposed amendments have no burden, the group of rules (3038-0005) of which this is a part has the following burden:

*Average Burden Hours per Response:* 124.75.

*Number of Respondents:* 4,654.

*Frequency of Response:* on occasion.

Persons wishing to comment on the information which would be required by this proposed/amended rule should contact Jeff Hill, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418-5170.

### List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular, sections 2(a)(1), 4b, 4c, 4l, 4m, 4n, 4o, and 8a, 7 U.S.C. 2, 6b, 6c, 6l, 6m, 6n, 6o, and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

### Subpart A—General Provisions, Definitions and Exemptions

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. Section 4.1 is proposed to be amended by adding new paragraphs (c) and (d) to read as follows:

#### § 4.1 Requirements as to form.

(a) \* \* \*

(b) \* \* \*

(c) Where a document is distributed through an electronic medium:

(1) The requirements of paragraph (a) of this section shall mean that all required information must be presented

<sup>4</sup> 47 FR 18618-18621 (April 30, 1982).

<sup>5</sup> 47 FR 18619-18620.

<sup>6</sup> 47 FR 18618, 18620.

in a format readily communicated to the recipient. For purposes of this paragraph (c), information is readily communicated to the recipient if it is accessible as a single file by means of commonly available hardware and software, and if the electronically delivered document is organized in substantially the same manner as would be required for a paper document with respect to the order of presentation and the relative prominence of information. Where a table of contents is required, the electronic document must either include page numbers in the text or employ a substantially equivalent cross-reference or indexing method or tool;

(2) The requirements of paragraph (b) of this section shall mean that such information must be presented in a manner reasonably calculated to draw the recipient's attention to the information and accord it greater prominence than the surrounding text; and

(3) A complete paper version of the document must be provided to the recipient upon request.

(d) If graphic, image or audio material is included in a document delivered to a prospective or existing client or pool participant, and such material cannot be reproduced in an electronic filing, a fair and accurate narrative description, tabular representation or transcript of the omitted material must be included in the filed version of the document. Inclusion of such material in a Disclosure Document shall be subject to the requirements of § 4.24(v) in the case of pool Disclosure Documents, and § 4.34(n) in the case of commodity trading advisor Disclosure Documents.

3. Section 4.2 paragraph (a) is proposed to be revised to read as follows:

**§ 4.2 Requirements as to filing.**

(a) All material filed with the Commission under this part 4 must be filed with the Commission at its Washington, D.C. office (Att: Special Counsel, Front Office Audit Unit, Division of Trading and Markets, C.F.T.C., 1155 21st Street N.W., Washington, D.C. 20581). Disclosure Documents may be filed at an electronic mail address for the Commission, as designated by the Commission.

\* \* \* \* \*

**Subpart B—Commodity Pool Operators**

4. Section 4.21, paragraph (b) is proposed to be revised to read as follows:

**§ 4.21 Required delivery of pool Disclosure Document.**

(a) \* \* \*

(b) The commodity pool operator may not accept or receive funds, securities or other property from a prospective participant unless the pool operator first receives from the prospective participant an acknowledgment signed and dated by the prospective participant stating that the prospective participant received a Disclosure Document for the pool. Where a Disclosure Document is delivered to a prospective pool participant by electronic means, in lieu of a manually signed and dated acknowledgment the pool operator may establish receipt by electronic means approved by the Commission, *Provided, however*, That the requirement of § 4.23(a)(3) to retain the acknowledgment specified in this paragraph (b) applies equally to such substitute evidence of receipt, which must be retained either in hard copy form or in another form approved by the Commission.

5. Section 4.26, paragraph (d) is proposed to be revised to read as follows:

**§ 4.26 Use, amendment and filing of Disclosure Document.**

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) Except as provided by § 4.8:

(1) The commodity pool operator must file with the Commission two copies of the Disclosure Document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver the Document to a prospective participant in the pool; *Provided, however*, that a pool operator electing to file electronically pursuant to § 4.2(a) must file a single copy of the Disclosure Document; and

(2) The commodity pool operator must file with the Commission two copies of all subsequent amendments to the Disclosure Document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment; *Provided, however*, that a pool operator electing to file electronically pursuant to § 4.2(a) must file a single copy of each such amendment.

**Subpart C—Commodity Trading Advisors**

6. Section 4.31, paragraph (b) is proposed to be revised to read as follows:

**§ 4.31 Required delivery of Disclosure Document to prospective clients.**

(a) \* \* \*

(b) The commodity trading advisor may not enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading unless the trading advisor first receives from the prospective client an acknowledgment signed and dated by the prospective client stating that the client received a Disclosure Document for the trading program pursuant to which the trading advisor will direct his account or will guide his trading. Where a Disclosure Document is delivered to a prospective client by electronic means, in lieu of a manually signed and dated acknowledgment the trading advisor may establish receipt by electronic means approved by the Commission, *Provided, however*, That the requirement of § 4.33(a)(2) to retain the acknowledgment specified in this paragraph (b) applies equally to such substitute evidence of receipt, which must be retained either in hard copy form or in another form approved by the Commission.

7. Section 4.36, paragraph (d) is proposed to be revised to read as follows:

**§ 4.36 Use, amendment and filing of Disclosure Document.**

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d)(1) The trading advisor must file with the Commission two copies of the Disclosure Document for each trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the Document to a prospective client in the trading program; *Provided, however*, that a trading advisor electing to file electronically pursuant to § 4.2(a) must file a single copy of the Disclosure Document.

(2) The commodity trading advisor must file with the Commission two copies of all subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment; *Provided, however*, that a trading advisor electing to file electronically pursuant to § 4.2(a) must file a single copy of each such amendment.

Issued in Washington, D.C. on August 19, 1996, by the Commission.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 96-21674 Filed 8-26-96; 8:45 am]

BILLING CODE 6351-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 730

[Docket No. 96N-0174]

RIN 0910-AA69

#### Food and Cosmetic Labeling; Revocation of Certain Regulations; Opportunity for Public Comment; Extension of the Comment Period

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to October 10, 1996, the comment period on the proposal to revoke certain cosmetic regulations that appear to be obsolete. The proposed rule was published in the Federal Register of June 12, 1996 (61 FR 29708). The agency is taking this action in response to a request from a trade association. This extension of the comment period is intended to allow interested persons additional time to submit comments to FDA on the proposed revocation of certain cosmetic regulations.

**DATES:** Written comments by October 10, 1996.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Corinne L. Howley, Center for Food Safety and Applied Nutrition (HFS-24), 200 C St. SW., Washington, DC 20204, 202-205-4272.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of June 12, 1996 (61 FR 29708), FDA issued a proposed rule to revoke certain regulations that appear to be obsolete. These regulations were identified by FDA as candidates for revocation following a page-by-page review of its regulations that the agency conducted in response to the Administration's "Reinventing Government" initiative. Interested person were given until August 26, 1996, to comment on the proposed rule.

FDA received a request from a trade association for an extension of the comment period on the agency's June 12, 1996, proposed revocation of part 730 of FDA's regulations (21 CFR part 730), on voluntary reporting of cosmetic product experiences. The trade association requested more time so that the proposed action could be considered by the association's board of directors. After careful consideration, FDA has decided to extend the comment period to October 10, 1996, to allow additional time for the submission of comments on whether it should revoke part 730. The extension is only for comments on this aspect of the proposed rulemaking.

Interested persons may, on or before October 10, 1996, submit to Dockets Management Branch (address above) written comments regarding whether part 730 should be revoked. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 21, 1996.

William B. Schultz,

*Deputy Commissioner for Policy.*

[FR Doc. 96-21818 Filed 8-26-96; 8:45 am]

BILLING CODE 4160-01-F

#### 21 CFR Part 880

[Docket No. 85N-0285]

#### Medical Devices; Reclassification of the Infant Radiant Warmer

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to reclassify the infant radiant warmer from class III (premarket approval) into class II (special controls) based on new information regarding the device. The infant radiant warmer is a device consisting of an infrared heating element intended to maintain the infant's body temperature by means of radiant heat. This document summarizes the basis for the agency's findings that sufficient valid scientific evidence is available to support reclassification of the infant radiant warmer and to establish special controls to provide reasonable assurance of the safety and effectiveness of the device. This action implements the Medical Device Amendments of 1976 (the amendments) as amended by the Safe

Medical Devices Act of 1990 (the SMDA).

**DATES:** Written comments by November 25, 1996. FDA proposes that any final rule based on this proposal become final 30 days after publication in the Federal Register.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Janet L. Scudiero, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1287.

#### SUPPLEMENTARY INFORMATION:

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I. Classification and Reclassification of Devices Under the Medical Device Amendments of 1976

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), as established by the amendments (Pub. L. 94-295) and amended by the SMDA (Pub. L. 101-629), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA's classification of a device is determined by the amount of regulation necessary to provide reasonable assurance of safety and effectiveness of a device. Except as provided in section 520(c) of the act (21 U.S.C. 360j(c)), FDA may not use confidential information concerning a device's safety and effectiveness as a basis for reclassification of the device from class III into class II or class I.

Under the original 1976 act, devices were to be classified into class I (general controls) if there was information showing that the general controls of the act were sufficient to assure safety and effectiveness; into class II (performance

standards) if there was insufficient information showing that general controls themselves would ensure safety and effectiveness, but there was sufficient information to establish a performance standard that would provide such assurance; and into class III (premarket approval) if there was insufficient information to support classifying a device into class I or class II and the device was a life-sustaining or life-supporting device or was for a use that is of substantial importance in preventing impairment of human health.

Most generic types of devices that were on the market before the date of the original 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Under sections 513(c) and (d) of the act, FDA secures expert panel recommendations on the appropriate device classifications for generic types of devices. FDA then considers the panel's recommendations and, through notice and comment rulemaking, issues classification regulations.

For those devices introduced into interstate commerce for the first time after May 28, 1976, the device is classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Those devices that FDA finds to be substantially equivalent to a classified preamendments generic type of device are thereby classified in the same class as the predicate preamendments device.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based on "new information." The reclassification can be initiated by FDA or by the petition of an interested person.

The term "new information," as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when a device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos v. United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn v. Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell v. Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of changes in "medical science." (See *Upjohn v. Finch*, *supra*, 422 F.2d at 951.) However, regardless of whether data before the agency are past or new data, the "new information" on which any reclassification is based is required to consist of "valid scientific evidence," as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of premarket approval applications (PMA's). (See section 520(c) of the act, (21 U.S.C. 360j(c).)

## II. Reclassification Under the Safe Medical Devices Act of 1990

The SMDA further amended the act to change the definition of a class II device. Under the SMDA, class II devices are those devices for which there is insufficient information to show that general controls themselves will ensure safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance, including the issuance of a performance standard, postmarket surveillance, patient registries, development and dissemination of guidelines, and other appropriate actions necessary to provide reasonable assurance of the safety and effectiveness of the device. Thus, the definition of a class II device was changed from "performance standards" to "special controls."

## III. History of the Proceedings

In the Federal Register of August 24, 1979 (44 FR 49873), FDA published a proposed rule to classify the infant radiant warmer into class III. The preamble included the classification recommendation of the General Hospital and Personal Use Devices Panel (the panel). The panel's recommendation included a summary of the reasons why the device should be subject to premarket approval and identified certain risks to health presented by the device, including electrical shock, possible eye damage due to long-term exposure to infrared radiation, patient injury, hospital staff burns, insensible water loss, and hyperthermia or hypothermia. The panel also recommended that a high priority for

the application of section 515(b) of the act (21 U.S.C. 360e)(premarket approval requirement) be assigned to the infant radiant warmer.

In the Federal Register of October 21, 1980 (45 FR 69694), FDA published a final rule classifying the infant radiant warmer into class III (21 CFR 880.5130). Concern for possible long-term effects of infrared radiation on the skin and eyes of infants was the sole reason for classifying the device into class III. FDA believed that the other risks to health identified in the proposed rule could be addressed by labeling or by a standard.

In the Federal Register of September 6, 1983 (48 FR 40272), FDA published a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice described the factors FDA considered in establishing priorities for initiating proceedings under section 515(b) of the act for issuing final rules requiring preamendments class III devices to have approved PMA's or product development protocols (PDP's) which have been declared completed. Using these factors, FDA concurred with the panel's recommendation that the infant radiant warmer should be subject to a high priority for initiating a proceeding to require premarket approval.

In the Federal Register of January 15, 1986 (51 FR 1910), FDA published a proposed rule to require filing of a PMA or a notice of completion of a PDP for the infant radiant warmer. In accordance with section 515(b) of the act and 21 CFR 860.132, FDA also announced an opportunity for interested persons to request a change in classification of the device based on new information. FDA identified the following potential risks to health associated with the use of infant radiant warmers: Insensible water loss, special risk group infants with very low birth weight, hypothermia and hyperthermia, damage to the eyes and skin, increased oxygen consumption, operator error, and other safety risks common to many devices (e.g., electric shock, inadequate stability, and burns to the user).

On January 30, 1986, the Health Industries Manufacturers Association submitted a petition (Ref. 1) to reclassify the infant radiant warmer from class III into class II. The petition was submitted under section 513(e) of the act. Consistent with the act and the regulations, FDA referred the petition to the panel for its recommendation on the requested change in classification.

On May 21, 1986, during a meeting by teleconference, the panel unanimously recommended that the infant radiant warmer be reclassified from class III into class II and that any change in classification not take effect until the effective date of a performance standard for the generic type of device established under section 514 of the act (21 U.S.C. 360d) (Ref. 2 at p. 75).

In the Federal Register of May 27, 1987 (52 FR 19735), FDA published a notice of intent to initiate a proceeding to reclassify the infant radiant warmer from class III into class II. Subsequent to that notice, FDA determined that the deliberations of the 1986 panel were incomplete and that another panel meeting was necessary to allow the panel to address specific recommendations and issues concerning the reclassification of the infant radiant warmer (Ref. 2 at pp. 54 and 65). This additional panel meeting was held on May 11, 1994. A summary of the panel's recommendation is set forth below.

#### IV. Device Description

FDA is proposing the following device description based on the panel's recommendation and the agency's review.

The infant radiant warmer is a device consisting of an infrared heating element intended to be placed over an infant to maintain the infant's body temperature by means of radiant heat. The device may also contain a temperature monitoring sensor, a heat output control mechanism, and an alarm system (infant temperature, manual mode if present, and failure alarms) to alert operators of a temperature condition over or under the set temperature, manual mode time limits, and device component failure, respectively. The device may be placed over a pediatric hospital bed or it may be built into the bed as a complete unit.

#### V. Recommendation of the Panel

In the public meeting held on May 11, 1994, the panel unanimously affirmed its previous recommendation that the infant radiant warmer should be reclassified from class III into class II (Ref. 3), and that the appropriate special control is a voluntary standard. The panel identified the Association for the Advancement of Medical Instrumentation (AAMI) voluntary standard for infant radiant warmers as the special control for the infant radiant warmer (Ref. 4).

The panel further recommended the following restrictions on the use of the device: A prescription statement in the labeling of the device that restricts the device to use only upon the order of a

physician, only in health care facilities, and only by persons with specific training and experience in the use of the device.

#### VI. Summary of the Reasons for the Recommendation

The panel gave the following reasons in support of its recommendation to reclassify the infant radiant warmer from class III into class II:

1. General controls by themselves are insufficient to provide reasonable assurances of the safety and effectiveness of the device.

2. There is sufficient publicly available information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

3. An existing voluntary standard (Ref. 4) is the special control recommended by the panel.

4. There is sufficient publicly available information to demonstrate that the device is not potentially hazardous to the life, health, or well-being of the infant. The panel identified no new risks to health associated with the use of the device and determined that some of the previously identified potential risks to health are no longer risks or are no longer serious risks (Ref. 3 at p. 225). Thus, the probable benefits to health of the device outweigh any probable risks to health.

The panel believes that the current and any subsequent manufacturers of the infant radiant warmer can comply with this voluntary standard, that FDA can ensure the safety and effectiveness of the device made by new manufacturers through the premarket notification procedures under section 510(k) of the act, and that a regulatory level of class III is unnecessary.

#### VII. Risks to Health

When the infant radiant warmer was proposed for classification into class III in 1979, the panel identified certain risks to health that they believed the device presented. The risks to health were identified as electrical shock, possible eye damage, patient injury, hospital staff burns, insensible water loss, and hyperthermia or hypothermia (44 FR 49873 at 49874). When the device was classified into class III in 1980, FDA identified concern for possible delayed long-term effects of infrared radiation on the skin and eyes of infants as the only risk to health presented by the device. FDA also determined that the other risks to health identified in the proposed rule could be addressed by labeling or by a standard (45 FR 69694). Subsequently, in 1986, the agency identified increased oxygen

consumption as another potential risk to health associated with the use of the device (51 FR 1910).

Based on the review of the new data and information contained in the petition and the panel members' personal knowledge of and experience with the device, the panel on May 11, 1994, agreed that all the potential risks to health (insensible water loss; special risk group, very low birth weight infants; hyperthermia and hypothermia; possible eye and skin damage; and increased oxygen consumption) associated with the use of the infant radiant warmer could be controlled by special controls (Ref. 3). The panel also believed that the general risks to health (operator error, electric shock, inadequate device stability, and burns to operators) could also be addressed by special controls.

On the basis of its review and the panel's recommendation, FDA now believes that the use of the infant radiant warmer for maintaining an infant's body temperature does not present a potential unreasonable risk of illness and injury, and that special controls would provide reasonable assurance of the safety and effectiveness of the device. In addition to the AAMI standard, FDA has also incorporated the panel's labeling recommendation as special controls for this device.

#### VIII. Summary of the Data Upon Which the Proposed Recommendation is Based

##### A. Insensible Water Loss

An increased rate of insensible water loss is the principle, well-documented risk to health associated with the use of infant radiant warmers (Refs. 5 and 6). Insensible water loss is the continuous and usually imperceptible loss of water, mainly from the skin, that occurs to some extent in all newborn infants. It is a well recognized condition of prematurity, its severity being inversely related to birth weight (Ref. 7). Other factors that contribute to insensible water loss in neonates include: illness; environmental temperature and humidity; and other therapies, especially phototherapy and respiratory support (Ref. 5). Insensible water loss is also associated with the use of incubators (Refs. 5 through 7).

Bell (Ref. 6) evaluated four studies (Refs. 8 through 11), which reported increased rates of insensible water loss of 40 to 190 percent during the use of radiant warmers compared to the use of incubators. He determined that the variations in the increased rates of insensible water loss are related to the experimental conditions of the investigations (mainly the different

weighing methods used in the studies). Bell concluded that insensible water loss in infants under infant radiant warmers without phototherapy is 40 to 100 percent higher than in infants in incubators.

Increased insensible water loss places an infant at a risk of dehydration and electrolyte imbalance and potentially interferes with the infant's thermoregulation. Because both underestimation and overestimation of fluid and electrolyte requirements can have serious consequences to infants, especially to low birth weight infants, guidance for parenteral fluid and electrolyte administration was needed. Since the infant radiant warmer was classified in 1980, several guidances which include recommendations for parenteral fluid and electrolyte administration have been developed for premature and term infants (Refs. 6, 12, and 13).

The use of plastic heat shielding with infant radiant warmers has been reported to reduce insensible water loss (Refs. 14 through 17). However, this practice is not without risks, including both underheating and overheating of infants (Refs. 2 and 18). The panel agreed that the use of heat shielding should be at the discretion of the informed physician (Ref. 2).

Although an increased rate of insensible water loss is a risk to health in the use of the infant radiant warmer, it can be managed by careful monitoring of the infant and administration of parenteral or oral electrolyte therapy when necessary. The new parenteral fluid and electrolyte therapy guidances minimize this risk to health and support the use of infant radiant warmers in the management of critically ill infants to whom continual access by health professionals is essential.

The panel believed that this risk to health is a well-understood risk associated with the use of the infant radiant warmer and that it is related to both the prematurity of the infant and the open bed design of the device (Ref. 3). The panel agreed that this risk to health is clinically manageable and that it could be controlled by special controls.

#### *B. Special Risk Group—Very Low Birth Weight Infants*

To survive, very low birth weight infants, weighing 1,500 grams or less, require aggressive diagnostic and therapeutic procedures, such as emergency resuscitation, tracheal intubation, placement of catheters and needles, and blood sampling (Ref. 1). The use of infant radiant warmers has allowed essential access to the infants

for the performance of these necessary procedures while providing effective warming. This is particularly important immediately after birth, during the first days of life, and for the care of critically ill premature infants.

Very low birth weight infants are especially susceptible to increased rates of insensible water loss because of their larger surface area to mass ratio, higher body water content, and the thinner epidermal barrier of their skin (Refs. 2 (at pp. 56 and 57), 5, and 13). The advances in parenteral fluid and electrolyte therapy since 1980 provide specific guidance to minimize this risk for very low birth weight infants (Refs. 6, 12, and 13).

The panel believed that this potential risk to health is not a risk related to the device, but that it is related to the prematurity of the infants (Ref. 3). The panel stated that the use of the infant radiant warmer has made the care of these infants more manageable, and the panel commented that now even smaller premature infants than in 1986 are successfully treated in infant radiant warmers. The panel believed that this risk can be controlled through special controls.

#### *C. Damage to the Eyes*

Infant radiant warmers operate by directing invisible infrared radiation (IR) from an overhead heater to the infant's body. The magnitude and spectral characteristics of the IR are controlled by the design of the device and are important in assessing the potential risk of exposure to IR.

During its classification deliberations in 1979, the panel considered infant radiant warmer performance data developed for FDA under a contract (Ref. 19). However, that data did not sufficiently address the panel's concern about the possibility of adverse effects on the eyes of infants resulting from long-term exposure to IR. The petition reported new performance data on five radiant warmers (Ref. 1). The new data provided measurements for individual wavelength regions of the electromagnetic spectrum, including the ultraviolet (200 to 400 nanometers (nm)), visible (400 to 760 nm), and IR-A (760 to 1,400 nm) wavelength regions, and for the 1,400 to 4,500 nm wavelength region which includes the IR-B (1,400 to 3,000 nm) wavelength region and the 3,000 to 4,500 nm portion of the IR-C wavelength region (the IR-C wavelength region extends from 3,000 to 100,000 nm). The petition also reported total irradiance, including irradiance for wavelengths extending beyond 4500 nm obtained by another measurement method. The IR-A

wavelength region is associated with the potential for damage to the lens and retina of the eye. The IR-B and IR-C wavelength regions are associated with the potential for thermal damage to the cornea of the eye.

All the infant radiant warmers emitted IR primarily in the IR-B and IR-C wavelength regions (Ref. 1). No ultraviolet radiation and negligible visible radiation (nondetectable to 0.026 milliwatt per square centimeter (mW/cm<sup>2</sup>)) was detected. The range of maximum IR-A irradiance was 0.103 to 3.463 mW/cm<sup>2</sup>, and the range of maximum total irradiance was 39.2 to 60.3 mW/cm<sup>2</sup>. These maximum irradiances were obtained at full power and at high line voltage (130 volts). At lower heater power levels, proportionately more of the IR is from the IR-C wavelength region.

In clinical use, however, infant radiant warmers are rarely operated at full power and at high line voltage (Ref. 1). The total irradiances necessary to maintain the desired infant skin temperature typically range from 12 to 25 mW/cm<sup>2</sup>, and typical IR-A irradiances are less than 1.0 mW/cm<sup>2</sup>. Engel et al. reported mean total irradiances of less than 10 mW/cm<sup>2</sup> and 17.1 mW/cm<sup>2</sup> for the warming of two groups of critically ill premature infants (Refs. 20 and 21); in general, the smaller infants required higher irradiances. In addition, the necessarily more frequent handling of critically ill neonates, which may be as often as once every 10 minutes, may interrupt delivery of a portion of the radiant heat to the infant and thus increase the amount of radiant power required for heating (Ref. 2).

The petition also summarized published information that was not reviewed by the classification panel when the infant radiant warmer was classified. Both Sliney and Freasier (Ref. 22) and Sliney and Wolbarsht (Ref. 23) reported that a safe chronic ocular exposure level to IR-A was 10 mW/cm<sup>2</sup>. The petition reported that the maximum amount of IR-A of the tested infant radiant warmers ranged from 0.24 to 3.5 mW/cm<sup>2</sup>, and that in actual use, infant radiant warmers emit typically less than 1 mW/cm<sup>2</sup> of IR-A (Ref. 1). Thus, the potentials for chronic injury to the lens and the retina are low because infant radiant warmers emit significantly less IR-A radiation than the level of IR-A radiation believed to be associated with injuries of the lens and retina.

The cornea and aqueous humor absorb almost all of the IR from 1,400 to 1,900 nm; the cornea absorbs all the IR above 1,900 nm (Ref. 23). Thus, most IR emitted by infant radiant warmers is absorbed by the anterior structures of

the eye and is not transmitted to the lens and retina. Sliney and Freasier (Ref. 22) and Sliney and Wolbarsht (Ref. 23) also reported that the irradiance of 100 mW/cm<sup>2</sup> was "well below" the threshold irradiance level to prevent corneal injury. Thus, the potentials for injury to the cornea and aqueous humor from exposure to IR emitted by infant radiant warmers are low because the maximum irradiances of infant radiant warmers range from 36.8 to 60.3 mW/cm<sup>2</sup> and their typical total use irradiances range from 12 to 25 mW/cm<sup>2</sup> (Ref. 1). For both the total irradiance and the IR-A irradiance, the margins for safety are significant.

To put this irradiance information in perspective, it should be noted that premature infants' eyes are rarely opened and that blinking of the eyes when opened keeps the corneal epithelium from drying out (Ref. 24). Thus, there is a low probability that a significant amount of IR actually enters the eyes of premature infants.

There are two studies on the effects of IR on the eyes of neonates. Johns et al. detected no adverse eye effects in infants warmed under radiant warmers after followup times of up to 45 days (Ref. 25). This study now has increased significance since Pitts and Cullen reported that corneal damage heals rapidly (usually within 24 hours) and that lens opacities formed within 24 hours after exposure heal earlier than expected (usually within 1 month) (Ref. 26). Thus, any corneal or lens effects, if present, would have been detected by Johns et al.

In 1993, Baumgart et al. (Ref. 27) reported a retrospective study of critically ill premature infants treated under radiant warmers and incubators with longer followup times of 30 days to 6 years. The mean followup time for the radiant warmer group was 29 months, and the mean IR irradiance of the infant radiant warmer group was less than 30 mW/cm<sup>2</sup>. They found no long-term or short-term corneal or lens effects in either group. The incidence of retinopathy of prematurity was higher in the radiant warmer group, but this higher incidence was attributed to prematurity and to the hospital's policy of placing the more critically ill premature infants receiving oxygen in infant radiant warmers rather than in incubators. It is noted that the incidence of retinopathy of prematurity is associated with prolonged oxygen therapy (Ref. 28).

There are few recommended IR exposure levels specifically intended for infants under infant radiant warmers. The Emergency Care Research Institute proposed that 0.3 W/cm<sup>2</sup> (300 mW/cm<sup>2</sup>)

was a reasonable total irradiance limit for an infant under an infant radiant warmer in 1973 and 1984 (Refs. 24 and 18, respectively) and that the near IR range between 700 to 1,200 nm should be limited to 40 mW/cm<sup>2</sup>. The 1994 International Electrotechnical Commission standard for infant radiant warmers has irradiance limits of 100 mW/cm<sup>2</sup> for total IR irradiance and 10 mW/cm<sup>2</sup> for IR-A (Ref. 29). The 1995 AAMI voluntary standard special control has irradiance limits of 60 mW/cm<sup>2</sup> for total IR irradiance and 10 mW/cm<sup>2</sup> for IR-A (Ref. 4). The maximum irradiances of currently marketed infant radiant warmers meet the AAMI voluntary standard special control irradiance limits (Ref. 3).

This new information concerning the IR irradiance characteristics of infant radiant warmers and the irradiance levels associated with acute and chronic injuries to the eyes have addressed the safety concerns previously held about the unknown potential for IR-induced long-term effects to the eyes of infants under infant radiant warmers. The panel stated that in over 20 years of clinical use, there are no reports in the literature of any adverse long-term effects to the eyes of infants attributed to the IR radiation emitted by infant radiant warmers (Ref. 3). They further commented that long-term developmental health assessments of infants cared for in infant radiant warmers do not mention any delayed eye conditions (Ref. 3, pp. 190 and 191). The panel agreed that the potential risk to health of long-term damage from overexposure of the eyes to total IR and IR-A could be controlled by special controls.

#### *D. Damage to the Skin*

The IR emitted by infant radiant warmers is designed to be below the threshold for thermal injury to the infant's skin (Ref. 24). The IR is not of sufficient energy to cause photochemical reactions in the skin. Most of the IR-A irradiance is reflected from the skin while IR-B and IR-C irradiance are absorbed by the outer 1 millimeter of the skin to accomplish the desired warming effect.

The panel commented that there are no published reports of skin damage in infants attributed to the use of radiant warmers and that long-term developmental health assessments of infants cared for in infant radiant warmers do not mention skin conditions (Ref. 3). The panel believed that the potential risk of overexposure of the skin to IR could be controlled by special controls.

#### *E. Increased Oxygen Consumption*

Bell reviewed five studies (Ref. 6) that reported conflicting results of statistically significant increased oxygen consumption rates (Refs. 30 and 31) and unchanged oxygen or slightly increased consumption rates (Refs. 11, 28, 32, and 33) in infants warmed under radiant warmers compared to infants warmed in incubators. Because increased oxygen consumption may be an indicator of a stress-related increase in metabolism, these reports caused concern that the use of infant radiant warmers stress the metabolism of infants.

Bell evaluated these studies taking into account differences in the various study parameters used, including differences in the servocontrol skin temperatures and the humidity in the neonatal nurseries (Ref. 6). He determined that only a small increase in oxygen consumption (4 kilocalories per kilogram per 24 hours additional energy expenditure) occurs in the infants under infant radiant warmers compared to infants in incubators. Bell agreed with Wheldon and Rutter (Ref. 31) that the net total heat loss of infants under radiant warmers to the environment due to evaporation, convection, radiation, and conduction does not exceed that of infants in incubators. He concluded that the increased oxygen consumption of infants in infant radiant warmers is of unknown clinical significance. Subsequently, Marks et al. reported that premature infants under infant radiant warmers experienced no short-term metabolic complications or adverse effects on growth even though they had a 10 percent higher oxygen consumption compared to infants in incubators (Ref. 34).

The panel acknowledged that although oxygen consumption may be greater in infants cared for in infant radiant warmers than in incubators, the clinical significance of this, if any, is unknown (Ref. 3). They noted that other factors unrelated to the device can also cause increased oxygen consumption. The panel agreed this potential risk could be controlled by special controls.

#### *F. Hypothermia and Hyperthermia*

The risks to health of hypothermia and hyperthermia are low during proper use of the device (Ref. 1). Infant radiant warmers are used to treat and to prevent hypothermia. Both hypothermia and hyperthermia can result from malfunctioning alarms and radiant heater components, and hyperthermia can result from detachment of the skin temperature probe from the infant. The device's temperature and failure alarm system is designed to prevent

hypothermia and hyperthermia by alerting operators of unsafe temperature conditions, skin temperature probe detachment from the skin, probe failure and device failure. The petition (Ref. 1), current device labeling (Ref. 3), the AAMI voluntary standard special control (Ref. 4), and accepted medical practice (Refs. 1 and 3) all recommend frequent monitoring of infants under infant radiant warmers. They also recommend that infant radiant warmers should be operated in the skin temperature servocontrol mode rather than the manual mode to further reduce the risks of both hypothermia and hyperthermia (Refs. 1 and 4). The panel agreed that this risk to health could be controlled by special controls.

#### G. Other Risks

Four other potential risks associated with the use of infant radiant warmers are electrical shock due to improper design or construction of the device, injury due to instability of the device, burns to the operator if the device is constructed of materials that absorb radiant heat, and operator error. Operator error can be minimized by appropriate training and comprehensive device labeling. The panel agreed that these are well-known risks that are generic to many neonatal devices and that they can be controlled by special controls (Ref. 3).

#### H. Benefits of the Device

The infant radiant warmer has the unique benefit of providing greater accessibility to the infant than do incubators during routine nursing and intensive care procedures without interrupting the delivery of heat. Infant radiant warmers can also heat an infant faster than an incubator. Ahlgren reported that only 5 to 10 minutes are required to warm the infant's skin to the preset skin temperature with the infant radiant warmer as compared to 45 to 50 minutes for the incubator (Ref. 35). Infant radiant warmers are recommended for the care of newborn infants who lose large amounts of heat through evaporation of amniotic fluid from their skin in the delivery room (Ref. 27). It is estimated that 80 percent of all infants are placed under infant radiant warmers at some time during their hospital stay (Ref. 1). Many practitioners consider infant radiant warmers to be the only way of warming some very low birth weight and critically ill infants (Refs. 3 and 6).

The panel believes, based on publicly available, valid scientific evidence, that the infant radiant warmer can be regulated as a class II device (general and special controls) to reasonably

assure the device's safety and effectiveness (Ref. 3).

#### IX. FDA's Tentative Findings

FDA tentatively concurs with the recommendation of the panel that infant radiant warmers should be reclassified into class II. The agency believes that "new information" in the form of publicly available, valid scientific evidence exists to establish special controls to provide reasonable assurance of safety and effectiveness of the infant radiant warmer for its intended use. The agency further identifies the AAMI voluntary standard and labeling as the special controls. Moreover, existing devices, within the generic type, have established a reasonable record of safe and effective use. Consistent with the purpose of the act, class II controls as defined by section 513(a)(1)(B) of the SMDA would provide the least amount of regulation necessary to reasonably assure that current and future infant warmers are safe and effective.

#### X. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### XI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because of the potential costs to comply with the provisions of premarket approval (class III) by each manufacturer, the agency believes that the economic impact to comply with special controls (class II) would likely

be less. Therefore, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

#### XII. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements in this proposed rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Rather, the proposed labeling statements are "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

#### XIII. Request for Comments

Interested persons may, on or before November 25, 1996, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the name of the device and the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

#### XIV. References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Health Industry Manufacturers Association Petition with incorporated errata, volumes 1 to 5, Washington, DC, 1986 (submitted January 30, 1986; revised April 15, 1986).
2. Transcript, General Hospital and Personal Use Devices Panel (telephone conference call), May 21, 1986.
3. Transcript, General Hospital and Personal Use Devices Panel with the attached general device classification questionnaire and supplemental data sheet, May 11, 1994.
4. Association for the Advancement of Medical Instrumentation, *Infant Radiant Warmers* (draft standard), May 1995.
5. Baumgart, S., "Radiant Energy and Insensible Water Loss in the Premature Newborn Infant Nursed under a Radiant Warmer," *Clinics in Perinatology*, 9:483-503, 1982.
6. Bell, E. F., "Infant Incubators and Radiant Warmers," *Early Human Development*, 8:351-375, 1983 (included in Ref. 1).

7. Baumgart, S., W. D. Engel, W. W. Fox, and R. A. Polin, "Radiant Warmer Power and Body Size as Determinants of Insensible Water Loss in the Critically Ill Neonate," *Pediatric Research*, 15:1495-1499, 1981 (included in Ref. 1).

8. Williams, P. R., and W. Oh, "Effects of Radiant Warmers on Insensible Water Loss in Newborn Infants," *American Journal of Diseases in Childhood*, 128:511-514, 1974 (included in Ref. 1).

9. Wu, P. Y. K., and J. E. Hodgemen, "Insensible Water Loss in Preterm Infants. Changes with Postnatal Development and Non-Ionizing Radiant Energy," *Pediatrics*, 54:704-711, 1974 (included in Ref. 1).

10. Bell, W. F., M. R. Weinstein, and W. Oh, "Heat Balance in Premature Infants: Comparative Effects of Convectively Heated Incubator and Infant Radiant Warmer, with and without Heatshield," *Journal of Pediatrics*, 96:460-465, 1980 (included in Ref. 1).

11. Jones, R. W. A., M. J. Rochefort, and J. D. Baum, "Increased Insensible Water Loss in New Born Infants Nursed under Radiant Heaters," *British Medical Journal*, 1:1347-1350, 1976 (included in Ref. 1).

12. Baumgart, S., C. B. Langman, W. W. Fox, and R. A. Polin, "Fluid, Electrolyte, and Glucose Maintenance in the Very Low Birth Weight Infant," *Clinical Pediatrics*, 32:199-206, 1982 (included in Ref. 1).

13. Costarino, A. T., and S. Baumgart, "Controversies in Fluid and Electrolyte Therapy for the Premature Infant," *Clinical Perinatology*, 15:863-878, 1988.

14. Marks, K. H., Z. Freidman, and M. B. Maisels, "A Simple Device for Reducing Insensible Water Loss in Low-Birth Weight Infants," *Pediatrics*, 60:223-226, 1980 (included in Ref. 1).

15. Baumgart, S., W. D. Engel, W. W. Fox, and R. A. Polin, "Effect of Heat Shielding on Convective and Evaporative Heat Losses and on Radiant Heat Transfer in the Premature Infant," *Journal of Pediatrics*, 99:948-956, 1981 (included in Ref. 1).

16. Baumgart, S., W. W. Fox, and R. A. Polin, "Physiologic Implications of Two Heat Shields for Infants under Infant Radiant Warmers," *Journal of Pediatrics*, 100:787-790, 1982 (included in Ref. 1).

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#### List of Subjects in 21 CFR Part 880

##### Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 880 be amended as follows:

## PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

1. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: Secs. 501, 510, 513, 515, 520, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 360, 360c, 360e, 360j, 371).

2. Section § 880.5130 is revised to read as follows:

### § 880.5130 Infant radiant warmer.

(a) *Identification.* The infant radiant warmer is a device consisting of an infrared heating element intended to be placed over an infant to maintain the infant's body temperature by means of radiant heat. The device may also contain a temperature monitoring sensor, a heat output control mechanism, and an alarm system (infant temperature, manual mode if present, and failure alarms) to alert operators of a temperature condition over or under the set temperature, manual mode time limits, and device component failure, respectively. The device may be placed over a pediatric hospital bed or it may be built into the bed as a complete unit.

(b) *Classification.* Class II (Special Controls). (1) Association for the Advancement of Medical Instrumentation (AAMI) Voluntary Standard for Infant Radiant Warmers; (2) prescription statement in accordance with 21 CFR 801.109 (restricted to use by or upon the order of qualified practitioners as determined by the States); (3) labeling for use only in health care facilities and only by persons with specific training and experience in the use of the device.

Dated: August 1, 1996.

D. B. Burlington,  
Director, Center for Devices and Radiological Health.

[FR Doc. 96-21846 Filed 8-26-96; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### 25 CFR Part 215

#### RIN 1076-AD35

### Lead and Zinc Mining Operations and Leases on Quapaw Indian Lands

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise our regulations for lead and zinc mining. The purpose is to update the

operations and procedures for the leasing of and operations for the discovery, testing, development, mining, and processing of all lead and zinc minerals on the lands of Quapaw Indians under the jurisdiction of the Miami Agency in Ottawa County, Oklahoma. This action is to assist Indians with the orderly and efficient development of their natural resources of lead and zinc deposits, and to insure operations are conducted without loss or damage to the environment or other resources.

**DATES:** You may send us written comments. We must receive them by October 28, 1996.

**ADDRESSES:** You must mail or hand carry your comments to Terrance Virden, Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street N.W., MS 4513-MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Dalgarn, Bureau of Indian Affairs, Miami Agency, P.O. Box 391, Miami, OK 74355-0391; telephone (918) 542-3396.

**SUPPLEMENTARY INFORMATION:** We are publishing this revised rule by the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Our policy is to give the public an opportunity to participate in the rulemaking process by submitting written comments on the proposed rule. We will consider all comments received during the public comment period. We will determine necessary revisions and issue the final rule. Please refer to this preamble's **ADDRESSES** section for where you must submit your written comments on this proposed rule.

We have certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

This rule is not a significant rule under Executive Order 12866 and does not require approval by the Office of Management and Budget.

We determined this proposed rule:

(a) Does not constitute a major Federal action significantly affecting the quality of the human environment, and no detailed statement is needed under the National Environmental Policy Act of 1969;

(b) Does not have significant takings implications in accordance with Executive Order 12630;

(c) Does not have significant federalism effects.

(d) 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.*); and

(e) Imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

The information collection requirements contained in this rule do not require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The primary author of this document is John Dahlgarn, Bureau of Indian Affairs, Department of the Interior.

#### List of Subjects in 25 CFR Part 215

Indian-lands, Lead, Zinc.

For the reasons set out in the preamble, we propose to revise Part 215 of Title 25 of the Code of Federal Regulations, as follows:

#### Part 215—Lead and Zinc Mining Operations and Leases on Quapaw Indian Lands

Sec.

215.0 Definitions.

215.1 Purpose.

215.2 Scope.

215.3 No operations until a lease is approved.

215.4 How are leases offered?

215.5 How are lands selected for a lease auction?

215.6 How do we advertise the lease auction?

215.7 How do I bid for a lease?

215.8 What must your bid include?

215.9 How do we conduct public auctions?

215.10 What happens after the public auction?

215.11 What happens if we reject your bid or do not award you a lease?

215.12 What happens if you fail to execute a lease?

215.13 How are royalty rates determined?

215.14 Who do you pay?

215.15 Who pays the gross production tax due to the State of Oklahoma?

215.16 Lessee must have local representation.

215.17 How long are leases?

215.18 What forms are used?

215.19 Who can execute (sign) leases?

215.20 What is required for corporate leases?

215.21 What bonds are needed?

215.22 Can leases be assigned?

215.23 Can leases of developed land be extended?

215.24 Will we deny requests for lease extensions?

215.25 Can new leases be granted if a lease has been forfeited or abandoned?

215.26 Exploration and mining operations.

215.27 When can operations and

production be suspended?

215.28 Who owns the mine tailings?

215.29 How are mine tailings disposed of?

215.30 What can chat be used for?

Authority: Sec. 26, 41 Stat. 1248; 50 Stat. 68; Sec. 2, 53 Stat. 1127; 84 Stat. 325; 104 Stat. 206.

#### § 215.0 Definitions.

*Allottee* means an Indian that has been allotted land, or an Indian owner of land or interest as an heir or devisee in unpartitioned lands under the supervision of the Government.

*BLM* means Supervisor, Geologic, Engineering and Mining Services Team of the Bureau of Land Management.

*Chat* means the piles of mine waste and gravity concentration tailings resulting from the operation of the lead-zinc mines.

*Incompetent Indian* means an Indian who we declared unable to improve or manage his or her restricted or trust lands. This includes minors and those Indians who are incompetent under State law.

*Leased lands, leased premises, or leased tract* means restricted or trust lands under a lease.

*Lessee* means any person, firm, or corporation, their legal representatives, heirs, or assigns, who has obtained a lease.

*Lessor* means any Indian owning or having an interest in restricted or trust allotted or inherited lands that has been leased.

*Mining operations* means drilling, mining, or construction on leased lands.

*We* means the U.S. Government, Department of the Interior, Bureau of Indian Affairs, and anyone who is authorized to represent us in matters covered in this part.

*You* means an allottee, lessee, lessor, or other interested persons.

#### § 215.1 Purpose.

The purpose of the regulations in this part is to assist you with the orderly and efficient development and production of your natural resources (lead and zinc) without waste or avoidable loss of or damage to deposits; avoid, minimize or correct damage to the environment, land, water and air or other resources; and to obtain a proper record and accounting of all minerals produced.

#### § 215.2 Scope.

The regulations in this part apply to the leasing of and operations for the discovery, testing, development, mining, and processing of all lead and zinc minerals on Quapaw Indian lands under the supervision and jurisdiction of the Miami Agency, Oklahoma.

#### § 215.3 No operations until a lease is approved.

No operations are allowed upon any restricted or trust lands allotted to or inherited by an Indian until we approve

the lease covering the land and the activity.

**§ 215.4 How are leases offered?**

We will offer lead and zinc mining leases at public auction to the highest responsible bidder.

**§ 215.5 How are lands selected for a lease auction?**

(a) Any one or a combination of Indian owners may request us to offer the lead and zinc minerals on any of their restricted or trust lands for sale at a lease auction.

(b) Before a tract of unpartitioned land will be offered for lease at a public auction, a majority of the interest owners must agree to the request.

**§ 215.6 How do we advertise the lease auction?**

(a) We will publish at least four notices starting 30 days before the public auction. The notices will be in a newspaper of general circulation in the county where the land is located, and in at least one nationally circulated mining trade journal.

(b) The public auction notice will include the following information:

- (1) Date of auction;
- (2) Time of auction;
- (3) Place of auction; and
- (4) How, who, and where to obtain information on participation in the auction.

**§ 215.7 How do I bid for a lease?**

(a) You may submit sealed bids by mail to the address in the notice. We must receive your bid before the public auction begins.

(b) You may submit your bid at the public auction.

(c) You may authorize an agent to submit your bid at the public auction. The agent must have your power of attorney to bid for you.

**§ 215.8 What must your bid include?**

Bids must include:

- (a) Your offer of the stipulated and fixed royalty;
- (b) Your bonus payment offer; and
- (c) Cashier's check payable to us in the amount of one year rental and 25 percent of your bonus payment offer.

**§ 215.9 How do we conduct public auctions?**

(a) At the announced auction time, we will announce the bidder, the amount, and terms of each sealed bid received.

(b) After the announcement of the sealed bids, public bidding will begin. All bidders present can bid, whether or not you submitted a sealed bid. Bidding is only on the bonus payment.

(c) At the conclusion of public bidding, we will determine the highest and best bid as the highest bonus offer.

(d) We reserve the right to reject any or all bids.

**§ 215.10 What happens after the public auction?**

(a) We review and select the highest and best bid for each tract offered in the auction.

(b) We inform the owners of the bid selections.

(c) We inform the owners of the estimated reasonable mining value of their lands and other necessary information to fully advise them of the current status and mining potential of their lands.

(d) The owners accept the bid offer and execute (sign) the lease.

(e) We will notify you when you are awarded a lease.

(f) You will have 30 days after notice to execute the lease by the terms of your bid and the regulations in this part.

(g) We will finalize the lease documents by approving the completed lease package.

**§ 215.11 What happens if we reject your bid or do not award you a lease?**

If your bid is not accepted or you are not awarded a lease, your bid deposit will be returned to you.

**§ 215.12 What happens if you fail to execute a lease?**

If we award you a lease and you fail to execute it, you will forfeit the money included with your bid. We will give these funds to the land owner(s).

**§ 215.13 How are royalty rates determined?**

(a) If a lease is offered for sale at public auction, we will set the royalty rate before the auction at a fixed percentage of gross proceeds of all lead and zinc ores and concentrates extracted. We will determine the royalty rate for each lease individually.

(b) If a lease is not offered for sale at public auction, we will determine the royalty rate or approve a negotiated rate for each lease.

(1) The royalty rate must not be less than the highest and best obtainable market price for lead and zinc ores and concentrates. We will determine this minimum price at the usual and customary disposal points at the time of the sale.

(2) We reserve the right to determine the market price if it is necessary to protect the interests of the Indian lessor.

(3) We reserve the right, when it is in the best interest of the Indian lessor, to require you to store the royalty share of ore instead of selling it. If we do this,

we will notify you in advance. You must store the ore in your ore bins at no cost to the lessor. You will not be required to store more than one-third of your bin capacity or for longer than 6 months.

**§ 215.14 Who do you pay?**

We must collect all payments for rents, royalties, bonus, and any other payments. We will then deposit the funds to the credit of the Indian lessor(s).

**§ 215.15 Who pays the gross production tax due to the State of Oklahoma?**

(a) We will pay the Indian owners share of the gross production tax to the State from their royalty income.

(b) You are responsible to pay your share of the gross production tax.

**§ 215.16 Lessee must have local representation.**

(a) You must designate a local or resident representative within Ottawa County, Oklahoma. You must also give us the representative's name and mailing address.

(b) We will notify and communicate with your local representative in securing compliance with our regulations and the terms of your lease.

(c) You must designate a substitute local representative if the primary representative is not available to us.

(d) If no designated local representative is available, any of your employees, contractors, or other person in charge of mining operations on the leased land will be considered your local representative for the purpose of serving a notice to you.

(e) We will consider you to be notified when we mail the notice to you or your local representative's last known address.

(f) Your response time begins with the day a notice is mailed or received in person by you or your local representative.

**§ 215.17 How long are leases?**

Lead and zinc mining leases can be for 10 years. We may limit leases to less than ten years.

**§ 215.18 What forms are used?**

We will prescribe the appropriate form for applications, leases, other information, and collection requirements.

**§ 215.19 Who can execute (sign) leases?**

(a) A lease contract can be executed by competent adult Indian owners.

(b) We will execute and approve leases for:

- (1) Minors;
- (2) Incompetent owners;

- (3) Undetermined heirs of a decedent's estate;
- (4) Owners who can not be located; and
- (5) Owners who have given us written authority to sign for them.

**§ 215.20 What is required for corporate lessees?**

(a) If the applicant for a lease is a corporation, your first application must include evidence that your officers can execute the lease. You must also submit:

(1) A certified copy of your articles of incorporation;

(2) If you are not a Oklahoma corporation, evidence that you are in compliance with the corporation laws where you are incorporated;

(3) List of officers, principal stockholders, and directors, with their addresses and the number of shares they possess;

(4) A sworn statement of your officers showing:

(i) The total number of shares of capital stock issued and the amount of cash recovered into your treasury for each share sold or, if paid in property, the kind, quantity, and value paid per share;

(ii) The amount per share of sold stock that is not paid for and subject to assessment;

(iii) The amount of cash in your treasury and elsewhere and its source;

(iv) The value of your property; and

(v) The amount of your indebtedness and the nature of your obligations.

(b) You must submit a statement of changes in officers and stockholders by January 1 of each year. We may request this statement at other times during the year also.

(c) We may require individual stockholders to provide affidavits on the companies or persons or firms that have interest in lead and zinc mining leases or Indian land in Ottawa County, Oklahoma, and if the stock is held in trust or not.

(d) If you are required to submit any other applications, you will only have to show the aggregate amounts of your assets and liabilities.

**§ 215.21 What bonds are needed?**

(a) Lessees must provide a surety bond when executing a lead and zinc lease.

(b) The surety bond must be with a surety company(s) that is acceptable to us.

(c) The amount of the surety must guarantee the payment of all deferred installments of the bonus, royalties, rentals, and the performance of all covenants and agreements by you.

(d) The amount of the surety must cover the costs of repair and restoration of the surface and natural resources.

(e) Minimum bond amounts are:

Acreage of lease	Minimum amount of bond
Less than 80 acres .....	\$50,000
More than 80 but less than 120 acres .....	100,000
120 or more acres .....	250,000

(f) We may reduce the amount of the bond below the minimum amounts with the consent of the lessor.

(g) You may execute a penal bond to us with your power of attorney in lieu of a surety. You can then submit United States bonds or notes in the total amount prescribed in paragraph (c) of this section.

(h) You may provide one aggregate bond instead of several individual bonds to cover all leases you have. We will determine the amount of the aggregate bond.

(i) We may increase the amount of any bond if necessary to protect the interests of the Indian lessor.

**§ 215.22 Can leases be assigned?**

(a) Yes. Leases can be assigned, subleased, or sublet only with our approval of the terms and conditions of the assignment, sublease, and, or subletting contract.

(b) You must notify us of any proposed assignment. The assignee must submit a financial statement and bond. We will then notify all restricted Indian land owners of the proposed assignment. They will have ten days to file written objections to the assignment. We will then approve or disapprove the assignment.

(c) The assignee must provide a bond per § 215.21.

**§ 215.23 Can leases of developed land be extended?**

(a) Yes. If you request and it is in the best interest of the Indian lessor, we may approve a new lease or extend an existing lease.

(b) New leases or extensions can be granted to lessees, assignees, sublessees, mining contractors, or other parties who have expended capital in the mining or development operations under the existing lease.

(c) New leases or extensions are executed per § 215.19.

(d) We must approve the bonus payment and royalty for the new lease or extension.

(e) We will not consider a request for a new lease or extension until the final year of the existing lease.

**§ 215.24 Will we deny requests for lease extensions?**

(a) Yes. If any of the following circumstances exist, we may deny your request:

(1) If a new lease or extension is not in the best interest of the Indian lessor;

(2) If any of the land under the extension request is encumbered by another existing lease, sublease, assignment, or mining contract; or

(3) If any owner or person claiming rights or interests files an objection.

(b) We will notify you about requests for extensions if our records or the district court records show you have rights or interest in any land involved.

(c) You will have 10 days to submit your objection to the extension after receipt of our notice.

(d) If an objection is submitted, they will have 20 days to submit a statement supporting their objection.

(e) The extension applicant will have 10 days to defend their application from objections.

(f) We will decide to approve or deny the extension based on the facts we receive.

**§ 215.25 Can new leases be granted if a lease has been forfeited or abandoned?**

Yes. If a lease on land where lead and zinc ores were discovered was canceled, forfeited, or expired, we can approve a new lease. If you apply for a new lease, your application must contain special offers for the terms and conditions of the new lease.

(a) We will consider your offer and if it is in the best interest of the Indian owner(s), we will approve it.

(b) If your offer is not in the best interest of the Indian owner(s), we will reject your offer.

(c) We will then proceed to offer the lease for sale at public auction described in § 215.9.

**§ 215.26 Exploration and mining operation.**

(a) Lessees must provide the BLM all notices, reports, drill logs, maps, records, and other information on mining operations required by us. The BLM will maintain a file for us.

(b) The files maintained by the BLM will be available for inspection by employees of BIA. Employees of the BLM will provide the BIA any information and technical advice we need. The BIA will provide the same service to the employees of the BLM.

(c) The BLM will not issue orders to Indian lessors. The BLM does have the authority to issue and amend orders to mining operators on production and operations. These orders will be prepared cooperatively with the BIA.

(d) Leases granted or approved under this part shall be subject to the

provisions found in 43 CFR Parts 3590 through 3599, inclusive, and are implemented in this part with relationship to:

- (1) Exploration and mining operations.
- (2) Obligations of lessees and permittees.
- (3) Maps and plans.
- (4) Bore holes and samples.
- (5) Mining methods.
- (6) Protection against mining hazards.
- (7) Milling waste from mining or milling.
- (8) Production records and audit.
- (9) Inspection, issuance of orders, and enforcement of orders.
- (10) Late payment or underpayment of charges.

**§ 215.27 When can operations and production be suspended?**

We may authorize the suspension of the operating and producing requirements on mining leases for minerals other than oil and gas whenever we find that marketing facilities are inadequate or economic conditions unsatisfactory. You may apply for relief from all operating and producing requirements to the BLM in triplicate and give a copy to us. Complete information must be furnished showing the necessity for relief. Suspension of operations and production will not relieve you from the obligations of continued payment of the annual rental or the minimum royalty.

**§ 215.28 Who owns the mine tailings?**

Mine tailings, mine refuse, "chat" and tailing piles are the property of the lessors from whose lands the ores were removed and in the percentage attributed thereto.

**§ 215.29 How are mine tailings disposed of?**

Disposal of mine tailings, mine refuse, "chat" or tailing piles for purposes other than the recovery of lead and zinc concentrates must be in the methods and manner we decide is appropriate and in the best interest of the Indian owners.

**§ 215.30 What can chat be used for?**

(a) Chat must only be used for applications that are within one of the following categories:

- (1) Applications that bind the chat into a durable product (for example, use as an aggregate in batch plants preparing asphalt or concrete);
- (2) Applications where the chat is applied below paving on asphalt or concrete roads or parking lots;
- (3) Applications where the chat is used as a raw product for manufacturing

a safe product (for example, glass manufacturing); or

(4) Applications where the chat is covered with at least twenty-four (24) inches of clean material in areas that are not likely to be used for residential or public area development (for example, deep fill on industrial sites).

(b) Any other applications, including residential applications, are prohibited. Use of chat for any unauthorized applications may result in immediate termination of a chat purchase contract, prosecution for trespass, or other sanctions.

(c) Contracts for the sale or disposal of chat under this part are subject to the provisions in 25 CFR part 216.

Dated: August 6, 1996.

Ada E. Deer,

*Assistant Secretary—Indian Affairs.*

[FR Doc. 96-21741 Filed 8-26-96; 8:45 am]

BILLING CODE 4310-02-P

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[INTL-0003-95]

RIN 1545-AT92

**Source of Income From Sales of Inventory and Natural Resources Produced In One Jurisdiction and Sold In Another Jurisdiction**

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

**ACTION:** Correction to the notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to the notice of proposed rulemaking (INTL-0003-95) which was published in the Federal Register on Monday, December 11, 1995 (60 FR 63478). The notice of proposed rulemaking relates to the source of income from sales of natural resources or other inventory produced in the United States and sold in a foreign country or produced in a foreign country and sold in the United States.

**FOR FURTHER INFORMATION CONTACT:** Anne Shelburne (202) 622-3880 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**  
Background

The notice of proposed rulemaking that is subject to these corrections is under section 863 of the Internal Revenue Code.

**Need for Correction**

As published, the notice of proposed rulemaking (INTL-0003-95) contains errors which may prove to be misleading and are in need of clarification.

**Correction of Publication**

Accordingly, the publication of proposed rulemaking (INTL-0003-95) which is the subject of FR Doc. 95-30087 is corrected as follows:

1. On page 63480, column 2, in the preamble, under the heading "1. Export Terminal Rule", the second full paragraph, line 12, the language "production activity following export. A" is corrected to read "production activity as defined in § 1.863-1(b)(3)(ii) following export. A".

2. On page 63483, column 3, in the preamble, under the heading "3. Determination of Source of Gross Income", line 3 from the top of the column, the language "are located where the tangible" is corrected to read "are located where the taxpayer's tangible".

3. On page 63483, column 3, in the preamble, under the heading "3. Determination of Source of Gross Income", the fourth full paragraph, line 8, the language "sit us of economic activity. Accordingly," is corrected to read "situs of economic activity. Accordingly,".

**§ 1.863-1 [Corrected]**

4. On page 63485, column 2, § 1.863-1 (b)(1) introductory text, line 2, the language "Except to the extent provided in" is corrected to read "Notwithstanding any other provision, except to the extent provided in".

**§ 1.863-2 [Corrected]**

5. On page 63486, column 3, § 1.863-2 (b), lines 15 and 16, the language "paragraph (a)(2) of this section, see § 1.863-3. However, the principles of" is corrected to read "paragraph (a)(2) of this section, see § 1.863-1 for natural resources and § 1.863-3 for other inventory. However, the principles of".

**§ 1.863-3 [Corrected]**

6. On page 63487, column 3, § 1.863-3 (b)(2)(iv), paragraph (i) of *Example 1.*, line 4, the language "country X to D, a unrelated foreign clothing" is corrected to read "country X to D, an unrelated foreign clothing".

7. On page 63488, column 2, § 1.863-3 (c)(1)(i)(B), line 4, the language "intangible assets owned by the taxpayer" is corrected to read

“intangible assets owned directly by the taxpayer”.

Michael L. Slaughter,

*Acting Chief, Regulations Unit, Associate Chief Counsel (Corporate).*

[FR Doc. 96-21601 Filed 8-26-96; 8:45 am]

BILLING CODE 4830-01-P

## 26 CFR Part 1

[INTL-4-95]

RIN 1545-AT41

### Allocation of Loss on Disposition of Stock; Correction

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Correction to the notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to the notice of proposed rulemaking (INTL-4-95) which was published in the Federal Register on Monday, July 8, 1996 (61 FR 35696). The notice of proposed rulemaking relates to the allocation of loss realized on the disposition of stock.

**FOR FURTHER INFORMATION CONTACT:** Seth B. Goldstein (202) 622-3850 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice of proposed rulemaking that is subject to these corrections is under section 865 of the Internal Revenue Code.

##### Need for Correction

As published, the notice of proposed rulemaking (INTL-4-95) contains an error that may prove to be misleading and is in need of clarification.

##### Correction of Publication

Accordingly, the publication of proposed rulemaking (INTL-4-95) which is the subject of FR Doc. 96-17004 is corrected as follows:

#### § 1.904-4 [Corrected]

On page 35701, column 2, § 1.904-4, paragraph (c)(2)(i), line 11, the language “January 1, 1988. Paragraph (2)(ii)(B) of” is corrected to read “January 1, 1988. Paragraph (c)(2)(ii)(B) of”.

Michael L. Slaughter,

*Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 96-21599 Filed 8-26-96; 8:45 am]

BILLING CODE 4830-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[TN-176-1-9641b; TN-177-1-9642b; FRL-5546-9]

### Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Tennessee SIP Regarding Volatile Organic Compounds

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

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of Tennessee for the purpose of amending the chapter regulating volatile organic compounds (VOCs). In the final rules section of this Federal Register, the EPA is approving the State’s SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** To be considered, comments must be received by September 26, 1996.

**ADDRESSES:** Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.  
Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C

Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37343-1531.

#### FOR FURTHER INFORMATION CONTACT:

William Denman, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347-3555 x4208. Reference files TN-176-1-9641b and TN-177-1-9642b.

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the rules section of this Federal Register.

Dated: July 22, 1996.

A. Stanley Meiburg,

*Acting Regional Administrator.*

[FR Doc. 96-21695 Filed 8-26-96; 8:45 am]

BILLING CODE 6560-50-P

### 40 CFR Part 52

[MA-46-1-7194b; A-1-FRL-5557-4]

### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Marine Vessel Transfer Operations

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a conditional approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision contains a regulation to control volatile organic compound (VOC) emissions from marine vessel transfer operations. In the Final Rules Section of this Federal Register, EPA is conditionally approving the Commonwealth’s SIP revision as a direct final rule without prior proposal. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

**DATES:** Comments must be received on or before September 26, 1996.

**ADDRESSES:** Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S.

Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the Commonwealth's submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Anne E. Arnold, (617) 565-3166.

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule which is located in the Rules Section of this Federal Register.

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

Dated: July 17, 1996.

John P. DeVillars,

*Regional Administrator, Region I.*

[FR Doc. 96-21693 Filed 8-26-96; 8:45 am]

BILLING CODE 6560-50-P D

#### 40 CFR Part 300

[ID CAD065021594; FRL-5558-8]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete Louisiana-Pacific Superfund Site from the National Priorities List: Request for comments.

**SUMMARY:** The Environmental Protection Agency (EPA), Region 9, announces its intent to delete the Louisiana-Pacific Site (the "Site") in Oroville, California, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR Part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of California Department of Toxic Substances Control have determined that the Site poses no significant threat to human health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

**DATES:** Comments concerning the proposed deletion of this Site from the NPL may be submitted on or before September 26, 1996.

**ADDRESSES:** Comments may be mailed to the following address: Keith Takata, Director, Superfund Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

Comprehensive information on this Site is available through the EPA Region 9 public docket, which is located at EPA Region 9's Superfund Records Center, at the address above, and is available for viewing between 8 a.m. and 5 p.m., Monday through Friday, excluding holidays. Additional information on the Louisiana-Pacific Superfund Site, including that contained in the public docket, is also available for viewing at the Site repositories:

Butte County Public Library, 1820 Mitchell Avenue, Oroville, CA 95966, (916) 538-7596

Meriam Library, California State University at Chico, Chico, CA 95929-0295, (916) 898-5710

**FOR FURTHER INFORMATION CONTACT:**

Frederick Schaffler, U.S. Environmental Protection Agency, 75 Hawthorne Street (H-7-2), San Francisco, CA 94105, (415) 744-2359.

**SUPPLEMENTARY INFORMATION:**

Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

#### I. Introduction

The Environmental Protection Agency (EPA), Region 9, announces its intent to delete the Louisiana-Pacific Site, located in Oroville, California, from the National Priorities List (NPL) and requests comments on this deletion. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. EPA identifies sites that present a significant risk to public health, welfare, or the environment and maintains the NPL as a list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

EPA will accept comments on the proposal to delete this Site for thirty days after publication of this notice in the Federal Register.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Louisiana-Pacific Site and explains how the Site meets the deletion criteria.

#### II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on, the NPL when no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required; or

(ii) All appropriate response under CERCLA has been implemented and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment, and therefore, taking of remedial measures is not appropriate.

The levels of hazardous substances, pollutants, or contaminants that remain at the Site are within the levels that allow for unlimited use and unrestricted exposure. Thus, subsequent review of the Site pursuant to section 121(c) of CERCLA, will not be required. If new information that indicates a need for further action becomes available, EPA may initiate response actions. Wherever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

#### III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 9 has recommended deletion and has prepared the relevant documents; (2) the State of California has concurred with the proposed deletion decision; (3) a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available for public review in the local Site information repositories.

Deletion of the Site from the NPL does not itself create, alter or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this Notice, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of this Site, EPA's Regional Office will accept and evaluate

public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final notice in the Federal Register. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to interested parties by the Regional Office.

#### IV. Basis for Intended Site Deletion

##### A. Site Background

The Louisiana-Pacific (L-P) Superfund Site consists of a wood processing plant and landfill located in Butte County just south of the city limits of Oroville, California (population 10,560). The plant and landfill are located about 1/2 mile apart and are separated by the Koppers Company, Inc., Superfund site, which is also on the NPL.

Log storage, lumber production and hardboard manufacturing take place at the L-P plant. It lies in the Feather River floodplain at an elevation of about 145 feet above mean sea level in an area of tailings piles created by dredger mining activities that ceased around 1936. The northern part of the plant is occupied by buildings and paved with asphalt. The central part of the plant has been graded relatively level for log storage. The western margin and southwest corner of the plant retain much of the historic, irregular dredge-tailing topography since modified by quarrying for log-deck base material.

Land use in the vicinity of the Site is mixed agricultural, residential, commercial and industrial. One- to five-acre farms exist, and much of the produce and livestock is raised for home use and not sold commercially. Residential areas are located to the south, southeast, west and northeast of the Site. Three schools are located within a two-mile radius of the Site.

##### B. History

Georgia-Pacific Corporation purchased the present L-P site in 1969 and completed construction of the sawmill facility in 1970. Louisiana-Pacific Corporation took control of the property in 1973. The hardboard facility was constructed in 1973, and L-P began operations at the landfill in 1978.

Between 1970 and 1984, L-P used a fungicide spray containing pentachlorophenol (PCP) to prevent fungal discoloration of sawn lumber. In 1973, a state agency discovered PCP

contamination in local groundwater south of the L-P and Koppers plants. PCP contamination was also detected in surface water, sawdust and wood waste at the L-P plant and landfill. As a result, the L-P site was placed on the NPL in February 1986. In December 1986, EPA began remedial investigations of surface water, soil, sediment, groundwater, wood waste and air at the L-P site to characterize the nature and extent of contamination. EPA issued the Remedial Investigation (RI) report and the Endangerment Assessment in 1989. Concurrent investigations of air quality were conducted by L-P and the Butte County Air Pollution Control District over a one-year period beginning in 1988. The Feasibility Study (FS) report was issued in May 1990.

In September 1990, EPA issued an Interim Record of Decision that required institutional controls as well as further soil sampling for arsenic and groundwater monitoring for arsenic and formaldehyde. L-P conducted the required sampling and monitoring pursuant to an administrative order issued by EPA in July 1991. The results indicated that contaminant concentrations in soil and groundwater at the Site do not pose a significant risk to human health or the environment. EPA issued a final ROD in August, 1995, documenting that no further remedial action was necessary at the L-P site.

##### C. Community Relations Activities

Fact sheets were sent out to the public at key progress points in the investigation. Technical exchange meetings were held monthly or bimonthly at the Site during the field work phase of the RI, with representatives of public agencies and local citizen groups invited to attend. RI/FS documents, including the Remedial Investigation report, the Endangerment Assessment report, and the Feasibility Study report, were sent to the local libraries and a representative of a community group. Similarly, documents prepared by L-P and EPA following the 1990 Interim ROD also were sent to local libraries.

The May 1995 proposed plan was distributed using EPA's mailing list for this site. A public comment period on the proposed plan was held between May 20, 1995 and June 19, 1995. Public notice appeared in local newspapers, including the Oroville Mercury-Register, prior to the opening of the public comment period. A formal public meeting was held on June 1, 1995.

##### D. Characterization of Risk

The results of the EPA and L-P investigations have shown that

groundwater, surface water, soil, sediment and wood waste contain various contaminants used by L-P and Koppers. Concentrations on the L-P plant were found to be highest in an area along the L-P/Koppers boundary. Contaminants in this area will be addressed as part of the Koppers cleanup. Although PCP, arsenic and formaldehyde were detected in soils and groundwater elsewhere at the L-P site, the concentrations were below state and federal drinking water standards (for arsenic and PCP) and health-based levels of concern (for formaldehyde). EPA believes that conditions at the Site pose no unacceptable risks to human health or the environment.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "all appropriate response under CERCLA has been implemented and no further action by responsible parties is appropriate". EPA, with the concurrence of the California Department of Toxic Substances Control, believes that this criterion for deletion has been met. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the Regional NPL Docket.

Dated: August 9, 1996.

Felicia Marcus,

Regional Administrator.

[FR Doc. 96-21572 Filed 8-26-96; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 20

[CC Docket No. 94-54; FCC 96-284]

#### Provision of Roaming Services by Commercial Mobile Radio Service Providers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission adopts a *Second Report and Order* and *Third Notice of Proposed Rulemaking* regarding the offering of roaming services by commercial mobile radio service providers. The *Second Report and Order* portion of this decision is summarized elsewhere in this issue of the Federal Register. The *Third Notice of Proposed Rulemaking (Third NPRM)* seeks comment on whether the Commission should adopt rules governing cellular, broadband personal communications services and certain specialized mobile radio (covered SMR)

carriers' obligations to provide automatic roaming service, and on a range of related issues. The action is taken to promote competition in commercial mobile radio services, thus securing lower prices and high quality services for consumers while encouraging the rapid deployment of new telecommunications technologies.

**DATES:** Comments are due on or before October 4, 1996, and reply comments are due on or before November 22, 1996.

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

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Steinberg, Wireless Telecommunications Bureau, (202) 418-1310.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the *Third Notice of Proposed Rulemaking* segment of the *Second Report and Order and Third Notice of Proposed Rulemaking* in CC Docket No. 94-54, FCC 96-284, adopted June 27, 1996, and released August 13, 1996. The *Second Report and Order* portion of this decision is summarized elsewhere in this edition of the Federal Register. The complete text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Third Notice of Proposed Rulemaking

1. In this *Third Notice of Proposed Rulemaking (Third NPRM)*, the Commission continues its examination of issues concerning the offering of roaming services by commercial mobile radio service (CMRS) providers. "Roaming" occurs when the subscriber of one CMRS provider utilizes the facilities of another CMRS provider with which the subscriber has no direct pre-existing service or financial relationship to place an outgoing call, to receive an incoming call, or to continue an in-progress call. Typically, although not always, roaming occurs when the subscriber is physically located outside the service area of the provider to which he or she subscribes. Under § 22.901 of the Commission's rules, cellular system licensees "must provide cellular mobile radiotelephone service upon request to all cellular subscribers in good standing, including roamers, while such subscribers are located within any portion of the authorized cellular geographic service area \* \* \* where

facilities have been constructed and service to subscribers has commenced."

2. Roaming service can be provided through a variety of technical and contractual arrangements. The most rudimentary form of roaming is manual roaming. Manual roaming is the only form of roaming that is available when there is no pre-existing contractual relationship between a subscriber, or her home system, and the system on which she wants to roam. In order to make or receive a call, a manual roamer must establish such a relationship. Automatic roaming, by contrast, means that the roaming subscriber is able to originate or terminate a call without taking any action other than turning on her telephone. This form of roaming requires a contractual agreement between the home and roamed-on systems.

3. This proceeding was initiated in a *Notice of Proposed Rulemaking and Notice of Inquiry*, which may be found at 59 FR 35664, July 13, 1994. A *Second Notice of Proposed Rulemaking (Second NPRM)* concerning roaming was released more than one year ago (60 FR 20949, April 28, 1995). At that point, the Commission's initial broadband PCS auctions had just been conducted and licenses were not yet issued. The business plans of companies entering the market for broadband PCS services were in their formative stages. No dual band or dual mode phones were yet available, and no broadband PCS provider had experience trying to negotiate a roaming agreement. The comments received in response to the *Second NPRM* largely reflected the nascent nature of the market's development. Based on this record, the Commission promulgated rules governing manual roaming in the *Second Report and Order*, which is summarized elsewhere in this issue of the Federal Register. However, the record yielded by these comments was inconclusive with respect to automatic roaming issues.

4. The record established by the comments submitted to date, while not providing a basis for the Commission to adopt automatic roaming rules, does persuade the Commission of the need to seek up-to-date information on events of the past year concerning automatic roaming issues. In general, the record raises the question whether, during the broadband PCS buildout period, market conditions may create economic incentives for certain CMRS carriers to discriminate unreasonably in the provision of roaming, or to otherwise engage in unjust or unreasonable practices with regard to roaming. Given the importance that the Commission

attaches to ensuring the widespread availability of roaming, and the inconclusiveness of the current record, the Commission requests additional comment on whether it would serve the public interest to adopt rules governing the provision of automatic roaming service by CMRS providers to other CMRS providers.

5. The Commission's consideration of automatic roaming issues is framed by three general questions. First, is there a need for Commission action? Second, if the Commission is persuaded that regulation would serve the public interest, what specific action should be taken? Third, what are the disadvantages of such action, especially as to network costs and additional burdens on providers, particularly smaller providers?

6. Commenters disagree on whether incumbent CMRS providers have the market power and the economic incentive to deny roaming agreements to new entrants. The Commission requests comment on this issue, and also on whether the geographic scope of broadband PCS licenses may reduce the importance of roaming to ensuring the ability of PCS providers to compete. Most roaming appears to occur in adjacent markets. The relatively limited geographic scope of cellular service areas prompted cellular carriers to compete for customers based on the extent of their roaming networks and their roaming rates and features. In contrast, broadband PCS license areas are significantly larger than cellular. Accordingly, broadband PCS customers can go much further distances without roaming. This raises the question of whether broadband PCS providers need to be able to offer automatic roaming arrangements in order to be able to compete.

7. In order to determine whether incumbent wireless providers have an incentive to, and will, deny roaming agreements to other providers, the Commission seeks evidence of the denial of such agreements, or unreasonable discrimination in the provision of agreements. Additionally, comment is requested on the likelihood of discrimination among wireless carriers belonging to partnerships, joint ventures, and other alliances among cellular carriers. The Commission further seeks comment on whether the geographic extent of a carrier's license holdings (in particular, carriers whose cellular and/or PCS holdings give them essentially nationwide, facilities-based operating "footprints") affects its incentive to enter into roaming agreements with smaller competitors in a way that merits a roaming

requirement. The Commission seeks comment, too, on whether requiring carriers to enter into roaming agreements will affect the value of these carriers' nationwide footprints.

8. The Commission next seeks comment on whether new entrants currently have viable options to obtain automatic roaming if incumbent cellular providers unreasonably deny such agreements. The Commission notes that although the deployment of multiple CMRS networks will, in the long run, increase the number of parties with which roaming agreements can be obtained in any area, such networks will not be widely available during the construction period of broadband PCS. The Commission solicits comment on the timing of such construction period. AT&T argues that, to the extent this is a problem at all, a PCS carrier can obtain roaming service during the buildout period in any market by entering into a contractual agreement with a cellular carrier that already possesses a roaming agreement in that market. The Commission seeks comment on whether AT&T's proposal for new entrants to "piggyback" on existing roaming arrangements is a reasonable means for carriers to obtain roaming capability.

9. To the extent that a basis for Commission action on automatic roaming is established, comment is invited on what the nature of that action should be. The Commission requests comment on whether, as a condition of license, it should require cellular, broadband PCS and covered SMR providers which enter into roaming agreements with other such providers to make like agreements available to similarly situated providers, where technically compatible handsets are being used, under nondiscriminatory rates, terms and conditions. The Commission clarifies that such a rule would need to recognize that not all carriers are similarly situated. Thus, such a rule need not require carriers to offer roaming agreements to all other carriers on the same terms and conditions, or even to offer roaming service to any carrier at all. The Commission seeks comment on the question of whether a covered CMRS provider that enters into a roaming agreement with another CMRS provider, however, should be required to offer like roaming agreements to other similarly situated providers upon reasonable request, without unreasonably discriminating on rates, terms, and conditions. The Commission seeks information and comment on the cost and burden of such a requirement.

10. In response to suggestions raised in the comments, the Commission asks whether a carrier should be able to offer a more favorable rate to its affiliates. Similarly, the Commission seeks comment on whether a carrier should be able to offer a lower rate to a geographically proximate carrier. The Commission also seeks comment on whether, as a general matter, it would serve the public interest to require carriers to make roaming service available to other carriers pursuant to one-way agreements under the same terms and conditions as under reciprocal agreements. The Commission invites comment on whether carriers should be permitted to refuse to enter into automatic roaming agreements with other facilities-based carriers in their markets, and on the advantages and disadvantages of a rule that would facilitate such "in-region" roaming. Comment is further solicited on how in-region roaming may affect carriers' incentives to build out their networks. The Commission also seeks comment on how an exception that permits carriers to deny roaming agreements to in-region competitors could be administered, given the different geographic scope of cellular, broadband PCS and covered SMR licenses and operations.

11. The Commission, in response to arguments that special rules are necessary to protect the right of resellers to enter into roaming agreements, does not propose to regulate the prices that carriers may charge resellers (or anyone else) for roaming, other than perhaps to prohibit discrimination in the prices charged to similarly situated carriers. However, the Commission seeks comment on the additional costs and burdens that may be imposed on facilities-based carriers if they are required to separately enter into agreements with multiple resellers. The Commission also seeks comment on what, if any, benefits might be generated by enabling resellers to obtain roaming agreements.

12. One of the principal reasons for the Commission's tentative conclusion in the *Second NPRM* to monitor the development of roaming, rather than to propose rules at that time, was its concern that technical factors might render compliance with rules unduly costly for providers, or that its rules might inadvertently impede technological progress. Based on the comments received, the Commission is not persuaded that an automatic roaming rule would have such an effect unless it required direct interconnection of networks for the continuation of calls in progress. While handoff of calls in progress is available at this time in some

cellular markets, it is much less widespread than originating and terminating access. More importantly, the record does not indicate that broadband PCS or cellular providers need to be able to obtain "continuation of calls in progress" roaming capability in order to compete. For these reasons, the Commission does not propose to require continuation of calls in progress. The Commission seeks additional technical information on this subject, and requests comment on this analysis.

13. Comment is also sought on whether and how rules governing automatic roaming could be at odds with the Commission's general policy of allowing market forces, rather than regulation, to shape the development of wireless technologies. The Commission's goal would be to make any rule it adopts consistent with such a policy. For example, under such a rule, if systems used different technologies or operated on different frequencies, the Commission believes the carrier seeking to enable its subscribers to roam on another system would have the burden of developing and implementing any technology necessary to achieve that result. Furthermore, on the basis of the existing record, the Commission believes any automatic roaming rule should be sufficiently flexible to permit a carrier to change its technology for legitimate business reasons without any obligation to make its system accessible to roamers using different technologies, to the extent such a technology change is otherwise permitted by the Commission's rules. A carrier could not, however, introduce features into its system in order to obstruct service to roamers from systems using otherwise compatible technologies. The Commission seeks comment on this analysis.

14. Requiring non-discrimination in roaming agreements would, theoretically, generate certain benefits. However, there also are potential downsides to imposing an automatic roaming requirement. First, imposing such a requirement is inconsistent with the Commission's general policy of allowing market forces, rather than regulation, to shape the development of wireless services. Similarly, it could be viewed as at odds with Congress' goal in adopting the Telecommunications Act of 1996 of creating a "pro-competitive, deregulatory national policy framework" for the United States telecommunications industry. Does the importance of roaming and the potential for discrimination warrant a departure from the Commission's general

competitive, deregulatory approach to wireless?

15. Second, cellular carriers compete vigorously on the basis of their roaming services. If the Commission adopts an automatic roaming non-discrimination requirement, will carriers still be able to differentiate their roaming services? If they cannot, will this lessen competition in the wireless market? Also, what impact will a roaming requirement have on the development of new and improved roaming features?

16. Third, the imposition of an automatic roaming requirement could be costly and burdensome. There are currently approximately 1,400 cellular systems; the Commission anticipates that broadband PCS and covered SMR providers, once licensed, will expand that number appreciably. What network and administrative costs are associated with entering into and maintaining roaming agreements among all such carriers? Will carriers, particularly smaller carriers, be able to absorb these costs or to recover them from their customers or other carriers? In this regard, the Commission emphasizes that it is *not* considering requiring carriers to upgrade their networks or implement any technology solely to enable roamers on different frequencies or with different air interface devices to complete calls on their systems. Similarly, the Commission is not considering requiring carriers to interconnect their networks to ensure that calls in progress can continue.

17. Some commenters argue that a roaming requirement would unduly expose CMRS providers to losses due to fraud, or that fraud cannot be controlled without direct interconnection of switches. The Commission seeks further comment on these arguments. The Commission notes that cellular carriers have exercised various options to protect themselves under the existing manual roaming rule, such as requiring manual roamers to supply a valid credit card number. The Commission seeks comment on whether similar protective measures would be available and equally effective if an automatic roaming rule is adopted. The Commission also seeks comment on whether carriers could include in their agreements with other carriers provisions to suspend roaming service in case of fraud, or other appropriate anti-fraud provisions, so long as they do so on a nondiscriminatory basis, and whether a particular carrier that poses an unusually high risk of fraud could for that reason be differently treated with respect to the terms of a roaming agreement.

18. Regarding establishment of a sunset period, the Commission agrees with those who contend that roaming regulations should apply only for a transitional period. The Commission believes that once broadband PCS providers' buildout periods are completed, sufficient wireless capacity will be available in the market and, as a result, any roaming regulations, whether manual or automatic, likely will become superfluous. The Commission further believes that, given the availability of sufficient capacity, a carrier would not have either the incentive or the ability to unreasonably deny manual roaming to an individual subscriber, or to unreasonably refuse to enter into an automatic roaming agreement with another CMRS provider, because some other carrier in its service area would be willing to do so. The Commission anticipates, due to its broadband PCS build-out requirement,<sup>1</sup> that the market for cellular, broadband PCS and covered SMR services will be substantially competitive within five years after the Commission completes the initial round of licensing broadband PCS providers. The Commission therefore believes that any action taken concerning automatic roaming should sunset five years after award of the last group of initial licenses for currently allocated broadband PCS spectrum. The Commission seeks comment on this issue. The Commission also seeks comment on whether, for the same reasons, the manual roaming rule adopted in the *Second Report and Order* portion of this decision also should sunset at the expiration of this five-year period. The Commission notes that this is the same sunset period recently adopted for its resale rule, and that the commencement of the five-year period will be announced by Public Notice.

19. Finally, in order to provide automatic roaming and adequately protect itself against fraud, a carrier would have to make arrangements with a subscriber's home system to verify the validity of the subscriber's account. The *Second NPRM* noted that such arrangements, as well as other arrangements that may be necessary for subscribers to use special features while roaming, may implicate concerns relating to subscriber privacy and carrier control over proprietary information, and it requested comment on these issues. Since that time, however, Congress has amended the Communications Act by adding a new section 222, which generally prohibits a carrier that obtains proprietary information from another carrier for

purposes of providing a telecommunications service from using that information for any other purpose. The Commission tentatively concludes that the treatment of roaming-related access to proprietary information is governed by section 222.

#### Filing Procedures

20. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules,<sup>2</sup> interested parties may file comments on or before October 4, 1996, and reply comments on or before November 22, 1996. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus eight copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. A copy of each filing also should be sent to International Transcription Service (ITS), 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800, and to Rita McDonald, Federal Communications Commission, Wireless Telecommunications Bureau (WTB), Policy Division, 2025 M Street, NW., Room 5202, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, 1919 M Street, NW., Room 239, Washington, DC 20054.

21. Parties are encouraged to submit comments and reply comments on diskette. Such diskette submissions would be in addition to and not a substitute for the formal filing requirements presented above. Parties submitting diskettes should submit them to Rita McDonald of the WTB Policy Division. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible form using WordPerfect 5.1 for Windows software. The diskette should be submitted in "read only" mode, and should be clearly labelled with the party's name, the proceeding (CC Docket No. 94-54), the type of pleading (comment or reply comment) and the date of submission.

22. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda

<sup>1</sup> See 47 CFR 24.203.

<sup>2</sup> 47 CFR 1.415, 1.419.

period, provided they are disclosed as provided in the Commission's Rules.<sup>3</sup>

## Initial Regulatory Flexibility Analysis

### I. Reason for Action.

23. This *Third Notice of Proposed Rulemaking (Third NPRM)* requests comment on whether the Commission should promulgate transitional regulations governing certain commercial mobile radio service (CMRS) providers' obligations to enter into "automatic" roaming agreements with other carriers. The Commission determines that a further NPRM is necessary because the existing record does not sufficiently illuminate the costs and benefits of an automatic roaming rule. In particular, at the time comments were filed no broadband PCS providers were in operation, and most providers were only beginning to formulate their business plans. Therefore, the record does not reflect the actual experience of broadband PCS providers in attempting to negotiate roaming agreements. Although some comments in the record suggest that an automatic roaming rule may be necessary to ensure new entrants an equal opportunity to compete, other commenters argue that established providers do not have an incentive to deny automatic roaming agreements or unreasonably discriminate against new entrants.

24. The Commission also requests comment on whether the manual roaming rule adopted in the *Second Report and Order* portion of this decision should sunset five years after the last group of initial licenses for currently allotted broadband PCS spectrum is awarded. Although the Commission expects that market forces will render a manual roaming rule unnecessary once broadband PCS licensees have substantially built out their networks, the existing record is insufficiently developed to support a decision regarding the advantages, disadvantages, and implications of sunsetting the manual roaming rule.

### II. Objectives of Proposed Rules.

25. The Commission's principal objective in this *Third NPRM* is to obtain information on the costs and benefits of an automatic roaming rule. In particular, the Commission seeks comment on whether it should adopt a rule requiring providers that enter into roaming agreements with any other provider to make like agreements available to similarly situated providers under nondiscriminatory rates, terms,

and conditions. The Commission also seeks comment on the potential costs of an automatic roaming rule, including whether such a rule would inadvertently impede technological progress, whether it would interfere with free and open competition, whether it would expose providers to the risk of losses due to fraud, and what administrative costs would be involved. The Commission seeks comment on how any rule should be drafted to minimize such costs. An additional objective is to obtain information on the advantages, disadvantages, and implications of sunsetting the manual roaming rule.

### III. Legal Basis for Proposed Rules.

26. If adopted, any changes to the Commission's roaming rules would be authorized under sections 1, 4(i), 4(j), 201, 202, 303(r), 309, 332, and 403 of the Communications Act of 1934, as amended, 47 USC 151, 154(i), 154(j), 201, 202, 303(r), 309, 332, 403.

### IV. Description and Estimate of Small Entities Subject to the Rules.

27. Pursuant to the Contract with America Advancement Act of 1996,<sup>4</sup> the Commission is required to estimate in its Final Regulatory Flexibility Analysis the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total CMRS entities would be affected by the regulations on which the Commission seeks comment in this *Third NPRM*. In particular, the Commission seeks estimates of how many affected entities will be considered small businesses.

28. The regulations on which the Commission seeks comment, if adopted, would apply to providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under § 90.629 of the Commission's rules. However, the rules would apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network.

29. As explained in the Final Regulatory Flexibility Analysis included in the full text of this *Second Report and Order and Third Notice of Proposed Rulemaking*, there are different definitions of "small business" for the

various services affected by this proceeding. Since the Commission has not defined small business with respect to cellular service, we are utilizing the Small Business Administration's definition applicable to radiotelephone companies—i.e., an entity employing fewer than 1,500 persons.<sup>5</sup> With respect to broadband PCS, the Commission has refined the definition of a small business to mean firms that have had average gross revenues of not more than \$40 million in the preceding three calendar years.<sup>6</sup> With respect to 800 MHz and 900 MHz SMR services, the Commission has defined small businesses as firms that have had average gross revenues of not more than \$15 million in the preceding three calendar years.<sup>7</sup>

30. The Commission seeks comment as to whether our use of these definitions is appropriate in this context. Additionally, we request commenters to identify whether they are small businesses under these definitions. For commenters that are a subsidiary of another entity, we seek this information for both the subsidiary and the parent corporation or entity.

### V. Reporting, Recordkeeping, and Other Compliance Requirements.

31. The proposals under consideration in this *Third NPRM* would not involve any reporting or recordkeeping requirements. The only likely compliance requirement would be to refrain from prohibited discrimination in offering roaming agreements to other carriers. If a sunset of the manual roaming rule is adopted, the effect would be to relieve affected providers from compliance requirements after the sunset takes effect.

### VI. Significant Alternatives Considered and Rejected.

32. The Commission considered and rejected the alternative of adopting an automatic roaming rule without further comment because it concluded that the record before it did not establish that an automatic roaming rule is necessary, and did not sufficiently develop the costs of any such rule. At the same time, the Commission rejected the alternative of declining to adopt an automatic roaming rule without further inquiry. Some commenters made cogent arguments that established providers might have the ability and incentive to disadvantage their competitors by

<sup>5</sup> 13 CFR § 121.201, Standard Industrial Classification Code 4812.

<sup>6</sup> See 47 CFR § 24.720(b).

<sup>7</sup> See 47 CFR § 90.814(b)(1).

<sup>3</sup> See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

<sup>4</sup> Pub. L. 104-121, 110 Stat. 847 (1996).

denying them nondiscriminatory roaming agreements, and the Commission believed these arguments should be further explored in light of ongoing developments.

33. The Commission did determine, however, that certain forms of regulation should not be proposed in the *Third NPRM*. In particular, the Commission rejected any proposal that would require carriers to adopt particular technology or modify their networks so as to offer roaming arrangements to any provider. Similarly, the Commission determined not to propose regulation of agreements between carriers to hand off calls in progress because the record indicated that such arrangements may be technically and administratively complex and because there was no evidence that access to such arrangements is important to providers' ability to compete. The Commission also rejected any alternative that would require carriers to do more than refrain from discrimination among similarly situated providers. Thus, the Commission does not propose to require carriers to offer roaming agreements under any particular terms and conditions, or even to offer roaming service to any carrier at all.

34. In addition, the Commission rejected the alternative of proposing to apply any automatic roaming rule to CMRS providers other than cellular, broadband PCS, and covered SMR carriers because the record did not establish that ubiquitous roaming capability is important to the competitive success or utility of these services. The Commission also rejected the alternative of proposing to continue any automatic roaming rule indefinitely because it believes that any necessity that may now exist for such a rule would be obviated once broadband PCS networks are substantially built out. With respect to manual roaming, the Commission requests comment on a sunset for similar reasons, but it rejected the alternative of imposing a sunset at this time because the existing record does not develop the implications of such a sunset.

*VII. Federal Rules That Overlap, Duplicate, or Conflict with These Proposed Rules.*

35. None.

*VIII. IRFA Comments*

36. The Commission requests written public comment on the foregoing Initial Regulatory Flexibility Analysis (IRFA). Comments must have a separate and distinct heading designating them as responses to the IRFA and must be filed

by the deadlines specified in paragraph 37 of the *Second Report and Order and Third Notice of Proposed Rulemaking*.

List of Subjects in 47 CFR Part 20

Communications common carriers.

Federal Communications Commission

William F. Caton,

*Acting Secretary.*

[FR Doc. 96-21796 Filed 8-26-96; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Part 571**

[Docket No. 96-093; Notice 1]

**Public Meeting—Heavy Vehicle Safety**

**AGENCY:** National Highway Traffic Safety Administration, Transportation.

**ACTION:** Notice of public meeting.

**SUMMARY:** This document announces a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will seek information from interested persons on the design and performance of heavy trucks and intercity and transit buses, as related to their safe operation. NHTSA also will consider suggestions for rulemakings and other actions that the agency should take to enhance the safety performance of heavy vehicles. This document also invites written comments on the same subject. School bus issues are excluded from this notice, since they are being addressed under separate agency actions.

**DATES:** *Public meeting:* The meeting will be held on October 17, 1996, from 10:00 am until 4:00 pm. Those wishing to make an oral presentation at the meeting should contact Darlene Curtin at the address, telephone number, or fax number listed below by September 30, 1996.

*Written comments:* Written comments are due by October 28, 1996.

**ADDRESS:** *Public meeting:* The public meeting will be held at the Westin Hotel, Renaissance Center, Detroit, Michigan 48243, Phone (313) 568-8200.

*Written comments:* All written comments should be mailed to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 7th Street, SW., Washington, DC 20590. Please refer to the docket and notice number at the top of this notice when submitting written comments.

**FOR FURTHER INFORMATION CONTACT:** Darlene Curtin, Office of Crash

Avoidance Standards, NHTSA, 400 7th Street, SW, Room 5320, Washington, DC 20590. Telephone 202-366-4931; Fax 202-366-4329.

**SUPPLEMENTARY INFORMATION:**

*Regulatory Reform*

Calling for a new approach to the way government interacts with the private sector, President Clinton asked the Executive Branch agencies to improve the regulatory process and seek non-regulatory means of working with the public and regulated industries. Specifically, the President requested that agencies: (1) cut obsolete regulations; (2) reward results; (3) meet with persons affected by and interested in its regulations; and (4) use consensual rulemaking more frequently. This notice responds to the third item by scheduling a meeting with the public with regard to the safety of heavy vehicles as affected by their design and performance characteristics.

*Issues to be Addressed*

This public outreach meeting represents a continuation of the agency's longstanding policy of working collaboratively with all parties who are concerned about this vital aspect of motor vehicle and highway safety. Truck crash involvement rates have improved markedly over the past 10 years, a time period during which truck travel grew 43 percent. Between 1982 and 1992, the fatal crash involvement rate for medium and heavy trucks fell 38 percent. The comparable rate for passenger cars dropped 39 percent during that same time period. Between 1989 and 1993, the involvement rate of medium and heavy trucks in all crashes (both fatal and non-fatal) decreased 11 percent. Notwithstanding these positive trends, there were 445,000 crashes in 1994 involving a medium/heavy truck. A total of 5,112 people were killed in those crashes, 13 percent of all those killed in highway related crashes that year. The majority of those killed were occupants of other vehicles involved in collisions with medium/heavy trucks.

To address this issue, the agency has worked extensively with industry and other interested parties to develop programs that will lead to effective and practical solutions for improving heavy vehicle safety. Most recently, in June 1995, the agency published a 5-year Heavy Vehicle Safety Research Program Plan which contains a listing of topics that were identified as being appropriate targets for further improvements in heavy vehicle safety design and performance. Prospective commenters and participants are referred to that

document as background material for this meeting. Copies are available upon request to Mr. James Britell at (202) 366-5678 or fax at (202) 366-7237.

NHTSA is interested in obtaining information from the public about how the agency, and the private sector, can best move forward over the next two to five years to foster, or possibly require, the implementation of additional technological improvements in heavy trucks and intercity and transit buses. The agency's strategic research plan identified a number of broad subject areas where technological opportunities exist for safety enhancement, including:

- \* Advanced technology electronics-based collision avoidance systems
- \* Driver/vehicle interaction, ergonomics/human factors
- \* Braking performance
- \* Vehicle dynamic stability/control/handling
- \* Truck occupant protection and inter-vehicle collision aggressivity reduction.

Commenters and participants are encouraged to focus on these topics, or others if they deem it appropriate, when preparing their suggestions and comments.

Among other things, NHTSA is holding this meeting to help assess how best to proceed with resource allocation and prioritization (both public and private sector), agenda setting (both research and regulatory), and other activities for improving the safety performance of heavy trucks and intercity and transit buses. The agency hopes to obtain information from the public, including private and commercial drivers, product suppliers, motor vehicle and trailer manufacturers, vehicle and traffic safety organizations, consumer groups, and others. This information will help NHTSA focus its rulemakings and other actions.

NHTSA will entertain suggestions for rulemakings, research, and other activities that the agency should undertake. Suggestions for agency action should be accompanied by a rationale for the action and the expected benefits and other consequences.

#### Procedural Matters

The public meeting will begin at 10:00 am on October 17, 1996, and is scheduled to conclude at 4:00 pm. It will take place on the day following the close of the SAE's Annual Truck and Bus Meeting and Exposition. The location will be the Westin Hotel, Renaissance Center, Detroit, Michigan. Persons wishing to speak at the public meeting should contact Darlene Curtin by the indicated date, and must include requests for audio-visual aids. Those

speaking at the public meeting should limit their presentations to 15 minutes. If a presentation will include slides, motion pictures, or other visual aids, the presenters should bring at least one copy to the meeting for submission to NHTSA, so that NHTSA can readily include the material in the public record. At the meeting, NHTSA staff may ask questions of any speaker, and any participant may submit written questions for the NHTSA staff. NHTSA may, at its discretion, address the latter to other meeting participants. There will be no opportunity for participants directly to question each other. If time permits, persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so.

A schedule of participants making oral presentations will be available at the designated meeting room. A copy of any written statements provided to NHTSA at the meeting will be placed in the docket relating to this notice. A verbatim transcript of the meeting will be prepared and placed in the NHTSA docket as soon as possible after the meeting.

Participation in 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.

NHTSA will continue to file relevant information in the docket as it becomes available after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Issued: August 22, 1996.

Barry Felrice,

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 96-21819 Filed 8-26-96; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 227 and 425

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17 and 425

### Endangered and Threatened Species; Notice of Public Meetings, Public Hearings and Extension of Comment Period on Proposed Threatened Status for a Distinct Population Segment of Anadromous Atlantic Salmon (*Salmo Salar*) in Seven Maine Rivers

**AGENCIES:** National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; and Fish and Wildlife Service, Interior.

**ACTION:** Reopening of public comment period and announcement of public meetings and hearings.

**SUMMARY:** The National Marine Fisheries Service and the Fish and Wildlife Service, collectively the Services, give notice that the public comment period has been reopened in regards to the proposed threatened status designation for a distinct population segment of anadromous Atlantic Salmon (*Salmo Salar*) in the Sheepscot, Ducktrap, Narraguagus, Pleasant, Machias, East Machias, and Dennys Rivers in Maine. There will be three public meetings to present information and answer questions, followed immediately by more formal public hearings to accept verbal and written comments about the designation of this population segment as threatened. The comment period is reopened for a period of 45 days.

**DATES:** The combined public meeting and hearings will be held from 7 to 10 p.m. on September 17, Augusta, Maine; from 7 to 10 p.m. on September 18, Ellsworth, Maine; and from 7 to 10 p.m. on September 19, Machias, Maine. All scientific data and comments must be submitted to the Services by October 11, 1996.

**ADDRESSES:** *Comments:* Please send any written comments to Paul Nickerson, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035, or Mary Colligan, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930.

*Public Meetings and Hearings:*

1. Cushnoc Room, Augusta Civic Center, Community Drive, Augusta, Maine.

2. Ellsworth Middle School, 20 Forrest Avenue, Ellsworth, Maine.

3. Science 102, University of Maine—Machias, 9 O'Brien Avenue, Machias, Maine.

**FOR FURTHER INFORMATION CONTACT:** Paul Nickerson at (413) 253-8615 or Mary Colligan at (508) 281-9116.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(5)(E) of the Endangered Species Act requires that a public hearing be held on proposed regulations if requested within 45 days of the proposal's publication in the Federal Register. On September 29, 1995 (60 FR 50530), the Services published a proposed rule to list the DPS of Atlantic salmon as threatened. Public hearing requests were received during the allotted time period. The public comment period for this proposed action officially closed on December 28, 1995. Due to federal furloughs and legislative and funding restrictions imposed, the Departments of Commerce and Interior were not able to hold the requested public hearings during the original comment period.

On April 26, 1996, the President waived the moratorium on ESA listing actions, as authorized by the FY 96 Omnibus Appropriations Act for both the Departments of Commerce and Interior. The Services may now proceed with previously pending listing actions. Consequently we are now reopening the comment period on this proposed rule and announcing public hearings. The proposed rule published in September, included a special 4(d) provision that allowed the state of Maine the opportunity to develop a conservation plan for the species. Following publication of the proposed rule the Governor of Maine issued an Executive Order creating a task force to draft the conservation plan. That task force has been actively working on the plan since October, 1995. Separate hearings will be held by state officials on the conservation plan in early September.

During this comment period the Services desire any scientific and commercial data that may have become available since closure of the previous comment period on December 28, 1995. The Services final determination whether to list the DPS of Atlantic salmon will consider all comments received during this and earlier comment periods and may result in final regulations that differ from the proposal of September 29, 1995.

In response to the request for public hearings, the Services have scheduled three combined public meetings and hearings. The meetings will run from 7:00 p.m. to 8:15 p.m. and will be followed by a 15 minute intermission. During the public meeting, the Services will make a brief presentation and will informally answer questions about the proposal; state officials will also make a brief presentation on the status of the conversation plan and informally answer questions about the plan. The meeting will not be recorded and will not be part of the formal record.

The public hearings, which will begin at 8:30 p.m., will provide an opportunity for interested individuals to enter formal statements on the proposal, which will become part of the administrative record. Those parties wishing to make statements should present them to the Services at the start of the hearing. Oral statements must be limited to five minutes in length, however, there is no limit to the length of written comments or materials. Oral and written statements receive equal consideration during deliberations. Written comments may now be submitted through October 11, 1996 to either of the offices in the ADDRESSES section.

**Author**

The primary authors of this notice are Mary Colligan and Paul Nicherson (addresses are above).

Authority: The authority for this section is the ESA (16 U.S.C. 1531-1544).

Dated: August 14, 1996.

Ralph C. Pisapia,  
*Acting Regional Director, Region 5.*

Dated: August 22, 1996.

Rennie S. Holt,  
*Acting Director, Office of Protected Resources.*  
[FR Doc. 96-21505 Filed 8-26-96; 8:45 am]

**BILLING CODE 4310-55-M**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 960129019-6019-01; I.D. 081696B]

**Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Reallocation of Pacific Cod**

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

**ACTION:** Reallocation; request for comments.

**SUMMARY:** NMFS proposes to reallocate the projected unused amount of Pacific cod from vessels using trawl gear to vessels using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI) and is inviting comments. The proposed action is necessary to allow the 1996 total allowable catch (TAC) of Pacific cod to be harvested. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council).

**DATES:** Comments must be received at the following address no later than 4:30 p.m., Alaska local time, September 5, 1996.

**ADDRESSES:** Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, or delivered to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK Attn: Lori Gravel.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Director, Alaska Region, NMFS, has determined that vessels using trawl gear will not be able to harvest 15,000 metric tons (mt) of Pacific cod allocated to those vessels under § 679.20(a)(7)(i)(A).

As of July 27, 1996, NMFS estimates 47,540 mt remain in the trawl gear share of the 1996 Pacific cod TAC and projects that trawl gear will take 32,540 mt during the remainder of 1996.

Trawl fisheries that will take Pacific cod include the directed Pacific cod, yellowfin sole, pollock, and rockfish fishery. NMFS closed directed fishing for Pacific cod by vessels using trawl gear in the BSAI effective June 23, 1996, until October 25, 1996, to prevent exceeding the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl Pacific cod fishery category in the BSAI. The directed fishery for Pacific cod with trawl gear will open October 25, 1996. One hundred eighty nine mt of prohibited species bycatch allowance of halibut mortality remain in

that allocation. Based on 1995 halibut bycatch rates for that fishery, 11,040 mt of Pacific cod is expected to be harvested in the directed fishery for Pacific cod with trawl gear. The trawl yellowfin sole, rockfish, and pollock directed fisheries will take Pacific cod as bycatch. Based on the remaining halibut mortality and the ratio of halibut mortality to Pacific cod caught in those directed fisheries after August 1, 1995, 21,495 mt of Pacific cod are estimated to be needed.

The directed fishery for Pacific cod by vessels using hook-and-line gear will reopen on September 1 when 360 mt of prohibited species bycatch allowance of halibut mortality become available for that fishery. Based on the ratio of Pacific cod caught to halibut mortality during the September and October hook-and-line fishery in 1995, NMFS estimates that hook-and-line gear will take 31,000 mt of Pacific cod. Pot gear is expected to take an additional 3,500 mt during September and October of 1996. The

combined hook-and-line/pot gear capacity after September 1, 1996 is 34,500 mt. Without the proposed reallocation of Pacific cod from trawl to hook-and-line and pot gear, 20,000 mt of Pacific cod is expected to be available for vessels fishing with those gears.

During 1995 NMFS did not reallocate unused amounts of Pacific cod from vessels using trawl gear to vessels using hook-and-line/pot gear until November when the trawl component of the fishery had completed its season and the trawl catch for 1995 was realized. As a consequence, a portion of the hook-and-line/pot fleet was unable to participate and the remainder was unable to sustain a continuous fishery and experienced unnecessary expenses associated with initiating the short-term fishery during November. In addition, the halibut mortality incurred per metric ton of Pacific cod caught during the last opening of the fishery in 1995 was higher, providing less desirable utilization of halibut mortality.

Therefore, in accordance with § 679.20(a)(7)(ii), NMFS proposes to apportion the projected unused amount, 15,000 mt of Pacific cod from vessels using trawl gear to vessels using hook-and-line or pot gear.

NMFS invites public comments and will consider those received during the comment period in determining whether to reallocate an unused amount of Pacific cod from trawl gear to hook-and-line or pot gear.

#### Classification

This action is taken under 50 CFR 679.20, and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 20, 1996.

Richard H. Schaefer,  
*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 96-21709 Filed 8-21-96; 4:07 pm]

BILLING CODE 3510-22-F

# Notices

Federal Register

Vol. 61, No. 167

Tuesday, August 27, 1996

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

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## DEPARTMENT OF AGRICULTURE

### Alternative Agricultural Research and Commercialization (AARC) Corporation; Request for Proposals

**AGENCY:** Alternative Agricultural Research and Commercialization (AARC) Corporation, USDA.

**ACTION:** AARC Corporation Request for Proposals.

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#### Program Description

##### *Purpose*

The Alternative Agricultural Research and Commercialization (AARC) Corporation is requesting proposals to use agricultural (traditional and new crops, animal by-products or forestry) materials in industrial products or processes. The authority for the AARC program is contained in Sections 1660 and 1661 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. Law No 101-624, 7 U.S.C. 5904, as amended by the Federal Agricultural Improvement and Reform (FAIR) Act of April 4, 1996, (Pub. Law 104-127, Title VII, subtitle A, chapter 2, section 1657c). Potential funding for proposals to provide commercialization assistance to private companies using the Cooperative Agreements Program (Program) to assist emerging industrial products/processes involving the use of agricultural materials in non-food, non-feed, non-traditional fiber products or processes. The Board of Directors reserves the right to use only certain types of authorized assistance. Successful projects are expected to repay the AARC Corporation Revolving Fund through negotiated arrangements. The Program is administered by the AARC Corporation, which is a wholly-owned government Corporation of the U.S. Department of Agriculture.

The objectives of the AARC Corporation are:

\* To search for new non-food, non-feed, non-traditional fiber products that may be

produced from agricultural commodities and for processes to produce such products.

\* To conduct product and co-product/process development and demonstration projects, as well as provide commercialization assistance for industrial products from agricultural and forestry materials.

\* To encourage cooperative development and marketing efforts among manufacturers, private and government laboratories, universities, and financiers to assist in bridging the gap between research results and marketable, competitive products and processes.

\* To collect and disseminate information about commercialization projects that use agricultural or forestry materials and industrial products derived therefrom.

Under the Program, the AARC Corporation will award competitive cooperative agreements to support primarily pre-commercialization or commercialization tasks, including marketing for the development of new industrial products or processes derived from agricultural or forestry materials. All other things equal, the nearer to commercialization a product or process is, the higher the likelihood of funding by the AARC Corporation.

The AARC Corporation will accept either pre-proposals or full proposals. Pre-proposals will be evaluated to determine if an idea has sufficient merit to warrant a full proposal, including if it meets the AARC Corporation's mission, and to provide suggestions for improvement. Full proposals will require more time to complete and will be evaluated to determine if they warrant funding. The AARC Corporation may ask applicants submitting either pre-proposals or full proposals to make an oral presentation. All proposals will be evaluated by external reviewers, as well as by the AARC Corporation staff, before the proposals (along with review comments) are provided to the Board of Directors. The Board makes final funding decisions.

##### *Available Funding*

Congress has agreed to appropriate \$7 million in FY 1997.

The AARC Corporation Board expects applicants to, at minimum, match the dollars requested from the AARC Corporation. A preference may be given to projects for which the ratio of AARC Corporation funds to non-Corporation funds would be the lowest.

##### *Eligibility*

Proposals are invited from any private firm, individual, public or private educational institution or organization, federal agency, cooperative, or non-profit organization. Cooperative projects involving combinations of the above organizations, especially with private sector leadership, are strongly encouraged. Since this is basically a program to commercialize new products, and since repayment is expected, it is much more likely that awards will be given to private firms. Small business entrepreneurs are preferred. The private sector partner must take the lead when an educational institution is involved.

##### *Program Emphasis*

The AARC Corporation Board has approved funding for about 60 projects using 1993-96 appropriated funds. Another six projects are currently under consideration for funding with 1996 appropriations. Projects include use of a broad range of agricultural and forestry materials such as: soybean oil, soybean meal, cotton lint, peanut hulls, corn husks, wheat straw, milkweed, kenaf, castor oil, rapeseed, cuphea, crambe, ethanol, mesquite, hesperaloe, lesquerella, agricultural and forestry wastes, biomass, and plant proteins. Examples of products include: biocontrol agents, medium-density fiberboard and building materials from straw, hollow veneer poles, food packaging, bonded paper from kenaf, oil absorbents, fillers and yarn, spinning fibers, highway signposts and railroad ties, building and furniture composites, heating and electricity, potting mixes, biodiesel—as replacement for petroleum, biodegradable lubricants, coatings, cosmetics, detergents, personal care products, compost, carrier for crop protection materials, and cat litter.

##### *Evaluation Criteria*

The AARC Corporation's primary interest, in this request for pre-proposals/proposals, is in providing assistance in pre-commercial activities to move new industrial products from agricultural and forestry materials into the marketplace. The AARC Corporation Board seeks projects that will have market impact; this includes expanding use of agricultural or forestry materials in industrial products especially those that expand markets for farmers, create

jobs, spur rural development, provide environmental and/or conservation benefits, and improve trade. Emphasis will be given to those proposals whose products are closest to commercialization and have positive impact on rural employment and economic activity.

Proposals and pre-proposals will be evaluated on four primary criteria: management team capability, business and marketing soundness, technical factors, and expected time and magnitude of impacts if successful. Examples of types of information that will enter the decision process on each of the primary categories of criteria include:

Management: Capability of the management team.

Amount of matching funds (cash) committed.

Awareness of the financial resources needed to successfully market the product.

Clear identification of project milestones. Private sector leadership to commercialize the product or process.

Business: Potential profitability.

Clear identification of customers.

Structure of the market in terms of size, number, leading competitors, and reaction of competitors to a new product.

Amount and nature of the value added to the agricultural or forestry material.

Ability to replicate in other parts of the country.

Key issues and government policies or regulations that might impact success.

Applicant's ability and willingness to repay the AARC Corporation for the risk investment made by the American taxpayers.

Technical: Relation to previous work.

Technical requirements of the product—industry standards or guidelines.

Technical and market testing needed.

Government approvals or permit required.

Major technical hindrances.

Innovative techniques and patents.

Ability to achieve technical claims.

Present stage of development.

Impacts: Volume of agricultural or forestry material used.

Number and quality of jobs (especially in distressed rural areas) expected to be created—type, rural/urban, timeframe.

Potential positive and negative environmental impacts from production to consumer disposal of product.

Proposed product's implications for helping improve farm income, especially the family farm.

Resource conservation effects such as replacement of stock resources, crop diversification, soil erosion, water use, etc.

Estimated impact on export/import trade balance, commodity support programs and rural economic activity.

#### Other Considerations

With respect to projects carried out with private researchers or commercial companies, the enabling legislation provides that information submitted by

applicants incident thereto will be kept confidential. Project information including applications is specifically excluded from release under the Freedom of Information Act, except with the approval of the person providing the information or in a judicial or administrative proceeding in which such information is subject to protective order. However, the information will be reviewed by three reviewers who will be held to confidentiality. Board members are required to exclude themselves from consideration of a proposal where a conflict of interest exists.

Intellectual property rights, such as patents and licenses, shall remain with the owner unless other arrangements are negotiated as part of the agreement. Inventions made under an award under this Program shall be owned by the awardee in accordance with 35 U.S.C. 200–204 and 37 CFR 401.

No agreement may be entered into under the program for the acquisition or construction of a building or facility.

All applicants must file a declaration of compliance with 31 U.S.C. 1352 regarding limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions either prior to or simultaneous with the submission.

Due to limited funds, the AARC Corporation may not be able to fund all projects meriting support, and awards will be based on merit using the review evaluations and the Board's judgement.

Applicants who submitted a proposal or pre-proposal previously must reapply to be considered for Fiscal Year 1997 funding.

#### Future Proposals

In the future and until further notice, the AARC Corporation Board will accept proposals or pre-proposals at any time on AARC Corporation forms. The Board will meet at least three times a year to select proposals for funding.

#### Submissions

Because funds are limited, projects will be accepted on a first come basis. Applicants are encouraged to submit applications as soon as possible after seeing this notice. To be eligible for this round of AARC Corporation Board decisions, both pre-proposals and full proposals must be received at the AARC Corporation office. Pre-proposals are preferred. One of the following addresses should be used, as applicable:

Regular U.S. Mail

USDA AARC Corporation, STOP 0401, 1400 Independence Ave, S.W., 0156 South Building, Washington, D.C. 20250-0401

Overnight Delivery

USDA AARC Corporation, 1400 Independence Ave, S.W., Room 0156 South Building, Washington, D.C. 20250-0401

#### For More Information

Proposals must be submitted on forms provided by the AARC Corporation—either pre-proposals or full proposals. Contact the AARC Corporation by letter using the addresses above, or fax number (202) 690-1655 to receive a packet containing the instructions and application forms.

Specific questions should be directed to Patricia Dunn: Phone 202-690-1634.

Done in Washington, D.C., on August 21, 1996.

W. Bruce Crain,

Executive Director, AARC Corporation.

[FR Doc. 96-21815 Filed 8-26-96; 8:45 am]

BILLING CODE 3410-2B-M

#### Agricultural Marketing Service

[Docket No. PY-96-005]

#### Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the shell egg surveillance portion of the Regulations for the Inspection of Eggs and Egg Products—7 CFR 59.

**DATES:** Comments on this notice must be received by October 28, 1996.

**ADDITIONAL INFORMATION:** Contact Shields Jones, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 3944-S, Washington, DC 20090-6456, (202) 720-3506.

#### SUPPLEMENTARY INFORMATION:

*Title:* Regulations for the Inspection of Eggs and Egg Products (Egg Products Inspection Act).

*OMB Number:* 0581-0113.

*Expiration Date of Approval:* March 31, 1997.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* Congress enacted the Egg Products Inspection Act (21 U.S.C. 1031–1056) (EPIA) to provide, in part, a mandatory inspection program to control the disposition of dirty and checked shell eggs; to control unwholesome, adulterated, and inedible egg products and shell eggs that are unfit for human consumption; and to control the movement and disposition of imported shell eggs.

The Act requires and directs the Department to develop and issue regulations to carry out the purposes or provisions of the Act and to be responsible for the administration and enforcement of the Act, except as otherwise provided. The regulations, 7 CFR 59, were developed under rulemaking procedures for these purposes. The regulations also provide requirements, guidelines, and rules, for both the provider (USDA) and the user (industry) to use as the basis for common understanding.

The information collection and record keeping requirements in this request are essential to carry out the intent of Congress, to administer the mandatory inspection program, and to take regulatory action, in accordance with the regulations and the Act.

The information collected is used only by authorized representatives of the USDA (AMS, Poultry Division's national staff; regional directors and their staffs; Federal-State supervisors and their staffs; and resident Federal-State graders, which includes State agencies). The information is used to assure compliance with the Act and the regulations and to take administrative and regulatory action. The Agency is the primary user of the information, and the secondary user is each authorized State agency which has a cooperative agreement with AMS.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.30 hours per response.

*Respondents:* State or local governments, businesses or other for-profit, Federal agencies or employees, small businesses or organizations.

*Estimated Number of Respondents:* 1268.

*Estimated Number of Responses per Respondent:* 5.17.

*Estimated Total Annual Burden on Respondents:* 2,330 hours.

Copies of this information collection can be obtained from Shields Jones, Standardization Branch, at (202) 720–3506.

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:

Douglas C. Bailey, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 3944–S, Washington, DC 20090–6456.

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: August 21, 1996.  
Lon Hatamiya,  
*Administrator.*  
[FR Doc. 96–21784 Filed 8–26–96; 8:45 am]  
BILLING CODE 3410–02–P

## Foreign Agricultural Service

### Special Provision for Frozen Concentrated Orange Juice Under the North American Free Trade Agreement Implementation Act

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

**ACTION:** Notice of Determination of Existence of Price Conditions Necessary for Imposition of Temporary duty on Frozen Concentrated Orange Juice from Mexico.

**SUMMARY:** Pursuant to Section 309(a) of the North American Free Trade Agreement Implementation Act of 1993 (“NAFTA Implementation Act”), this is a notification that for 5 consecutive business days the daily price for frozen concentrated orange juice was lower than the trigger price.

**FOR FURTHER INFORMATION CONTACT:** Joseph Somers, Horticultural and Tropical Products Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000 or telephone at (202) 720–2974.

**SUPPLEMENTARY INFORMATION:** The NAFTA Implementation Act authorizes the imposition of a temporary duty (snapback) for Mexican frozen concentrated orange juice when certain conditions exist. Mexican articles falling under subheading 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTS) are subject to the snapback duty provision.

Under Section 309(a) of the NAFTA Implementation Act, certain price conditions must exist before the United States can apply a snapback duty on imports of Mexican frozen concentrated orange juice. In addition, such imports must exceed specified amounts before the snapback duty can be applied. The price conditions exist when for each

period of 5 consecutive business days the daily price for frozen concentrated orange juice is less than the trigger price.

For the purpose of this provision, the term “daily price” means the daily closing price of the New York Cotton Exchange, or any successor as determined by the Secretary of Agriculture (the “Exchange”), for the closest month in which contracts for frozen concentrated orange juice are being traded on the Exchange. The term “business day” means a day in which contracts for frozen concentrated orange juice are being traded on the Exchange.

The term “trigger price” means the average daily closing price of the Exchange for the corresponding month during the previous 5-year period, excluding the year with the highest average price for the corresponding month and the year with the lowest average price for the corresponding month.

Price conditions no longer exist when the Secretary determines that for a period of 5 consecutive business days the daily price for frozen concentrated orange juice has exceeded the trigger price. Whenever the price conditions are determined to exist or to cease to exist the Secretary is required to immediately notify the Commissioner of Customs of such determination. Whenever the determination is that the price conditions exist and the quantity of Mexican articles of frozen concentrated orange juice entered exceeds (1) 264,978,000 liters (single strength equivalent) in any of calendar years 1994 through 2002, or (2) 340,560,000 liters (single strength equivalent) in any of calendar years 2003 through 2007, the rate of duty on Mexican articles of frozen concentrated orange juice that are entered after the date on which the applicable quantity limitation is reached and before the date of publication in the Federal Register of the determination that the price conditions have ceased to exist shall be the lower of—(1) The column 1—General rate of duty in effect for such articles on July 1, 1991; or (2) the column 1—General rate of duty in effect on that day. For the purpose of this provision, the term “entered” means entered or withdrawn from warehouse for consumption in the customs territory of the United States.

In accordance with Section 309(a) of the NAFTA Implementation Act, it has been determined that for the period July 11–17, 1996, the daily price for frozen concentrated orange juice was less than the trigger price.

Issued at Washington, DC the 19th day of August 1996.  
 Timothy J. Galvin,  
*Acting Administrator, Foreign Agricultural Service.*  
 [FR Doc. 96-21622 Filed 8-26-96; 8:45 am]  
 BILLING CODE 3410-10-M

### Public Briefing on World Food Summit Intersessional Meetings

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

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that a public briefing on the July 29-August 2, 1996 World Food Summit Intersessional meetings in Rome will be held September 11, 1996. The purpose of the forum is for members of the U.S. delegation to the Intersessional to brief the public, and receive comments and suggestions with respect to Summit preparations.

**DATES:** The meeting will be held Wednesday, September 11, 1996 from 2:00 to 4:00.

**ADDRESSES:** The meeting will be held in room 3017 in the South Building at the U.S. Department of Agriculture in Washington, D.C.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Inquiries may be directed to the Office of the National Secretary, Foreign Agricultural Service, Room 3008 South Building, U.S. Department of Agriculture, 14th and Independence Ave. SW, Washington, D.C. 20250, telephone (202) 690-0776 or fax (202) 720-6103. Additional information is available on the FAS Homepage ([http://ffas.usda.gov/ffas/food\\_summit/summit.html](http://ffas.usda.gov/ffas/food_summit/summit.html)) or by calling (202) 690-0776.

Signed in Washington, D.C. August 16, 1996.

Timothy J. Galvin,  
*Acting Administrator, Foreign Agricultural Service.*  
 [FR Doc. 96-21621 Filed 8-26-96; 8:45 am]  
 BILLING CODE 3410-10-M

### DEPARTMENT OF COMMERCE

#### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Company Organization Survey.  
*Form Number(s):* NC-9901.  
*Agency Approval Number:* 0607-0444.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 144,500 hours.

*Number of Respondents:* 85,000.

*Avg. Hours Per Response:* 1.7 hours.

*Needs and Uses:* The Census Bureau conducts the Company Organization Survey (COS) annually to update and maintain the Standard Statistical Establishment List (SSEL). The SSEL is a computerized list of all employer organizations and their establishments and contains such information as name, address, physical location, Standard Industrial Classification (SIC) code, employment size code, and company affiliation. It provides a single universe for the selection and maintenance of statistical samples of establishments, legal entities, or enterprises; provides a standard basis for assigning SIC codes; and provides establishment level data from multi-establishment companies that are summarized and published in the annual County Business Patterns series of reports. In this request for revision, we are amending instructions and adding relatively short reference lists for respondents to use as guides when reporting updated industrial classification information for selected establishments; reducing the panel size by implementing improved methodology for selectively targeting the collection to enterprises affected by changes in organization and/or operating characteristics; and removing a one-time data inquiry to selected respondents for collecting information on respondents' ability and interest in reporting data electronically in subsequent years.

*Affected Public:* Businesses or other for-profit, Not-for-profit institutions.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.  
*Legal Authority:* Title 13 USC, Sections 182, 224, and 225.

*OMB Desk Officer:* Jerry Coffey, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: August 21, 1996.

Linda Engelmeier,  
*Acting Departmental Forms Clearance Office,  
 Office of Management and Organization.*  
 [FR Doc. 96-21858 Filed 8-26-96; 8:45 am]

BILLING CODE 3510-07-M

### 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 June 18, 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 30853). 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, 1995 through December 31, 1995. 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:** August 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mark Ross or Richard Rimlinger, AD/CVD Enforcement, 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, 1995 through December 31, 1995 administrative review for Rhone Poulenc on February 20, 1996 (61 FR 6347) at the request of the petitioner, the PQ Corporation. On June 18, 1996, the Department issued the preliminary results for this administrative review (61 FR 30853).

## Scope of Review

Imports covered by the review are shipments of ASM, a crystallized silicate ( $\text{Na}_2\text{SiO}_3$ ) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-floatation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under Harmonized Tariff Schedule (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 30853 (June 18, 1996).

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: August 20, 1996.  
Robert S. LaRussa,  
*Acting Assistant Secretary for Import Administration.*  
[FR Doc. 96-21857 Filed 8-26-96; 8:45 am]  
BILLING CODE 3510-DS-P

## [A-602-803]

### **Certain Corrosion-Resistant Carbon Steel Flat Products From Australia: 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 May 29, 1996, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Australia (61 FR 26876). The review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 1994 through July 31, 1995. We gave interested parties an opportunity to comment on our preliminary results.

Based on our analysis of the comments received, we have not changed the results from those presented in the preliminary results of review.

**EFFECTIVE DATE:** August 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert Bolling or Jean Kemp, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482-3793.

## **SUPPLEMENTARY INFORMATION:**

### Background

On May 29, 1996, the Department published in the Federal Register (61 FR 28676) the preliminary results of the administrative review of the antidumping duty order on certain corrosion-resistant carbon steel flat products from Australia (58 FR 44161, August 9, 1993). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

### 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).

### Scope of the Review

The products covered by this administrative review constitute one "class or kind" of merchandise: certain corrosion-resistant carbon steel flat products. The class or kind includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150

millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers BHP and the period August 1, 1994 through July 31, 1995 (POR).

**Analysis of Comments Received**

We gave interested parties an opportunity to comment on the preliminary results. We only received comments from petitioners, Bethlehem Steel Corporation, U.S. Steel Group, a Unit of USX Corporation, Inland Steel Industries, Inc., LTV Steel Company, Inc., National Steel Corporation, AK Steel Corporation, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation,

WCI Steel, Inc., and Lukens Steel Company, in this proceeding. Neither respondent (The Broken Hill Proprietary Company Ltd. (BHP)) nor petitioners requested a hearing.

*Comment 1:* Petitioners stated that the Department correctly concluded in its preliminary results that the use of facts available is appropriate in this review because BHP did not respond to Sections B, C, or D of the Department's antidumping duty questionnaire. In addition, petitioners noted that because BHP failed to cooperate and withheld requested information, Section 776(b) of the Act permits the Department to use an inference adverse to BHP in selecting from among the facts otherwise available. (See, *Certain Pasta from Italy*, 61 FR 30326, 30328 (June 14, 1996)) Moreover, the petitioners argue that the Department's practice under the old law was to view a respondent who refuses to participate as non-cooperative and to subject said respondent to the use of the most adverse facts available. (See, *Certain Carbon Steel Flat Products from Brazil*, 58 FR 37091, 37094 (July 9, 1993))

Additionally, petitioners stated that the Department correctly applied Section 776(c) of the Act and the Statement of Administrative Action (SAA) in its preliminary results and correctly followed its practice for assessing the probative value of the information to be used by examining its reliability and relevance. (See, *Mechanical Transfer Presses from Japan*, 61 FR 15036 (April 4, 1996)) Also, petitioners note that the Department correctly recognized that in selecting as adverse facts available the margin calculated in the prior segment of this proceeding, "it is not necessary to question the reliability of the margin for that time period." Petitioners also noted that the Department did consider information as to whether there were circumstances that would render the margin not relevant, and stated that the Department correctly concluded that there were no such circumstances.

*Department's Position:* We agree with petitioners. Our final results are in accord with our reasoning in our preliminary results. Because BHP failed to submit a response to sections B through E of the Department's antidumping questionnaire we have determined that it is appropriate to use as an adverse inference in selecting from among the facts otherwise available, the margin calculated in a prior segment of the proceeding. The Department will apply the antidumping margin of 39.05 percent for these final results, which is the antidumping margin from the

amended final results of the first administrative review.

**Final Results of Review**

As a result of this review, we have determined that the following margin exists for the period August 1, 1994, through July 31, 1995:

Manufacturer/Exporter	Margin (percent)
BHP .....	39.05

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Australia that are entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for BHP will be the rate established above; (2) for previously 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, 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) the cash deposit rate for all other manufacturers or exporters will continue to be 24.96 percent, the all others rate established in the final results of the less than fair value investigation (58 FR 44161, August 19, 1993).

The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information

disclosed under APO in accordance with 19 C.F.R. 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: August 20, 1996.

Robert S. LaRussa,  
Acting Assistant Secretary for Import Administration.

[FR Doc. 96-21856 Filed 8-26-96; 8:45 am]

BILLING CODE 3510-DS-P

### North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews; Notice of Decision of Panel

**AGENCY:** North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Decision of the Panel.

**SUMMARY:** On July 31, 1996 the Binational Panel issued its decision in the matter of Oil Country Tubular Goods from Mexico, Secretariat File No. USA-95-1904-04.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2016, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the Federal Register on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these Rules.

#### Background Information

This Binational Panel reviewed the Final Determination of Sales at Less Than Fair Value made by the International Trade Administration

respecting Oil Country Tubular Goods from Mexico. That determination was published in the Federal Register on June 28, 1995 (60 FR 33567).

#### Decision of Panel

(1) The Panel upheld the Department's calculation of TAMSA's financial expense on the basis of Best Information Available and on the alternative basis that the 1993 financial data was not representative of the financial expenses incurred during the Period of Investigation.

(2) The Panel remanded the Final Determination to the Department for a detailed explanation as to the reasons for its rejection of the 1993 financial data as non-representative of the General and Administrative expenses incurred during the Period of Investigation.

(3) The Panel upheld the Department's rejection of TAMSA's nonstandard cost allocation method and its substitution of an allocation method based on standard costs. The Panel also granted the Department's request for a remand to re-calculate the nonstandard cost allocation for a particular subset of TAMSA's sales.

(4) The Panel determined that the challenge by TAMSA to the Final Determination, based on a statement made by the Department in the Team Concurrence Memorandum, is not ripe for consideration.

The Panel ordered the Department to make a determination on remand consistent with the instructions and findings set forth in the Panel's opinion. The Department shall allow an appropriate period of time for North Star and TAMSA to comment on the proposed remand results. The final determination on remand shall be issued within ninety (90) days of the date of this Order (not later than October 29, 1996).

Dated: August 6, 1996.

James R. Holbein,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 96-21749 Filed 8-26-96; 8:45 am]1

BILLING CODE 3510-GT-M

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0139]

#### Submission for OMB Review; Comment Request Entitled Federal Acquisition and Community Right-To-Know

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Federal Acquisition and Community Right-to-Know. This OMB clearance currently expires on October 31, 1996. A request for public comments was published at 61 FR 31090, June 19, 1996. No comments were received.

**DATES:** *Comment Due Date:* October 28, 1996.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000-0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ralph De Stefano, Office of Federal Acquisition Policy, GSA (202) 501-1758.

#### SUPPLEMENTARY INFORMATION:

##### A. Purpose

The interim rule added FAR Subpart 23.9 and its associated solicitation provision and contract clause which implement the requirements of E.O. 12969 of August 8, 1995 (60 FR 40989, August 10, 1995), "Federal Acquisition and Community Right-to-Know," and the Environmental Protection Agency's "Guidance Implementing E.O. 12969; Federal Acquisition Community Right-

to-Know; Toxic Chemical Release Reporting" (60 FR 50738, September 29, 1995). The interim rule requires offerors in competitive acquisitions over \$100,000 (including options) to certify that they will comply with applicable toxic chemical release reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986 (42 USC 11001-11050) and the Pollution Prevention Act of 1990 (42 USC 13101-13109). The rule does not apply to acquisitions of commercial items under FAR Part 12 or contractor facilities located outside the United States. This rule does not apply to subcontractors beyond first tier.

#### B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *0.50 minutes* per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents (includes first-tier subcontractors), *167,487*; responses per respondent, *1*; total annual responses, *167,487*; preparation hours per response, *0.50*; and total response burden hours, *83,744*.

**Obtaining Copies of Justifications:** Requester may obtain copies of justifications from the General Services Administration, FAR Secretariat (MVRs), Room 4037, Washington, DC 20405, telephone (202)501-4755. Please cite OMB Control No. 9000-0139, Federal Acquisition and Community Right-to-Know, in all correspondence.

Dated: August 22, 1996.

Sharon A. Kiser,  
FAR Secretariat.

[FR Doc. 96-21779 Filed 8-26-96; 8:45 am]

BILLING CODE 6820-EP-P i

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Director, Information Resources Group, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before October 28, 1996.

**ADDRESSES:** Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue SW., Room 5624, Regional Office Building 3, Washington, DC 20202-4651.

**FOR FURTHER INFORMATION CONTACT:**

Patrick J. Sherrill (202) 708-8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 21, 1996.

Gloria Parker,

Director, Information Resources Group.

Office of Postsecondary Education

*Type of Review:* New.

*Title:* William D. Ford Federal Direct Loan Program General Forbearance Form.

*Frequency:* On occasion.

*Affected Public:* Individuals or households.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 50,000.

Burden Hours: 10,000.

*Abstract:* This form is the means by which a William D. Ford Federal Direct Loan Program borrower requests a forbearance when they are willing but unable to make currently scheduled Direct Loan payments due to a temporary financial hardship.

Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* Federal Direct Stafford/Ford Loan and Federal Direct Unsubsidized Stafford/Ford Loan Promissory Note and Disclosure.

*Frequency:* On occasion.

*Affected Public:* Individuals or households.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 2,384,000.

Burden Hours: 397,174.

*Abstract:* This form is used to determine applicant eligibility for Federal Direct Stafford/Ford Loans and/or Federal Direct Unsubsidized Stafford/Ford Loans. The respondents are students applying for benefits.

Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* Federal Direct PLUS Loan Application and Promissory Note.

*Frequency:* On occasion.

*Affected Public:* Individuals or households.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 203,000.

Burden Hours: 101,500.

*Abstract:* This information is used to determine applicant eligibility for Federal Direct PLUS Loans. The respondents are parents applying for benefits.

Office of Postsecondary Education

*Type of Review:* Revision.

*Title:* Addendum to Federal Direct PLUS Loan Promissory Note Endorser.

*Frequency:* On occasion.

*Affected Public:* Individuals or households.

*Annual Reporting and Recordkeeping Hour Burden:*

Responses: 50,750.  
Burden Hours: 25,375.

**Abstract:** Applicants for Federal Direct PLUS Loans who have adverse credit may obtain endorsers. The information collected on this form is used to check credit of endorsers. The respondents are endorsers.

[FR Doc. 96-21759 Filed 8-26-96; 8:45 am]

BILLING CODE 4000-01-P

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

#### Kalispel Tribe Resident Fish Project; Flood Plain Statement of Findings

**AGENCY:** Bonneville Power Administration (BPA), Department of Energy (DOE).

**ACTION:** Floodplain statement of findings.

**SUMMARY:** This notice announces BPA's proposal to construct a pump station and two water control structures in a floodplain of the Pend Oreille River in Pend Oreille County, Washington. The action is necessary to provide water for the hatchery and related facilities including two bass nurseries. The effect on the public would be an increased bass fishery within the Box Canyon Reach of the Pend Oreille River (see map). In accordance with 10 C.F.R. Part 1022, BPA has prepared this Floodplain Statement of Findings for the Kalispel Tribe Resident Fish Project. A Notice of Floodplain and Wetlands Involvement was published in the Federal Register on March 29, 1996 and a floodplain and wetlands assessment was prepared by BPA describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. The assessment was prepared in conjunction with the Environmental Assessment for this project (DOE/EA-1154).

**FOR FURTHER INFORMATION, CONTACT:** Gene Lynard—ECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208-3621, phone number 503-230-3790, fax number 503-230-5699.

**SUPPLEMENTARY INFORMATION:** The proposed action is to be located in the floodplain because there are no practical alternatives to locate them outside of the floodplain. The alternative to the proposed action is the no action alternative. The proposed action does conform to applicable State or local floodplain protection standards. The facilities would be designed to withstand flooding. Short-term erosion impacts would be controlled by using

best management practices, and the Tribe would obtain all necessary permits prior to project construction.

BPA will endeavor to allow 15 days of public review after publication of this statement of findings prior to implementing the proposed action within the floodplain.

Issued in Portland, Oregon, on August 19, 1996.

Randall W. Hardy,

*Administrator.*

[FR Doc. 96-21786 Filed 8-26-96; 8:45 am]

BILLING CODE 6450-01-P

### Energy Information Administration

#### Agency Information Collection Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, Department of Energy.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title of the collection of information; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response x estimated number of likely respondents.)

**DATES:** Comments must be filed by no later than September 26, 1996. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk

Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION:** Requests for additional information or copies of the forms and instructions should be directed to Ms. Norma White, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Ms. White may be telephoned at (202) 426-1107.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. EIA-800-804, 807, 810-814, 816, 817, 819M and 820, Petroleum Supply Reporting System;
2. Sponsor—Energy Information Administration; Docket Number 1905-0165; Response Obligation—Mandatory; Extension of currently approved collection;
3. The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude oil, petroleum products and natural gas liquids. These data are published by the EIA. Respondents are operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers and barges, and oil importers;
4. Respondents—Business or other for-profit, Federal Government, and State, Local or Tribal Government; 5. Total burden hours—55,605 (2,616 respondents x 18.68043 responses x 1.13786 hours per response).

Authority: 44 U.S.C. 3506(a)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104-13).

Issued in Washington, D.C., August 19, 1996.

Yvonne M. Bishop,

*Director, Office of Statistical Standards  
Energy Information Administration.*

[FR Doc. 96-21805 Filed 8-26-96; 8:45 am]

BILLING CODE 6450-01-P

**Federal Energy Regulatory  
Commission**

[Docket No. CP96-714-000]

**East Tennessee Natural Gas Company;  
Notice of Request Under Blanket  
Authorization**

August 21, 1996.

Take notice that on August 14, 1996, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP96-714-000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish a new delivery point in Roane County, Tennessee under East Tennessee's blanket certificate issued in Docket No. CP82-412-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

East Tennessee proposes to install a new delivery point to be located at approximate mile post 3110-1+11.83 on East Tennessee's system in Roane County, Tennessee, to provide additional firm transportation service of 3,700 dekatherms per day to the Powell-Clinch Utility District (Powell-Clinch), an existing customer of East Tennessee.

East Tennessee states that it will install a four-inch hot-tap assembly, approximately 50 feet of four-inch interconnecting pipe, a four-inch turbine meter, electronic gas measurement (EGM) and communications equipment. East Tennessee states that it will own, operate and maintain the measurement facilities, the hot-tap assembly and interconnecting pipe, and will maintain the EGM and communications equipment.

East Tennessee states that the total quantities to be delivered to Powell-Clinch after the delivery point is installed will not exceed the total quantities authorized. East Tennessee asserts that the installation of the proposed delivery point is not prohibited by East Tennessee's tariff, and that it has sufficient capacity to accomplish the deliveries at the proposed new delivery point without detriment or disadvantage to any of East Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section

157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 96-21752 Filed 8-26-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP96-709-000]

**Panhandle Eastern Pipe Line  
Company; Notice of Application**

August 21, 1996.

Take notice that on August 13, 1996, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed an application with the Commission in Docket No. CP96-709-000 pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to Consumer Power Company (Consumers) of the North Line Lateral facilities<sup>1</sup> in various Michigan counties and to construct and operate a new interconnection between Consumers and Panhandle, all as more fully set forth in the application which is open to the public for inspection.

Panhandle states that its proposed abandonment in place of the North Line Lateral facilities to Consumers would enable Consumers to integrate the operation of its pipeline and distribution systems facilities. Panhandle states that it would abandon the North Line Lateral facilities to Consumers at their fully depreciated net book value of zero dollars.

Panhandle also proposes to construct and operate a new interconnection point with Consumers in Washtenaw County by relocating the existing South Lyon metering facilities at the interconnection between Consumers' affiliate Michigan Gas Storage Company (MGS) and Panhandle's North Line in Oakland County. Panhandle states that Consumers would reimburse Panhandle for the estimated \$30,000 construction cost for the new interconnection.

<sup>1</sup> The North Line Lateral facilities consist of approximately 137 miles of pipeline between 3-inches and 18-inches in diameter and include the Clawson lateral, the Howell Field to Gate 6 lateral, and related facilities located in Genesee, Livingston, Oakland, Saginaw, and Washtenaw Counties, Michigan.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 11, 1996, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 96-21751 Filed 8-26-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT96-91-000]

**Transcontinental Gas Pipe Line  
Corporation; Notice of Refund Report**

August 21, 1996.

Take notice that on July 30, 1996, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission its Report of Refunds in accordance with section 8.01(i) of Transco's NIPPs-SE Rate Schedules x-315, x-316, x-318, and x-324, and Section 4 of Rate Schedules LSS and SS-2. The report shows that Transco refunds made to its customers

resulting from the Commission's order issued February 16, 1996, in National Fuel's Docket Nos. RP94-367 and RP95-31-000, *et al.*

Transco states that on July 25, 1996, it refunded \$289,869.35 including interest to its NIPPs-SE, and a net of \$187,612.80 including interest to its LSS and SS-2 customers resulting from the referenced National Fuel refund for the period June 1, 1995 to March 31, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 29, 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 file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

*Acting Secretary.*

[FR Doc. 96-21753 Filed 8-26-96; 8:45 am]

BILLING CODE 6717-01-M

### Office of Hearings and Appeals

#### Cases Filed; Week of May 13 Through May 17, 1996

During the week of May 13 through May 17, 1996, the appeals, applications,

petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585-0107.

Dated: August 19, 1996.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

### LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 13 through May 17, 1996]

Date	Name and location of applicant	Case No.	Type of submission
2/27/96	West Virginia, Charleston, West Virginia	RM251-296	Request for Modification/Rescission in the Amoco II Second Stage Refund Proceeding. If granted: The January 7, 1987 Decision and Order, Case Number RQ251-339, would be modified regarding the state's application for refund submitted in the Amoco II Second Stage Refund Proceeding.
3/12/96	Belridge/Rhode Island Providence, Rhode Island.	RQ8-608	Application for Second Stage Belridge Refund. If granted: The second stage refund application submitted by the State of Rhode Island in the Belridge Refund Proceeding would be granted.
3/12/96	Amoco II/Rhode Island, Providence, Rhode Island.	RQ251-609	Application for Second Stage Amoco II Refund. If granted: The second stage refund application submitted by the State of Rhode Island in the Amoco II Refund Proceeding would be granted.
5/13/96	Headquarters, Washington, DC	VSA-0075	Request for Review of Opinion under 10 C.F.R. Part 710. If granted: The Opinion of the Office of Hearings and Appeals, Case No. VSO-0075, would be reviewed at the request of an individual employed at Headquarters.
5/13/96	Oil Products, Inc., Mount Angel, Oregon	VEE-0023	Exception to the Reporting Requirements. If granted: Oil Products, Inc. would not be required to file Form EIA-782B Resellers'/Retailers' Monthly Petroleum Product Sales Report.
5/14/96	Golden Cat Division/Ralston Purina, Washington, DC.	RJ272-12	Reconsideration of a Supplemental Crude Oil Denial. If granted: The January 16, 1996 Decision and Order, Case No. RK272-319, issued to Golden Cat Division, Ralston Purina would be modified regarding the firm's application for refund submitted in the Crude Oil Supplemental Refund Proceeding.
5/15/96	Southard Oil Company, Inc., West Frankfort, Illinois.	VEE-0024	Exception to the Reporting Requirements. If granted: Southard Oil Company, Inc. would not be required to file Form EIA-782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
5/15/96	Williams Gulf, Memphis, Tennessee	RR300-283	Request for Modification/Rescission in the Gulf Refund Proceeding. If granted: The January 30, 1996 Dismissal Letter, Case Number RF300-18405, would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
5/16/96	FOIA Group, Inc., Alexandria, Virginia	VFA-0165	Appeal of an Information Denial. If granted: The May 7, 1996 Freedom of Information Request Denial issued by Savannah River Operations would be rescinded, and FOIA Group, Inc. would receive access to certain DOE information.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued  
[Week of May 13 through May 17, 1996]

Date	Name and location of applicant	Case No.	Type of submission
5/16/96 .....	Keith E. Loomis, Washington, DC .....	VFA-0166	Appeal of an Information Request Denial. If granted: The March 25, 1996 Freedom of Information Request Denial issued by the Office of Naval Reactors would be rescinded, and Keith E. Loomis would receive access to certain DOE information.
5/17/96 .....	Government Accountability Project, Washington, DC.	VFA-0167	Appeal of an Information Request Denial. If granted: The Government Accountability Project would receive a waiver of all fees incurred in the processing of its Freedom of Information Request for certain DOE information.

REFUND APPLICATIONS RECEIVED  
[Week of May 13 through May 17, 1996]

Date received	Name of refund proceeding/name of refund applicant	Case No.
5/13/96 thru 5/17/96 .....	Crude Oil Refund Applications .....	RK272-3541 thru RK272-3560
5/16/96 .....	Petroleum Trading & Transport .....	RF354-6

[FR Doc. 96-21787 Filed 8-26-96; 8:45 am]  
BILLING CODE 6450-01-P

**Notice of Cases Filed; Week of May 20 through May 24, 1996**

During the week of May 20 through May 24, 1996, the appeals, applications,

petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of

receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585-0107.

Dated: August 19, 1996.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS  
[Week of May 20 through May 24, 1996]

Date	Name and location of applicant	Case No.	Type of submission
5/20/96 .....	Burlin McKinney, Oliver Springs, Tennessee	VFA-0168	Appeal of an Information Request Denial. If granted: The April 26, 1996 Freedom of Information Request Denial issued by Oak Ridge Operations Office would be rescinded, and Burlin McKinney would receive access to certain DOE information.
5/20/96 .....	Lakes Gas Company, Forest Lake, Minnesota.	VER-0001	Request for Modification/Rescission in the Reporting Requirements. If granted: The April 30, 1996 Decision and Order, Case No. VEE-0018, issued to Lakes Gas Company would be modified regarding the firm's request for exception to the reporting requirements.
5/21/96 .....	Idaho Operations Office, Idaho Falls, Idaho	VSO-0097	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Idaho Operations Office would receive a hearing under 10 C.F.R. Part 710.
5/21/96 .....	Oak Ridge Operations Office, Oak Ridge, Tennessee.	VSA-0065	Request for Review of Opinion under 10 C.F.R. Part 710. If granted: The April 15, 1996 Opinion of the Office of Hearings and Appeals, Case Number VSO-0065, would be reviewed at the request of an individual employed at Oak Ridge Operations Office.
5/21/96 .....	The Cincinnati Enquirer, Cincinnati, Ohio ....	VFA-0169	Appeal of an Information Request Denial. If granted: The May 17, 1996 Freedom of Information Request Denial issued by the Ohio Field Office would be rescinded, and The Cincinnati Enquirer would receive access to certain DOE information.
5/23/96 .....	Glen Milner, Seattle, Washington .....	VFA-0170	Appeal of an Information Request Denial. If granted: The April 22, 1996 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Glen Milner would receive access to certain DOE information.

## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 20 through May 24, 1996]

Date	Name and location of applicant	Case No.	Type of submission
5/24/96 .....	Gerald Kelly, Washington, DC .....	VWA-0011	Request for Hearing under Department of Energy Contractor Employee Protection Program. If granted: A hearing under 10 C.F.R. Part 708 would be held on the complaint of Gerald Kelly that reprisals were taken against him by management officials of Am-Pro Protective Agency, Inc. as a consequence of his having disclosed safety/health concerns.

[FR Doc. 96-21788 Filed 8-26-96; 8:45 am]  
BILLING CODE 6450-01-P

**Notice of Cases Filed; Week of July 1 through July 5, 1996**

During the Week of July 1 through July 5, 1996, the appeals, applications, petitions or other requests listed in this

Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of

publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585-0107.

Dated: August 19, 1996.  
George B. Breznay,  
*Director, Office of Hearings and Appeals.*

## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 1, through July 5, 1996]

Date	Name and location of applicant	Case No.	Type of submission
7/2/96 .....	Michael J. Ravnitzky, St. Paul, Minnesota.	VFA-0188	Appeal of an Information Request Denial. If granted: The June 12, 1996 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Michael J. Ravnitzky would receive access to certain DOE information.
7/2/96 .....	States .....	RQ14-611, RQ8-612, RQ38-613, RQ23-614, RQ2-615, RQ3-616, RQ13-617, RQ5-618, RQ10-619, RQ183-620, RQ21-621, RQ334-622, and RQ1-623	Request for Modification/Rescission in the Anderson, Belridge, Bob's Oil, Charter, Coline, National Helium, OKC, Palo Pinto, Pennzoil, Perry Gas, Standard Oil, Time Oil and Vickers Refund Proceedings. If granted: The request, if granted, would allow for the distribution of remaining second-stage funds.
7/3/96 .....	Rockville Center Union Free School District, Cedarhurst, New York.	RR272-242	Request for Modification/Rescission in the Crude Refund Proceeding; If granted: The January 23, 1992 Dismissal Letter, Case Number RF272-78607, issued to Rockville Centre Union Free School District would be modified regarding the firm's application for refund submitted in the Crude refund proceeding.

Date received	Name of refund proceeding/name of refund applications	Case No.
6/13/96-7/5/96 .....	MacMillan Oil Refund .....	RF355-1 thru RF355-21.
4/23/96-7/5/96 .....	Crude Oil Refund Applications .....	RK272-3614 thru RK272-3806.

[FR Doc. 96-21789 Filed 8-26-96; 8:45 am]  
BILLING CODE 6450-01-P

**Notice of Cases Filed; Week of July 8 Through July 12, 1996**

During the week of July 8 through July 12, 1996, the appeals, applications,

petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of

receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585-0107.

Dated: August 19, 1996.  
George B. Breznay,  
*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS  
[Week of July 8 through July 12, 1996]

Date	Name and location of applicant	Case No.	Type of submission
7/8/96 .....	Jackson & Michael Gulf Service, Charleston, West Virginia.	RR300-286	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The January 31, 1996 Dismissal, Case No. RF300-19659, issued to Jackson & Michael Gulf Service would be modified regarding the firm's application for refund submitted in the Gulf Refund Proceeding.
7/8/96 .....	Pittsburgh Naval Reactors Office, West Mifflin, Pennsylvania.	VSO-0103	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Pittsburgh Naval Reactors Office would receive a hearing under 10 C.F.R. Part 710.
7/8/96 .....	United Truck & Bus Service Co., Providence, Rhode Island.	RR300-285	Request for Modification/Rescission in the Gulf Oil Refund Proceeding. If granted: The May 8, 1996 Dismissal, Case No. RF300-15632, issued to United Truck & Bus Service Co. would be modified regarding the firm's application for refund submitted in the Gulf Oil Refund Proceeding.
7/11/96 .....	Petro San Juan, Friday Harbor, Washington.	VEE-0029	Exception to the Reporting Requirements. If granted: Petro San Juan would not be required to file Form EIA-782B, "Reseller's/Retailer's Monthly Petroleum Product Sales Report."
7/12/96 .....	Albuquerque Operations Office, Albuquerque, New Mexico.	VSO-0104	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Albuquerque Operations Office would receive a hearing under 10 C.F.R. Part 710.
7/12/96 .....	Spence, Moriarity & Schuster, Jackson, Wyoming.	VFA-0190	Appeal of an Information Request Denial. If granted: The June 11, 1996 Freedom of Information Request Denial issued by Albuquerque Operations Office would be rescinded, and Spence, Moriarity & Schuster would receive access to certain DOE information.
7/12/96 .....	The National Security Archive, Washington, DC.	VFA-0189	Appeal of an Information Request Denial. If granted: The June 18, 1996 Freedom of Information Request Denial issued by the Office of Energy Intelligence would be rescinded, and the National Security Archive would receive access to certain Department of Energy information.

REFUND APPLICATIONS RECEIVED  
[Week of July 8 through July 12, 1996]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/8/96 thru 7/12/96 .....	Crude Oil Refund Applications .....	RK272-3807 thru RK272-3832
7/8/96 thru 7/12/96 .....	MacMillan Oil Refund Applications .....	RF355-22 thru RF355-27

[FR Doc. 96-21790 Filed 8-26-96; 8:45 am]  
BILLING CODE 6450-01-P

**Notice of Cases Filed; Week of July 15 through July 19, 1996**

During the week of July 15 through July 19, 1996, the appeals, applications,

petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of publication of this Notice or the date of

receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585-0107.

Dated: August 19, 1996.  
George B. Breznay,  
*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS  
[Week of July 15 through July 19, 1996]

Date	Name and location of applicant	Case No.	Type of submission
7/16/96	Ebon Research Systems, Altamonte Springs, Florida.	VFA-0191	Appeal of an Information Request Denial. If granted: The July 2, 1996 Freedom of Information Request Denial issued by the Office of Inspector General would be rescinded, and Ebon Research Systems would receive access to certain DOE information.
7/16/96	Greenpeace, Washington, DC .....	VFA-0192	Appeal of an Information Request Denial. If granted: The June 5, 1996 Freedom of Information Request Denial issued by the Office of Defense Programs would be rescinded, and Greenpeace would receive access to certain DOE information.

## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 15 through July 19, 1996]

Date	Name and location of applicant	Case No.	Type of submission
7/16/96	Rocky Flats Field Office, Golden, Colorado	VSO-0105	Request for Hearing under 10 C.F.R. Part 710. If granted: An individual employed at Rocky Flats Field Office would receive a hearing under 10 C.F.R. Part 710.
7/17/96	Michael A. Grosche, Norwalk, Connecticut	VFA-0193	Appeal of an Information Request Denial. If granted: The June 7, 1996 Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded, and Michael A. Grosche would receive access to certain DOE information.
7/17/96	Paul McGinnis, Huntington Beach, California.	VFA-0194	Appeal of an Information Request Denial. If granted: The June 17, 1996 Freedom of Information Request Denial issued by the Nevada Operations Office would be rescinded, and Paul McGinnis would receive access to certain DOE information.
7/19/96	Lee Oil Company, Greensboro, North Carolina.	VEE-0030	Exception to the Reporting Requirements. If granted: Lee Oil Company would not be required to file Form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report."

## REFUND APPLICATIONS RECEIVED

[Week of July 15 through July 19, 1996]

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/15/96 thru 7/19/96 .....	MacMillan Oil Refund Applications .....	RF355-28 thru RF355-34
7/15/96 thru 7/19/96 .....	Crude Oil Refund Applications .....	RG272-1026 thru RG272-1036
7/15/96 thru 7/19/96 .....	Crude Oil Refund Applications .....	RK272-3833, RK272-3841

[FR Doc. 96-21791 Filed 8-26-96; 8:45 am]

BILLING CODE 6450-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-5560-9]

**Agency Information Collection Activities: Submission For OMB Review; Comment Request; Operating Permits Regulations****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 following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Part 70 Operating Permits Regulations, EPA ICR Number 1587.05, OMB Control Number 2060-0243, expiring September 30, 1996. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before September 26, 1996.

**FOR FURTHER INFORMATION OR A COPY CALL:** Sandy Farmer at EPA, (202) 260-2740, and refer to EPA ICR Number 1587.04.

**SUPPLEMENTARY INFORMATION:**

*Title:* Part 70 Operating Permits Regulations, EPA ICR Number 1587.04, OMB Control Number 2060-0243, expiring September 30, 1996. This is a request for a revision to an existing collection.

*Abstract:* The information found in this ICR is required for the submittal of a complete permit application, as well as for the periodic reporting and recordkeeping necessary to maintain that permit once it has been approved. Under a fully functional permit program, the permitting authority, primarily States and local authorities, collect this information from air pollution sources. This information allows the permitting authority and the Federal government to manage air resources. The EPA certifies that the information collection is necessary for the proper performance of EPA's functions, and that it has practical utility; is not unnecessarily duplicative of information EPA otherwise can reasonably access; and reduces, to the extent practicable and appropriate, the

burden on persons providing the information to or for EPA.

Within 12 months of the effective date of a part 70 program (i.e., the approval of that program by EPA), all sources subject to the part 70 operating permits program must submit complete permit applications to the permitting authority (section 503(c)). Permitting authorities must submit to EPA all proposed and final permits and any permit applications, or portions thereof, necessary to carry out EPA's responsibilities (section 505(a)(1)). No less often than every 6 months sources must submit to the permitting authority the results of any required monitoring or other information necessary to assure compliance with applicable requirements (section 504(b)).

In accordance with title V, the information submitted by sources as a part of their applications for revisions and renewals is a matter of public record. To the extent that the information required for the completeness of a permit is proprietary, confidential, or of a nature that it could impair the ability of the source to maintain its market position, that information is collected and handled subject to the requirements of section 503(e) and section 114(c) of the Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 13, 1996 (61 FR 30061); no comments were received.

**Burden Statement:** There are an estimated 25,547 sources subject to the operating permits program. The annual public reporting and recordkeeping burden for this collection of information is estimated to average 211 hours per source. This reflects all the information reporting activities associated with this collection. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Respondents/Affected Entities:** Sources subject to the operating permits program.

**Estimated Number of Respondents:** 25,659.

**Frequency of Response:** One-time and semiannual.

**Estimated Total Annual Hour Burden:** 5.3 million hours.

**Estimated Total Annualized Cost Burden:** \$0.

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 Number 1587.05 and OMB Control Number 2060-0243 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: August 22, 1996.

Richard Westlund,  
Acting Director, Regulatory Information Division.

[FR Doc. 96-21825 Filed 8-26-96; 8:45 am]

BILLING CODE 6560-50-P

[AD-FRL-5559-5]

**Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating)**

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

**ACTION:** Notice of release of control techniques guidelines (CTG).

**SUMMARY:** The CTG for control of volatile organic compound (VOC) emissions from surface coating operations in the shipbuilding and ship repair industry is available to assist States in analyzing and determining reasonably available control technology (RACT) for shipbuilding and ship repair operations located within ozone national ambient air quality standards (NAAQS) nonattainment areas. The CTG also sets forth the adoption and implementation dates for RACT. The CTG for Shipbuilding and Ship Repair Operations (Surface Coating) is not being issued as a stand-alone document. Rather, it is a combination of the information contained in this notice and in the EPA's previously published alternative control techniques (ACT) document for this emission source category.

**EFFECTIVE DATE:** Any State that has not adopted an approvable RACT regulation for the source category addressed by this CTG must submit a RACT regulation for these sources within one year from the date of publication of this action in the Federal Register. For any State that has adopted an approvable RACT regulation for the source category addressed by this CTG, Section 182(b)(2) of the Clean Air Act (CAA) requires these States to

submit a revision to the applicable implementation plan, to include provisions that require the implementation of RACT. This revision shall be submitted to the EPA not later than August 27, 1997. Furthermore, all States must require sources to implement the required limitations and work practices under these adopted RACT regulations not later than August 27, 1998.

**ADDRESSES: Alternative Control Techniques (ACT) Document.** The EPA published the ACT document for surface coating operations at shipbuilding and ship repair facilities in April 1994. A copy of the ACT document may be obtained from the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (800) 553-NTIS. Specify the following title when ordering: "Alternative Control Techniques Document: Surface Coating Operations at Shipbuilding and Ship Repair Facilities" (EPA 453/R-94-032).

**Docket:** Following publication of the ACT document, the recommended RACT was developed concurrently with maximum achievable control technology (MACT), on which standards issued under Section 112 of the CAA were based. The rulemaking docket, No. A-92-11, is available for inspection and copying from 8 a.m. to 5:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M-1500, Ground Floor, 401 M Street, SW, Washington, DC 20460; telephone number (202) 260-7548, FAX (202) 260-4400. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mohamed Serageldin at (919) 541-2379, Coatings and Consumer Products Group, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION: Potentially Affected Entities.** Entities potentially affected by this action are those shipbuilding and ship repair operations which are (or have the potential to become) "major" sources of VOC emissions and are located in nonattainment areas of ozone.

Category	Examples of potentially affected entities
Industry .....	Any building or repairing, repainting, converting, or alteration of ships. The term ship means any marine or fresh-water vessel, including self-propelled by other craft (barges), and navigational aids (buoys). Note: Offshore oil and gas drilling platforms and vessels used by individuals for noncommercial, non-military, and recreational purposes that are less than 20 meters in length are not considered ships.

Category	Examples of potentially affected entities
Federal Gov't .....	Federal Agencies which undertake shipbuilding or ship repair operations (see above) such as the Navy and Coast Guard.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities which are the focus of this action. This table lists the types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected (see definition of ship in Appendix B). If you have questions regarding the focus or applicability of this action, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this notice.

The substantive presumptive RACT determination set out in this action is intended solely as guidance, does not represent final EPA action, and is not fully developed for judicial review. It is not intended, nor can it be relied upon, to create any rights enforceable by any party in litigation with the United States. The EPA officials may decide to follow the guidance provided in this action, or to act at variance with the guidance, based on an analysis of specific circumstances. The EPA also may change this guidance at any time without public notice.

Electronic versions of the ACT document as well as this action are available for download from the EPA's Technology Transfer Network (TTN), a collection of the EPA's electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541-5742 for data transfer of up to a 14,400 bits per second. Internet access is available at [http://www.epa.gov/oar/ttn\\_bbs.htm/](http://www.epa.gov/oar/ttn_bbs.htm/). Additional information on TTN is available from the HELP line at (919)541-5384.

The information presented in this section is organized as follows:

- I. Background and Purpose
- II. BACM and "Presumptive RACT"
- III. Modification to the ACT Document
- IV. Model Rule
- V. Summary of Impacts
- VI. Administrative Designation and Regulatory Analysis
- Appendix A. Thinning Calculations
- Appendix B. Definitions
- Appendix C. Thinning Chart (Figure 1)
- Appendix D. VOC Data Sheet

#### I. Background and Purpose

Section 183(b)(4) of the CAA specifically requires the EPA to issue a CTG for the shipbuilding and ship repair industry, to reduce air emissions of VOC and particulate matter from coatings (paints) and solvents used at new and existing shipbuilding and ship repair facilities. However, unlike the more general CTG requirements which require the EPA to establish a RACT level of control, Section 183(b)(4) requires the EPA to establish a CTG based on best available control measures (BACM) for emissions of VOC and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10) from the removal or application of coatings and solvents at shipbuilding and ship repair facilities. The BACM is a broadly defined term referring to "best" technologies and other "best" available measures that can be used to control pollution. A discussion of the analogy between BACM and reasonable available control measures is presented in State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for Implementation of Title I of the Clean Air Act Amendments of 1990 (59 FR 41998, August 16, 1994).

Pursuant to Section 183 of the CAA, the EPA is required to issue CTG for the purpose of assisting States in developing RACT level of controls for sources of VOC emissions. In turn, each State is required to submit a revision to its State implementation plan (SIP) providing RACT regulations for sources of VOC that are located in moderate or above ozone nonattainment areas. Specifically, Section 182(b)(2) of the CAA requires States to submit RACT regulations for sources of VOC that are covered by a CTG issued after enactment of the Clean Air Act of 1990, but prior to the time of attainment. The CTG also applies to those facilities in nonattainment areas located in States which already have existing shipbuilding and ship repair (or marine) coating regulations; the State limits must be at least as stringent as the CTG limits or otherwise must be determined to meet RACT (and in this case, BACM).

The CTG review current knowledge and data concerning the technology and costs of various emissions control

techniques. The CTG are intended to provide State and local air pollution authorities with an information base for proceeding with their own analyses of RACT to meet statutory requirements. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to attain achievement of the NAAQS and the economic and technical circumstances of the individual source.

The application of RACT and resulting VOC emissions reduction is to "enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population." The intent of this action is to protect the public health by requiring the highest degree of reduction in VOC emissions in ozone nonattainment areas, taking into consideration the cost of achieving such emission reduction, any nonair quality, health and environmental impacts, and energy requirements.

The VOC that are emitted by shipbuilding and ship repair facilities include xylene, toluene, ethyl benzene, isopropyl alcohol, butyl alcohol, ethyl alcohol, methanol, methyl ethyl ketone, methyl isobutyl ketone, ethylene glycol, and glycol ethers. All of these VOC contribute significantly to the formation of ground level ozone which can damage lung tissue and cause serious respiratory illness. Additionally, VOC can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat, and skin irritation and blood cell, heart, liver, and kidney damage. The adverse health effects are associated with a wide range of ambient concentration and exposure time and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on the multiple factors that affect human variability such as genetics, age, health status (e.g., the presence of pre-existing disease), and lifestyle. Implementation of BACM described in the CTG will reduce VOC emissions from shipbuilding and ship repair surface coating operations by 1,250 megagrams Mg (1,370 tons per year).

#### II. BACM and "Presumptive RACT"

In developing the CTG for this industry, the EPA reviewed current knowledge and data concerning the

technology and costs of various emission control techniques. The type and level of VOC control identified as BACM is based on the marine coating VOC limits being used in California (with some exceptions and modifications). Table 1 presents the various paint categories with the maximum as-applied VOC content allowed for each under BACM. These same limits were similarly used in the development of national emission standards for hazardous air pollutants (NESHAP) for this same industry and serve as the basis for MACT. The VOC coating limits have not changed from what was proposed and promulgated in the NESHAP. Also included in BACM are work practice guidelines that state: (1) all handling and transfers of VOC-containing materials to and from containers, tanks, vats, drums, and piping systems are conducted in a manner that minimizes spills, and (2) all containers, tanks, vats, drums, and piping systems are free of cracks, holes, and other defects and remain closed unless materials are being added to or removed from them.

With regard to PM-10 emissions, the EPA determined BACM to be no control. At proposal, the EPA found no sufficiently demonstrated technology to recommend for quantifiably controlling PM-10 emissions. The technologies in use and under development were discussed in the ACT document. There has been no new information received since the proposal that would lead the EPA to change that position.

Based on the EPA's work on the MACT standard and the ACT, the EPA has determined that the use of lower-VOC paints is the only technologically and economically feasible level of control for these sources that the EPA can establish on a category-wide basis. The EPA is recommending BACM, which was published for comment along with the NESHAP (59 FR 62681, December 6, 1994), be selected. Final BACM was identified in this action and was considered the "presumptive norm" or presumptive RACT for the source category. However, BACM, the presumptive norm, is only a recommendation. Individual sources may have alternative BACM requirements imposed by making an adequate infeasibility demonstration (44 FR 53761, September 17, 1979). States and sources may elect to establish alternative types of control for submittal to the EPA in a SIP revision. The EPA would make a final determination of whether such controls meet the RACT requirement of Section 182(b)(2) and BACM requirement of Section 183(b)(4),

through notice-and-comment rulemaking action on the SIP submittal.

The EPA believes that RACT, BACM, and MACT are identical in this instance on a category-wide basis. While typically MACT ("maximum") implies more stringent control than BACM ("best"), which in turn implies more stringent control than RACT ("reasonable"), the EPA recognizes that there may be isolated instances when there is such a limited range of controls for a specified industry or industry process that two or all three of these levels of control may be identical. For a general discussion of these terms, refer to "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (59 FR 41998, August 16, 1994).

The cost-effectiveness of add-on controls of VOC emissions for spray booth painting and tank painting operations was determined to be low. However, the variability and size of tanks inside a ship that may be painted, at any one time, in a shipyard makes evaluation of add-on controls on a category-wide basis difficult. Controls have to be evaluated on a case-by-case basis. It should be noted that automated, high-use paint operations may be feasibly controlled and would have to be evaluated on a case-by-case basis.

### III. Modifications to the ACT Document

There have been some substantive technical changes since the ACT document for this industry was published in April 1994. Most notable of those changes is the inclusion of cold weather coating limits and the incorporation of both mass VOC per volume (g VOC/L) of coating less water and exempt solvents emission limits and the equivalent mass VOC per volume of solids (nonvolatiles) emission limits (see Table 1 in this notice). The solids based units should be used to determine compliance whenever thinning solvent is added to a coating. This change was made to provide a uniform basis for all calculations related to emission reductions (i.e., associated with thinning additions or add-on control devices). The procedure for calculating the VOC content of a given coating to which thinning solvent is added is provided in Appendix A to this notice. Information in Appendix C and Appendix D may also be used to calculate VOC content.

The promulgated NESHAP for this industry (60 FR 64330, December 15, 1995) also reflects technical changes

made as a result of public comments and provides information for air quality management agencies to consider in the development of an enforceable regulation limiting VOC emissions from shipbuilding and ship repair surface coating operations. Additional information related to the promulgated NESHAP is presented in the "Background Information for Final Standards" (EPA/453-R-96-003B).

### IV. Model Rule

In effect, the NESHAP can be used as a "model rule" providing an organizational framework and regulatory language specifically tailored for surface coating operations at shipyards. Information is provided on applicability, definitions, format of standards, compliance determinations (calculations), and reporting and recordkeeping. Many of the definitions used in the ACT were modified/clarified for the NESHAP; therefore, Appendix B to this notice has been included to provide the updated terminology and definitions, including technical amendments to the NESHAP.

The various compliance options are described and illustrated (in a flow diagram) in the NESHAP as well. The State or other implementing agency can exercise its prerogative to consider other options provided they meet the objectives prescribed in this action. This guidance is for instructional purposes only and, as such, is not binding. The State or other enforcement agency should consider all information presented in the ACT document, the promulgated NESHAP, and this final action along with additional information about specific sources to which the regulation will apply.

### V. Summary of Impacts

The EPA estimates the State and local regulations developed pursuant to this CTG could affect about 100 facilities, reduce emissions of VOCs by approximately 1,250 Mg per year, and result in nationwide costs of approximately \$1.1 million. These costs are in addition to the \$2.0 million assigned to the NESHAP for controlling volatile organic hazardous air pollutants (VOHAP) (and VOC) emissions from the 35 major source shipyards. Further information on costs and controls is presented in the Shipbuilding and Ship Repair ACT guideline document (EPA 453/R-94-032; NTIS PB94-181694) published in April 1994.

### VI. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must

determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

environment, public health or safety, or State, local, or tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

(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.

It has been determined that this CTG document is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. This CTG document is not a "rulemaking," rather it provides information to States to aid them in developing rules.

TABLE 1.—VOC LIMITS FOR MARINE COATINGS

Coating Category	VOC limits <sup>a b</sup>		
	Grams/liter coating (minus water and exempt compounds)	Grams/liter solids <sup>c</sup>	
		t ≥ 4.5°C	t < 4.5°C <sup>d</sup>
General use .....	340	571	728
Specialty:			
Air flask .....	340	571	728
Antenna .....	530	1,439	.....
Antifoulant .....	400	765	971
Heat resistant .....	420	841	1,069
High-gloss .....	420	841	1,069
High-temperature .....	500	1,237	1,597
Inorganic zinc high-build .....	340	571	728
Military exterior .....	340	571	728
Mist .....	610	2,235	.....
Navigational aids .....	550	1,597	.....
Nonskid .....	340	571	728
Nuclear .....	420	841	1,069
Organic zinc .....	360	630	802
Pretreatment wash primer .....	780	11,095	.....
Repair and maint. of thermoplastics .....	550	1,597	.....
Rubber camouflage .....	340	571	728
Sealant for thermal spray aluminum .....	610	2,235	.....
Special marking .....	490	1,178	.....
Specialty interior .....	340	571	728
Tack coat .....	610	2,235	.....
Undersea weapons systems .....	340	571	728
Weld-through precon. primer .....	650	2,885	.....

<sup>a</sup> The limits are expressed in two sets of equivalent units. Either set of limits may be used to demonstrate compliance.

<sup>b</sup> To convert from g/L to lb/gal, multiply by (3,785 L/gal)(1/453.6 lb/g) or 1/120. For compliance purposes, metric units define the standards.

<sup>c</sup> VOC limits expressed in units of mass of VOC per volume of solids were derived from the VOC limits expressed in units of mass of VOC per volume of coating assuming the coatings contain no water or exempt compounds and that the volumes of all components within a coating are additive.

<sup>d</sup> These limits apply during cold-weather time periods (i.e., temperatures below 4.5°C). Cold-weather allowances are not given to coatings in categories that permit less than 40 percent solids (nonvolatiles) content by volume. Such coatings are subject to the same limits regardless of weather conditions.

Appendix A. Procedure to Determine VOC Contents of Coatings to Which Thinning Solvent Will Be Added

For a coating to which thinning solvent is routinely or sometimes added, the owner or operator shall determine the VOC content as follows:

(1) Prior to the first application of each batch, designate a single thinner for the coating and calculate the maximum allowable thinning ratio (or ratios, if the affected source complies with the cold-weather limits in addition to the other limits specified in Table 1 for each batch as follows:

$$R = \frac{(V_s)(VOC\ limit) - m_{VOC}}{D_{th}} \quad \text{Eqn.}$$

Where:

R = Maximum allowable thinning ratio for a given batch (L thinner/L coating as supplied);

V<sub>s</sub> = Volume fraction of solids in the batch as supplied (L solids/L coating as supplied);

VOC limit = Maximum allowable as-applied VOC content of the coating (g VOC/L solids);

m<sub>VOC</sub> = VOC content of the batch as supplied (g VOC/L coating as supplied);

D<sub>th</sub> = Density of the thinner (g/L).

If V<sub>s</sub> is not supplied directly by the coating manufacturer, the owner or operator shall determine V<sub>s</sub> as follows:

$$V_s = 1 - \frac{m_{volatiles}}{D_{avg}} \quad \text{Eqn. 2}$$

Where:

$m_{\text{volatiles}}$  = Total volatiles in the batch, including VOC, water, and exempt compounds (g/L coating); and  
 $D_{\text{avg}}$  = Average density of volatiles in the batch (g/L).

In addition, the owner or operator may choose to construct nomographs, based on Equation 1, similar or identical to the one provided in Appendix C (Figure 1) as a means of easily estimating the maximum allowable thinning ratio. The VOC Data Sheet included as Appendix D also provides useful information in determining compliance with the applicable VOC coating limit.

#### Appendix B. Definitions

Terms used in this CTG are defined in the CAA or in this section as follows:

*Add-on control system* means an air pollution control device such as a carbon absorber or incinerator that reduces pollution in an air stream by destruction or removal prior to discharge to the atmosphere.

*Affected source* means any shipbuilding or ship repair facility having surface coating operations with a minimum 1,000 liters (L) (264 gallons (gal)) annual marine coating usage.

*Air flask specialty coating* means any special composition coating applied to interior surfaces of high pressure breathing air flasks to provide corrosion resistance and that is certified safe for use with breathing air supplies.

*Antenna specialty coating* means any coating applied to equipment through which electromagnetic signals must pass for reception or transmission.

*Antifouling specialty coating* means any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

*As applied* means the condition of a coating at the time of application to the substrate, including any thinning solvent.

*As supplied* means the condition of a coating before any thinning, as sold and delivered by the coating manufacturer to the user.

*Batch* means the product of an individual production run of a coating manufacturer's process. (A batch may vary in composition from other batches of the same product.)

*Bitumens* mean black or brown materials that are soluble in carbon disulfide, which consist mainly of hydrocarbons.

*Bituminous resin coating* means any coating that incorporates bitumens as a principal component and is formulated

primarily to be applied to a substrate or surface to resist ultraviolet radiation and/or water.

*Certify* means, in reference to the VOC content of a coating, to attest to the VOC content as determined through analysis by Method 24 of Appendix A to Part 60 of Title 40 of the Code of Federal Regulations (CFR) or to attest to the VOC content as determined through an EPA-approved test method. In the case of conflicting results, the EPA Method 24 shall take precedence.

*Coating* means any material that can be applied as a thin layer to a substrate and which cures to form a continuous solid film.

*Cold-weather time period* means any time during which the ambient temperature is below 4.5°C (40°F) and coating is to be applied.

*Container of coating* means the container from which the coating is applied, including but not limited to a bucket or pot.

*Cure volatiles* means reaction products which are emitted during the chemical reaction which takes place in some coating films at the cure temperature. These emissions are other than those from the solvents in the coating and may, in some cases, comprise a significant portion of total VOC and/or VOHAP emissions.

*Epoxy* means any thermoset coating formed by reaction of an epoxy resin (i.e., a resin containing a reactive epoxide with a curing agent).

*Exempt compounds* means specified organic compounds that are not considered VOC due to negligible photochemical reactivity. Exempt compounds are specified in 40 CFR § 51.100(s).

*Facility* means all contiguous or adjoining property that is under common ownership or control, including properties that are separated only by a road or other public right-of-way.

*General use coating* means any coating that is not a specialty coating.

*Heat resistant specialty coating* means any coating that during normal use must withstand a temperature of at least 204°C (400°F).

*High-gloss specialty coating* means any coating that achieves at least 85 percent reflectance on a 60 degree meter when tested by the American Society for Testing and Materials (ASTM) Method D-523.

*High-temperature specialty coating* means any coating that during normal use must withstand a temperature of at least 426°C (800°F).

*Inorganic zinc (high-build) specialty coating* means a coating that contains 960 grams per liter (eight pounds per

gallon) or more elemental zinc incorporated into an inorganic silicate binder that is applied to steel to provide galvanic corrosion resistance. (These coatings are typically applied at more than two mil dry film thickness.)

*Maximum allowable thinning ratio* means the maximum volume of thinner that can be added per volume of coating without violating the applicable VOC limit (see Table 1).

*Military exterior specialty coating or Chemical Agent Resistant Coatings* means any exterior topcoat applied to military or U.S. Coast Guard vessels that are subject to specific chemical, biological, and radiological washdown requirements.

*Mist specialty coating* means any low viscosity, thin film, epoxy coating applied to an inorganic zinc primer that penetrates the porous zinc primer and allows the occluded air to escape through the paint film prior to curing.

*Navigational aids specialty coating* means any coating applied to Coast Guard buoys or other Coast Guard waterway markers when they are recoated aboard ship at their usage site and immediately returned to the water.

*Nonskid specialty coating* means any coating applied to the horizontal surfaces of a marine vessel for the specific purpose of providing slip resistance for personnel, vehicles, or aircraft.

*Nonvolatiles (or volume solids)* means substances that do not evaporate readily. This term refers to the film-forming material of a coating.

*Normally closed* means a container or piping system is closed unless an operator is actively engaged in adding or removing material.

*Nuclear specialty coating* means any protective coating used to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM D4082-83), relatively easy to decontaminate (ASTM D4256-83), and resistant to various chemicals to which the coatings are likely to be exposed (ASTM 3912-80). (For nuclear coatings, see the general protective requirements outlined by the U.S. Atomic Energy Commission in a report entitled "U.S. Atomic Energy Commission Regulatory Guide 1.54" dated June 1973, available through the Government Printing Office at (202) 512-2249 as document number A74062-00001.)

*Operating parameter value* means a minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with one or

more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

*Organic zinc specialty coating* means any coating derived from zinc dust incorporated into an organic binder that contains more than 960 grams of elemental zinc per liter (eight pounds per gallon) of coating, as applied, and that is used for the expressed purpose of corrosion protection.

*Pleasure craft* means any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters in length. A vessel rented exclusively to, or chartered for, individuals for such purposes shall be considered a pleasure craft.

*Pretreatment wash primer specialty coating* means any coating that contains a minimum of 0.5 percent acid, by mass, and is applied only to bare metal to etch the surface and enhance adhesion of subsequent coatings.

*Repair and maintenance of thermoplastic coating of commercial vessels (specialty coating)* means any vinyl, chlorinated rubber, or bituminous resin coating that is applied over the same type of existing coating to perform the partial recoating of any in-use commercial vessel. (This definition does not include coal tar epoxy coatings, which are considered "general use" coatings.)

*Rubber camouflage specialty coating* means any specially formulated epoxy coating used as a camouflage topcoat for exterior submarine hulls and sonar domes.

*Sealant for thermal spray aluminum* means any epoxy coating applied to thermal spray aluminum surfaces at a maximum thickness of one dry mil.

*Ship* means any marine or fresh-water vessel used for military or commercial operations, including self-propelled vessels, those propelled by other craft

(barges), and navigational aids (buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. Pleasure craft and offshore oil and gas drilling platforms are not considered ships.

*Shipbuilding and ship repair operations* means any building, repair, repainting, converting, or alteration of ships.

*Special marking specialty coating* means any coating that is used for safety or identification applications, such as ship numbers and markings on flight decks.

*Specialty coating* means any coating that is manufactured and used for one of the specialized applications described within this list of definitions.

*Specialty interior coating* means any coating used on interior surfaces aboard U.S. military vessels pursuant to a coating specification that requires the coating to meet specified fire retardant and low toxicity requirements, in addition to the other applicable military physical and performance requirements.

*Tack specialty coating* means any thin film epoxy coating applied at a maximum thickness of two dry mils to prepare an epoxy coating that has dried beyond the time limit specified by the manufacturer for the application of the next coat.

*Thinner* means a liquid that is used to reduce the viscosity of a coating and that evaporates before or during the cure of a film.

*Thinning ratio* means the volumetric ratio of thinner to coating, as supplied.

*Thinning solvent*: see Thinner.

*Undersea weapons systems specialty coating* means any coating applied to any component of a weapons system intended to be launched or fired from under the sea.

*Volatile organic compounds (VOC)* means any organic compound that

participates in atmospheric photochemical reactions; that is, any organic compound other than those that the Administrator designates as having negligible photochemical reactivity. The VOC is measured by a reference method, an equivalent method, an alternative method, or by procedures specified under any rule. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, any owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard. For a list of compounds that the Administrator has designated as having negligible photochemical reactivity, refer to 40 CFR § 51.00.

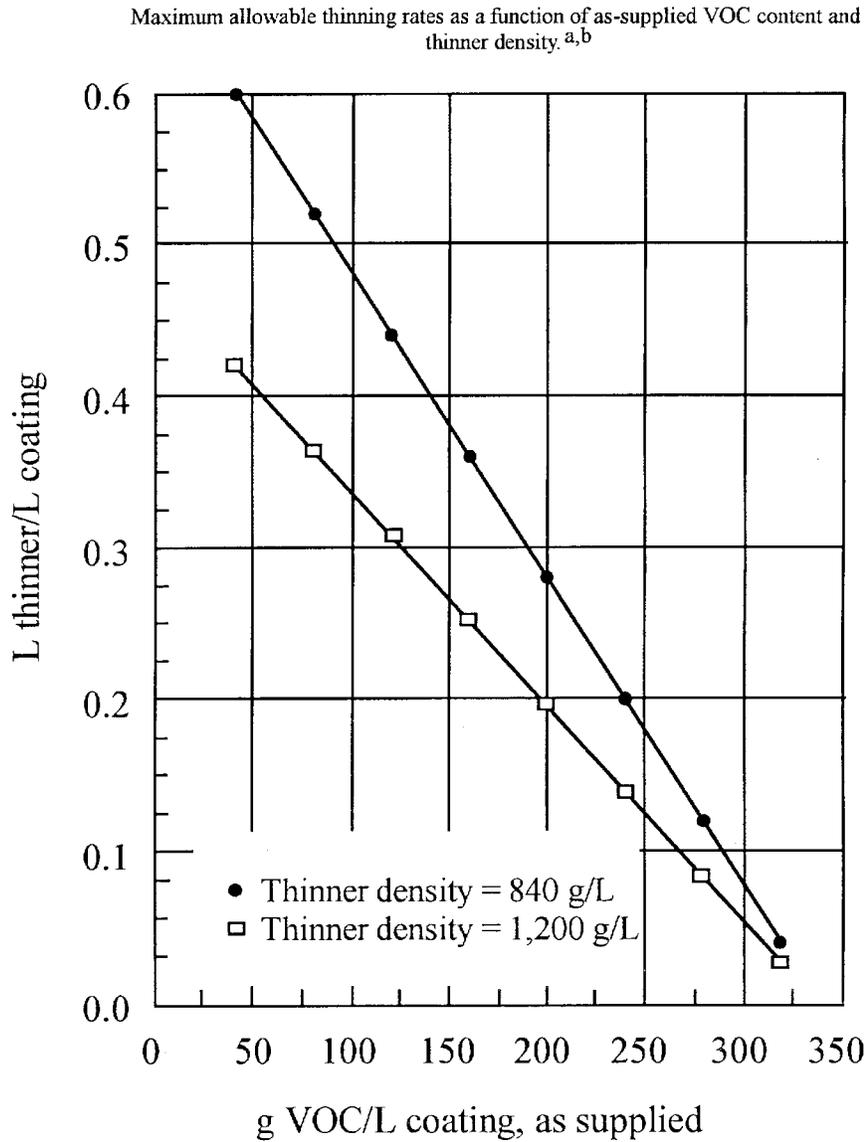
*Volatile organic hazardous air pollutant (VOHAP)* means any compound listed in or pursuant to Section 112(b) of the CAA that contains carbon, excluding metallic carbides and carbonates. This definition includes VOC listed as hazardous air pollutant (HAP) and exempt compounds listed as HAP.

*Weld-through preconstruction primer (specialty coating)* means a coating that provides corrosion protection for steel during inventory, is typically applied at less than one mil dry film thickness, does not require removal prior to welding, is temperature resistant (burn back from a weld is less than 1.25 centimeters (0.5 inches)), and does not normally require removal before applying film-building coatings, including inorganic zinc high-build coatings. When constructing new vessels, there may be a need to remove areas of weld-through preconstruction primer due to surface damage or contamination prior to application of film-building coatings.

BILLING CODE 6560-50-P

## APPENDIX C

(Figure 1.)



<sup>a</sup>These graphs represent maximum allowable thinning ratios for general use coatings without water or exempt compounds.

<sup>b</sup>The average density of the volatiles in the coating was assumed = 840 g solvent/L solvent.

## Appendix D

*VOC Data Sheet: 1 Properties of the Coating "As Supplied" by the Manufacturer<sup>2</sup>*

Coating Manufacturer: \_\_\_\_\_

Coating Identification: \_\_\_\_\_

Batch Identification: \_\_\_\_\_

Supplied To: \_\_\_\_\_

Properties of the coating as supplied<sup>1</sup> to the customer:A. Coating Density: (D<sub>c</sub>)s \_\_\_\_\_ g/L[ ] ASTM D1475-90\* [ ] Other<sup>3</sup>B. Total Volatiles: (m<sub>v</sub>)s \_\_\_\_\_ Mass Percent[ ] ASTM D2369-93\* [ ] Other<sup>3</sup>C. Water Content: 1. (m<sub>w</sub>)s \_\_\_\_\_ Mass Percent

[ ] ASTM D3792-91\* [ ] ASTM

D4017-90\* [ ] Other<sup>3</sup>2. (v<sub>w</sub>)s \_\_\_\_\_ Volume Percent[ ] Calculated [ ] Other<sup>3</sup>D. Organic Volatiles: (m<sub>o</sub>)s \_\_\_\_\_ Mass PercentE. Nonvolatiles: (v<sub>n</sub>)s \_\_\_\_\_ Volume Percent[ ] Calculated [ ] Other<sup>3</sup>

F. VOC Content (VOC)s:

1. \_\_\_\_\_ g/L solids (nonvolatiles)

2. \_\_\_\_\_ g/L coating (less water and exempt compounds)

G. Thinner Density: D<sub>th</sub> \_\_\_\_\_ g/LASTM \_\_\_\_\_ [ ] Other<sup>3</sup>

Remarks: (use reverse side)

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Dated: August 15, 1996.

Mary D. Nichols,

*Assistant Administrator for Air and Radiation.*

[FR Doc. 96-21827 Filed 8-26-96; 8:45 am]

BILLING CODE 6560-50-P

## [FRL-5560-7]

**Air Quality Criteria for Ozone and Related Photochemical Oxidants****AGENCY:** Environmental Protection Agency.**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of a final report titled, Air Quality Criteria for Ozone and Related Photochemical Oxidants, Volumes I, II, and III (EPA/600/P-93/004aF, bF, and cF), prepared by the U.S. Environmental Protection Agency's (EPA) Office of Research and Development (ORD). This document evaluates the latest scientific information pertaining to health and environmental effects associated with

ozone and related photochemical oxidants.

**DATES:** On June 12, 1996, ORD transmitted the final document to the EPA Office of Air and Radiation. ORD thereby completed a criteria document preparation, comment, revision and approval cycle beginning with the call for information of August 27, 1992 (57 FR 38832).

**ADDRESSES:** Interested parties can obtain a single bound copy of the final Air Quality Criteria Document for Ozone and Related Photochemical Oxidants by contacting the ORD Publications Office, Technology Transfer and Support 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 three-volume document by the title and EPA document number (EPA/600/P-93/004aF-cF). A limited number of paper copies will be available from the above source. After the supply is exhausted, copies of the Ozone document 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 numbers for the Air Quality Criteria for Ozone and Related Photochemical Oxidants are: Vol. I of III (PB96-185582), Vol. II of III (PB96-185590), Vol. III of III (PB96-185608), and for the three-volume set (PB96-185574).

The Executive Summary of the Air Quality Criteria Document for Ozone will be available via the Internet on the ORD Home Page (<http://www.epa.gov/ORD>). Interested parties also can access the Executive Summary of the Ozone Air Quality Criteria Document electronically on the Agency's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network (TTN) Bulletin Board System (BBS). The telephone number for the TTN BBS is (919) 541-5742. To access the bulletin board, a modem and communications software are necessary. The following parameters on the communications software are required: Data Bits—8; Parity—N; and Stop Bits—1. The Executive Summary will be located on the Clean Air Act Amendments BBS, under Title I, Policy/Guidance Documents. If assistance is needed in accessing the system, call the help desk at (919) 541-5384 in Research Triangle Park, NC. A copy of the complete report is also available for public inspection at the EPA Air Docket and at the EPA Library, both at EPA Headquarters,

Waterside Mall, 401 M Street, SW, Washington, D.C. EPA Air Docket hours, in Room M1500 of Waterside Mall, are 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding Federal holidays. EPA Library hours are from 10:00 a.m. until 2:00 p.m., Monday through Friday, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

James Raub, National Center for Environmental Assessment (MD-52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541-4157; facsimile: (919) 541-1818; e-mail: raub.james@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Sections 108 and 109 of the Clean Air Act (CAA) govern the establishment, review, and revision of National Ambient Air Quality Standards (NAAQS). Section 108 directs the Administrator of the U.S. Environmental Protection Agency (EPA) to list pollutants that may reasonably be anticipated to endanger public health or welfare and to issue air quality criteria for them. The air quality criteria are to reflect the latest scientific information useful in indicating the kind and extent of all effects on public health and welfare that may be expected from the presence of the pollutant in ambient air. In keeping with these CAA mandates, this document evaluates the latest scientific information useful in deriving criteria to form scientific bases for decisions regarding possible revision of current Ozone NAAQS.

Dated: August 7, 1996.

Joseph K. Alexander,

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 96-21826 Filed 8-26-96; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL EMERGENCY MANAGEMENT AGENCY****Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(a)(1)).

*Title:* Community Rating System (CRS) Program—Application Worksheets and Commentary and NFIP Repetitive Loss Correction Worksheet.

*FEMA Form:* 81-83, NFIP Repetitive Loss Correction Worksheet.

\* Incorporation by reference—see § 63.14.

<sup>1</sup> Adapted from EPA-340/1-86-016 (July 1986), p. II-2.<sup>2</sup> The subscript "s" denotes each value is for the coating "as supplied" by the manufacturer.<sup>3</sup> Explain the other method used under "Remarks."

*Type of Review:* Revision of a currently approved information collection.

*Abstract:* The Community Rating System (CRS) is designed by the Federal Insurance Administration to encourage, through the use of flood insurance premium discounts, communities and States to undertake activities that will mitigate flooding and flood damage beyond the minimum standards for National Flood Insurance Program participation. Communities use the NFIP/CRS Coordinator's Manual which includes the schedule, commentary and application worksheets. The application worksheets, requisite documentation, and certification are submitted to the appropriate FEMA Regional Office. The NFIP Repetitive Loss Correction Worksheet is used to correct/update property location/address, dates of loss, total number of losses per property, community name, community number, and reason for change.

*Affected Public:* State, local or tribal government.

*Number of Respondents:* 60.

*Estimated Time per Respondent:* 30 hours.

*Estimated Total Annual Burden and Recordkeeping Hours:* 1,800.

*Frequency of Response:* Other—once per respondent with annual updates regarding participation.

**COMMENTS:** Interested persons are invited to submit written comments on the proposed collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**ADDRESSES:** Requests for additional information or copies of the information collection instruments should be made to Muriel B. Anderson, Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646-2625. FAX number (202) 646-3524.

Dated: July 31, 1996.  
Reginald Trujillo,  
Director, Program Services Division,  
Operations Support Directorate.  
[FR Doc. 96-21808 Filed 8-26-96; 8:45 am]  
BILLING CODE 6718-01-P

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(a)(1)).

*OMB Control Number:* 3067-0024.  
*Title:* General Admissions Application and National Fire Academy Roster of Course Completion.

*Type of Review:* Extension.  
*Form Numbers:* FEMA Form 75-5, General Admissions Application; FEMA Form 75-9, National Fire Academy Roster of Course Completion.

*Abstract:* The National Fire Academy (NFA) and Emergency Management Institute (EMI) (located at the National Emergency Training Center in Emmitsburg, Maryland) use FEMA Form 75-5, General Admissions Application,

to admit applicants to resident courses and programs offered at the NETC. Information from the application form is maintained in the Student Record System. The system: (1) Provides a consolidated record of all FEMA training taken by a student; (2) Identifies or verifies participation in any prerequisite courses; (3) Produces a transcript which can be used by the student in requesting college credit or continuing education units for courses completed; and (4) Determines which students receive stipends to attending NFA courses.

FEMA Form 75-9, National Fire Academy Roster of Course Completion, is used by a State and local sponsoring agency to admit applicants to NFA off-campus courses. The form is completed by the student at the time the class is conducted. The United States Fire Administration/NFA has established a strong cooperative partnership with State and local fire training systems. This partnership has resulted in the ongoing development and delivery of a series of courses which constitute the NFA's off-campus program curriculum. NFA off-campus courses offer short term intensive training designed to provide maximum participation by fire service/rescue personnel and allied professionals, who can not afford the time required for attending on-campus resident programs, to attend training courses within the State and local community.

*Affected Public:* Individuals or households, Not-for-profit institutions, and State, local or tribal governments, and Federal Government.

ESTIMATED TOTAL ANNUAL BURDEN HOURS

FEMA form No.	No. responses	Time per response (minutes)	Total burden hours
FEMA Form 75-5 .....	33,000	.....	4,950
FEMA Form 75-9 .....	15,000	3	750
Total .....	48,000	16	5,700

<sup>1</sup> Average.

**COMMENTS:** Interested persons are invited to submit written comments on the proposed collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of the forms should be made to Muriel B. Anderson, Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646-2625 or Facsimile number (202) 646-3524.

Dated: July 31, 1996.  
Reginald Trujillo,  
Director, Program Services Division,  
Operations Support Directorate.  
[FR Doc. 96-21809 Filed 8-26-96; 8:45 am]  
BILLING CODE 6718-01-P

**Agency Information Collection Activities: Submission for OMB Review; Comment Request**

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(a)(1)).

*OMB Control Number:* 3067-0163.

*Title:* Individual and Family (IFG) Grant Program Information.

*Type of Review:* Extension of a currently approved information collection.

*Abstract:* Individual and Family Grant (IFG) Program Information is essential to the effective monitoring and management of the State-administered IFG program by FEMA regional office staff. FEMA regions have oversight responsibility for ensuring that the States perform and adhere to FEMA regulations and policy guidance.

This collection of information is a series of forms and reports which assist the FEMA regional office staff in monitoring program delivery to disaster applicants and complying with other Federal requirements (flood insurance, environmental assessments, and floodplain management).

FEMA Forms included in this collection are as follows: (1) FEMA Form 76-27, DARIS Entry Document, Initial Report. This report is initiated by FEMA Regional Offices based on the

data provided by States. States provides FEMA preliminary information on the IFG program for staffing and management purposes. This report is completed once for each disaster, and establishes a DARIS report for each new IFG program. (2) FEMA Form 76-28, DARIS Entry Document, Status Report. This report is completed by State IFG staff and provided to the FEMA Regional Director. It serves as the framework for reviewing, analyzing, and monitoring the progress of the program. The report tracks the number and dollar amount of applications approved by the State, the number and dollar amounts of grants disbursed, and the number of grant appeals. The data carried on this report is used to make determinations on the need for additional allocation and obligation of funds for program activity. (3) FEMA Form 76-29, DARIS Entry Document, Final Statistical Report. This report captures the funding history by category of each IFG program. The information reveals the total IFG Program cost, and is used to prepare reports to OMB and the Congress. The report is also used as a management tool to check on the State's record of accuracy in estimating IFG Program costs and in requesting advances. States are responsible for completing the form, and the FEMA Regional Offices are responsible for entering the information into DARIS. (4) FEMA Form 76-30, Environmental Review, IFG Program. The National Environmental Policy Act (NEPA) requires an environmental

review process before certain IFG assistance in the housing category can be approved. When the review is conducted, the State is required to use the form to record the necessary information. (5) FEMA Form 76-32, Worksheet for Case File Reviews. FEMA requires States to keep IFG program information and, on occasion, requests the States to provide such information, as needed. (6) FEMA Form 76-34, Checklist for IFG Program Review. The checklist is used during the interview stage of the IFG Mid-Program Review of the State's administration of the program. It covers all items that must be monitored by FEMA to ensure effective management of the IFG program. (7) FEMA Form 76-35, Worksheet for Preparing and Reviewing State Administrative Plans. The worksheet is used to develop or update State Administrative Plans that must be approved by FEMA. The plans are used by State IFG personnel to administratively manage the IFG Program. (8) FEMA Form 76-38, Floodplain Management Analysis. Executive Orders 11988, Floodplain Management Analysis, and 11990, Protection of Wetlands, place a responsibility on FEMA and States to perform reviews before certain IFG assistance in the housing category can be approved. The review involves an eight-step decision-making process if the action could affect a floodplain or wetland.

**BURDEN ESTIMATES PER RESPONSE:**

FEMA form No.	No. of respondents	Hours per response	Annual burden hours
FEMA Form 76-27 .....	25	15 minutes .....	6.25
FEMA Form 76-28 .....	25	30 minutes .....	2,250
FEMA Form 76-29 .....	25	30 minutes .....	12.5
FEMA Form 76-30 .....	1	1 hour .....	1
FEMA Form 76-32 .....	25	30 minutes .....	187.5
FEMA Form 76-34 .....	25	4 hours .....	100
FEMA Form 76-35 .....	25	2.5 hours .....	62.5
FEMA Form 76-38 .....	2	2 hours .....	80

*Estimated Total Annual Burden Hours:* 2,700.

*Affected Public:* State, local or tribal governments.

**COMMENTS:** Interested persons are invited to submit written comments on the proposed collection to Victoria Wassmer, Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the forms should be made to Muriel B. Anderson, Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646-2625 or Facsimile number (202) 646-3524.

Dated: July 31, 1996.

Reginald Trujillo,  
 Director, Program Services Division,  
 Operations Support Directorate.  
 [FR Doc. 96-21810 Filed 8-26-96; 8:45 am]

**BILLING CODE 6718-01-P**

**Open Meeting, Technical Mapping Advisory Council**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

*Name:* Technical Mapping Advisory Council.

*Date of Meeting:* September 13, 1996.

*Place:* Hall of States, 444 North Capitol Street, NW, Washington, D.C.

*Time:* 8:30 a.m. to 5:00 p.m.

*Proposed Agenda:* Discussion of the National Flood Insurance Program map production process, develop an action plan for achieving Council goals, and a discussion of the annual report.

*Status:* Open to the public.

**FOR FURTHER INFORMATION CONTACT:**

Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472; telephone (202) 646-2756 or by fax as noted above.

Michael K. Buckley, P.E.,

*Chief, Hazard Identification Branch, Mitigation Directorate.*

[FR Doc. 96-21807 Filed 8-26-96; 8:45 am]

BILLING CODE 6718-04-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 September 10, 1996.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Lester G. Abeloff*, Stroudsburg, Pennsylvania, and *Rupert Dale Hughes*, East Stroudsburg, Pennsylvania; each to acquire 14 percent of the voting shares of Pocono Community Bank (in organization), Stroudsburg, Pennsylvania.

Board of Governors of the Federal Reserve System, August 21, 1996.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 96-21773 Filed 8-26-96; 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 September 20, 1996.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *New South Bancshares, Inc.*, Irondale, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of New South Bank (in organization), Irondale, Alabama.

In connection with this application, Applicant also has applied to acquire New South Federal Savings Bank, Irondale, Alabama, and thereby engage in operating a savings association, pursuant to § 225.25(b)(9) of the Board's Regulation Y. The proposed activity will be conducted throughout the State of Alabama.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Schofield Bancorporation, Inc.*, La Crosse, Wisconsin; to become a bank holding company by acquiring 96 percent of the voting shares of Intercity State Bank, Schofield, Wisconsin.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Laredo National Bancshares of Delaware, Inc.*, Wilmington, Delaware; to acquire 100 percent of the voting shares of Mercantile Financial Enterprises, Inc., Wilmington, Delaware, and thereby indirectly acquire Mercantile Bank, NA, Brownsville, Texas.

Board of Governors of the Federal Reserve System, August 21, 1996.

Jennifer J. Johnson

*Deputy Secretary of the Board*

[FR Doc. 96-21775 Filed 8-26-96; 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 September 10, 1996.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire Home Financial Corporation, Hollywood, Florida, and thereby indirectly acquire Home Savings Bank, FSB, Hollywood, Florida, and thereby engage in operating a savings association, pursuant to § 225.25 (b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Centennial Holdings, Ltd.*, Olympia, Washington; to engage *de novo* through its subsidiary, Totten, Inc., Olympia, Washington, in arranging commercial real estate equity financing, pursuant to § 225.25(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 21, 1996.

Jennifer J. Johnson

*Deputy Secretary of the Board*

[FR Doc. 96-21774 Filed 8-26-96; 8:45 am]

BILLING CODE 6210-01-F

## FEDERAL TRADE COMMISSION

[File No. 942-3311]

### Computer Business Services, Inc.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Sheridan, Indiana home-based computer business opportunity firm from misrepresenting the success rates or profitability of its clients and from using deceptive testimonials or other deceptive statements to entice consumers to buy its products. The firm would also be required to disclose that federal laws restrict the use of certain automatic telephone dialing systems it sells and to pay \$5 million in consumer redress.

**DATES:** Comments must be received on or before October 28, 1996.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** C. Steven Baker, Federal Trade Commission, Chicago Regional Office, 55 East Monroe Street, Suite 1860, Chicago, IL 60603. (312) 353-8156; Catherine R. Fuller, Federal Trade Commission, Chicago Regional Office, 55 East Monroe Street, Suite 1860, Chicago, IL 60603. (312) 353-5576.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in

accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Agreement Containing Consent Order

In the Matter of Computer Business Services, Inc., a corporation, Andrew L. Douglass, individually and as an officer of the corporation, Matthew R. Douglass, individually, and Peter B. Douglass, individually.

The Federal Trade Commission has conducted an investigation of certain acts and practices of Computer Business Services, Inc., Andrew L. Douglass, individually and as an officer of Computer Business Services, Inc., Matthew R. Douglass, and Peter B. Douglass, ("proposed respondents"). Proposed respondents, having been represented by counsel, are willing to enter into an agreement containing a consent order resolving the allegations contained in the draft complaint. Therefore,

*It is hereby agreed* by and between Computer Business Services, Inc., Andrew L. Douglass, individually and as an officer of Computer Business Services, Inc., Matthew R. Douglass, and Peter B. Douglass, and counsel for the Federal Trade Commission that:

1. Proposed respondent Computer Business Services, Inc. is an Indiana Corporation with its principal office or place of business at CBSI Plaza, Sheridan, Indiana 46069.

2. Proposed respondent Andrew L. Douglass is an officer of Computer Business Services, Inc. and resides at 9 E. 191st Street, Westfield, Indiana 46074. His principal office or place of business is the same as that of Computer Business Services, Inc.

3. Proposed respondent Matthew R. Douglass is a supervisory employee of Computer Business Services, Inc. and resides at 9 Forest Bay Lane, Cicero, Indiana 46034. His principal office or place of business is the same as that of Computer Business Services, Inc.

4. Proposed respondent Peter B. Douglass is a supervisory employee of Computer Business Services, Inc. and resides at 18846 Casey Rd., Sheridan, Indiana 46069. His principal office or place of business is the same as that of Computer Business Services, Inc.

5. Proposed respondent admit all the jurisdictional facts set forth in the draft complaint.

6. Proposed respondents waive:

- (a) Any further procedural steps;
- (b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and
- (c) All rights to seek judicial review or otherwise to challenge or contest the

validity of the order entered pursuant to this agreement.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint, will be placed on the public record for a period of sixty (60) days, and information about it publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft complaint, or that the facts as alleged in the draft complaint, other than the jurisdictional facts, are true.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order in disposition of the proceeding, and (2) make information about it public. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery of the complaint and the decision and order to proposed respondents by any means specified in Section 4.4 of the Commission's Rules shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

10. Proposed respondents have read the draft complaint and consent order. They understand that they may be liable for civil penalties in the amount provided by law and other appropriate relief for each violation of the order after it becomes final.

Order

#### Definitions

For purposes of this order, the following definitions shall apply:

1. "Business venture" means any written or oral business arrangement, however denominated, whether or not covered by the Federal Trade Commission's trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR part 436, and which consists of payment of any consideration for:

A. the right to offer, sell, or distribute goods, or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

B. more than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

2. "Clearly and prominently" shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence for an ordinary consumer to hear and comprehend it.

C. In a print or electronic advertisement, the disclosure shall be in a type size, and in a location, that is sufficiently noticeable for an ordinary consumer to see and read, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. Unless otherwise specified, "respondents" shall mean Computer Business Services, Inc., a corporation, its successors and assigns and its officers; Andrew L. Douglass, individually and as an officer of the corporation; Matthew R. Douglass, individually; and Peter B. Douglass, individually; and each of the above's agents, representatives and employees.

4. "In or affecting commerce" shall mean as defined in Section 4 of the

Federal Trade Commission Act, 15 U.S.C. 44.

5. "Automatic telephone dialing system" shall mean as defined in the Telephone Consumer Protection Act, 47 U.S.C. 227(a)(1).

I

*It is ordered* that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not misrepresent, expressly or by implication:

A. That consumers who purchase or use such business ventures ordinarily succeed in operating profitable businesses out of their own homes;

B. That consumers who purchase or use such business ventures ordinarily earn substantial income;

C. The existence of a market for the products and services promoted by respondents;

D. The amount of earnings, income, or sales that a prospective purchaser could reasonably expect to attain by purchasing a business venture;

E. The amount of time within which the prospective purchaser could reasonably expect to recoup his or her investment; or

F. By use of hypothetical examples or otherwise, that consumers who purchase or use such business ventures earn or achieve from such participation any stated amount of profits, earnings, income, or sales. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondents from using hypothetical examples which so not contain any express or implied misrepresentations or from representing a suggested retail price for products or services.

II

*It is further ordered* that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not represent, expressly or by implication, the performance, benefits, efficacy or success rate of any product or service that is a part of such business venture, unless such representation is true and, at the time of making the representation, respondents possess and rely upon competent and reliable evidence that substantiates such representation. For purposes of this order, if such evidence consists of any test, analysis, research, study, or other evidence based on the expertise of

professionals in the relevant area, such evidence shall be "competent and reliable" only if it has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

### III

*It is further ordered* that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any business venture or any product or service that is part of any business venture in or affecting commerce, shall not:

A. Use, publish, or refer to any user testimonial or endorsement unless respondents have good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained; or

B. Represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

1. The representation is true and, at the time it is made, respondents possess and rely upon competent and reliable evidence that substantiates the representation; or

2. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

- What the generally expected results would be for users of the products, or
- The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Provided, however, that when endorsements and user testimonials are used, published, or referred to in an audio cassette tape recording, such disclosure shall be deemed to be in close proximity to the endorsements or user testimonials when the disclosure appears at the beginning and end of each side of the audio cassette tape recording containing such endorsements or user testimonials. Provided further, however, that when both sides of an audio cassette tape recording contain such endorsements or user testimonials, the disclosure need only appear at the beginning and end of the first side and the end of the second side of the audio cassette tape recording.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

### IV

*It is further ordered* that respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture utilizing, employing or involving in any manner, an automatic telephone dialing system, shall disclose, clearly and prominently, and in close proximity to any representation regarding the use or potential use of an automatic telephone dialing system to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party, that federal law prohibits the use of an automatic telephone dialing system to initiate a telephone call to any residential telephone line using an artificial or prerecorded voice to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party unless a live operator introduces the message. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondents from making truthful statements or explanations regarding the laws and regulations regarding the use of automatic telephone dialing systems.

### V

*It is further ordered* that respondent Computer Business Services, Inc., directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product or service, shall not make any false or misleading statement or representation of fact, expressly or by implication, material to a consumer's decision to purchase respondents' products or services.

### VI

*It is further ordered* that:

A. Respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall pay to the Federal Trade Commission by electronic funds transfer the sum of five million dollars (\$5,000,000) no later than fifteen (15) days after the date of service of this order. In the event of any default on any obligation to make payment under this Part, interest, computed pursuant to 28 U.S.C. § 1961(a) shall accrue from the date of default to the date of payment. In the event of default, respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B.

Douglass, shall be jointly and severally liable.

B. Payment of the sum of five million dollars (\$5,000,000) in accordance with subpart A above shall extinguish any monetary claims the FTC has against Jeanette L. Douglass and George L. Douglass based on the allegations set forth in the Complaint as of the date of entry of this Order. Nothing in this paragraph or any other paragraph of this order shall be construed to prohibit the FTC from seeking administrative or injunctive relief against Jeanette L. Douglass or George L. Douglass.

C. The funds paid by respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, pursuant to subpart A above shall be paid into a redress fund administered by the FTC and shall be used to provide direct redress to purchasers of Computer Business Services, Inc. Payment to such persons represents redress and is intended to be compensatory in nature, and no portion of such payment shall be deemed a payment of any fine, penalty, or punitive assessment. If the FTC determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission. Customers of respondents, as a condition of their receiving payments from the Redress Fund, shall be required to execute releases waiving all claims against respondents, their officers, directors, employees, and agents, arising from the sale of Computer Business Services, Inc. business ventures by respondents prior to the date of issuance of this order. The Commission shall provide respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, with the originals of all such executed releases received from respondents' customers.

### VII

*It is further ordered* that respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and

upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and

promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

#### VIII

*It is further ordered* that respondent Computer Business Services, Inc., and its successors and assigns, and respondent Andrew L. Douglass, for a period of five (5) years after the date of issuance of this order, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

#### IX

*It is further ordered* that respondent Computer Business Services, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondents learn fewer than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of

Protection, Federal Trade Commission, Washington, D.C. 20580.

#### X

*It is further ordered* that respondents Andrew L. Douglass, Matthew R. Douglass and Peter B. Douglass, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his or her current business or employment, or of his or her affiliation with any new business or employment. The notice shall include respondents' new business addresses and telephone numbers and a description of the nature of the business or employment and his or her duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

#### XI

*It is further ordered* that Computer Business Services, Inc. and its successors and assigns, and respondents Andrew L. Douglass, Matthew R. Douglass and Peter B. Douglass shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

#### XII

This order will terminate twenty (20) years from the date of its issuance, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a compliant (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in fewer than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

*Provided, further,* that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never

been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

#### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Computer Business Services, Inc., Andrew L. Douglass, an officer of the corporate respondent and Matthew R. Douglass and Peter B. Douglass, individually.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns earnings and success claims made regarding business ventures promoted by respondents. The Commission's complaint charges that respondents made false and unsubstantiated claims that consumers who purchase or use respondents' business ventures ordinarily succeed and earn substantial income. In fact, the complaint alleges, the vast majority of consumers never even recoup their initial investment. The complaint also alleges that respondents falsely represented that endorsements appearing in respondents' advertisements reflect the actual experiences of its customers and that those endorsements reflect the typical or ordinary experience of purchasers of respondents' business ventures. Further, the complaint alleges that respondents represented that consumers can successfully utilize automatic telephone dialing systems to market their businesses but failed to disclose that federal law prohibits the use of such systems in the untended mode to initiate a call to any residential telephone line in certain circumstances.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. The proposed order extends to all business ventures and to all products or services that are part of any business venture.

Part I of the proposed consent order prohibits the respondents from misrepresenting the earnings or success

of its purchasers, the existence of a market for the products or services promoted by respondents, or the amount of time within which a prospective purchaser can reasonably expect to recoup his or her investment. Part II of the proposed order prohibits the respondents from misrepresenting the performance, benefits, efficacy or success rate of any product or service that is a part of such business venture, unless at the time such representation is made the respondents possess and relies upon competent and reliable evidence that substantiates the representation. Part III of the proposed order prohibits the respondents from misrepresenting that a user testimonial or endorsement is typical or ordinary and from using, publishing or referring to any user testimonial or endorsement unless respondents have good reason to believe that at the time of such use, publication or reference, the person or organization named subscribes to the facts and opinions stated herein. Part IV of the proposed order requires respondents to disclose, in close proximity to any representation regarding the use or potential use of an automatic telephone dialing system, that federal law prohibits the use of an automatic telephone dialing system to initiate a telephone call to any residential telephone line using an artificial or prerecorded voice to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party unless a live operator introduces the message.

The remaining parts of the proposed consent order require the respondents to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to each of its operating divisions and to certain company officials, to notify the Commission of any changes in corporate structure that might affect compliance with the Order, and to file one or more compliance reports.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,  
Secretary.

[FR Doc. 96-21772 Filed 8-26-96; 8:45 am]

BILLING CODE 6750-01-M

## GENERAL SERVICES ADMINISTRATION

### Federal Acquisition Policy Division, FAR Secretariat Revision and Stocking Change of a Standard Form

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** The General Services Administration/FAR Secretariat is revising SF 25, Performance Bond to update the burden statement by correcting the GSA address and deleting OMB's address for submitting comments regarding the burden estimate or any other aspect of the collection of information.

This form is now authorized for local reproduction, and you can obtain the updated camera copy in two ways:

On the internet. Address: <http://www.gsa.gov/forms>, or;

From CARM, Attn.: Barbara Williams, (202) 501-0581.

**FOR FURTHER INFORMATION CONTACT:** FAR Secretariat, (202) 501-4225. This contact is for information on completing the form and interpreting the FAR only.

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

Dated: August 15, 1996.

Theodore D. Freed,  
Standard and Optional Forms Management  
Officer.

[FR Doc. 96-21769 Filed 8-26-96; 8:45 am]

BILLING CODE 6820-34-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulations—HHSAR Part 342—Contract Administration—Extension no change—0990-0131—HHSAR 342.7103 requires reporting information when a cost overrun is anticipated. The information is used to determine if a proposed overrun is reasonable—Respondents—State or local governments, Business or other for-profit, non-profit institutions,

small businesses. Annual number of Responses: 215; Average burden per response: 20 hours; Total burden: 3,400 hours.

2. HHS Acquisition Regulation—HHSAR Part 333—Disputes and Appeals—Extension no change—0990-0133—The Litigation and Claims clause is needed to inform the government of actions filed against government contracts—Respondents: State or local governments, Business or other for-profit, non-profit institutions, small businesses. Annual number of Responses: 86; Average burden per response: 30 minutes; Total burden: 43 hours.

3. HHS Acquisition Regulation—HHSAR Part 332—Contract Financing—Extension no change—0990-0134—The requirements of HHSAR Part 332 are needed to ascertain costs associated with certain contracts so as to timely pay contractor. Respondents: State or local governments, small businesses—Burden Information for Cost Sharing Clause—Number of Respondents: 7; Annual Number of Responses per Respondent: 10; Average Burden per Response: one hour; Annual Burden: 70 hours—Burden Information for Letter of Credit Clause—Number of Respondents: 39; Annual Number of Responses: 4; Burden per Response: 1 hour; Estimated Annual Burden: 156 hours—Total Burden: 226 hours.

OMB Desk Officer: Allison Eydt.  
Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690-6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington DC 20201. Written comments should be received within 30 days of this notice.

Dated: August 16, 1996.

William R. Beldon,  
Acting Deputy Assistant Secretary, Budget.  
[FR Doc. 96-21760 Filed 8-26-96; 8:45 am]

BILLING CODE 4150-04-M

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of

Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS).

*Times and Dates:* 9 a.m.–5 p.m., September 18, 1996. 9 a.m.–5 p.m., September 19, 1996.

*Place:* Room 503A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

*Status:* Open.

*Purpose:* The meeting will provide an opportunity for recognizing the contributions of ten retiring members and welcoming the new Chairperson and nine new members. Departmental officials will brief the Committee on recent legislative developments and new Committee responsibilities, activities of the HHS Data Council, and related data policy activities; the new members also will be briefed by the retiring and continuing members on pending issues and recent accomplishments, including the recently completed report and recommendations on Core Health Data Elements. The Committee also will discuss its future priorities and work plans.

*Notice:* In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8:30 and 9:00 a.m. or 12:30 and 1:00 p.m. so they can be escorted to the meeting. Entrance to the meeting at other times during the day cannot be assured.

*Contact Person for More Information:* Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 690–7100, or Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: August 21, 1996.  
James Scanlon,  
*Director, Division of Data Policy.*  
[FR Doc. 96–21777 Filed 8–26–96; 8:45 am]  
BILLING CODE 4151–04–M

**Centers for Disease Control and Prevention**

[INFO–96–23]

**Proposed Data Collections Submitted for Public Comment and Recommendations**

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

**Proposed Projects**

1. Prevention Marketing Initiative Community Demonstration Site Project Evaluation—(0920–0343)—Extension—The Centers for Disease Control and Prevention, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, Community Assistance, Planning, and National Partnership Branch's Prevention Communications unit is planning to conduct a longitudinal track study as part of the evaluation of a five-city HIV prevention demonstration program. This demonstration program is part of the CDC's national Prevention Marketing Initiative. The local demonstration program involves the integration of social marketing processes and community participation in an effort to develop and implement HIV prevention activities.

Community groups in the local demonstration sites have chosen to target people 25 years old and younger using a variety of intervention strategies. Decisions about the nature of local interventions are based on formative research conducted in each community. It is hoped that this demonstration project will result in reductions in HIV risk behavior among people 25 years old and younger, as well as enhanced collaboration among individuals and organizations in the participating communities.

To evaluate the effectiveness of the interventions, questionnaire data will be collected from people 25 years old and under in demonstration communities. These data will be collected before and after prevention activities and message campaigns are launched. A baseline survey is planned in Fall, 1996 under OMB NO. 0920–0343 (Evaluation of the National AIDS Information and Education Program Activities). The cost to respondents is estimated at \$10,000.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Young people under 25 years of age in targeted prevention program communities .....	4,000	1	.25	1000
Total .....	.....	.....	.....	1000

Dated: August 21, 1996.  
Wilma G. Johnson,  
*Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*  
[FR Doc. 96–21778 Filed 8–26–96; 8:45 am]  
BILLING CODE 4163–18–P

**Food and Drug Administration**

[Docket No. 96F–0245]

**Hoehst Celanese Corp.; Filing of Food Additive Petition**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Hoechst Celanese Corp. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of 4-chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfohenyl)-1H-pyrazol-4-yl]azo]-5-methylbenzenesulfonic acid, calcium salt (1:1) (C.I. Pigment Yellow 191) as a

colorant for all polymers intended for use in contact with food.

**DATES:** Written comments on the petitioner's environmental assessment by September 26, 1996.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John R. Bryce, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3023.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4493) has been filed by Hoechst Celanese Corp., 500 Washington St., Coventry, RI 02816. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the expanded safe use of 4-chloro-2-[[5-hydroxy-3-methyl-1-(3-sulfophenyl)-1H-pyrazol-4-yl]azo]-5-methylbenzenesulfonic acid, calcium salt (1:1) (C.I. Pigment Yellow 191) as a colorant for all polymers intended for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 26, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that

finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: August 19, 1996.

Alan M. Rulis,

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 96-21850 Filed 8-26-96; 8:45 am]

BILLING CODE 4160-01-F

**[Docket No. 96F-0176]**

**Indirect Food Additives: Polymers  
Toray Industries (America) Inc.; Filing  
of Food Additive Petition**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Toray Industries (America) Inc., has filed a food additive petition proposing that the food additive regulations be amended to provide for the safe use of Nylon 6/12 copolymers for use as a non-food contact layer of laminated articles intended for use with food.

**DATES:** Written comments on the petitioner's environmental assessment by September 26, 1996.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Elke Jensen, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3109.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348 (b)(5))), notice is given that a food additive petition (FAP 6B4505) has been filed by Toray Industries (America) Inc., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in Part 177 Indirect Food Additives: Polymers (21 CFR part 177) to provide for the safe use of Nylon 6/12 copolymers for use as a non-food contact layer of laminated articles intended for use with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets

Management Branch (address above) for public review and comment. Interested persons may, on or before September 26, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: May 24, 1996.

Alan M. Rulis,

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 96-21847 Filed 8-26-96; 8:45 am]

BILLING CODE 4160-01-F

**[Docket No. 96F-0293]**

**Zeneca Inc.; Filing of Food Additive  
Petition**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Zeneca Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-methyl-4,5-trimethylene-4-isothiazolin-3-one as a preservative for paper and paperboard coatings used in contact with food.

**DATES:** Written comments on the petitioner's environmental assessment by September 26, 1996.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3081.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 6B4516) has been filed by Zeneca Inc., Foulkstone 1405, 2d, 1800 Concord Pike, Wilmington, DE 19850-5457. The petition proposes to amend the food additive regulations in § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of 2-methyl-4,5-trimethylene-4-isothiazolin-3-one as a preservative for paper and paperboard coatings used in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 26, 1996, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: August 8, 1996.

Alan M. Rulis,

Director, Office of Premarket Approval,  
Center for Food Safety and Applied Nutrition.  
[FR Doc. 96-21845 Filed 8-26-96; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 96E-0099]

**Determination of Regulatory Review Period for Purposes of Patent Extension; CEDAX® Oral Suspension**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for CEDAX® Oral Suspension and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was

issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CEDAX® Oral Suspension (ceftibuten dihydrate). CEDAX® Oral Suspension is indicated for the treatment of individuals with mild-to-moderate infections caused by susceptible strains of the designated microorganisms in the specific conditions: Acute Bacterial Exacerbations of Chronic Bronchitis due to *Haemophilus influenzae* (including B-lactamase-producing strains), *Moraxella catarrhalis* (including B-lactamase producing strains) or *Streptococcus pneumoniae* (penicillin-susceptible strains only), Acute Bacterial Otitis Media due to *Haemophilus influenzae* (including B-lactamase producing strains), *Moraxella catarrhalis* (including B-lactamase producing strains) or *Streptococcus pyogenes*, or Pharyngitis and Tonsillitis due to *Streptococcus pyogenes*. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CEDAX® Oral Suspension (U.S. Patent No. 4,634,697) from Schering-Plough Corp. and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 10, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CEDAX® Oral Suspension represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CEDAX® Oral Suspension is 2,641 days. Of this time, 1,179 days occurred during the testing phase of the regulatory review period, while 1,462 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* September 28, 1988. The applicant claims September 29, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 28, 1988, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357):* December 20, 1991. FDA has verified the applicant's claim that the new drug application (NDA) for CEDAX® Oral Suspension (NDA 50-686) was initially submitted on December 20, 1991.

3. *The date the application was approved:* December 20, 1995. FDA has verified the applicant's claim that NDA 50-686 was approved on December 20, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 28, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 24, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 16, 1996.  
Stuart L. Nightingale,  
Associate Commissioner for Health Affairs.  
[FR Doc. 96-21844 Filed 8-26-96; 8:45 am]  
BILLING CODE 4160-01-F

[Docket No. 96E-0153]

### Determination of Regulatory Review Period for Purposes of Patent Extension; ARIMIDEX®

AGENCY: Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for ARIMIDEX® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Brian J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ARIMIDEX®

(anastrozole). ARIMIDEX® is indicated for the treatment of advanced breast cancer in postmenopausal women with disease progression following tamoxifen therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ARIMIDEX® (U.S. Patent No. 4,935,437) from Zeneca Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 28, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ARIMIDEX® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ARIMIDEX® is 1,336 days. Of this time, 1,062 days occurred during the testing phase of the regulatory review period, while 274 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* May 2, 1992. The applicant claims May 1, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 2, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* March 29, 1995. FDA has verified the applicant's claim that the new drug application (NDA) for ARIMIDEX® (NDA 20-541) was initially submitted on March 29, 1995.

3. *The date the application was approved:* December 27, 1995. FDA has verified the applicant's claim that NDA 20-541 was approved on December 27, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 565 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 26, 1996, submit

to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 24, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 16, 1996.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 96-21849 Filed 8-26-96; 8:45 am]

BILLING CODE 4160-01-F

**[Docket No. 96E-0100]**

**Determination of Regulatory Review Period for Purposed of Patent Extension; CEDAX® Capsules**

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for CEDAX® Capsules and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Brain J. Malkin, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417)

and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product CEDAX® Capsules (ceftibuten dihydrate). CEDAX® Capsules is indicated for the treatment of individuals with mild-to-moderate infections cause by susceptible strains of the designated microorganisms in the specific conditions: Acute Bacterial Exacerbations of Chronic Bronchitis due to *Haemophilus influenzae* (including B-lactamase-producing strains), *Moraxella catarrhalis* (including B-lactamase producing strains) or *Streptococcus pneumoniae* (penicillin-susceptible strains only), Acute Bacterial Otitis Media due to *H. influenzae* (including B-lactamase producing strains), *M. catarrhalis* (including B-lactamase producing strains) or *S. pyogenes*, or Pharyngitis and Tonsillitis due to *S. pyogenes*. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CEDAX® Capsules (U.S. Patent No. 4,812,561) from Schering-Plough Corp. and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a latter dated

April 10, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of CEDAX® Capsules represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CEDAX® Capsules is 3,065 days. Of this time, 1,603 days occurred during the testing phase of the regulatory review period, while 1,462 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective: August 1, 1987. The applicant claims August 2, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 1, 1987, which was 30 days after FDA receipt on the IND.

2. The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357): December 20, 1991. FDA has verified the applicant's claim that the new drug application (NDA) for CEDAX® Capsules (NDA 50-685) was initially submitted on December 20, 1991.

3. The date the application was approved: December 20, 1995. FDA has verified the applicant's claim that NDA 50-685 was approved on December 20, 1995.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 902 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 28, 1996, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 24, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an

FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 15, 1996.  
Stuart L. Nightingale,  
*Associate Commissioner for Health Affairs.*  
[FR Doc. 96-21851 Filed 8-26-96; 8:45 am]  
BILLING CODE 4160-01-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 teleconference meetings of SAMHSA's Special Emphasis Panel II and Special Emphasis Panel I in August, 1996.

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 individuals named as Contacts for the meetings listed below.

The Special Emphasis Panel II meeting 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 meeting is 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.

*Panel:* Research Utilization & Integration into Substance Abuse Treatment.

*Meeting Date:* August 27, 1996.

*Place:* Parklawn Building, Room 17-74, 5600 Fishers Lane, Rockville, MD 20852.

*Closed:* August 27, 1996, 2:00 p.m.-5:00 p.m.

*Contact:* Katie Baas, Room 17-89, Parklawn Building, Telephone: (301)443-0411 and FAX: (301)443-3437.

The Special Emphasis Panel I meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).

*Meeting Date:* August 28, 1996—1:30 p.m.—3:00 p.m.

*Place:* Parklawn Building, Room 17-90, 5600 Fishers Lane, Rockville, MD 20852.

*Closed:* August 28, 1996—1:30 p.m.—3:00 p.m.

*Contact:* Sandra E. Stephens, Room 17-89, Parklawn Building, Telephone: (301) 443-9915 and FAX: (301) 443-3437.

This notice is being published less than 15 days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: August 21, 1996.

Jeri Lipov,

*Committee Management Officer, SAMHSA.*  
[FR Doc. 96-21792 Filed 8-26-96; 8:45 am]

BILLING CODE 4162-20-P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4070-N-02 and FR-4105-N-027]

### Office of Administration; Notice of Submission of Proposed Information Collection to OMB

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research—HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** The due date for comments is: September 3, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Jane Karadbil, Office of University Partnerships—telephone (202) 708-1537. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Karadbil.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, an information collection package with respect to a proposed Notice of Funding Availability for the Hispanic-Serving Institutions Work Study Program (HSI-WSP). HUD seeks to implement this initiative as soon as possible.

The Hispanic-Serving Institutions Work Study Program provides grants to certain institutions of higher education (i.e., Hispanic-serving community colleges) to assist economically disadvantaged and minority students who participate as full-time students participating in associate degree programs in a community building academic discipline. Approximately 30 grants will be awarded with Fiscal Year 1996 funds.

Submission of the information required under this information collection is mandatory in order to compete for and receive the benefits of the program. All materials submitted are subject to the Freedom of Information Act and can be disclosed upon request. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. The OMB control number, when assigned, will be announced by a separate notice in the Federal Register.

The Department has submitted the proposal for the collection of information to OMB for review as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The department has requested emergency clearance of the collection of information, as described below, with approval being sought by August 28, 1996:

(1) *Title of the information collection proposal:* Application Kit—Hispanic-Serving Institutions Work Study Program.

(2) *Summary of the collection of information:* Each application for HSI-WSP would be required to submit current information, as listed below as:

1. Transmittal letter signed by the Chief Executive Officer of the institution.

2. OMB Standard Forms 424 (Application for Federal Assistance),

Form 424B (Non-Construction Assurances) and Budget.  
 3. Eligibility of degree program(s).  
 4. One- to two-page executive summary of the proposed project.  
 5. Proposal narrative statement addressing the selection factors for award.  
 6. Management/workplan.  
 7. Resumes of key faculty and staff.  
 8. Budget for students.  
 9. Tuition and fee schedule.  
 10. Assurance regarding application's financial management system.  
 11. Drug-Free Workplace Certification.  
 12. Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(3) *Description of the need for the information and its proposed use:*  
 To appropriately determine which Institutions of Higher Education should be awarded HSI-WSP grants, certain information is necessary about the applicant's plan for educating and providing work placement experiences for the students, the budget, the management of the project.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:  
 Respondents will be public and private institutions of higher education. Grantees will also be expected to prepare and submit annual monitoring reports.

The estimated number of respondents submitting applications is 89. The proposed frequency of the response to the collection of information is one-time. The application need only be submitted once. The estimated number of respondents to the monitoring requirements is 30.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

**Reporting Burden**  
*Number of respondents:* 89 for applicants; 30 for monitoring requirements.

*Total burden hours:* 40 hours per respondent for applications); 11 hours a year per respondent for monitoring requirements.

*Total estimated burden hours:* 4,130.  
 Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.  
 Dated: August 20, 1996.  
 David S. Christy,  
*Director of IRM Policy and Management Division.*  
 [FR Doc. 96-21763 Filed 8-26-96; 8:45 am]  
**BILLING CODE 4210-01-M**

**[Docket No. FR-4086-N-18]**

**Office of Administration; Submission for OMB Review: Comment Request**

**AGENCY:** Office of Administration, HUD.  
**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: September 26, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 18, 1996.  
 David S. Cristy,  
*Acting Director, Information Resources Management Policy and Management Division.*

**Notice of Submission of Proposed Information Collection to OMB**

*Title of Proposal:* Construction Complaint/Request for Financial Assistance.

*Office:* Housing.

*OMB Approval Number:* 2502-0047.

*Description of the Need for the Information and Its Proposed Use:* Form HUD-92556 will provide orderly processing of homeowners complaint items that the builder is responsible to correct. The form will also determine eligibility for financial assistance for the homeowners and will identify builders who are not conforming to applicable standards.

*Form Number:* HUD-92556.

*Respondents:* Individuals or Households.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-92556 .....	5,000		1		.5		2,500

*Total Estimated Burden Hours:* 2,500.  
*Status:* Reinstatement without changes.

*Contact:* David Dwyer, HUD, (202) 708-2121, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: July 18, 1996.  
 [FR Doc. 96-21765 Filed 8-26-96; 8:45 am]  
**BILLING CODE 4210-01-M**

**Office of Administration; Submission for OMB Review: Comment Request**

[Docket No. FR-4086-N-19]

**AGENCY:** Office of Administration, HUD.  
**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: September 26, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a

toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 18, 1996.

David S. Cristy,  
*Acting Director, Information Resources Management Policy and Management Division.*

Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Section 8 Housing Assistance Program (HAP) Contract, Part II.

*Office:* Housing.

*OMB Approval Number:* 2502-0409.

*Description of the Need for the Information and Its Proposed Use:* The HAP Contract, Part II is the legal document used to obligate Federal funds and to commit the owner to HUD regulations and necessary procedural requirements governing the purpose and use of these funds.

*Form Number:* HUD-52522-D.

*Respondents:* Business or Other For-Profit, Individuals or Households, State, Local, or Tribal Government, and Not-For-Profit Institutions.

*Frequency of Submission:* On Occasion.

*Reporting Burden:*

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-52522-D .....	729		1		3.56		2,597

*Total Estimated Burden Hours:* 2,597.  
*Status:* Reinstatement with changes.  
*Contact:* Barbara Hunter, HUD, (202) 708-3944, Joseph F. Lackey, Jr., OMB, (202) 395-7316.

Dated: July 18, 1996.

[FR Doc. 96-21766 Filed 8-26-96; 8:45 am]

BILLING CODE 4210-01-M

**Office of Administration; Submission for OMB Review: Comment Request**

[Docket No. FR-4086-N-20]

**AGENCY:** Office of Administration, HUD.  
**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** Comments due date: September 26, 1996.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 23, 1996.  
 David S. Cristy,  
 Acting Director, Information Resources  
 Management Policy and Management  
 Division.

Notice of Submission of Proposed  
 Information Collection to OMB

*Title of Proposal:* Chicago Housing  
 Authority Resident Satisfaction and  
 Management Needs Survey.

*Office:* Public and Indian Housing.  
*OMB Approval Number:* None.  
*Description of the Need for the  
 Information and its Proposed Use:* The  
 purpose of this survey is to assess the  
 Chicago Housing Authority (CHA)  
 residents' perception of living  
 conditions in the developments and  
 their satisfaction with CHA's services.  
 Data collection of the survey will  
 consist of an initial survey and a one-

year follow-up survey. The survey will  
 be conducted door-to-door of  
 approximately 1,175 residents.

*Form Number:* None.  
*Respondents:* Individuals or  
 Households.  
*Frequency of Submission:* Annually.  
*Reporting Burden:*

	Number of respondents	x	Frequency of response	x	Hours per re- sponse	=	Burden hours
Survey .....	1,175		2		.25		588

*Total Estimated Burden Hours:* 588.  
*Status:* New  
*Contact:* Robert Dalzell, HUD, (202)  
 708-4233, Joseph F. Lackey, Jr., OMB,  
 (202) 395-7316.

Dated: July 23, 1996.  
 [FR Doc. 96-21767 Filed 8-26-96; 8:45 am]  
 BILLING CODE 4210-01-M

[Docket No. FR-4011-N-03]

**Office of the Assistant Secretary for  
 Community Planning and  
 Development; NOFA for Technical  
 Assistance for the John Heinz  
 Neighborhood Development Program,  
 Notice of Funding Availability for FY  
 1996; Announcement of OMB Approval  
 Number**

**AGENCY:** Office of the Assistant  
 Secretary for Community Planning and  
 Development, HUD.  
**ACTION:** Notice of funding availability  
 for FY 1996; Announcement of OMB  
 Approval Number.

**SUMMARY:** On August 12, 1996 (61 FR  
 41936), the Department published in the  
 Federal Register, a Notice of Funding  
 Availability (NOFA) that announced the  
 availability of \$132,978 for technical  
 assistance funding under the John Heinz  
 Neighborhood Development Program. In  
 the **SUPPLEMENTARY INFORMATION** section,  
 under the "Paperwork Reduction Act  
 Statement", the NOFA stated that  
 "\* \* \* the OMB control number will  
 be published by a separate notice in the  
 Federal Register." The purpose of the  
 notice is to announce the OMB approval  
 number to the NOFA.

**DATES:** Completed applications must be  
 submitted no later than 4:30 p.m.  
 Eastern Time on September 11, 1996.  
 HUD reserves the right to extend the  
 deadline date through notification in the  
 Federal Register. In the interest of  
 fairness to all competing applicants, an  
 application will be treated as ineligible  
 for consideration if it is not physically

received by the deadline date and hour.  
 Applicants should take this requirement  
 into account and make early submission  
 of their materials to avoid any risk of  
 losing eligibility brought about by  
 unanticipated delays or other delivery  
 related problems.

**FOR FURTHER INFORMATION CONTACT:**  
 Ophelia H. Wilson or Stella Hall, Office  
 of the Deputy Assistant Secretary for  
 Grant Programs, Office of Community  
 Planning and Development, U.S.  
 Department of Housing and Urban  
 Development, 451 Seventh Street, SW.,  
 Room 7220, Washington, DC 20410;  
 telephone (202) 708-2186. (This is not  
 a toll-free number.) For hearing- and  
 speech-impaired persons, this number  
 may be accessed via TTY (text  
 telephone) by calling the Federal  
 Information Relay Service at 1-800-  
 877-8339. However, written inquiries  
 are preferred and may be mailed or  
 faxed to: (202) 708-3363.

**SUPPLEMENTARY INFORMATION:**  
 Accordingly, the OMB Approval  
 Number for the NOFA for Technical  
 Assistance for the John Heinz  
 Neighborhood Development Program;  
 Funding Availability for Fiscal Year  
 1996, published in the Federal Register  
 on August 12, 1996 at 61 FR 41936, is  
 2506-0158. The approval number  
 expires on November 11, 1996.

Dated: August 20, 1996.  
 Camille E. Acevedo,  
 Assistant General Counsel for Regulations.  
 [FR Doc. 96-21764 Filed 8-26-96; 8:45 am]  
 BILLING CODE 4210-29-M

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

[NV-020-1220-00; Case File N2-19-96]

**Nevada; Temporary Closing of Certain  
 Public Lands in the Winnemucca  
 District for the Management of the Fall  
 1996 Land Speed Record Attempt  
 Runs**

**AGENCY:** Bureau of Land Management  
 (Interior).

**ACTION:** Temporary closure of certain  
 Public Lands in Pershing County during  
 high speed runs conducted by certain  
 organizations in September, October  
 and November, 1996. Access and  
 movement would be temporarily halted  
 while the high speed vehicles make  
 their runs with speeds in excess of 100  
 mph.

**SUPPLEMENTARY INFORMATION:** Certain  
 lands in the Winnemucca District,  
 Pershing County, Nevada, would be  
 temporarily closed to public access and  
 movement from one-half hour before to  
 immediately after high speed runs made  
 on the playa of the Black Rock Desert.  
 These runs would be made in an  
 attempt to break the current land speed  
 record. Since any movement during  
 such high speeds have a tendency to  
 attract the attention of the driver of the  
 vehicle, for safety considerations all  
 movement needs to be halted during  
 these high speed runs. That individual's  
 attention needs to be focused on the  
 course and the vehicle. The exact time  
 of the closures would depend entirely  
 on when the runs are made. Weather or  
 mechanical conditions may prevent  
 them from running every day of their  
 permit.

The Winnemucca Assistant District  
 Manager, Nonrenewable Resources, is  
 the authorized officer for this event,  
 permit number N2-19-96. These  
 temporary closures and restrictions are  
 made pursuant to 43 CFR 8364. The

public lands to be closed are those on the playa of the Black Rock Desert.

The following public lands administered by the BLM restricted or closed are the lands of the playa of the Black Rock Desert within the following townships: T. 33., R. 24 E.; T. 33½ N., R. 24 E.; T. 34 N., R. 24 E.; T. 33 N., R. 25 E.; T. 34 N., R. 25 E.; T. 35 N., R. 25 E.; T. 35½ N., T. 25 E.; T. 34 N., R. 26 E.; T. 35 N., R. 26 E.; T. 35½ N., R. 26 E.

The lands involved are located in the Mount Diablo Meridian and are located northeast and east of Gerlach, Nevada. They are within Pershing County. All graded roads on the edge of the desert but not on the actual playa are not affected by this closure order. A map showing the route of the course is available from the following BLM office: Winnemucca District Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada, 89445, (702) 623-1500.

Any person who fails to comply with this closure order issued under 43 CFR Part 8364 may be subject to the penalties provided for in 43 CFR 8360.7.

**FOR FURTHER INFORMATION, CONTACT:** Lynn Clemons, 5100 East Winnemucca Blvd., Winnemucca, Nevada, 89445 (702) 623-1500.

Dated: August 15, 1996.

Ron Wenker

*District Manager, Winnemucca*

[FR Doc. 96-21842 Filed 8-25-96; 8:45 am]

**BILLING CODE 4310-HC-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[UT-940-1910-00-4677]

#### Idaho: Filing of Protraction Diagrams in Idaho

The protraction diagrams of the following described unsurveyed townships, all in Boise Meridian, Idaho, were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. August 14, 1996.

T. 19 N., R. 3 W.; T. 23 N., R. 2 W.; T. 24 N., R. 2 W.; T. 25 N., R. 4 E.; T. 26 N., R. 4 E.; T. 25 N., R. 5 E.; T. 26 N., R. 5 E.; T. 25 N., R. 6 E.; T. 26 N., R. 6 E.; T. 27 N., R. 4 E.; T. 28 N., R. 4 E.; T. 27 N., R. 5 E.; T. 28 N., R. 5 E.; T. 27 N., R. 6 E.; T. 28 N., R. 6 E.; T. 29 N., R. 5 E.; T. 30 N., R. 5 E.; T. 29 N., R. 6 E.; T. 30 N., R. 6 E.; T. 29 N., R. 7 E.; T. 30 N., R. 7 E.; T. 23 N., R. 7 E.; T. 24 N., R. 7 E.; T. 23 N., R. 8 E.; T. 24 N., R. 8 E.; T. 23 N., R. 9 E.; T. 24 N., R. 9 E.

The preparation of these diagrams was requested by the USDA Forest Service, Geometronics Service Center, to support its mapping program.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706-2500.

Dated: August 14, 1996.

Duane E. Olsen,

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 96-21771 Filed 8-26-96; 8:45 am]

**BILLING CODE 4310-GG-M**

### National Park Service

#### Cape Cod National Seashore, Massachusetts; Environmental Assessment: Interim Pheasant Management Program

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

**ACTION:** Notice of Availability and Public Comment Period for the Environmental Assessment, Interim Pheasant Management.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA 42 USC 4321 *et. seq.*), the National Park Service, Cape Cod National Seashore, announces that an Environmental Assessment (EA) for the Interim Pheasant Management Program is available for public review and comment.

The public comment period is from August 29, 1996 to September 29, 1996. Interested persons may review the document and make written comments to the Superintendent, Cape Cod National Seashore, Headquarters Building, 99 Marconi Site Road, Wellfleet, Massachusetts 02667. Written comments and visits or phone inquiries by interested parties will be accepted.

The EA analyzes the impacts of two alternatives for an interim proposal for the research and management of the Ring-Necked Pheasant (*Phasianus colchicus*) hunting and stocking program at Cape Cod National Seashore. The two alternatives include a no action option which continues current management, and a two year research and evaluation alternative to assess impacts to native resources and provide an objective evaluation of the stocking and hunting program.

Numerous groups interested in the issue of pheasant management have increasingly questioned or requested review or changes as to how the State of Massachusetts and the National Park Service manage the pheasant hunting program. Many hunting interests have

also asked that the program be preserved and allowed to continue within the seashore. Currently, little or no data exist on pheasant survival, population, movement patterns, harvest numbers, and impacts the release may have on the native Seashore ecosystems. Based on this lack of data, the long history of pheasant stocking in the Seashore, and policy questions that require data on which to base informed management decisions, the EA analyzes impacts and provides for public review of the two alternatives to initiate an appropriate research and management program.

Copies of the document are available at the address listed above or by calling Mike Reynolds at (508) 349-3785 x216 at the Seashore Headquarters for copies, questions, or other inquiries.

Dated: August 20, 1996.

Maria Burks,

*Superintendent, Cape Cod National Seashore.*

[FR Doc. 96-21747 Filed 8-26-96; 8:45 am]

**BILLING CODE 4310-70-M**

#### Carlsbad Caverns National Park; Final General Management Plan/ Environmental Impact Statement

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

**ACTION:** Notice of availability of the Final General Management Plan/ Environmental Impact Statement for Carlsbad Caverns National Park, Eddy County, New Mexico.

**SUMMARY:** Pursuant to Section 102(2) of the National Environmental Policy Act of 1969 the National Park Service announces the availability of the Final General Management Plan/ Environmental Impact Statement (GMP/EIS) for Carlsbad Caverns National Park. The Draft General Management Plan/ Environmental Impact Statement was on public review from November 15, 1995 to March 25, 1996. A public open house was held on February 15, 1996, to solicit public comment on the GMP/EIS. Twenty-nine comment letters were received from agencies, organizations, and individuals. The National Park Service's responses to comments on the draft plan are included in the Final GMP/EIS.

The purpose of the general management plan is to set forth the basic management philosophy and to provide the strategies for addressing issues and achieving management objectives over the next 10 to 15 years. The Final GMP/EIS describes and evaluates three alternatives for the

management of Carlsbad Caverns National Park.

Alternative 1 (No Action): Alternative 1 describes the continuation of existing management direction at the park as described in current plans. The park would provide for visitor use and respond to resource management issues and concerns as funding allowed, but no major change in management direction would be initiated.

Alternative 2: Alternative 2 is the proposed action and National Park Service's preferred alternative. It would base resource management and visitor use decisions on expanded scientific research, inventory, and monitoring. Information would be gathered about how human activities and facilities are affecting park resources, especially cave resources. A development concept plan would be undertaken once these studies had been completed to determine how to reduce or eliminate threats to subsurface resources, with measures possibly ranging from infrastructure improvements to the removal of certain facilities. Opportunities for visitors to enjoy and learn about significant park resources would be increased, special off-trail tours would be continued, the feasibility of opening Ogle Cave to tours would be studied, and additional surface trails would be provided. The visitor center would be remodeled to be more efficient, and a ranger residence would be provided near Slaughter Canyon.

Alternative 3: Alternative 3 proposes the removal of many surface functions and facilities above the cavern within five years to ensure the protection of subsurface resources. To replace these functions, a new visitor orientation/transit center and a park operations center would be developed at the base of the Guadalupe escarpment. Visitors would use a shuttle system for access to the existing visitor center, which would be modified to focus on interpretation and essential services. Visitor use of the cavern would be monitored and restricted to minimize further damage to cave resources, and no special off-trail tours would be provided.

The environmental impact analysis indicates that alternatives 2 and 3 would better protect the park's significant resources than would alternative 1.

**DATES:** The 30-day no action period for review of the Final GMP/EIS will end on September 27, 1996. A record of decision will follow the no action period.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Carlsbad Caverns National Park, 3225 National parks

Highway, Carlsbad, New Mexico 88220. Telephone: 505-785-2232, extension 321.

Dated: August 10, 1996  
Joseph J. Sovick,  
*Acting Superintendent, Southwest System Support Office.*  
[FR Doc. 96-21803 Filed 8-26-96; 8:45 am]  
**BILLING CODE 4310-70-M**

### **Pecos National Historical Park, Final General Management Plan/ Development Concept Plan/ Environmental Impact Statement**

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice of availability of the Final General Management Plan/ Development Concept Plan/ Environmental Impact Statement for Pecos National Historical Park, Santa Fe and San Miguel County, New Mexico.

**SUMMARY:** Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the Final General Management Plan/ Development Concept Plan/ Environmental Impact Statement (GMP/DCP/EIS) for Pecos National Historical Park, New Mexico.

**SUPPLEMENTARY INFORMATION:** On June 27, 1990, Congress repealed the act to establish Pecos National Monument and authorized the establishment of Pecos National Historical Park to include the former Pecos National Monument and 5,500 acres of the Forked Lightning Ranch. On November 8, 1990, Congress expanded Pecos National Historical Park to include the 682 acre Glorieta unit. The purpose of this Final GMP/DCP/EIS is to set forth the basic management philosophy of the park and the overall approaches to resource management, visitor use, and facility development that would be implemented over the next 10-15 years.

This Final GMP/DCP/EIS describes and analyzes alternatives for the Pecos and Glorieta units of Pecos National Historical Park. Proposed action and no-action alternatives have been developed for each unit. In addition to the proposed action and no-action alternatives, two additional action alternatives have been developed for the Pecos unit and one additional action alternative has been identified for the Glorieta unit. These alternatives propose future management and use options for the newly established Pecos National Historical Park. Under Pecos Unit Alternative A (no action) present use and management would continue. The primary interpretive focus would

continue to be at the Pecos Pueblo/mission ruins complex, and no new visitor facilities would be developed. Under Pecos Unit Alternative B (the proposed action) two visitor staging areas would be developed—the Fogelson visitor center area and Kozlowski's Stage Stop. New visitor facilities would include trails and trailheads and interpretive exhibits. Under Pecos Unit Alternative C three visitor staging areas would be developed—the Fogelson visitor center, Kozlowski's Stage Stop, and the Gateway overlook. Staging areas and associated facilities would have easy vehicle access. Under Pecos Unit Alternative D visitors would enter the park from the south and a new visitor center would be developed at the Gateway overlook area. Other visitor facilities would continue to be provided at Kozlowski's Stage Stop and the Fogelson visitor center. Under Glorieta unit alternative 1 (no-action) no new facilities would be provided. Glorieta unit alternative 2 (proposed action) would incorporate a staffed visitor contact facility and interpretive trails and exhibits at Pigeon's Ranch and an exterior interpretive exhibit at a pulloff overlooking Cañoncito. Glorieta unit alternative 3 would incorporate the same facilities as alternative 2; however, the staffed contact station would be at a different location. The major impact topics assessed for the proposals and the alternatives are cultural and natural resources and the socioeconomic environment, including the local economy and NPS operations.

This Final GMP/DCP/EIS was prepared in order to evaluate a range of alternatives and an assessment of impacts of these alternatives. This document was on public review for 60 days from September 15 through November 17, 1995. Responses to public comment are addresses in this Final GMP/DCP/EIS.

**DATES:** This Final GMP/DCP/EIS will be available for public review until September 30, 1996. This Final GMP/DCP/EIS can be obtained by contacting Pecos National Historical Park at 505-757-6414.

**ADDRESSES:** Public reading copies of the Final GMP/DCP/EIS will be available for review at the following locations: Office of Public Affairs, National Park Service, 1849 C Street, NW, Washington, D.C. 20240; Department of Interior Natural Resource Library, 1849 C Street, NW, Washington, D.C. 20240; Pecos National Historical Park, Highway 63, Pecos, New Mexico; and local public libraries.

Dated: August 19, 1996.

Joseph J. Sovick,  
Acting Superintendent, Southwest System  
Support Office.

[FR Doc. 96-21802 Filed 8-26-96; 8:45 am]

BILLING CODE 4310-70-M

### 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 August 21, 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, D.C. 20013-7127. Written comments should be submitted by September 11, 1996.

Carol D. Shull,  
Keeper of the National Register.

#### ALABAMA

##### Limestone County

Eddins, Joel, House, Rt. 2, approximately .5 mi. NW of jct. of AL 53 and Elkwood Section Rd., Ardmore, 96001004.

#### ARKANSAS

##### Franklin County

Altus Well Shed—Gazebo, Jct. of N. Franklin and E. Main Sts., NW corner, Altus, 96001005.

#### INDIANA

##### Allen County

New York Chicago and St. Louis Railroad Steam Locomotive No. 765, 15808 Edgerton Rd., New Haven, 96001010.

##### Hamilton County

Roberts Chapel, 3102 E. 276th St., Atlanta vicinity, 96001009.

##### Marion County

Nurses' Sunken Garden and Convalescent Park, Bounded by Michigan St., Rotary Bldg., West Dr., and Union Bldg., Indianapolis, 96001008.

St. Philip Neri Parish Historic District, 530 and 550 N. Rural St. and 545 N. Eastern Ave., Indianapolis, 96001007.

##### Porter County

Horner, Imre and Maria, House, 2 Merrivale Ave., Beverly Shores, 96001006.

#### KANSAS

##### Marshall County

St. Bridget Church, RR 2, 6.5 mi. N of Axtell, St. Bridget Township, Axtell vicinity, 96001011.

#### MISSOURI

##### Boone County

Elkins, Samuel H. and Isabel Smith, House, 315 N. 10th St., Columbia, 96001012.

#### OREGON

##### Multnomah County

American Can Company Complex, 2127 26th Ave., NW, Portland, 96000996.

Auto Rest Garage, 925-935 10th Ave., SW, Portland, 96000997.

Broadway Building, 715 Morrison St., SW, Portland, 96001000.

Corbett Brothers Auto Storage Garage, 630 Pine, SW, Portland, 96000999.

Journal Building, 806 Broadway, SW, Portland, 96000995.

Kress Building, 638 5th Ave., SW, Portland, 96000994.

Liebes, H. and Company, Building, 625 Broadway, SW, Portland, 96000993.

Lumbermen's Building, 333 5th St., SW, Portland, 96000992.

Mohawk Building, 708-724 3rd Ave., SW, Portland, 96001002.

Morgan Building, 720 Washington St., SW, Portland, 96001003.

Northwestern National Bank Building, 621 Morrison St., SW, Portland, 96001001.

Public Service Building and Garage, 920 6th Ave., SW, Portland, 96000998.

#### TENNESSEE

##### Hamilton County

Chattanooga National Cemetery (Civil War Era National Cemeteries) 1200 Bailey Ave., Chattanooga, 96001013.

#### TEXAS

##### Dallas County

Busch—Kirby Building (Boundary Increase), 1501-1509 Main St., Dallas, 96001015

##### Fort Bend County

Green, Henry G. and Annie B., House, .5 mi SE of jct. of old US 59 and TX 118, Kendleton, 96001016.

##### Jeff Davis County

Trueheart, Henry M. and Annie V., House, Jct. of 7th St. and Court Ave., Fort Davis, 96001014.

#### WISCONSIN

##### Lincoln County

First Street Bridge, 1st St. spanning the Prairie River, Merrill, 96001017.

##### Oconto County

Smyth Road Bridge, Smyth Rd. over North Branch of the Oconto River, Lakewood, 96001018.

[FR Doc. 96-21801 Filed 8-26-96; 8:45 am]

BILLING CODE 4310-70-P

### Bureau of Reclamation

#### Request For Proposal to Lease Lands Near Laughlin, Clark County, Nevada to Construct, Manage, Operate and Maintain Recreation Facilities

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of solicitation for proposals from qualified parties to lease,

construct, manage, operate and maintain areas for recreational development.

**SUMMARY:** The Bureau of Reclamation is soliciting proposals from qualified parties to lease approximately 1,000 acres of land for recreational development.

**ADDRESSES:** Interested parties should request copies of the Request for Proposal from Ms. Neva Tandy, Natural Resource Specialist, Natural Resources Group, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006-1470, Telephone: (702) 293-8521 or FAX (702) 293-8146.

**FOR FURTHER INFORMATION CONTACT:** Neva Tandy at (702) 293-8521.

#### SUPPLEMENTARY INFORMATION:

Reclamation's Lower Colorado Regional office is supervised by the Regional Director, Mr. Robert W. Johnson, and encompasses projects administered by the Grand Canyon, Phoenix, Yuma, and Southern California Area offices. Hoover, Davis and Parker Dams and appurtenant works are administered by the Lower Colorado Dams Facilities office, located at Hoover Dam.

A Concession Agreement will be negotiated with the Concessionaire selected under this RFP. The Regional Director is the authorizing official in this action. Prior to execution of an agreement by the Regional Director, the agreement will be reviewed for legal sufficiency and endorsement, then signed by the prospective new Concessionaire.

Dated: August 16, 1996.

William E. Rinne,

Director, Resource Management and Technical Services.

[FR Doc. 96-21748 Filed 8-26-96; 8:45 am]

BILLING CODE 4310-94-P

### AGENCY FOR INTERNATIONAL DEVELOPMENT

#### Notice of Public Information Collection Being Reviewed by the U.S. Agency for International Development, Proposed Collections; Comments Requested

**SUMMARY:** U.S. Agency for International Development (USAID), is making efforts to reduce the paperwork burden. AID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) whether the proposed or continuing collections of information are necessary

for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Send any comments on these information collections on or before August 30, 1996.

**ADDRESSES:** Contact Mary Ann Ball, Bureau for Management, Office of Administrative Services, Information Support Services Division, U.S. Agency for International Development, Room B930, N.S., Washington, D.C., (202) 736-4743 or via e-mail MABall@USAID.GOV

**SUPPLEMENTARY INFORMATION:**

*Title:* USAID Acquisition Regulations (AIDAR)—Information Collection Elements.

*Form No.:* USAID 1420-17, Contractor Employee Biographical Data Sheet.

*OMB No.:* 0412-0520.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* USAID is authorized to make contracts with any corporation, international organization, or other body of persons in or outside of the United States in furtherance of the purposes and within limitations of the Foreign Assistance Act (FAA). The information collection requirements placed on the public are published in 48 CFR Chapter 7, and include such items as the Contractor Employee Biographical Data Sheet and Performance & Progress Reports (AIDAR 752.7026). These are all USAID unique procurement requirements. The preaward requirements are based on a need for prudent management in the determination that an offeror either has or can obtain the ability to competently manage development assistance programs utilizing public funds. The requirements for information collection requirements during the post-award period are based on the need to administer public funds prudently.

*Annual Reporting Burden:*

Number of Respondents: 3526.

Total Annual Responses: 92,250.

Total annual hours requested: 314,014.

Dated: August 9, 1996.  
Genease E. Pettigrew,  
*Chief, Information Support Services Division,  
Office of Administrative Services, Bureau of  
Management.*  
[FR Doc. 96-21770 Filed 8-26-96; 8:45 am]  
**BILLING CODE 6116-01-M**

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**Submission for OMB Review**

**State Unemployment Insurance (UI)  
Wage Records Quality Project;  
Correction**

**AGENCY:** Bureau of Labor Statistics, Labor.

**ACTION:** Correction.

**SUMMARY:** This notice corrects an error in the Office of the Secretary's document which concerned Bureau of Labor Statistics information collection requests. In notice document 96-19658 beginning on page 40452 in the issue of Friday, August 2, 1996, make the following correction:

On page 40452 in the second column, the frequency was previously listed as quarterly. This should be corrected to read one time.

Signed at Washington, D.C., this 22d day of August, 1996.

Peter T. Spolarich,  
*Division of Management Systems, Bureau of  
Labor Statistics.*

[FR Doc. 96-21838 Filed 8-26-96; 8:45 am]  
**BILLING CODE 4510-28-M**

**Employment and Training  
Administration**

[TA-W-32,260 and TA-W-32,260B]

**Buster Brown Apparel, Inc., Garment  
Finishing Department, Chattanooga,  
Tennessee and Sylva, North Carolina;  
Amended Certification Regarding  
Eligibility to Apply for Worker  
Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 24, 1996, applicable to all workers of Buster Brown Apparel, Inc., Chattanooga, Tennessee. The notice was published in the Federal Register on May 17, 1996 (61 FR 24960).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations

have occurred at Buster Brown's production facility in Sylva, North Carolina. The workers are engaged in employment related to the production of children's apparel.

The intent of the Department's certification is to include all workers of Buster Brown Apparel adversely affected by imports. Accordingly, the Department is amending the certification to include all workers at the subject firms' location in Sylva, North Carolina.

The amended notice applicable to TA-W-32,260 is hereby issued as follows:

"All workers of Buster Brown Apparel, Inc., Garment Finishing Department Chattanooga, Tennessee (TA-32,260) and Sylva, North Carolina (TA-W-32,260B) who become totally or partially separated from employment on or after April 15, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 13th day of August 1996.

Russell T. Kile,  
*Acting Program Manager, Policy and  
Reemployment Services, Office of Trade  
Adjustment Assistance.*

[FR Doc. 96-21834 Filed 8-26-96; 8:45 am]  
**BILLING CODE 4510-30-M**

[TA-W-32,429]

**Cone Mills Corporation Carlisle, South  
Carolina; Amended Certification  
Regarding Eligibility to Apply for Worker  
Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 1996, applicable to all workers of Cone Mills Corporation, Greensboro, North Carolina. The notice will soon be published in the Federal Register.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department's worker certification incorrectly identified the affected workers as being located in Greensboro, North Carolina, the headquarters of Cone Mills Corporation. The worker separations took place at the subject firm's Carlisle Plant in Carlisle, South Carolina. The workers are engaged in the production of printed cloth/fabric. The company reports that no worker layoffs have occurred in Greensboro, North Carolina.

The intent of the Department's certification is to include those workers of Cone Mills Corporation, adversely affected by imports. Accordingly, the Department is amending the

certification to exclude workers at the subject firms' headquarters in Greensboro, North Carolina and include the workers at the Carlisle, South Carolina location.

The amended notice applicable to TA-W-32,429 is hereby issued as follows:

"All workers of Cone Mills Corporation, Carlisle, South Carolina, who became totally or partially separated from employment on or after May 22, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 14th day of August 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-21832 Filed 8-26-96; 8:45 am]

BILLING CODE 4510-30-M

### Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the

subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than September 6, 1996.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than September 6, 1996.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 12th day of August, 1996.

Russell Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

### Appendix

#### PETITIONS INSTITUTED ON 08/12/96

TA-W	Subject firm (petitioners)	Location	Date of petition	Product(s)
32,624	Dura-Bond Industries (wkrs)	Highspire, PA	07/29/96	Coating of large diameter steel pipes.
32,625	Woodbridge Group (IBT)	Fairless Hills, PA	07/30/96	Molds and finishes urethane foam.
32,626	Devro-Teepak (wkrs)	Columbia, SC	07/26/96	Meat casings.
32,627	ABS Global, Inc. (wkrs)	Deforest, WI	07/27/96	Breeding stock (bulls).
32,628	Charming Shoppes (wkrs)	Philadelphia, PA	07/23/96	Retail store—ladies' apparel.
32,629	Burlington Resources (Co.)	Englewood, CO	07/30/96	Crude oil and natural gas.
32,630	Conoco (Co.)	Houston, TX	08/01/96	Crude oil and natural gas.
32,631	S and D Creations (wkrs)	Owasso, OK	07/30/96	Soft sculpture items.
32,632	Liberty Childrenswear (Co.)	Birmingham, AL	08/01/96	Children's jeans.
32,633	Holiday Hosiery (Co.)	Hudson, NC	08/01/96	Socks—men and ladies.
32,634	Trico Products Corp. (UAW)	Buffalo, NY	07/29/96	Windshield wiper systems for autos.
32,635	Lamson and Sessions (USWA)	Cleveland, OH	07/30/96	Plastic conduits.
32,636	Columbia Textile (UNITE)	Paterson, NJ	07/23/96	Industrial and textile fabric for garments.
32,637	Aeroquip Corp. (wkrs)	Henderson, KY	06/20/96	Injection moulding.
32,638	Sterling Boot (EJL mfg) (wkrs)	Ft. Worth, TX	07/29/96	Cowboy boots.
32,639	Magnetex Manufacturing (wkrs)	Mendenhall, MS	07/30/96	Light fixtures.
32,640	British United Turkeys (Co.)	Lewisburg, WV	08/02/96	Turkey hatching eggs.
32,641	Robinson Manufacturing (wkrs)	Oxford, ME	07/29/96	Textiles.
32,642	Springs/Dundee Bath (Co.)	Dadeville, AL	07/30/96	Woven textiles.
32,643	L.L. Brewton Lumber Co. (wkrs)	Winnfield, LA	07/29/96	Lumber.

[FR Doc. 96-21836 Filed 8-26-96; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-31,946 and TA-W-31,946A]

### J & J Lingerie Company, Glen Falls, New York and Glencraft Lingerie, Inc., New York New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to

Apply for Worker Adjustment Assistance on March 12, 1996, applicable to all workers of J & J Lingerie Company located in Glen Falls, New York. The notice was published in the Federal Register on March 25, 1996 (61 FR 12101).

At the request of petitioners, the Department reviewed the worker certification. Findings show that workers of the parent company of J & J Lingerie Company were inadvertently

excluded from the certification. The Department is amending the certification to include workers of Glencraft Lingerie, Inc. located in New York, New York.

The intent of the Department's certification is to include all workers of J & J Lingerie company adversely affected by imports.

The amended notice applicable to TA-W-31,946 is hereby issued as follows:

"All workers of J & J Lingerie Company, Glen Falls, New York (TA-W-31,946) and Glencraft Lingerie, Inc., New York, New York (TA-W-31,946A), who became totally or partially separated from employment on or after February 6, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 12th day of August 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-21833 Filed 8-26-96; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-31,031]

**Mahan Western Industries, Incorporated, El Paso, Texas; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 14, 1995, applicable to all workers of Mahan Western Industries, Incorporated, a/k/a Miller Manufacturing, El Paso, Texas. The notice was published in the Federal Register on June 27, 1995 (60 FR 33235).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that its name has been changed to Private Western Brands, Inc. Accordingly, the Department is amending the certification to include all workers of Private Western Brands, Inc., El Paso, Texas. The workers are engaged in employment related to the production of leather western boots.

The intent of the Department's certification is to include all workers of Mahan Western Industries, Incorporated, a/k/a Miller Manufacturing adversely affected by imports.

The amended notice applicable to TA-W-31,031 is hereby issued as follows:

"All workers on Mahan Western Industries, Incorporated a/k/a Miller Manufacturing, a/k/a Private Western Brands, Inc., El Paso, Texas who became totally or partially separated from employment on or after May 4, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 13th day of August 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-21831 Filed 8-26-96; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-32,459 and TA-W-32,459A]

**Warner's, a Division of Warnaco Inc.; Dothan, Alabama and Barbourville, Kentucky; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 11, 1996, applicable to all workers of Warner's, a Division of Warnaco located in Dothan, Alabama. The notice was published in the Federal Register on August 2, 1996 (61 FR 40454).

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Warner's manufacturing facility in Barbourville, Kentucky. The workers are engaged in employment related to the production of intimate apparel.

The intent of the Department's certification is to include all workers of Warner's, a division of Warnaco, adversely affected by imports. Accordingly, the Department is amending the certification to include all workers at the subject firms' Barbourville, Kentucky location.

The amended notice applicable to TA-W-32,549 is hereby issued as follows:

"All workers of Warner's, a Division of Warnaco, Dothan, Alabama (TA-W-32,459), and Barbourville, Kentucky (TA-W-32,459A), who became totally or partially separated from employment on or after June 4, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 14th day of August 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-21830 Filed 8-26-96; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-32,558]

**Warner's of Warnaco Barbourville, Kentucky; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 15, 1996 in response to a worker petition which was filed June 27, 1996 on behalf of workers at Warner's of Warnaco, Barbourville, Kentucky (TA-W-32,558).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA-W-32,459A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 14th day of August 1996.

Russell T. Kile,

*Acting Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.*

[FR Doc. 96-21835 Filed 8-26-96; 8:45 am]

BILLING CODE 4510-30-M

**Notice of Change in Status of Extended Benefit (EB) Periods for the State of Alaska.**

This notice announces changes in benefit period eligibility under the EB Program for the State of Alaska.

**SUMMARY:** The following changes have occurred since the publication of the last notice regarding States' EB status:

- July 6, 1996—Alaska's 13-week insured unemployment rate for the week ending June 15, 1996 fell below 6.0 percent and was less than 120 percent of the average for the corresponding period for the prior two years, causing Alaska to trigger "off" EB effective July 6, 1996.

**Information for Claimants**

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security

agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for Extended Benefits (20 CFR 615.12(c)(1)). In the case of a State ending an EB period, the State employment security agency will furnish a written notice to each individual who is filing claims for Extended Benefits informing him/her of the EB period and its effect on the individual's right to Extended Benefits (20 CFR 615.13(c)(4)).

Persons who believe they may be entitled to Extended Benefits, or who wish to inquire about their rights under the programs, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on August 19th, 1996

Timothy M. Barnicle,

*Assistant Secretary of Labor for Employment and Training.*

[FR Doc. 96-21837 Filed 8-26-96; 8:45 am]

BILLING CODE 4510-30-M

### **Pension and Welfare Benefits Administration**

[Prohibited Transaction Exemption 96-64; Exemption Application No. D-10063, et al.]

**Grant of Individual Exemptions; Society National Bank; KeyTrust Company of Ohio; Society Asset Management, Inc; and KeyCorp, et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be

held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### **Statutory Findings**

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Society National Bank; KeyTrust Company of Ohio; Society Asset Management, Inc; and KeyCorp Located in Cleveland, Ohio

[Prohibited Transaction Exemption 96-64; Application No. D-10063]

### **SECTION I—Exemption for In-Kind Transfer of CIF Assets**

The restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of December 1, 1993, to the in-kind transfer of assets of plans for which Society National Bank, KeyTrust Company of Ohio, N.A., Society Asset Management, Inc., and KeyCorp or an affiliate (collectively, the Bank) serves as a fiduciary (the Client Plans), other than plans established and maintained by the Bank, that are held in certain collective investment funds maintained by the Bank (the CIFs), in exchange for shares of The Victory Portfolios (collectively, the Funds), an open-end investment company registered under the Investment Company Act of 1940 (the 1940 Act), for which the Bank acts as an investment adviser as well as a custodian, sub-administrator, and/or shareholder servicing agent, or provides some other

“secondary service” as defined in Section IV(h), in connection with the termination of such CIFs, provided that the following conditions and the general conditions of Section III below are met:

(a) No sales commissions or other fees are paid by the Client Plans in connection with the purchase of Fund shares through the in-kind transfer of CIF assets and no redemption fees are paid in connection with the sale of such shares by the Client Plans to the Funds.

(b) All or a pro rata portion of the assets of a CIF are transferred to a Fund in exchange for shares of such Fund.

(c) Each Client Plan receives shares of a Fund which have a total net asset value that is equal to the value of the Client Plan's pro rata share of the assets of the CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner at the close of the same business day, using independent sources in accordance with Rule 17a-7(b) of the Securities and Exchange Commission (SEC) under the 1940 Act and the procedures established by the Funds pursuant to Rule 17a-7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the Friday preceding the weekend of the CIF transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

(d) A second fiduciary who is independent of and unrelated to the Bank (the Second Fiduciary) receives advance written notice of the in-kind transfer of assets of the CIFs and full written disclosure of information concerning the Funds, including:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section IV(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank considers investing in the Fund is an appropriate investment decision for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in a Fund, and, if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents are published in the Federal Register.

(e) After consideration of the foregoing information, the Second Fiduciary authorizes in writing the in-kind transfer of the Client Plan's CIF assets to a corresponding Fund in exchange for shares of the Fund.

(f) For all in-kind transfers of CIF assets to a Fund following March 5, 1996, the date of publication in the Federal Register for the proposal of this exemption, the Bank sends by regular mail to each affected Client Plan the following information:

(1) Within 30 days after completion of the transaction, a written confirmation containing:

(i) The identity of each security that was valued for purposes of the transaction in accordance with Rule 17a-7(b)(4);

(ii) The price of each such security involved in the transaction;

(iii) The identity of each pricing service or market-maker consulted in determining the value of such securities; and

(2) Within 90 days after completion of each in-kind transfer, a written confirmation containing:

(i) The number of CIF units held by the Client Plan immediately before the transfer, the related per unit value, and the total dollar amount of such CIF units; and

(ii) The number of shares in the Funds that are held by the Client Plan following the transfer, the related per share net asset value, and the total dollar amount of such shares.

(g) The conditions set forth in paragraphs (e), (f) and (n) of Section II below are satisfied.

#### *Section II—Exemption for Receipt of Fees*

The restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply as of October 1, 1995 to: (1) the receipt of fees by the Bank from the Funds for acting as an investment adviser to the Funds in connection with the investment by the Client Plans in shares of the Funds; and (2) the receipt and retention of fees by the Bank from the Funds for acting as custodian, sub-

administrator and shareholder servicing agent to the Funds, as well as for providing any other services to the Funds which are not investment advisory services (i.e. "secondary services"), in connection with the investment by the Client Plans in shares of the Funds, provided that the following conditions and the general conditions of Section III are met:

(a) No sales commissions are paid by the Client Plans in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Client Plans to the Funds.

(b) The price paid or received by a Client Plan for shares in a Fund is the net asset value per share at the time of the transaction, as defined in Section IV(e), and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) The Bank, including any officer or director of the Bank, does not purchase or sell shares of the Funds from or to any Client Plan.

(d) Each Client Plan receives a credit, either through cash or the purchase of additional shares of the Funds pursuant to an annual election made by the Client Plan, of such Plan's proportionate share of all fees charged to the Funds by the Bank for investment advisory services, including any investment advisory fees paid by the Bank to third party sub-advisors, within no more than one business day of the receipt of such fees by the Bank.

(e) For each Client Plan, the combined total of all fees received by the Bank for the provision of services to the Client Plan, and in connection with the provision of services to the Funds in which the Client Plan may invest, is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.\*

(f) The Bank does not receive any fees payable pursuant to Rule 12b-1 under the 1940 Act in connection with the transactions.

\* In addition, the Department notes that Section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Thus, the Department believes that the Bank should ensure, prior to any investments made by a Client Plan for which it acts as a trustee or investment manager, that all fees paid by the Funds, including fees paid to parties unrelated to the Bank and its affiliates, are reasonable. In this regard, the Department is providing no opinion as to whether the total fees to be paid by a Client Plan to the Bank, its affiliates, and third parties under the arrangements described herein would be either reasonable or in the best interests of the participants and beneficiaries of the Client Plans.

(g) The Client Plans are not employee benefit plans sponsored or maintained by the Bank.

(h) The Second Fiduciary receives, in advance of any initial investment by the Client Plan in a Fund, full and detailed written disclosure of information concerning the Funds, including but not limited to:

(1) A current prospectus for each Fund in which a Client Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any secondary services as defined in Section IV(h), and all other fees to be charged to or paid by the Client Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why the Bank may consider such investment to be appropriate for the Client Plan;

(4) A statement describing whether there are any limitations applicable to the Bank with respect to which assets of a Client Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, once such documents are published in the Federal Register.

(i) After consideration of the information described above in paragraph (h), the Second Fiduciary authorizes in writing the investment of assets of the Client Plan in each particular Fund, the fees to be paid by such Funds to the Bank, and the purchase of additional shares of a Fund by the Client Plan with the fees credited to the Client Plan by the Bank.

(j) All authorizations made by a Second Fiduciary regarding investments in a Fund and the fees paid to the Bank are subject to an annual reauthorization wherein any such prior authorization referred to in paragraph (i) shall be terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (i) above (the Termination Form) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually; provided that the Termination Form need not be supplied to the Second Fiduciary pursuant to this paragraph sooner than six months after such Termination Form is supplied pursuant to paragraph (l) below, except to the extent required by such paragraph in order to disclose an additional service or fee increase. The instructions

for the Termination Form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the Termination Form will result in continued authorization of the Bank to engage in the transactions described in paragraph (i) on behalf of the Client Plan.

(k) The Second Fiduciary of each Client Plan invested in a particular Fund receives full written disclosure, in a statement separate from the Fund prospectus, of any proposed increases in the rates of fees charged by the Bank to the Funds for secondary services (as defined in Section IV(h) below) at least 30 days prior to the effective date of such increase, accompanied by a copy of the Termination Form, and receives full written disclosure in a Fund prospectus or otherwise of any increases in the rates of fees charged by the Bank to the Funds for investment advisory services even though such fees will be credited as required by paragraph (d) above.

(l) In the event that the Bank provides an additional secondary service to a Fund for which a fee is charged or there is an increase in the amount of fees paid by the Funds to the Bank for any secondary services resulting from a decrease in the number or kind of services performed by the Bank for such fees in connection with a previously authorized secondary service, the Bank will, at least thirty days in advance of the implementation of such additional service or fee increase, provide written notice to the Second Fiduciary explaining the nature and the amount of the additional service for which a fee will be charged or the nature and amount of the increase in fees of the affected Fund. Such notice shall be accompanied by the Termination Form, as defined in Section IV(i) below.

(m) On an annual basis, the Bank provides the Second Fiduciary of a Client Plan investing in the Funds with:

(1) A copy of the current prospectus for the Funds and, upon such fiduciary's request, a copy of the Statement of Additional Information for such Funds which contains a description of all fees paid by the Funds to the Bank;

(2) A copy of the annual financial disclosure report of the Funds in which such Client Plan is invested which includes information about the Fund portfolios as well as audit findings of an independent auditor within 60 days of the preparation of the report; and

(3) Oral or written responses to inquiries of the Second Fiduciary as they arise.

(n) All dealings between the Client Plans and the Funds are on a basis no less favorable to the Client Plans than dealings with other shareholders of the Funds.

#### *Section III—General Conditions*

(a) The Bank maintains for a period of six years the records necessary to enable the persons described below in paragraph (b) to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than the Bank shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b) (1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Client Plans who has authority to acquire or dispose of shares of the Funds owned by the Client Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (b)(1)(ii) and (iii) shall be authorized to examine trade secrets of the Bank, or commercial or financial information which is privileged or confidential.

#### *Section IV—Definitions*

For purposes of this exemption:

(a) The term "Bank" includes Society National Bank, KeyTrust Company of Ohio, Society Asset Management, Inc., KeyCorp and any affiliate thereof as defined below in paragraph (b)(1) of this section.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries,

controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund" or "Funds" shall include the Victory Portfolios, or any other diversified open-end investment company or companies registered under the 1940 Act for which the Bank serves as an investment adviser and may also serve as a custodian, shareholder servicing agent, transfer agent or provide some other "secondary service" (as defined below in paragraph (h) of this Section) which has been approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales calculated by dividing the value of all securities, determined by a method as set forth in the Fund's prospectus and statement of additional information, and other assets belonging to the Fund or portfolio of the Fund, less the liabilities charged to each such portfolio or Fund, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a Client Plan who is independent of and unrelated to the Bank. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to the Bank if:

(1) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Bank;

(2) Such fiduciary, or any officer, director, partner, employee, or relative of the fiduciary is an officer, director, partner or employee of the Bank (or is a relative of such persons) or any affiliate thereof;

(3) Such fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, employee of the Bank (or relative of such persons), or affiliate thereof, is a director of such Second Fiduciary, and

if he or she abstains from participation in (i) the choice of the Client Plan's investment adviser, (ii) the approval of any such purchase or sale between the Client Plan and the Funds, and (iii) the approval of any change in fees charged to or paid by the Client Plan in connection with any of the transactions described in Sections I and II above, then paragraph (g)(2) of this section shall not apply.

(h) The term "secondary service" means a service other than an investment management, investment advisory, or similar service, which is provided by the Bank to the Funds. For purposes of this exemption, the term "secondary service" will include securities lending services provided by the Bank to the Funds, but will not include any brokerage services provided to the Funds by the Bank for the execution of securities transactions engaged in by the Funds.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary which expressly provides an election to the Second Fiduciary to terminate on behalf of a Client Plan the authorization described in paragraph (j) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate an authorization without penalty to the Client Plan and to notify the Bank in writing to effect a termination by selling the shares of the Funds held by the Client Plan requesting such termination within one business day following receipt by the Bank of the form; provided that if, due to circumstances beyond the control of the Bank, the sale cannot be executed within one business day, the Bank shall have one additional business day to complete such sale.

**EFFECTIVE DATE:** This exemption is effective as of December 1, 1993, for the transactions described in Section I above, and October 1, 1995, for the transactions described in Section II above.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 5, 1996, at 61 FR 8674.

**NOTICE TO INTERESTED PERSONS:** The applicant represents that it was unable to notify interested persons within the time period specified in the Federal Register notice published on March 5, 1996. The applicant states that interested persons were notified, in the manner agreed upon between the applicant and the Department, by June 30, 1996. Interested persons were advised that they had until July 31, 1996

to comment or request a hearing on the proposed exemption. No written comments or requests for a hearing were received by the Department.

**FOR FURTHER INFORMATION CONTACT:** Mr. E. F. Williams of the Department, telephone (202) 219-8194. (This is not a toll-free number.)

Bill Ussery Motors, Inc. Fourth Amended and Restated Profit Sharing Plan and Trust (the Plan) Located in Coral Gables, Florida

[Prohibited Transaction Exemption 96-65; Exemption Application No. D-10146]

#### *Exemption*

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain real property (the Property) by the Plan to Mr. John C. Brockway, the sole shareholder of the sponsoring employer and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not experience any loss nor incur any expenses from the transaction; and (3) the Plan receives as consideration from the Sale the greater of either (a) the fair market value of the property as determined by a qualified, independent appraiser on the date of the Sale, or (b) an amount equal to the appraised fair market value as determined on December 31, 1994.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 21, 1996, at 61 FR 31954.

**COMMENTS:** The Department received one written comment requesting that the purchaser of the Property be changed from Bill Ussery Motors, Inc. (the Employer), the sponsoring employer and a party in interest to Mr. John C. Brockway, the sole shareholder of the Employer and its Chief Executive Officer, and a party in interest. Accordingly, after giving full consideration to the request and the entire record, the Department has determined to change the designation of the purchaser of the Property as requested and to grant the exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Hach Company 401(k) Profit Sharing Plan (the Plan) Located in Loveland, CO

[Prohibited Transaction Exemption 96-66; Exemption Application No. D-10203]

#### *Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of Group Annuity Contract No. 5000008 (the GAC) issued by Anchor National Life Insurance Company, located in Los Angeles, California, to Hach Company, a party in interest with respect to the Plan.

This exemption is subject to the following conditions:

(a) The sale is a one-time transaction for cash.

(b) The Plan does not experience any losses or incur any expenses in connection with the transaction.

(c) The Plan receives as consideration an amount that is equal to the fair market value of the GAC as of the date of the sale.

(d) The trustees of the Plan have determined that the proposed transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 21, 1996 at 61 FR 31955.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Cablevision Industries Corporation Profit Sharing Plan (the Plan) Located in New York, New York

[Prohibited Transaction Exemption 96-67; Exemption Application No. D-10233]

#### *Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase from the Plan by Cablevision Industries Corporation (the Employer), the sponsor of the Plan, of the Plan's entire remaining interest (the Surviving Claim) in guaranteed investment contract number GCNG8690011A issued by the Executive Life Insurance Company; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The Plan receives a cash purchase price which is no less than the greater of (1) the fair market value of the Surviving Claim as of the sale date, or (2) the Plan's principal investment attributable to the Surviving Claim plus interest through the purchase date at the Contract Rate (as defined in the Notice of Proposed Exemption); and

(C) In the event the Employer subsequently receives payments with respect to the Surviving Claim from any source in excess of the purchase price paid to Plan, such excess will be paid to the Plan.

**EFFECTIVE DATE:** This exemption is effective as of June 17, 1996.

For a more complete statement of the facts and representations supporting this exemption, refer to the notice of proposed exemption published on June 4, 1996 at 61 FR 28242.

**FOR FURTHER INFORMATION CONTACT:** Ronald Willett of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Hoechst Marion Roussel, Inc. Matching Contribution Plan (the Plan) Located in Kansas City, Missouri

[Prohibited Transaction Exemption 96-68; Exemption Application No. D-10242]

#### *Exemption*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continuing guarantee by Hoechst Marion Roussel, Inc. (the Corporation) of a loan made to the Marion Merrell Dow Inc. Associate Stock Ownership Plan (the Plan), provided the following conditions are satisfied: a) the transaction is a continuation of a guarantee that was statutorily exempt at the time it was entered into; and b) the transaction requires an exemption because of an independent transaction involving the Plan's sponsor as a corporate entity.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 21, 1996 at 61 FR 31956.

**EFFECTIVE DATE:** This exemption is effective from July 18, 1995 to August 2, 2005.

#### **WRITTEN COMMENTS AND HEARING**

**REQUESTS:** The only written comment

received by the Department was submitted by the applicant to correct an erroneous representation in the notice of proposed exemption. The applicant had represented that German companies do not maintain stock plans since, under German law, companies are not legally permitted to purchase their own stock. The applicant states in its comment letter that it has recently come to the applicant's attention that in certain cases some German corporations have introduced stock plans to compensate their German employees. The applicant also represents that this does not change the fact that Hoechst AG, the German corporation of which the Corporation is an indirect wholly owned subsidiary, does not wish to have any of its equity securities owned by an employee stock ownership plan for the benefit of United States employees.

The Department received no hearing requests with respect to the proposed exemption. The Department has considered the entire record, including the applicant's comment, and has determined to grant the exemption as proposed.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### **General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 22nd day of August, 1996.

Ivan Strasfeld,

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

[FR Doc. 96-21840 Filed 8-26-96; 8:45 am]

BILLING CODE 4510-29-P

[Application No. D-10224, et al.]

**Proposed Exemptions; Zerhusen and Ghazi, M.D. Inc. Profit Sharing Plan, et al.**

**AGENCY:** Pension and Welfare Benefits Administration, Labor

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of

Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

#### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of proposed exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Zerhusen and Ghazi, M.D. Inc. Profit Sharing Plan (the Plan) Located in Cincinnati, Ohio

[Application No. D-10224]

#### Proposed Exemption

The Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale (the

Sale) by Dr. J. Robert Zerhusen's individual, self-directed account within the Plan (the Account) of a parcel of real property (the Property) to his spouse, Marilyn E. Zerhusen (Mrs. Zerhusen), a participant in the Plan and a party in interest with respect to the Plan, provided that the following conditions are satisfied: (a) the Sale is a one time transaction for a lump sum cash payment; (b) the purchase price is the fair market value of the Property as of the date of the Sale; (c) the Property has been appraised by a qualified, independent real estate appraiser; and (d) the Account will pay no commissions or other expenses relating to the Sale.

#### Summary of Facts and Representations

1. The Plan is a defined contribution plan and has four participants as of the date of the application. The Plan participants have individual, self-directed investment accounts within the Plan. Dr. J. Robert Zerhusen (Dr. Zerhusen) has a non-self-directed account in addition to a self-directed account within the Plan. The real property involved in the Sale is in Dr. Zerhusen's self-directed account and Dr. Zerhusen has investment discretion over this real property. As of December 31, 1995, the fair market value of the total assets of the Plan was \$911,015.68. As of that date, the Account had assets of \$106,546.00 and Dr. Zerhusen's non-self-directed account had assets of \$713,740.45. The \$49,100.00 appraised value of the Property represents forty-six (46) percent of the total Account balance as of December 31, 1995.

2. The Plan was sponsored by Zerhusen & Ghazi, M.D. Inc. (Z & G) which was an Ohio corporation maintained by physicians for the practice of medicine. Dr. Zerhusen is the trustee of the Plan. Currently, there is no active trade or business being conducted in the name of Z & G. The operations of the corporation have been transferred to a newly formed corporation named Westside Cardiology, Inc. Dr. Zerhusen maintains the position of president and director of Westside Cardiology, Inc.

3. The Property consists of 5.112 acres of unimproved land located on Rear Owl Creek Road in Cincinnati, Ohio. The specific zoning classification is residential. The Property was originally purchased by the Account on December 23, 1986 for \$40,000.00. The 20 acres of property adjacent to the Property is owned by Mrs. Zerhusen. Mrs. Zerhusen purchased the adjacent property from the same seller and on the same date that the Account purchased the

Property.<sup>1</sup> The adjacent Property was purchased by Mrs. Zerhusen for \$8,000 per acre or \$160,000.00.

4. The Property has been held in the Account since the purchase date and has not been used by or leased to any person since its acquisition by the Account. On February 9, 1996, the Property was appraised by Joseph L. Schaffer, a Certified Real Estate Appraiser located in Cincinnati, Ohio. Relying on the market data approach, Mr. Schaffer estimated that the fair market value of the Property was \$49,100.00. In his appraisal of the Property, Mr. Schaffer found that there will be no special benefit to be derived by Mrs. Zerhusen by virtue of purchasing the Property due to the fact that she owns the adjacent parcel.

5. Mrs. Zerhusen proposes to purchase the Property from the Account for a lump sum payment of cash representing the fair market value of the Property on the date of sale. There will be no other type of financing involved. The applicant represents that the Sale will result in a conversion of Plan assets from real property to a liquid investment. The Plan will be terminating due to dissolution of the Plan sponsor, Z & G, and liquid assets will be easier to transfer from the Plan.

6. In summary, the applicant represents that the requested exemption will satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Sale is a one time transaction for a lump sum cash payment; (b) the Plan will receive the fair market value of the Property at the time of the transaction; (c) the fair market value of the Property has been determined by an independent, qualified real estate appraiser; (d) the Plan will pay no fees or commissions associated with the Sale; and (e) no other participant in the Plan will be affected by the transaction.

#### Notice to Interested Persons

Because the only Plan assets involved in the proposed transaction are those in the Account of Dr. Zerhusen and he is the only participant affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this proposed exemption in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:**  
Wendy McColough of the Department,

<sup>1</sup> The Department expresses no opinion herein on whether the acquisition and holding of the Property by the Account in the Plan violated any of the provisions of Part 4 of Title I of the Act.

telephone (202) 219-8971. (This is not a toll-free number.)

Lehman Brothers, Inc. (Lehman)  
Located in New York, New York

[Application No. D-10255]

### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the sales of collateralized guaranteed investment contracts (CGICs) by Lehman to employee benefit plans (the Plans), provided the following conditions are satisfied: (a) The decision to purchase a CGIC will be made by a fiduciary of a Plan who is independent of Lehman; (b) Lehman will provide the independent fiduciary with audited and unaudited statements of its financial condition at the time of the purchase of the CGIC and subsequently as issued; (c) Lehman will transfer to a tri-party custodial account, under the exclusive direction of a Plan's trustees, securities selected by the Plan with a market value equal to at least 102% of the CGIC's purchase price; (d) such securities will be marked to market on a daily basis, and Lehman will be required to maintain the market value of the securities at the agreed-upon level of at least 102% of the CGIC's purchase price; (e) a Plan will receive daily reports describing the securities on deposit and their market value, and monthly reports describing all activity with respect to the CGIC, including accrued interest; (f) a Plan will have full recourse against Lehman for all obligations and expenses owed to it by Lehman; (g) Lehman will be responsible for all legal fees and expenses associated with any failure to fulfill its obligations under a CGIC; (h) a Plan will have an unqualified right to the return of its principal and accrued interest no later than the conclusion of the stated term of the CGIC; (i) if a Plan requires a termination of a CGIC prior to maturity to pay benefit responsive payments, no market value adjustment will be imposed; and (j) Lehman will market CGICs only to Plans with assets having an aggregate market value of at least \$50 million.

### *Summary of Facts and Representations*

1. Lehman, a Delaware corporation, is a wholly-owned subsidiary of Lehman Brothers Holdings Inc. (Holdings), also a Delaware corporation. Lehman, one of the largest full-line investment services firms in the United States, is a broker/dealer registered with and regulated by the Securities and Exchange Commission. Lehman is a member of the New York Stock Exchange and other principal securities exchanges in the U.S., is a primary government securities dealer, and is also a member of the National Association of Securities Dealers, Inc. As of November 30, 1995, Lehman had \$82.6 billion in assets, \$2 billion in shareholders' equity, and \$3 billion in subordinated debt.

2. On August 31, 1995, Lehman Government Securities, Inc. (LGS), another wholly-owned subsidiary of Holdings, merged into Lehman. LGS had been an issuer of a variety of different types of guaranteed investment contracts (GICs) since 1986. Lehman has issued over \$19.5 billion of GICs (including the activities of LGS) and maintains an active portfolio of between \$6.5 and \$8.5 billion.

3. Lehman requests an exemption for the sale of CGICs to Plans. The applicant represents that a CGIC is a secured, stable GIC. A CGIC offers all of the return characteristics and ease of use found in a traditional insurance company general account GIC, such as a fixed, floating or indexed rate of return, benefit responsiveness and book value accounting. However, unlike a general or separate account GIC, a CGIC offers additional protection by allowing a Plan sponsor to maintain legal title to the assets which Lehman deposits to secure the CGIC's principal for the term of the CGIC. In addition, the Plan's sponsor will stipulate the quality and type of assets (the Purchased Securities) selected to secure its CGIC contract, and such assets will be held by a third party custodian.<sup>2</sup>

4. The purchase of a CGIC by a Plan will be effected through the execution by an independent Plan fiduciary of a Master Repurchase Agreement With Respect to CGIC Investments (the Master Agreement), a confirmation (the Confirmation), and a custody agreement (the Custody Agreement). Lehman represents that it will market CGICs only to Plans with assets having an

<sup>2</sup> If and when Lehman substitutes securities for the Purchased Securities that were selected by a Plan, the substituted securities will have a statistical credit rating from an independent rating agency that is, at a minimum, equal to the credit rating of the lowest rated Purchased Securities that had been selected by the Plan as acceptable collateral at the time of the purchase of the CGIC.

aggregate market value of at least \$50 million. This restriction is intended to assure that the decision to purchase a CGIC will be made by an independent fiduciary of above average experience and sophistication in matters of this kind.

5. Lehman will provide an independent fiduciary of the Plan with its most recent audited statement of financial condition and its most recent unaudited statement of financial condition at the time Lehman issues a Confirmation to the Plan. In addition, Lehman will represent to the Plan that, since the date of the latest such financial statement, there has been no material adverse change in its financial condition that has not been disclosed to the Plan. Finally, during the term of the CGIC, Lehman will provide the Plan with future audited and unaudited statements of its financial condition as these are issued.

6. By the close of business on the initial day of a Plan's purchase of a CGIC, assets will be transferred to a custodial account in the name of the Plan's trustee, pursuant to the terms of the Custody Agreement. The assets will be in the form of Purchased Securities selected by the Plan, and the margin value of the securities (the Margin Value) will be equivalent to the market value of the Purchased Securities divided by an applicable margin percentage (the Margin Percentage). The Margin Percentage for Purchased Securities (other than for cash)<sup>3</sup> will be no less than 102 percent, depending on the type of Purchased Securities. The Margin Value of the Purchased Securities based upon such Margin Percentage shall equal or exceed the purchase price of the CGIC (the Purchase Price).

7. Under the terms of the Custody Agreement, a tri-party custodial arrangement, an independent bank will act as the non-exclusive custodian (Custodian) with respect to the CGIC in all transactions thereunder.<sup>4</sup> Lehman will pay all costs associated with the establishment and operation of the custodial account, and such account by its terms will not be subject to any security interest, lien or right of setoff by the Custodian, or any third party claiming through the Custodian.

<sup>3</sup> Cash may be substituted for Purchased Securities during the course of a business day or be delivered to the Plan's account to cure a margin deficit in accordance with the terms of the Custody Agreement. The Margin Percentage with respect to such cash shall be 100%.

<sup>4</sup> Although it is anticipated that most Plans will choose the tri-party custodial arrangement, a Plan may, at its discretion, hold the assets related to a CGIC.

8. The Custodian will be responsible for daily mark-to-market valuations of the Purchased Securities to ensure that the Margin Value of the Purchased Securities will be maintained at the agreed-upon level throughout the life of the CGIC. The Custodian will provide daily reports to the Plan and to Lehman describing the Purchased Securities on deposit in the Custodial Account and the market value of such securities. If a decline in the market value of the Purchased Securities causes the Margin Value to fall below the Purchase Price, the Custodian will require Lehman to transfer sufficient securities (or cash) to the Plan's account to restore the value of the Purchased Securities to the appropriate Margin Value. Conversely, if an increase in the market value of the Purchased Securities causes the Margin Value to exceed the Purchase Price, Lehman may request the Custodian to transfer to it sufficient cash or securities such that the Margin Value in the Plan's account does not exceed the Purchase Price.

9. The general terms of a CGIC, including the terms and conditions under which Lehman will repurchase Purchased Securities from a Plan, will be set forth in the Master Agreement, while the specific and negotiable terms of a CGIC, such as the principal amount, the interest rate, the maturity date, and the Margin Percentage will be set forth in a Confirmation.

10. The type of Purchased Securities will be a component in determining the interest rate of a CGIC. For example, direct obligations of the U.S. Government, such as Treasury bills, notes, bonds and GNMA's, will provide a lower rate of return to Lehman than less liquid U.S. Government agency securities. Accordingly, a CGIC's interest rate with the former as Purchased Securities will be lower than with the latter as Purchased Securities. Alternatively, a higher interest rate may be obtained from a CGIC if a Plan selects Purchased Securities that offer lower credit quality and/or increased pricing volatility, such as AAA private label mortgage-backed securities, AA corporate bonds or asset-backed securities (e.g., automobile receivables), because such securities would generate a higher return to Lehman. In any case, however, a Plan will not be at risk for either credit or market value exposure of the Purchased Securities, and the interest on a CGIC will not vary with the investment performance of the Purchased Securities.

11. Accrued interest will be paid or compounded monthly, quarterly, semi-annually, annually or compounded until maturity, in accordance with the

needs of the Plan. A Plan will receive from Lehman monthly reports detailing all activity with respect to the Plan's CGIC, including accrued interest, as well as the previously discussed daily reports from the Custodian regarding the market value of the Purchased Securities.

12. In order to provide a Plan with the ability to withdraw all or part of its investment prior to the maturity date of a CGIC, the Master Agreement provides that the Plan, in its sole discretion may require Lehman to repurchase Purchased Securities held in the custodial account prior to the maturity date of the CGIC (a Transaction Reduction) under the following circumstances and conditions.

The Master Agreement will provide that, prior to requesting a Transaction Reduction, a Plan must satisfy its benefit responsive payments, to the extent possible, from its normal sources of liquidity which shall be set forth in the Master Agreement or the Confirmation. Such sources, which are Plan assets separate and apart from the CGIC, may include, but are not limited to, the following:

- (a) cash reserves;
- (b) funds received from new deposits;
- (c) liquidation of short-term securities;
- (d) proceeds from interest payments received;
- (e) proceeds from the maturity of contracts.

However, to the extent that these normal sources of a Plan's liquidity have been exhausted and additional funds are required by the Plan to satisfy its benefit responsive payments, the Plan may request a Transaction Reduction under the CGIC, as well as withdrawals from other investment providers, using a methodology agreed upon in the Master Agreement or the Confirmation. Such a benefit responsive Transaction Reduction would be effected without penalty upon two days' written notice to Lehman (or such other period that is otherwise agreed to by a Plan and Lehman). At any time, however, Lehman may demand reasonable proof, including written documentation to verify or establish the need for such a benefit responsive Transaction Reduction.

A Plan may effect a whole or partial Transaction Reduction at any time and for any purpose, other than a benefit responsive payment, upon ten days' written notice to Lehman (or such other period that is agreed to by a Plan and Lehman). On the date of such notice, Lehman, as calculation agent, would determine the market value adjustment (Termination Cost), if any, applicable to

such a Transaction Reduction. Such Termination Cost would be determined in accordance with one of two methodologies mutually agreed upon in the Confirmation and described in the Master Agreement. One such methodology would employ an objective mathematical computation that would result in a Termination Cost if the prevailing interest rate on the date of notice for a comparable GIC with terms similar to the unexpired term of the CGIC were greater than that of the CGIC. Under an alternative methodology, the Termination Cost would be based upon quotations obtained by Lehman from not less than three leading independent dealers of the amount, if any, that Lehman would be required to pay such a dealer to enter into an agreement with Lehman that would have the effect of preserving for Lehman the economic equivalent of its rights under the CGIC. The lowest of such dealer quotations (i.e., the quotation most favorable to the Plan) would be the Termination Cost of the CGIC. Such quotes would result in a Termination Cost to a Plan only if the quote most favorable to the Plan represented an amount that Lehman would be required to pay to the independent dealer for such a replacement transaction. In either case, the Termination Cost would not be based on the investment performance of the Purchased Securities or investments purchased by Lehman with the CGIC principal. Lehman represents that it will not have the discretion to increase the market value adjustment to a CGIC regardless of which methodology is utilized.

13. If Lehman fails to repurchase the Purchased Securities upon the maturity date of the CGIC or fails to maintain the Margin Value in accordance with the Custody Agreement, a Plan will have the right under the Master Agreement (i) to sell any or all of the Purchased Securities and to apply the proceeds to the aggregate unpaid purchase price and any other amounts owing by Lehman or (ii) to take possession of the Purchased Securities and credit the market value of the Purchased Securities (as determined by a generally recognized source or by the most recent closing bid quotation from such a source) against the aggregate unpaid CGIC purchase price and any other amounts owing by Lehman. After an event of default, any income on the Purchased Securities will be retained by the Plan and applied to the aggregate unpaid CGIC purchase price. In addition, in the case of such a default by Lehman, Lehman will be obligated to pay the amount of any

obligations to, and the expenses of, a Plan that are not otherwise covered by the Purchased Securities, including all reasonable legal or other expenses incurred by the Plan in connection with, or as a consequence of, such default, together with interest thereon at a rate equal to the CGIC interest rate.

14. A CGIC will terminate (Final Repurchase Date) upon the earlier of (i) the maturity date of the CGIC, (ii) the date on which a Transaction Reduction causes a return to a Plan of the CGIC's remaining principal and interest, or (iii) the date on which Lehman terminates a CGIC as a result of its determination that a modification to the Plan's operative documents or the Plan's administration (a Plan Amendment) would materially reduce Lehman's expected benefits or increase its exposure or obligations under the CGIC.<sup>5</sup> On the Final Repurchase Date, Lehman will pay the applicable repurchase price of the CGIC (and any accrued but unpaid interest) to the Plan, and the Purchased Securities remaining in the custodial account will be returned to Lehman.

15. The applicant represents that the terms and conditions of the CGIC are essentially the same as the conditions imposed by the Department in Prohibited Transaction Exemption 81-8 (PTE 81-8, 46 FR 7511, January 23, 1981, as amended at 50 FR 14043, April 9, 1985), other than the condition that the term of a repurchase agreement be limited to one year or less:

(a) PTE 81-8 does not provide relief for fiduciaries of a plan. The exemption proposed herein does not provide relief when Lehman is a fiduciary to a Plan with respect to the investment of Plan assets in a CGIC.

(b) PTE 81-8 requires that the seller transfer to a Plan securities (or banker's acceptances, commercial paper or certificates of deposit) with a market value of at least 100% of the purchase price paid by the Plan. The exemption proposed herein requires that Lehman transfer to a custodial account, under the exclusive direction of a Plan's trustees, Purchased Securities with a market value of at least 102% of the CGIC's purchase price.

(c) PTE 81-8 requires that a Plan must receive certain audited and unaudited statements of the seller's financial condition, as well as a representation regarding changed financial condition. The exemption proposed herein requires Lehman to provide the same information and representation to a Plan

at the time Lehman issues a confirmation to the Plan. In addition, Lehman is under a continuing obligation to provide audited and unaudited statements of its financial condition as issued.

(d) PTE 81-8 requires a written repurchase agreement the terms of which would satisfy an "arm's-length" standard. The use of master agreements covering a series of transactions is expressly approved. Under the exemption proposed herein, the Master Agreement, the Confirmation, and the Custody Agreement will be in written form. The terms of the CGIC, as reflected in Confirmation, are subject to negotiation, based on the needs of a Plan as determined by its independent fiduciary in arm's-length negotiations with Lehman.

(e) PTE 81-8 requires that the interest paid to a Plan must be no less than it would receive in a comparable transaction with an unrelated party. Under the exemption proposed herein, the Plan will receive interest at a rate agreed upon by the Plan and Lehman based upon the economic characteristics of the transaction.

(f) PTE 81-8 requires that the collateral be marked to market on a daily basis to maintain a 100% market value level. The exemption proposed herein similarly requires that the Purchased Securities be marked to market on a daily basis to maintain at least a 102% Margin Value.

(g) PTE 81-8 requires that the seller must transfer an amount equal to the purchase price of the securities plus interest to a Plan upon the expiration of a repurchase agreement. Under the exemption proposed herein, a Plan will have an unqualified right to the return of its principal and accrued interest no later than the conclusion of the stated term of the CGIC.

(h) PTE 81-8 requires that a Plan must have certain rights in event of a seller's default. The exemption proposed herein provides that a Plan has full recourse against Lehman and the Purchased Securities for all obligations and expenses owed to it by Lehman. In addition, Lehman would be responsible for all legal fees and expenses associated with any such failure to fulfill its obligations under a CGIC.

16. In summary, the applicant represents that the proposed transaction will satisfy the criteria contained in section 408(a) of the Act for the following reasons: (a) the decision to purchase a CGIC will be made by a fiduciary of a Plan who is independent of Lehman; (b) Lehman will provide the independent Plan fiduciary with audited and unaudited statements of its

financial condition at the time Lehman issues a Confirmation to the Plan, and Lehman will be under a continuing obligation to provide audited and unaudited statements of financial condition as issued; (c) upon the purchase of a CGIC by a Plan, Lehman will transfer to a tri-party custodial account, under the exclusive direction of a plan's trustees, securities selected by the Plan with a market value equal to at least 102% of the CGIC's purchase price; (d) the Purchased Securities will be marked to market on a daily basis, and Lehman will be required to maintain the market value of the Purchased Securities at the agreed-upon level of at least 102% of the CGIC's purchase price; (e) a Plan will receive daily reports describing the securities on deposit in the custodial account and their market value, as well as monthly reports describing all activity with respect to the CGIC, including accrued interest; (f) interest will be paid on a CGIC at intervals determined by the Plan; (g) a Plan will have full recourse against Lehman and the purchased Securities for all obligations and expenses owed to it by Lehman; (h) Lehman will be responsible for all legal fees and expenses associated with any failure to fulfill its obligations under a CGIC; (i) a Plan will have an unqualified right to the return of its principal and accrued interest no later than the conclusion of the stated term of the CGIC; (j) if a Plan requires a termination of a CGIC prior to maturity to pay benefit responsive payments, no market value adjustment will be imposed on such an early termination; and (k) the CGICs will be marketed only to Plans with assets having an aggregate market value of at least \$50 million.

**FOR FURTHER INFORMATION CONTACT:** Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Rexam Retirement Savings Plan (the Plan) Located in Charlotte, North Carolina

[Application No. D-10294]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of

<sup>5</sup>Lehman represents that in the unlikely event of a Plan Amendment, the Master Agreement provides that such a termination would be subject to a market value adjustment, if any.

the Code shall not apply to the loan of \$1,620,246.56 (the Loan) to the Plan from Rexam, Inc. (the Employer) with respect to the Guaranteed Investment Contract No. 62317 (the GIC) issued by Confederation Life Insurance Company (Confederation) and the Plan's potential repayment of the Loan upon the receipt by the Plan of payments under the GIC; provided the following conditions are satisfied:

(A) All terms and conditions of the transactions are no less favorable to the Plan than those that the Plan could obtain in arm's-length transactions with unrelated parties;

(B) No interest payments or other expenses are paid by the Plan in connection with the Loan and its repayment;

(C) The Loan will be repaid only from proceeds paid to the Plan by Confederation, its successors, or by any other third-party;

(D) Repayment of the Loan will be waived to the extent that the Loan exceeds the proceeds from the GIC;

(E) If total proceeds received by the Plan with respect to the GIC exceed the amount of the Loan, the excess will be credited to the respective accounts of the participants in proportion to the relative investment of each account in the GIC on June 25, 1996; and

(F) A qualified, independent fiduciary represented the Plan at the execution of the Loan and will continue to represent the interests of the Plan throughout the duration and repayment of the Loan.

**EFFECTIVE DATE:** If the proposed exemption is granted, the exemption will be effective as of June 25, 1996.

#### *Summary of Facts and Representations*

1. The Employer, a Delaware corporation with its principal office located in Charlotte, North Carolina, is a wholly-owned subsidiary of Rexam plc, a publicly traded holding company based in London, England. The Employer is primarily in the business of manufacturing and marketing specialty packaging and coated products. The specialty packaging includes (A) healthcare packaging such as pharmaceutical blister foil packaging and sterilizable packaging for medical instruments and surgical gloves, (B) cosmetic packaging that includes perfume atomizers and lipstick tubes and cases, and (C) plastic bottles and containers and child-resistant screw tops. The coated products by the Employer include graphic printed cartons and containers and metallized films and papers that are used for labels and food and cigarette package liners.

2. The Plan is a defined contribution plan that maintains individual accounts

for its participants and is intended to satisfy the qualification requirements of sections 401(a) and 401(k) of the Code. The total assets of the Plan had a fair market value of \$74,767,875.86, as of March 31, 1996. There are currently approximately 5,800 participants in the Plan.

The applicant represents that the Plan is administered by an investment committee (the Committee) which is appointed by the Employer. The Committee consists of the Employer's Chief Executive Officer, Chief Financial Officer, Corporate Treasurer, and Vice President—Human Resources. The applicant represents that the Committee selects for the Plan the different types of investment funds or vehicles that are maintained by the Plan trustee and offered to participants for self-directing investments of assets in their respective individual accounts in the Plan. The Committee also reviews the performance of the Plan trustee which has discretion for selecting the various specific securities of the different investment funds or vehicles offered to the Plan. The Charlotte, North Carolina office of Towers Perrin is represented by the applicant to have been the previous recordkeeper for the Plan.

After reviewing various investment funds available for tax-qualified plans, the applicant represents that it amended the Plan, effective July 1, 1996, in order to enhance the investment options available to Plan participants. The new investment options or funds consist of six mutual funds managed by the Vanguard Group of Investment Companies. After the execution of the Loan on June 25, 1996, a transfer of assets of the Plan, other than the GIC issued by Confederation, was made from Wachovia Bank of North Carolina, N.A., located in Winston-Salem, North Carolina (Wachovia) to the new trustee of the Plan, Vanguard Fiduciary Trust Company, located in Valley Forge, Pennsylvania (Vanguard), an affiliate of The Vanguard Group of Investment Companies. At the time of the transfer, Vanguard also assumed from Towers Perrin the function of recordkeeper for the new assets of the Plan.

Wachovia continues as trustee for the Plan with respect to the GIC issued by Confederation until the final settlement of the GIC and the repayment of the Loan and will represent and enforce the interests of the Plan and its participants.

3. The GIC was acquired by the Plan effective September 27, 1990, from Confederation pursuant to the Plan tendering \$1 million to Confederation

on October 25, 1990.<sup>6</sup> Under the terms of the GIC the maturity date is September 28, 1995, and the interest yield is guaranteed at 9.25 percent compounded annually with both interest and principal to be paid on September 29, 1995. The applicant represents that no additional deposits or withdrawals of the principal have been made.

On August 12, 1994, the Ingham County Circuit Court in Lansing, Michigan placed Confederation in conservatorship and rehabilitation, causing Confederation to suspend all payments on its contracts, including the GIC. The Employer represents that it does not know whether, when, or under what circumstances Confederation will be able to pay the principal and interest that is due under the GIC.

4. In order to eliminate the expenses and risks associated with the continued investment of participant's respective accounts in the GIC, and to permit participant's accounts so invested to direct equivalent amounts invested in the GIC into the investment options offered by Vanguard, the Employer made the Loan on June 25, 1996, as a one-time, unsecured, and interest free loan. No expenses or commissions were incurred, or are to be incurred, by the Plan from the transactions.

The Loan was computed to equal the \$1 million principal amount of the GIC and the 9.25 contract rate compounded annually through the maturity date of September 28, 1995, plus an additional yield of 5.5 percent compounded for the period after September 28, 1995, through June 25, 1996.<sup>7</sup>

The terms of the Loan also provide that repayment to the Employer is to be made by the Plan solely from the proceeds received from the GIC.

As provided by the Loan, if the proceeds received by Wachovia, as trustee for the Plan, from the GIC are less than the amount of the Loan, Wachovia will ensure the remaining outstanding balance owed by the Plan on the Loan will be waived by the Employer. In addition, Wachovia will enforce the terms of the Loan which provide, *inter alia*, that if the proceeds from the GIC exceed the amount of the Loan, the excess will be shared by the respective accounts of the participants

<sup>6</sup>The Department notes that decisions to acquire and hold the GIC are governed by the fiduciary responsibility provisions of Part 4 Title I of the Act. In this regard the Department is not proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC.

<sup>7</sup>The 5.5 percent rate of return was selected because of the short period of time involved and because the rate was comparable to the short-term investment fund yield offered by the Plan to the participants through Wachovia.

in proportion to the amounts the respective accounts were invested in the GIC on June 25, 1996. The applicant further represents that the transactions are administratively feasible because of the documentation of the Loan and its repayment terms can be monitored. Also, the applicant represents that the transactions are in the best interests of the Plan and its participants and beneficiaries because they enable the Plan to avoid having a portion of the participants accounts invested in an illiquid asset that has significant investment risk. Further, the transactions are represented by the applicant to serve the interests of the participants and beneficiaries by permitting the participants to direct the entire value of their respective accounts into the investment options offered by Vanguard.

5. In summary, the applicant represents that the transactions will satisfy the criteria for an exemption under section 408(a) of the Act because (a) the transactions will preserve the ability of the Plan to timely fund and preserve benefits for the participants and their beneficiaries; (b) the Plan will not incur any expenses or commissions with respect to the transactions; (c) repayment of the Loan will be made only from the proceeds realized from the GIC; (d) if the proceeds realized from the GIC as paid by Confederation, its successors, or any other third party are not sufficient to repay the Loan the Employer will waive the unpaid balance of the Loan; and (e) if the proceeds from the GIC exceed the Loan, the excess will be paid to the accounts of the participants in proportion to their respective accounts investment in the GIC.

**FOR FURTHER INFORMATION CONTACT:** Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

#### General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a

prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of August, 1996.

Ivan Strasfeld,

*Director of Exemption Determinations,  
Pension and Welfare Benefits Administration,  
U.S. Department of Labor.*

[FR Doc. 96-21839 Filed 8-26-96; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** Office of Records Administration, National Archives and Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified

period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Request for copies must be received in writing on or before October 11, 1996. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESSES:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, College Park, MD 20740. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their

disposition. Further information about the disposition process will be furnished to each requester.

#### Schedules Pending

1. Department of the Air Force (N1-AFU-96-6). Reports relating to personnel support for contingency operations.
2. Department of Justice (N1-60-95-2). Subject and reference files, 1991-92, of the Assistant Attorney General for Policy Development.
3. Department of Justice, Immigration and Naturalization Service (N1-85-96-7). Reduction in the retention period for Form I-775, Visa Waiver Program Agreement.
4. Securities and Exchange Commission (N1-266-96-1). Comprehensive schedule for Office of International Affairs.

Dated: August 16, 1996.

James W. Moore,

*Assistant Archivist for Records Administration.*

[FR Doc. 96-21768 Filed 8-26-96; 8:45 am]

BILLING CODE 7515-01-M

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## NATIONAL CAPITAL PLANNING COMMISSION

### Proposed Construction and Operation of a Convention Center in Washington, D.C.; Public Meeting and Intent to Prepare an Environmental Impact Statement

**SUMMARY:** Pursuant to Section 102 (2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality (40 CFR Parts 1500-1508), Section 106 of the National Historic Preservation Act of 1966, as amended, and in accordance with the Environmental Policies and Procedures implemented by the National Capital Planning Commission (Commission), the Commission and the District of Columbia Government announce their intent to conduct one (1) public meeting to discuss a new Convention Center in Washington, D.C. The purpose of the public meeting is to determine the significant issues related to the construction and operation of the convention center. The meeting will serve as part of the formal environmental review/scoping process for the preparation of the environmental document that is required for this project.

This Notice of Intent (NOI) initiates the formal environmental review/scoping process for this project and the public is encouraged to submit written comments on the alternatives and on the impacts of this time. A comprehensive

Environmental Impact Statement (EIS) is considered to be the appropriate environmental document for this project and it is expected that completion of an EIS will discharge all obligations under Federal environmental laws. The comments and responses received on the scope of the alternatives and potential impacts, as a result of this NOI, will be considered for the environmental document.

The proposed convention center would include approximately 2 million gross square feet and would be located in central Washington, D.C. The proposed convention center is scheduled to be completed in December 1999.

The Environmental Impact Statement (EIS) will identify and analyze impacts and mitigation options of the alternative actions under consideration. At present those alternatives may include: (1) Construction and operation of a new convention center at the Mount Vernon Square site (bounded by K, 7th, 9th, and N Streets, NW.); (2) construction and operation of a new convention center at the Northeast No. 1 site (generally, between First Street, NE. and the railroad track); and (3) a No Action Alternative, which would result in a no new construction. Topics for environmental analysis include short-term construction-related impacts, long-term changes in traffic, parking, socio-economic impacts, land use and physical/biologic conditions within the project area; cultural (historic and archeological) and visual resource protection; and site operations and maintenance.

**SUPPLEMENTARY INFORMATION:** The environmental review/scoping process will include all written comments and one (1) public meeting for the purpose of determining significant issues related to the alternatives and to the potential impacts associated with the proposed construction and operation of the Convention Center. The public meeting will be held:

*Wednesday, September 25, 1996 at 7:00 P.M. at 900 9th Street, NW, the D.C. Convention Center/Rooms 30 and 31.*

This public meeting will be advertised in local and regional newspapers. Adequate signs will be posted to direct meeting participants. A short formal presentation will precede the request for public comments. National Capital Planning Commission and District of Columbia representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, regional and local agencies, and interested

individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. A Document summarizing the written and oral comments received will be prepared.

An Informational Packet will be available for review at the offices of the National Capital Planning Commission at 801 Pennsylvania Avenue, N.W., and at Martin Luther King, Jr. Public Library (9th & G Streets, N.W.), or upon request. Agencies and the general public are invited and are encouraged to provide written comments on the scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, environmental review/scoping comments should clearly describe specific issues or topics which the community believes the EIS should address.

**DATES:** All written statements regarding environmental review of the proposed arena must be postmarked no later than September 27, 1996 to the address below:

*National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Suite 301, Washington, D.C. 20576, Attention: Mr. Maurice Foushee, Community Planner*

#### FOR FURTHER INFORMATION PLEASE

**CONTACT:** National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Suite 301, Washington, D.C. 20576, Phone: (202) 482-7200.

Sandra H. Shapiro,

*General Counsel, National Capital Planning Commission.*

[FR Doc. 96-21806 Filed 8-26-96; 8:45 a.m.]

BILLING CODE 7502-02-M

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463 as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Materials Research #1203

*Dates and Times:* 9-10-96, 5:00 pm-9:00 pm, and 9-11-96; 8:00 am-5:00 pm

*Type of Meeting:* Closed

*Contact Person:* Dr. W. Lance Haworth, Coordinating Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065 NSF, 4201 Wilson Blvd. Arlington, VA 22230 Telephone (703) 306-1815

*Purpose of Meeting:* To provide advice and recommendations concerning support for the Materials Research Science and Engineering Centers, Purdue University.

*Agenda:* Presentation and evaluation of progress

*Reason for Closing:* The proposal being reviewed includes information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 22, 1996.

M. Rebecca Winkler,

*Committee Management Officer.*

[FR Doc. 96-21781 Filed 8-26-96; 8:45 am]

BILLING CODE 7555-05-M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

#### National Transportation Safety Board

**TIME AND DATE:** 9:30 a.m., Wednesday, September 4, 1996.

**PLACE:** The Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** 6582A Railroad Accident Report: Collision Involving Two New York City Transit Subway Trains on the Williamsburg Bridge in Brooklyn, New York, June 5, 1995.

6734 Pipeline Special Investigation Report: Evaluation of Pipeline Failures During Flooding and of Spill Response Actions, San Jacinto River near Houston, Texas, October 1994.

*News Media Contact:* Telephone: (202) 382-0660

**FOR MORE INFORMATION CONTACT:** Bea Hardesty (202) 382-6525.

Dated: August 23, 1996.

Bea Hardesty,

*Federal Register Liaison Officer.*

[FR Doc. 96-21914 Filed 8-23-96; 10:22 am]

BILLING CODE 7533-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 72-2 (50-280/281)]

### Notice of Issuance of Amendment to Materials License SNM-2501, Virginia Electric and Power Company, Surry Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (the Commission) has

issued Amendment 8 to Materials License No. SNM-2501 held by Virginia Electric and Power Company (VA Power) for the receipt, possession, transfer, and storage of spent fuel at the Surry ISFSI, located in Surry County, Virginia. The amendment is effective as of the date of issuance.

By application dated October 16, 1995, VA Power requested to amend its ISFSI license to (1) Revise references to the physical security plan, and (2) permanently exempt it from the submittal date specified in 10 CFR 72.44(d)(3) for the required annual radioactive effluent release report. The Commission has chosen not to grant the exemption. However, the license has been revised to delete the requirement of submitting a second, semi-annual radioactive effluent release report that is not required by 10 CFR Part 72.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c) (10) and (12), an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room at the Swem Library, the College of William and Mary, Williamsburg, VA 23185.

Dated at Rockville, Maryland, this 20th day of August 1996.

For the Nuclear Regulatory Commission.  
William D. Travers,  
*Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 96-21812 Filed 8-26-96; 8:45 am]

BILLING CODE 7590-01-P

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of August 26, September 2, 9, and 16, 1996.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

#### MATTERS TO BE CONSIDERED:

Week of August 26—Tentative

*Monday, August 26*

2:00 p.m.

Meeting with Chairman of Nuclear Safety Research Review Committee (NSRRC) (Public Meeting)  
(Contact: Jose Cortez, 301-415-6596)

*Tuesday, August 27*

9:30 a.m.

Briefing on Design Certification Issues (Public Meeting)  
(Contact: Jerry Wilson, 301-415-3145)

2:00 p.m.

Briefing on Annealing Demonstration Project (Public Meeting)  
(Contact: Michael Mayfield, 301-415-6690)

*Wednesday, August 28*

10:00 a.m.

Briefing on Certification of USEC (Public Meeting)  
(Contact: John Hickey, 301-415-7192)

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

Week of September 2—Tentative

*Wednesday, September 4*

9:30 a.m.

Briefing by DOE on Status of HLW Program (Public Meeting)

*Thursday, September 5*

3:00 p.m.

Briefing by Executive Branch (CLOSED—Ex. 1)

Week of September 9—Tentative

There are no meetings scheduled for the Week of September 9.

Week of September 16—Tentative

There are no meetings scheduled for the Week of September 16.

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.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/SECY/smj/schedule.htm>.

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](mailto:alb@nrc.gov) or [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: August 23, 1996.

William M. Hill, Jr.,  
SECY Tracking Officer, Office of the Secretary.

[FR Doc. 96-21989 Filed 8-23-96; 2:01 pm]

BILLING CODE 7590-01-M

## POSTAL SERVICE

### Information Based Indicia Program (IBIP)

**AGENCY:** Postal Service.

**ACTION:** Announcement of Public Meeting on IBIP.

**SUMMARY:** The Postal Service will be hosting another public meeting in conjunction with IBIP. The meeting will be on Policy Issues regarding IBIP. It will be held Wednesday, September 25, 1996, at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202-3555.

**DATES:** Reservations for this meeting may be made until September 19, 1996, by calling Terry Goss at 202-268-3757 or Gloria Valcin at 202-268-5586.

Stanley F. Mires,  
Chief Counsel, Legislative.

[FR Doc. 96-21554 Filed 8-26-96; 8:45 am]

BILLING CODE 7710-12-M

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Mutual Fund Telephone Survey—SEC File No. 270-395, OMB Control No. 3235-0448; Mall Intercept Survey—SEC File No. 270-393, OMB Control No. 3235-0450; Mutual Fund Mail Survey—SEC File No. 270-395, OMB Control No. 3235-0451.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission

(“Commission”) has submitted to the Office of Management and Budget requests for approval of extension on previously approved collections of information. The Commission is seeking approval to execute a mutual fund telephone survey, a mall intercept survey, and a mutual mail survey. These surveys will attempt to assess the public’s understanding of mutual funds and other financial matters. The results will enable the Commission to better understand the level of investor comprehension of mutual fund prospectuses and financial issues.

The mutual fund telephone survey is estimated to require 750 burden hours. Approximately 3,000 people will participate in the telephone survey, with each interview lasting 15 minutes.

The mall intercept survey is estimated to require 33 burden hours.

Approximately 100 people will participate in the survey, with each interview lasting 20 minutes.

The mutual fund mail survey is estimated to require 333 burden hours. Approximately 1,000 people will participate in the survey, with the interview lasting 20 minutes.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: August 19, 1996.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 96-21756 Filed 8-26-96; 8:45 am]

BILLING CODE 8010-01-M

### [Investment Company Act Release No. 22153; 812-10122]

### The One Group, et al.; Notice of Application

August 20, 1996.

**AGENCY:** Securities and Exchange Commission (“SEC”).

**ACTION:** Notice of Application for an Order under the Investment Company Act of 1940 (the “Act”).

**APPLICANTS:** The One Group (the “Trust”), Banc One Investment Advisors Corporation (the “Adviser”), The One Group Services Company (the “Distributor”), BISYS Fund Services Limited Partnership, BNY Hamilton Distributors, Inc., Concord Financial Group, Inc., Emerald Asset Management, Inc., Pilot Funds Distributors, Inc., 231 Broker-Dealer Services, Inc., UST Distributors, Inc., Victory Broker/Dealer Services, Inc., Vista Fund Distributors, Inc., Branch Banking and Trust Company, First Chicago Investment Management Company, and NBD Bank.

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) of the Act from section 12(d)(1) of the Act, and under sections 6(c) and 17(b) of the Act from section 17(a) of the Act.

**SUMMARY OF APPLICATION:** The order would permit certain portfolios of the Trust (the “Portfolios”) to operate as “funds of funds” by investing substantially all of their assets in other portfolios (the “Underlying Portfolios”) of the Trust. The order also would allow other groups of investment companies that are distributed by the Distributor (the “Distributor Funds”) to operate a “fund of funds” arrangement within their respective fund complexes (“Distributor Funds of Funds”), whereby the Distributor Funds of Funds will invest in shares of underlying Distributor Funds (the “Underlying Distributor Funds”).

**FILING DATES:** The application was filed on May 3, 1996 and was amended on August 16, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 16, 1996, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC’s Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, 774 Park Meadow Drive, Westerville, Ohio 43081.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Staff Attorney, at (202) 942-0574, or Robert A. Robertson,

Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

#### Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act. The Trust is comprised of separate investment portfolios, each of which will pursue a distinct set of investment objectives and policies.<sup>1</sup> The Portfolios will initially consist of the following eight separately managed portfolios: The One Group Aggressive Growth Fund, The One Group Growth Fund, The One Group Growth and Income Fund, The One Group Municipal Balanced Fund, The One Group Conservative Growth Fund, The One Group Fixed Income Fund, The One Group Municipal Balanced Fund, and The One Group Tax-Free Income Fund. The Underlying Portfolios are the other investment portfolios of the Trust.

2. Applicants request that any relief granted pursuant to this application also apply to any open-end management investment company that currently or in the future is part of the same "group of investment companies" as defined in rule 11a-3 as the Trust (collectively, the "One Group Funds").<sup>2</sup> Applicants also request that any such relief apply to any other "group of investment companies" distributed by the Distributor (Distributor Funds) or any entity that controls, is controlled by, or is under common control with the Distributor Fund of Funds would be substantially similar to those of the Portfolios.

3. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 and is an indirect, wholly owned subsidiary of Banc One Corporation, a bank holding company incorporated in the State of Ohio.<sup>3</sup> The Adviser is responsible for

<sup>1</sup> Although certain portfolios of the One Group Funds do not presently intend to rely on the requested order, any such registered investment company, or portfolio therefore, would be covered by the order if it later proposed to enter into a fund of funds arrangement in accordance with the terms described in the application.

<sup>2</sup> Rule 11a-3 under the Act defines the "same group of investment companies" as two or more companies that: (a) hold themselves out to investors as related companies for purposes of investment and investor services; and (b) that have a common investment adviser or principal underwriter.

<sup>3</sup> The following entities serve as investment advisers to investment companies for which the Controlled Distributors serve as principal underwriter/distributor and presently intend to rely on the order: Branch Banking and Trust Company,

the overall management of the Portfolios' investment affairs and also serves as investment adviser to the Underlying Portfolios. The Adviser may charge the Portfolios, and will charge the Underlying Portfolios, investment advisory fees. In certain cases the Underlying Portfolios have one or more sub-advisers. The Adviser pays the sub-advisers out of the advisory fees paid by the Underlying Portfolios.

4. The Distributor is a broker-dealer registered under the Securities Exchange Act of 1934 ("1934 Act") and is a member of the National Association of Securities Dealers, Inc. ("NASD"). The Distributor serves as the Portfolios' principal underwriter/distributor and administrator. Each Controlled Distributor is, or, in the case of Controlled Distributors created in the future will be a broker-dealer registered under the 1934 Act and a member of the NASD, and will serve as the principal underwriter/distributor for Distributor Funds and may serve as the Distributor Funds' administrator. Each Controlled Distributor is or will be a wholly owned subsidiary of The BISYS Group, Inc. The BISYS Group, Inc. is holding company that furnishes financial or informational services to bank proprietary investment companies and community banks. The BISYS Group, Inc. has no affiliation (other than through the service relationships of its wholly owned subsidiaries) with any investment company or its bank sponsor. The BISYS Group, Inc. is not affiliated with Bank One Corporation or with the Adviser.

5. Applicants propose a fund of funds arrangement where each Portfolio will invest in shares of Underlying Portfolios that are part of the same "group of investment companies." Each Portfolio that will make investments in reliance on the proposed order will invest in other investment companies only to the extent contemplated by the requested relief. However, each Portfolios also may invest directly in stocks, bonds, and money market investments. Exemptive relief is not sought with respect to such other investments.

6. Each Portfolio initially proposes to allocate its assets among one or more Underlying Portfolios representing the

First Chicago Investment Management Company, and NBD Bank. Other entities which serve as investment advisers to investment companies for which the Controlled Distributors serve as principal underwriter/distributor do not presently intend to rely on the order. However, each such investment adviser and the investment company which it advises may rely on the order in the future if the adviser and investment company determine to establish and operate a fund-of-funds in accordance with the representations and conditions in the application.

following asset classes: cash; fixed income; domestic equity; and international equity. The Portfolios will be designed for long-term investors, including tax-deferred retirement plan participants. The Portfolios will provide an efficient and simple method of allowing investors to structure a comprehensive asset allocation program. In addition, each Distributor Fund of Funds would invest in shares of Underlying Distributor Funds that are part of the same "group of investment companies" as the Distributor Funds of Funds. The structure, investment allocations, expenses and purpose of each Distributor Fund of Funds would be similar to those of the Portfolios.

#### Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 6(c) of the Act provides that the SEC may exempt persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an order permitting the Portfolios to acquire shares of the Underlying Portfolios, and the Distributor Funds of Funds to acquire shares of the Underlying Distributor Funds, beyond the section 12(d)(1) limits.

3. The restrictions in section 12(d)(1) were intended to prevent certain abuses perceived to be associated with the pyramiding of investment companies, including: (a) unnecessary duplication of costs, e.g. sales loads, advisory fees, and administrative costs; (b) undue influence by the fund holding company over its underlying funds; (c) the threat of large scale redemptions of the securities of the underlying investment

companies; and (d) unnecessary complexity.

4. Applicants believe that the proposed arrangement will not raise the fee layering concerns contemplated by section 12(d)(1). Applicants contend that the proposed arrangement will not involve the layering of advisory fees since, before approving any advisory contract under section 15(a) of the Act, the board of trustees of the Trust or the board of trustees or directors of the Distributor Fund of Funds, including a majority of the trustees or directors who are not "interested persons," as defined in section 2(a)(19) of the Act, will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Underlying Distributor Fund advisory contract.

5. Applicants state that the proposed structure will not raise the sales charge layering concerns underlying section 12(d)(1). Any sales charges or service fees relating to the shares of a Portfolio or Distributor Fund of Funds will not exceed the limits set forth in Article III, section 26 of the Rules of Fair Practice of the NASD when aggregated with any sales charges or service fees that the Portfolio or Distributor Fund of Funds pays relating to Underlying Portfolio or Underlying Distributor Fund shares. The aggregate sales charges at both levels, therefore, will not exceed the limit that otherwise lawfully could be charged at any single level. Applicants expect that, overall, administrative and other expenses will be reduced at both levels under the proposed arrangement and, therefore, an investment in a Portfolio or Distributor Fund of Funds should not be significantly more expensive than a direct investment in an Underlying Portfolio or Underlying Distributor Fund. Applicants believe that all of the One Group Funds and Underlying Distributor Funds are likely to benefit from the existence of the Portfolios and Distributor Funds of Funds since increased distribution and the resulting increase of assets under management will produce additional cost savings.

6. Applicants also believe that the concern that the acquiring fund might be able to control the management decisions of the underlying fund through the threat of large redemptions is not relevant to the proposed arrangements. There is little risk that the Adviser will exercise inappropriate control over the Underlying Portfolios. The Portfolios only will acquire shares of Underlying Portfolios that are One Group Funds. Because the Adviser is the investment adviser to the

Underlying Portfolios as well as to the Portfolios, a redemption from one Underlying Portfolio will simply lead to the investment of the proceeds in another Underlying Portfolio.

Applicants believe that the same will be true in the case of the Distributor Funds of Funds since they will invest in Underlying Distributor Funds that are part of the same "group of investment companies."

7. Applicants believe that the proposed arrangement will be structured to minimize large scale redemption concerns. The Portfolios and Distributor Funds of Funds will be designed for intermediate and long term investment purposes. This will reduce the possibility of the Portfolios and Distributor Funds of Funds from being used as short-term investment vehicles and further protect the Portfolios and the Distributor Funds of Funds and their respective Underlying Portfolios and the Underlying Distributor Funds from unexpected large redemptions. Applicants believe that the proposed arrangement will not be unnecessarily complex. No Underlying Portfolio or Underlying Distributor Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

8. Section 17(a) generally makes it unlawful for an affiliated person of a registered investment company to sell securities to, or purchase securities from, the company. The Portfolios and the Underlying Portfolios may be considered affiliated persons because they share a common adviser and to the extent a Portfolio owns 5% of an Underlying Portfolio's shares. Similar arguments may be made in the case of the Distributor Funds of Funds and the Underlying Distributor Funds. An Underlying Portfolio's issuance of its shares to the Portfolio, and the sale by the Underlying Distributor Funds of their shares to the Distributor Funds of Funds, could be deemed principal transactions subject to section 17(a).

9. Section 17(b) provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Applicants request an exemption under

sections 6(c) and 17(b) to allow the above transactions.<sup>4</sup>

10. Applicants believe that the proposed transactions meet the standards of sections 6(c) and 17(b). The consideration paid for the sale and redemption of shares of Underlying Portfolios and Underlying Distributor Funds will be based on the net asset value of the Underlying Portfolios and Underlying Distributor Funds, respectively, subject to applicable sales charges. The proposed arrangements also will be consistent with the policies as set forth in the registration statement of each Portfolio and Distributor Fund of Funds. Applicants also believe that the proposed transactions are consistent with the general purposes of the Act.

#### Applicant's Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Portfolio and each Underlying Portfolio will be part of the "same group of investment companies," as defined in rule 11a-3 under the Act. In addition, each Distributor Fund of Funds and each Underlying Distributor Fund will be part of the same "group of investment companies."

2. No Underlying Portfolio or Underlying Distributor Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

3. A majority of the trustees of the Trust and a majority of the trustees or directors of each Distributor Fund of Funds, will not be "interested persons," as defined in section 2(a)(19) of the Act.

4. Any sales charges or service fees charged relating to the shares of a Portfolio or Distributor Fund of Funds, when aggregated with any sales charges or service fees paid by the Portfolio or Distributor Fund of Funds relating to the securities of the respective Underlying Portfolio or Underlying Distributor Fund, will not exceed the limits set forth in Article III, section 26, of the NASD's Rules of Fair Practice.

5. Before approving any advisory contract under section 15 of the Act, the board of trustees of the Trust and the board of trustees or directors of the Distributor Fund of Funds, including a majority of the trustees or directors who are not "interested persons," as defined in section 2(a)(19), will find that

<sup>4</sup> Section 17(b) applies to a specific proposed transaction, rather than an ongoing series of future transactions. See *Keystone Custodian Funds*, 21 S.E.C. 295, 298-99 (1945). Section 6(c), along with section 17(b), frequently is used to grant relief from section 17(a) to permit an ongoing series of future transactions.

advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Underlying Distributor Fund advisory contract. The finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Portfolio or Distributor Fund of Funds.

6. Applicants agree to provide the following information, in an electronic format, to the Chief Financial Analyst of the SEC's Division of Investment Management: monthly average total assets of each Portfolio and Distributor Fund of Funds, and each respective Underlying Portfolio and Underlying Distributor Fund; monthly purchases and redemptions (other than by exchange) for each Portfolio and Distributor Fund of Funds and each respective Underlying Portfolio and Underlying Distributor Fund; monthly exchanges into and out of each Portfolio and Distributor Fund of Funds and each respective Underlying Portfolio and Underlying Distributor Fund; month-end allocations of each Portfolio's assets among the Underlying Portfolios and of the assets of each Distributor Fund of Funds among its Underlying Distributor Funds; annual expense ratios for each Portfolio and each Distributor Fund of Funds and each respective Underlying Portfolio and any Underlying Distributor Fund; and a description of any vote taken by the shareholders of any Underlying Portfolio and Underlying Distributor Fund, including a statement of the percentage of votes cast for and against the proposal by the Portfolio and the Distributor Fund of Funds and by the other shareholders of the Underlying Portfolio and Underlying Distributor Fund. The information will be provided as soon as reasonably practicable following each fiscal year-end of the Portfolio and each Distributor Fund of Funds (unless the Chief Financial Analyst notifies applicants in writing that the information need no longer be submitted.)

For the Commission, by the Division of Investment Management, under delegated authority.  
Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 96-21754 Filed 8-26-96; 8:45 am]

BILLING CODE 8010-01-M

### Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be Published].

STATUS: Open meeting.

PLACE: 450 Fifth Street, N.W.,  
Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: To be Published.

CHANGE IN THE MEETING: Additional Item.

The following item will be considered at an open meeting scheduled to be held on Wednesday, August 28, 1996, at 10:00 a.m.:

The Commission will consider whether to propose additional amendments to the Quote Rule. These amendments would require continuous two-sided quotations from exchange specialists and over-the-counter market makers that are responsible for more than 1% of the quarterly transaction volume for an OTC security included in the Nasdaq Stock Market, Inc. For further information, please contact Gail Marshall, Division of Market Regulation, at (202) 942-7129.

Commissioner Johnson, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942-7070.

Dated: August 23, 1996.

Jonathan G. Katz,  
*Secretary.*

[FR Doc. 96-22008 Filed 8-23-96; 3:46 pm]

BILLING CODE 8010-01-M

[Release No. 34-37587; File No. SR-Amex-96-31]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to The Listing Criteria for Equity Linked Notes

August 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 14, 1996, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 107B of the Amex *Company Guide* to provide greater flexibility for issuers listing Equity Linked Notes.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### (1) Purpose

On May 20, 1993<sup>3</sup> and December 13, 1993,<sup>4</sup> the Commission approved amendments to Section 107 of the Amex *Company Guide* to provide for the listing and trading of Equity Linked Term Notes ("ELNs"). ELNs are intermediate term (two to seven years), hybrid debt instruments, the value of which is linked to the performance of a highly capitalized, actively traded U.S. common stock.

The Exchange now proposes to amend Section 107B of the *Company Guide* to provide for greater flexibility in the listing criteria for ELNs. Specifically, the Exchange proposes to provide for an alternative minimum tangible net worth criteria for issuers of ELNs. An issuer with minimum tangible net worth in excess of \$250,000,000 will not be limited to offerings of equity linked notes that do not exceed 25% of their net worth. The Exchange believes that this strikes an appropriate balance between the Exchange's responsiveness to innovations in the securities markets and its need to ensure the protection of investors and the maintenance of fair and orderly markets. Moreover, the Exchange believes that these changes will not have an adverse impact on the market for equity linked notes nor its

<sup>3</sup> See Securities Exchange Act Release No. 32345 (File No. SR-Amex-92-42).

<sup>4</sup> See Securities Exchange Act Release No. 33328 (File No. SR-Amex-93-35).

investors since issuers with the lower net worth of \$150,000,000 will still be required to limit the amount of their equity linked note offerings to 25% of their net worth. Finally, such alternative criteria is currently in place for issuers of currency and index warrants listed on the exchange.<sup>5</sup>

#### (2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for no finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR-Amex-96-31 and should be submitted by [insert date 21 days from date of publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-21755 Filed 8-26-96; 8:45 am]

BILLING CODE 8010-01-M

[Docket No. 34-37591; File No. SR-MSRB-96-8]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business

August 21, 1996.

On August 6, 1996, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (SR-MSRB-96-8), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act, which renders the proposal effective upon receipt of this filing by the Commission. 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 Board is filing herewith a notice of interpretation concerning rule G-37 on political contributions and prohibitions on municipal securities business (hereafter referred to as "the proposed rule change"). The proposed rule change is as follows:

##### Rule G-37: Political Contributions and Prohibitions on Municipal Securities Business

##### *Contributions to a Non-Dealer Associated PAC and Payments to a State or Local Political Party*

1. Q: Could contributions to a non-dealer associated PAC or payments to a state or local political party lead to a ban on municipal securities business with an issuer under rule G-37?

A: Rule G-37(d) prohibits a dealer and any municipal finance professional from doing any act indirectly which would result in a violation of the rule if done directly by the dealer or municipal finance professional. A dealer would violate rule G-37 by doing business with an issuer after providing money to any person or entity when the dealer knows that such money will be given to an official of an issuer who could not receive such a contribution directly from the dealer without triggering the rule's prohibition on business. For example, in certain instances, a non-dealer associated PAC or a local political party may be soliciting funds for the purpose of supporting a limited number of issuer officials. Depending upon the facts and circumstances, contributions to the PAC or payments to the political party might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official.

2. Q: If a dealer receives a fund raising solicitation from a non-dealer associated PAC or a political party with no indication of how the collected funds will be used, can the dealer make contributions to the non-dealer associated PAC or payments to the political party without causing a ban on municipal securities business?

A: Dealers should inquire of the non-dealer associated PAC or political party how any funds received from the dealer would be used. For example, if the non-dealer associated PAC or political party is soliciting funds for the purpose of supporting a limited number of issuer officials, then, depending upon the facts and circumstances, contributions to the PAC or payments to the political party might well result in the same prohibition on municipal securities business as would a contribution made directly to the issuer official.

##### *Two-Year Designation Period for Municipal Finance Professionals*

3. Q: Rule G-37(g)(iv) states that each person designated a municipal finance professional shall retain this designation for two years after the last activity or position which gave rise to the designation. If a dealer

<sup>5</sup> See Section 106 of the Amex Company Guide.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

terminates a municipal finance professional's employment, and that person is no longer associated in any way with the dealer (including any affiliated entities of the dealer), must the dealer continue to designate that person a "municipal finance professional" for recordkeeping and reporting purposes under rules G-37(g)(iv) and G-8(a)(xvi)?

A: No. If a municipal finance professional is no longer employed by the dealer, and is not an "associated person" of the dealer, then the dealer is not required to designate that person a municipal finance professional and the dealer may cease its recordkeeping and reporting obligations with respect to that person.

4. Q: If a municipal finance professional is transferred from a firm's dealer department to another non-municipal department, such as the corporate department, must the dealer continue to designate this person a municipal finance professional for recordkeeping and reporting purposes?

A: If a municipal finance professional is transferred to another department within the same firm (such as corporate, equities, etc.) and remains an "associated person" of the dealer, the dealer must continue to designate this person a municipal finance professional for two years from the date of the last activity or position which gave rise to this designation and must continue its recordkeeping and reporting obligations under rules G-37 and G-8. It is incumbent upon each dealer to determine whether the person is an associated person pursuant to Section 3(a)(18) of the Securities Exchange Act of 1934. If so, then in addition to recordkeeping and reporting obligations, dealers should be mindful that any contributions made by this associated person during the two-year designation period (other than contributions that qualify for the rule's \$250 *de minimis* exception) will subject the dealer to the rule's ban on municipal securities business for two years from the date of such contribution. Of course, the ban can only be triggered if the person previously was a municipal finance professional.

5. Q: A municipal finance professional resigns from a dealer, but still remains an associated person of the dealer (e.g., by retaining a position in the dealer's holding company). May the dealer cease designating this person a municipal finance professional for purposes of the recordkeeping and reporting requirements under rules G-37 and G-8? In addition, may this person make contributions to issuer officials without causing the dealer to be banned from the municipal securities business with such issuers?

A: As noted above in Q&A number 4, if a person is no longer a municipal finance professional because he or she has left the dealer's employ, but nevertheless remains an associated person of the dealer, then the dealer must continue to designate this person a municipal finance professional for two years from the last activity or position which gave rise to such designation.

Moreover, any contributions by this associated person (other than those that qualify for the *de minimis* exception under rule G-37(b)) will subject the dealer to the

rule's ban on municipal securities business for two years from the date of the contribution.

## 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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board 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

On April 7, 1994, the Commission approved Board rule G-37, concerning political contributions and prohibitions on municipal securities business.<sup>1</sup> Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board published six prior notices of interpretation which set forth, in question-and-answer format, general guidance on rule G-37.<sup>2</sup> In prior filings with the Commission, the Board stated that it will continue to monitor the application of rule G-37, and, from time to time, will publish additional notices of interpretations, as necessary.<sup>3</sup> In light of questions recently received from market participants concerning the applicability of the rule to contributions to non-dealer associated political action committees and payments to state or

<sup>1</sup> Securities Exchange Act Release No. 33868 (April 7, 1994). The rule applies to contributions made on and after April 25, 1994.

<sup>2</sup> See Securities Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994); Securities Exchange Act Release No. 34603 (Aug. 25, 1994), 59 FR 45049 (Aug. 31, 1994); Securities Exchange Act Release No. 35128 (Dec. 20, 1994), 59 FR 66989 (Dec. 28, 1994); Securities Exchange Act Release No. 35544 (March 28, 1995), 60 FR 16896 (April 3, 1995); Securities Exchange Act Release No. 35879 (June 21, 1995), 60 FR 33447 (June 28, 1995); Securities Exchange Act Release No. 36857 (Feb. 16, 1996), 61 FR 7034 (Feb. 23, 1996).

See also *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 11-16; Vol. 14, No. 4 (August 1994) at 27-31; Vol. 14, No. 5 (December 1994) at 8; Vol. 15, No. 1 (April 1995) at 21; Vol. 15, No. 2 (July 1995) at 3-4; and Vol. 16, No. 1 (Jan. 1996) at 31. See also *MSRB Manual* (CCH) ¶ 3681.

<sup>3</sup> File Nos. SR-MSRB-94-6 and 94-15.

local political parties, as well as the two-year designation period for municipal finance professionals, the Board has determined that it is necessary to provide further guidance to the municipal industry. Accordingly, the Board is publishing this seventh set of questions and answers.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.<sup>4</sup>

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b-4 thereunder, thus rendering the proposal effective upon receipt of this filing by the Commission.

At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the

<sup>4</sup> Section 15B(b)(2)(C) states in the pertinent part that the rules of the Board "shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest."

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-96-8 and should be submitted by September 17, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-21816 Filed 8-26-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37588; File No. SR-NASD-95-39]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 4 and 5 to Proposed Rule Change Relating to Application of the Rules of Fair Practice to Transactions in Exempted Securities (Except Municipals) and an Interpretation of Its Suitability Rule**

August 20, 1996.

**I. Introduction**

On September 18, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder;<sup>2</sup> a proposed rule change to apply the Association's Rules of Fair Practice to transactions in exempted securities, other than municipals, and to adopt an interpretation of the Association's suitability rule as it applies to

institutional customers.<sup>3</sup> The NASD filed Amendment No. 1 to the proposed rule change on October 17, 1995, Amendment No. 2 on January 22, 1996, and Amendment No. 3 on February 15, 1996.

The proposed rule change and Amendment No. 1 were published for comment in Securities Exchange Act Release No. 36383 (Oct. 17, 1995), 60 FR 54530 (Oct. 24, 1995). Amendment No. 2 was replaced by Amendment No. 3 before publication.<sup>4</sup> Amendment No. 3 was published for comment in Securities Exchange Act Release No. 36973 (Mar. 14, 1996), 61 FR 11655 (Mar. 21, 1996). On July 22, 1996 and August 14, 1996, the NASD filed Amendment Nos. 4 and 5, respectively, to the proposed rule change.<sup>5</sup> This order

<sup>3</sup>The proposed rule change (i) Amends Article I, Section 4 and 5 of the Rules of Fair Practice to apply the Rules of Fair Practice to those members registered with the SEC solely under the provisions of Section 15C of the Act and to transactions in all securities, except municipals; (ii) merges the NASD's Government Securities Rules, where applicable, into the Rules of Fair Practice, (iii) makes clarifying amendments to certain sections and Interpretations under Articles III and IV of the Rules of Fair Practice relating to the government securities business; (iv) amends certain Rules of Fair Practice and Board Interpretations to exempt transactions in government securities; (v) amends Article III, Section 2 of the Rules of Fair Practice by amendment to Subsection 2(b) and adoption of an Interpretation of the Board of Governors—Suitability Obligations to Institutional Customers; (vi) makes technical changes to NASD By-Laws, Schedules to the By-Laws, the Rules of Fair Practice and the Code of Procedure to replace references to provisions of the Government Securities Rules with references to the appropriate Rules of Fair Practice, and to delete the terms "exempted security" or "exempted securities," or, replace these terms with the term "municipal securities," as applicable; and (vii) modifies references to SEC Rules 15c3-1 and 15c3-3 to reflect SEC amendments to those rules.

<sup>4</sup>Amendment No. 2 responded to some of the comments received on the original proposed rule change. Amendment No. 3 expanded upon the discussion contained in Amendment No. 2 by including responses to nine comment letters received on the original proposed rule change. Amendment No. 3 to SR-NASD-95-39 completely replaced and superseded Amendment No. 2. See letters from Joan C. Conley, Secretary, NASD, to Mark P. Barracca, Branch Chief, SEC, dated February 15, 1996, and March 4, 1996. The Commission received seven additional comment letters after the publication of Amendment No. 3.

<sup>5</sup>See Letter from Joan C. Conley, Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated July 22, 1996. Pursuant to an NASD rule proposal that became effective in May 1996, the *NASD Manual* has been reorganized to make it easier to use. See Securities Exchange Act Release No. 36698 (Jan. 11, 1996) (Rules that were formerly organized under the "Rules of Fair Practice" generally are grouped under the NASD's Conduct Rules at Rules 2000-3000). Amendment No. 4 provides the new numbering of those provisions of the *NASD Manual* that are being affected by this rule proposal. A conversion chart is attached to this order as Exhibit 1. Moreover, Amendment No. 4 proposes to apply Section 50, Article III of the Rules of Fair Practice to transactions in exempted securities (except municipals). The NASD states that Section 50,

permanently approves the proposed rule change, as amended, and Amendment Nos. 4 and 5 on an accelerated basis.

**II. Background**

The Government Securities Act Amendments of 1993 ("GSAA") eliminated the statutory limitations on the NASD's authority to apply sales practice rules to transactions in exempted securities, including government securities, other than municipals.<sup>6</sup> To implement the expanded sales practice authority granted to the NASD pursuant to the GSAA, the Association has proposed to delete the NASD Government Securities Rules and apply the NASD Rules of Fair Practice, where applicable, to exempted securities, including government securities, other than municipals.<sup>7</sup>

Concurrently, the NASD has proposed an interpretation of its suitability rule as it applies to members' dealings with institutional customers ("Suitability Interpretation" or "Interpretation"). The Interpretation would apply to all securities, except municipals, the purchase or sale of which is recommended by a broker-dealer. A draft of the proposed suitability interpretation contained in this proposed rule change was first published for comment in NASD Notice to Members 94-62 (August 1994) ("NTM 94-62").<sup>8</sup> In response to this solicitation of comments, the NASD received 15 comment letters.<sup>9</sup> The

Article III, which requires NASD members to report to the NASD the occurrence of certain specified events and quarterly summary statistics concerning customer complaints, would be applicable to exempted securities (except municipals). See Letter from John A. Ramsay, Deputy General Counsel, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated August 14, 1996 ("Amendment No. 5"). In Amendment No. 5, the NASD notes that actions for conduct violating "Fair Prices and Commissions" of Article III, Section 4, and the Mark-Up Policy may be brought under Article III, Section 1, requiring members to adhere to just and equitable principles of trade.

<sup>6</sup>Government Securities Act Amendments of 1993, Pub. L. No. 103-202, §1(a), 107 Stat. 2344 (1993).

<sup>7</sup>The terms "exempted securities," "government securities" and "municipal securities" are defined in Sections 3(a)(12), 3(a)(42) and 3(a)(29) of the Act respectively.

<sup>8</sup>A copy of the NTM 94-62 is included in File No. SR-NASD-95-39 as Exhibit 2 thereto.

<sup>9</sup>The NASD received letters regarding NTM 94-62 from the following: (1) Brian C. Underwood, Director of Compliance, A.G. Edwards & Sons, Inc., dated September 29, 1994; (2) Alan S. Kramer, Senior Managing Director, Bear Stearns & Co. Inc., dated October 17, 1994; (3) Marjorie E. Gross, Senior Vice President & Associate General Counsel, Chemical Bank, dated September 29, 1994; (4) Marjorie E. Gross, Senior Vice President & Associate General Counsel, Chemical Bank, dated October 14, 1994; (5) F. Smith, President, Freeman Securities Company, Inc., dated September 30, 1994; (6) Wendy R. Beer, Compliance Counsel, Furman Selz,

<sup>1</sup> 15 U.S.C. Section 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

proposed suitability interpretation published in NTM 94-62 was revised, and a second draft was published for comment in Notice to Members 95-21 (April 1995) ("NTM 95-21").<sup>10</sup> Sixteen comments were received in response thereto.<sup>11</sup> Thereafter, the NASD filed a proposed interpretation with the Commission.

III. Description

A. Application of the Rules of Fair Practice to Exempted Securities Except Municipals and Merger of Government Securities Rules

As shown in Table 1 below, the proposed rule change merges certain provisions of the current Government Securities Rules into the Rules of Fair Practice. The proposed rule change also applies certain of the NASD Rules of

Fair Practice to exempted securities (except municipals) for the first time. Table 2 below indicates the Rules of Fair Practice that will be applicable to exempted securities (except municipals).

Amendments Merging Government Securities Rules into Rules of Fair Practice

The NASD proposes to merge certain provisions contained solely under the Government Securities Rules into corresponding sections of the Rules of Fair Practice to provide NASD members with one set of sales practice rules that will reflect the NASD's expanded authority under the GSAA. Specifically, the NASD proposes to add provisions of the Government Securities Rules into Article III, Section 21(c)(3), 38, and 39; Article IV, Sections 1 to 4; and Article

V, Section 1 of the Rules of Fair Practice. The NASD also proposes to move provisions contained in Section 6 of the Government Securities Rules into new Section 38A of Article III of the Rules of Fair Practice. To effect these amendments, the NASD has reorganized and renumbered many of the provisions contained in the above-referenced sections of the Rules of Fair Practice.

Table 1 identifies the provisions of the Government Securities Rules and the corresponding provisions of the Rules of Fair Practice into which the Government Securities Rules will be merged. In addition, Table 1 indicates the corresponding section of the Rules of Fair Practice for each Government Securities Rule where no rule language change is necessary because of expanded authority under Article I, Section 5 of the Rules of Fair Practice.<sup>12</sup>

TABLE 1.—GOVERNMENT SECURITIES RULES MERGED INTO RULES OF FAIR PRACTICE

Sec. 1. Adoption of Rules .....	Article I, Sec. 1—No change.
Sec. 2. Applicability:	
Subsection (a) .....	Article I, Sec. 4 and 5(a).
Subsection (b) .....	Article I, Sec. 5 (b) and (c)—No change.
Sec. 3. Definitions in By-Laws and Rules of Fair Practice .....	Article II, Sec. 1 and 2—No change.
Sec. 4. Books and Records .....	Article III, Sec. 21.
Sec. 5. Supervision .....	Article III, Sec. 27—No change.
Sec. 6. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties.	Article III, Sec. 38 and 38A.
Explanation of Board of Governors—Restrictions on a Member's Activity.	Explanation of Board of Governors Restrictions on a Member's Activity—Article III, Sec. 38 and 38A.
Sec. 7. Approval of Change in Exempt Status under SEC Rule 15c3-3	Article III, Sec. 39.
Sec. 8. Communications with the Public .....	Article III, Sec. 35—No change.
Sec. 9. Availability to Customers of Certificate, By-Laws, Rules, and Code of Procedure.	Article IV, Sec. 1—No change.
Sec. 10. Complaints:	
Subsection (a) Complaints by Public Against Members .....	Article IV, Sec. 2.

dated October 31, 1994; (7) Betsy Dotson, Assistant Director, Federal Liaison Center, Government Finance Officers Association, dated September 30, 1994; (8) Kathryn S. Reimann, Senior Vice President and Director of Fixed Income Compliance, Lehman Brothers Inc., dated October 17, 1994; (9) Larry Forrester, Senior Vice President, Lyn-Hayes Financial, Inc., dated August 23, 1994; (10) Marguerite C. Willenbucher, Vice President and Senior Counsel, Debt and Equity Markets Group, Merrill Lynch, Pierce, Fenner & Smith Inc., dated October 17, 1994; (11) Ken DeRegt, Managing Director, Morgan Stanley & Co. Incorporated, dated October 14, 1994; (12) Prudential Insurance Company of America, dated October 31, 1994; (13) Marianna Maffucci, Senior Vice President and General Counsel, Public Securities Association, dated October 17, 1994; (14) William A. McIntosh, Managing Director and Co-Head of U.S. Fixed Income, Salomon Brothers Inc., dated September 30, 1994; and (15) Robert F. Price, Chairman, Federal Regulation Committee, and Mark T. Commander, Chairman, Self-Regulation and Supervisory Practice Committee, Securities Industry Association, dated October 17, 1994. A copy of each comment letter listed above is included in File No. SR-NASD-95-39 as Exhibit 3 thereto. These letters are discussed in Securities Exchange Act Release No. 36383 (Oct. 17, 1995), 60 FR 54530 (Oct. 24, 1995) (notice of proposed rule change for File No. SR-NASD-95-39).

<sup>10</sup>A copy of NTM 95-21 is included in File No. SR-NASD-95-39 as Exhibit 4 thereto.

<sup>11</sup>The NASD received letters regarding NTM 95-21 from the following: (1) Allen Weintraub, Chairman and Chief Executive Officer, The Advest Group, Inc., dated May 5, 1995; (2) Brian C. Underwood, Director of Compliance, A.G. Edwards & Sons, Inc., dated May 15, 1995; (3) Michael S. Caccese, Esq., Senior Vice President, General Counsel, and Secretary, Association for Investment Management and Research; (4) Marjorie E. Gross, Senior Vice President & Associate General Counsel, Chemical Bank, dated May 17, 1995; (5) Michael J. Wilk, Managing Director, Comerica Securities, dated May 12, 1995; (6) Douglas E. Harris, Senior Deputy Comptroller for Capital Markets, Comptroller of the Currency, dated May 17, 1995; (7) Lawrence Jacob, Senior Vice President, Assistant Secretary and Director of Compliance, Daiwa Securities America Inc., dated May 16, 1995; (8) James A. Brickley, President and CEO, Federal Farm Credit Banks Funding Corp., dated May 17, 1995; (9) Mitchell Delk, Vice President Government and Industry Relations, Freddie Mac, dated June 1, 1995; (10) Betsy Dotson, Assistant Director, Federal Liaison Center, Government Finance Officers Association, dated May 17, 1995; (11) Matthew Lee, Executive Director, Inner City Press/Community on the Move, dated May 15, 1995; (12) Matthew Elderfield, Assistant Director, London Investment

Banking Association, dated June 13, 1995; (13) Linda D. Edwards, Vice President Compliance, Llama Company, dated May 9, 1995; (14) Scott H. Rockoff, Managing Director, Director of Compliance, and Assistant General Counsel, Nomura Securities International, Inc., dated May 17, 1995; (15) Robert D. McKnew, Chairman, Public Securities Association, dated May 18, 1995; and (16) Robert F. Price, Chairman Federal Regulation Committee, Richard O. Scribner, Chairman, Self-Regulation and Supervisory Practices Committee, and Zachary Snow, Chairman OTC Derivative Products Committee, Securities Industry Association, dated June 7, 1995. A copy of each comment letter listed above is included in File No. SR-NASD-95-39 as Exhibit 5 thereto. These letters are discussed in Securities Exchange Act Release No. 36383, *supra* note 9 (notice of proposed rule change for File No. SR-NASD-95-39).

<sup>12</sup>The NASD proposes to amend Article I, Section 5(a) of the Rules of Fair Practice by deleting the phrase "other than those members registered with the Securities and Exchange Commission solely under the provisions of Section 15C of the Act and persons associated with such members" to expand the application of the Rules of Fair Practice to members involved in the government securities business pursuant to Section 1 15C of the Act.

TABLE 1.—GOVERNMENT SECURITIES RULES MERGED INTO RULES OF FAIR PRACTICE—Continued

Subsection (b) Complaints by District Business Conduct Committees.	Article IV, Sec. 3.
Subsection (c) Complaints by the Board of Governors .....	Article IV, Sec. 4.
Sec. 11. Reports and Inspection of Books for Purpose of Investigating Complaints.	Article IV, Sec. 5—No change.
Resolution of Board of Governors—Suspension of Members for Failure to Furnish Information Duly Requested.	Resolution of Board of Governors—Suspension of Members for Failure to Furnish Information Duly Requested—No change
Sec. 12. Sanctions for Violation of the Rules .....	Article V, Sec. 1.
Sec. 13. Payment of Fines or Costs .....	Article V, Sec. 2—No change.
Sec. 14. Cost of Proceedings .....	Article V, Sec. 3—No change.

Application of NASD Rules of Fair Practice to Government Securities

As indicated in Table 2 below, certain provisions of the Rules of Fair Practice will not be immediately applicable to transactions in government securities. The NASD intends to review the application of these rules to the government securities market.

**Front Running.** Currently, the NASD Front Running Interpretation<sup>13</sup> applies only to equity securities. The NASD believes, however, that the member conduct prohibited by the Front Running Interpretation may occur under certain circumstances in the government securities market, and will review the application of the Front Running Interpretation to the government securities market.<sup>14</sup> In the interim, the NASD believes that actions for similar front running conduct occurring in the government securities market may be brought under Article III, Section 1 of the Rules of Fair Practice.<sup>15</sup>

Trading ahead of customer limit orders<sup>16</sup> and trading ahead of research reports,<sup>17</sup> also are currently drafted to apply only to equity securities. The NASD believes the conduct addressed

by these Interpretations also may occur under certain circumstances in the government securities market and intends to review the application of these Interpretations to the government securities market. The NASD also believes that actions for similar conduct occurring in the government securities market may be brought under Article III, Section 1 of the Rules of Fair Practice.

*Article III, Section 35A of the Rules of Fair Practice/Schedule C to the By-Laws*

The proposed rule change would apply Schedule C of the By-Laws ("Schedule C"), regarding NASD registration requirements of persons associated with a member, to the personnel of sole-government securities broker-dealers, including persons selling options on government securities. The proposed rule change also would have the effect of applying Article III, Section 35A of the Rules of Fair Practice ("Section 35A") to the options communications of such members with the public. The NASD currently is considering whether it is appropriate to require a government securities broker-dealer to register an

associated person as its "Compliance Registered Options Principal" under Part II, Section 2(f) of Schedule C. The NASD intends to file separately a proposed rule change concerning this issue.<sup>18</sup> Section 35A(b) of the Rules of Fair Practice requires the registration of such a Principal to approve certain options advertisements, sales materials and other literature for government securities options transactions. The NASD has determined that Article III, Section 35A(b) will not be applicable to options advertisements, sales materials and other literature for government securities options transactions during the interim period when the NASD is reviewing the registration issue.

**Customer Account Statements.** The proposed rule change would phase-in the implementation of Article III, Sections 21, 27, 32, and 45 of the Rules of Fair Practice to dealers in government securities within three months of the effective date of the rule change. The NASD believes that the phase-in is necessary to provide members with sufficient time to change their internal procedures to comply with these rules.

TABLE 2.—APPLICABILITY OF THE RULES OF FAIR PRACTICE TO EXEMPTED SECURITIES, INCLUDING GOVERNMENT SECURITIES (EXCEPT MUNICIPALS)

ARTICLE III	
Section 1:	
Business Conduct of Members .....	Applicable.
Interpretations of the Board of Governors:	
Execution of Retail Transactions in the Over-the Counter Market .....	Applicable.
Prompt Receipt and Delivery .....	Not Applicable.
Forwarding of Proxy and Other materials .....	Not Applicable.
Free-Riding and Withholding .....	Amending to be Not Applicable.
Interpretation on Limit Order Protection .....	Not Applicable.
Front Running Policy .....	Not Applicable.
Trading Ahead of Research Reports .....	Not Applicable. <sup>1</sup>
Section 2:	
Recommendations to Customers .....	Applicable.
Policy of the Board of Governors—Fair Dealing With Customers Policy .....	Applicable.

<sup>13</sup> Interpretation of the Board of Governors at paragraph 2151.08.

<sup>14</sup> Securities Exchange Act Release No. 36973 (Mar. 14, 1996), 61 FR 11655 (Mar. 21, 1996).

<sup>15</sup> *Id.*

<sup>16</sup> Interpretation of the Board of Governors at paragraph 2151.07.

<sup>17</sup> Interpretation of the Board of Governors at paragraph 2151.09.

<sup>18</sup> Securities Exchange Act Release No. 36973, *supra* note 14.

TABLE 2.—APPLICABILITY OF THE RULES OF FAIR PRACTICE TO EXEMPTED SECURITIES, INCLUDING GOVERNMENT SECURITIES (EXCEPT MUNICIPALS)—Continued

Section 3: Charges to Customer .....	Applicable.
Section 4: Fair Prices and Commissions .....	Applicable. <sup>2</sup>
Interpretation of the Board of Governors—NASD Mark-Up Policy .....	Applicable. <sup>3</sup>
Section 5: Publication of Transactions and Quotations .....	Applicable.
Interpretation of the Board of Governors—Manipulative and Deceptive Quotations .....	Applicable.
Section 6: Offers at Stated Prices .....	Applicable.
Policy of the Board of Governors—Policy With Respect to Firmness of Quotations .....	Applicable.
Section 7: Disclosure of Prices in Selling Agreements .....	Applicable only to traditional underwriter arrangements.
Section 8: Securities Taken in Trade .....	Not Applicable.
Interpretation of the Board of Governors—Safe Harbor and Presumption of Compliance .....	Not Applicable.
Section 9: Use of Information Obtained in Fiduciary Capacity .....	Applicable.
Section 10: Influencing or Rewarding Employees of Others .....	Applicable.
Section 11: Payment Designed to Influence Market Prices, Other than Paid Advertising .....	Applicable.
Section 12: Disclosure on Confirmations .....	Not Applicable; superseded by SEC rules.
Section 13: Disclosure of Control .....	Not Applicable.
Section 14: Disclosure of Participation or Interest in Primary or Secondary Distribution .....	Applicable.
Section 15: Discretionary Accounts .....	Applicable.
Section 16: Offers "At the Market" .....	Not Applicable. <sup>4</sup>
Section 17: Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities .....	Applicable.
Section 18: Use of Fraudulent Devices .....	Applicable.
Section 19: Customers Securities or Funds .....	Applicable.
Section 20: Installment or Partial Payment Sales .....	Applicable.
Section 21: Books and Records .....	Applicable, except for proposed amendments to Subsection (b)(i).
Section 22: Disclosure of Financial Condition .....	Applicable.
Section 23: Net Prices to Persons Not in Investment Banking or Securities Business .....	Not Applicable.
Section 24: Selling Concessions .....	Not Applicable.
Interpretation of the Board of Governors—Services in Distribution .....	Not Applicable.
Section 25: Dealing with Non-Members .....	Not Applicable.
Interpretation of the Board of Governors—Transactions Between Members and Non-members .....	Not Applicable.
Section 26: Investment Companies .....	Not Applicable.
Section 27: Supervision .....	Applicable.
Section 28: Transaction for or by Associated Persons .....	Applicable.
Section 29: Variable Contracts of an Insurance Co. ....	Not Applicable.
Section 30: Margin Accounts .....	Applicable.
Section 31: Securities Failed to Receive and Failed to Deliver .....	Not Applicable.
Section 32: Fidelity Bonds .....	Applicable.
Section 33: Options .....	Not Applicable.

TABLE 2.—APPLICABILITY OF THE RULES OF FAIR PRACTICE TO EXEMPTED SECURITIES, INCLUDING GOVERNMENT SECURITIES (EXCEPT MUNICIPALS)—Continued

Section 34: Direct Participation Programs Appendix F .....	Not Applicable.
Section 35: Communications With the Public .....	Applicable.
Section 35A: Options Communications With the Public .....	Not Applicable/Under Review.
Section 36: Transactions with Related Persons .....	Not Applicable.
Interpretation of the Board of Governors—Transactions With Related Persons .....	Not Applicable.
Section 37: [Reserved] <sup>5</sup>	
Section 38: Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties .....	Applicable.
Section 39: Approval of Change in Exempt Status under SEC Rule 15c3-3 .....	Applicable.
Section 40: Private Securities Transactions .....	Applicable.
Section 41: Short-Interest Reporting .....	Not Applicable.
Section 42: Prohibition on Transactions During Trading Halts .....	Not Applicable.
Section 43: Outside Business Activities .....	Applicable.
Section 44: The Corporate Financing Rule .....	Not Applicable.
Section 45: Customer Account Statements .....	Applicable.
Section 46: Adjustment of Open Orders .....	Not Applicable.
Section 47: Clearing Agreements .....	Applicable.
Section 48: Short Sale Rule .....	Not Applicable.
Section 49: Primary Nasdaq Market Maker Standards .....	Not Applicable.
Section 50: Reporting Requirements .....	Applicable. <sup>6</sup>
<b>ARTICLE IV</b>	
Section 1: Availability to Customers of Certificate, By-laws, Rules and Code of Procedures .....	Applicable.
Section 2: Complaints by Public Against Members for Violations of Rules .....	Applicable.
Section 3: Complaints by District Business Conduct Committee .....	Applicable.
Section 4: Complaints by Board of Governors .....	Applicable.
Section 5: Reports and Inspection of Books for Purpose of Investigating Complaints .....	Applicable.
<b>ARTICLE V</b>	
Section 1: Sanctions for Violations of Rules .....	Applicable.
Interpretation of the Board of Governors—The Effect of a Suspension or Revocation of the Registration, if any, of a Person Associated with a Member or the Barring of a Person from further Association with any Member.	
Section 2: Payment for Fines, Other Monetary Sanctions, or Costs .....	Applicable.
Section 3: Costs of Proceedings .....	Applicable.

<sup>1</sup> As noted previously, the NASD will review the application of this Interpretation to the government securities market.

<sup>2</sup> Amendment No. 5 states that the NASD may bring action for conduct violating Article III, Section 4 ("Fair Prices and Commissions") under its just and equitable principles of trade rule. See Amendment No. 5, *supra* note 5.

<sup>3</sup> Article III, Section 4 of the Rules of Fair Practice and the NASD Mark-Up Policy currently apply to transactions in equity and corporate debt securities. The NASD is developing an Interpretation of the Mark-Up Policy with respect to exempted securities and other debt securities. Therefore, the current application of Article III, Section 4 of the Rules of Fair Practice and the NASD Mark-Up Policy will not apply to transactions in exempted securities until adoption of an Interpretation of the NASD Mark-Up Policy with respect to all debt securities. However, current Article III, Section 4 of the Rules of Fair Practice and the Mark-Up Policy remain in full force and effect for all equity and corporate debt transactions. See letter from Elliott R. Curzon, Assistant General Counsel, NASD, to Mark P. Barracca, Branch Chief, Division of Market Regulation, SEC, dated October 17, 1995 (Amendment No. 1 to the proposed rule change). In Amendment No. 5, the NASD clarifies that it may bring action for conduct violating the Mark-Up Policy under its just and equitable principles of trade rule. See Amendment No. 5, *supra* note 5.

<sup>4</sup>The NASD has indicated that it will review the application of this Interpretation to the government securities market.

<sup>5</sup>In Amendment No. 4, the NASD indicated that the reference to Section 37 in Amendment No. 3 was in error because the Commission approved the NASD's deletion of this section on March 8, 1994. See Amendment No. 4, *supra* note 5.

<sup>6</sup>In Amendment No. 4, the NASD proposed that the Reporting Requirements be applicable to exempted securities (except municipals). The NASD noted that Section 50, Article III was approved by the Commission on September 8, 1995. See Amendment No. 4, *supra* note 5.

### *B. Suitability Interpretation— Description of the Proposal*

The NASD is proposing to adopt an interpretation of the Board of Governors—Suitability Obligations to Institutional Customers under Article III, Section 2 of the Rules of Fair Practice. The NASD intends the proposed Suitability Interpretation to clarify that the NASD's suitability rule under Article III, Section 2(a) of the Rules of Fair Practice is applicable to institutional customers, while recognizing that generally, a member's relationship with an institutional customer is different from the member's relationship with retail customers.

The proposed Suitability Interpretation states that the NASD's suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Members' responsibilities under the Suitability Interpretation include having a reasonable basis for recommending a particular security or strategy, as well as reasonable grounds for believing that the recommendation is suitable for the customer to whom it is made. Members are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer.

In its proposal filed with the Commission, the NASD states that the Suitability Interpretation is intended to provide guidance to members in fulfilling their customer-specific suitability obligations, *i.e.*, the manner in which a member determines that a recommendation is suitable for a particular customer.<sup>19</sup> The manner in which a member fulfills this suitability obligation will vary depending on the customer and the specific transaction. The NASD further states that the proposed Suitability Interpretation and the factors contained therein are not intended either to create a safe harbor for members or a burdensome evidentiary checklist.

The proposed Suitability Interpretation states that the two most

important considerations in determining the scope of a member's suitability obligations in making recommendations to an institutional customer are the customer's capability to evaluate investment risk independently, and the extent to which the customer is exercising independent judgment in evaluating a member's recommendation. Thus, under the proposed Interpretation, a member must determine, based on information available to it, the customer's capability to evaluate investment risk. In some cases, the member may conclude that the customer is not capable of making independent investment decisions in general. In other cases, the institutional customer may have general capability, but may not be able to understand a particular type of instrument or its risk. The NASD states that if a customer is either generally not capable of evaluating investment risk or lacks sufficient capability to evaluate the particular product, the scope of the member's obligation under the suitability rule would not be diminished by the fact that the member was dealing with an institutional customer.<sup>20</sup>

Members also must make a determination regarding whether the customer is exercising independent judgment in its investment decision, that is, whether the customer's investment decision will be based on its own independent assessment of the opportunities and risks presented by a potential investment, market factors and other investment considerations. The proposed Suitability Interpretation states that a member's determination that a customer is making independent investment decisions will depend on the nature of the relationship that exists between the member and customer.

A member's determination of a customer's capability to evaluate investment risk independently will depend on an examination of the customer's capability to make its own investment decisions, including the resources available to the customer to make informed decisions. The NASD specified several factors relevant to making such a determination. These considerations include: (1) the use of one or more consultants, investment

advisers or bank trust departments; (2) the general level of experience of the institutional customer in financial markets and specific experience with the type of instruments under consideration; (3) the customer's ability to understand the economic features of the security involved; (4) the customer's ability to independently evaluate how market developments would affect the security; and (5) the complexity of the security or securities involved.

With respect to the determination that a customer is making independent investment decisions, the NASD proposed several relevant factors. These considerations include: (1) any written or oral understanding that exists between the member and the customer regarding the nature of the relationship between the member and the customer and the services to be rendered by the member; (2) the presence or absence of a pattern of acceptance of the member's recommendations; (3) the use by the customer of ideas, suggestions, market views and information obtained from other members or market professionals, particularly those relating to the same type of securities; and (4) the extent to which the member has received from the customer current comprehensive portfolio information in connection with discussing recommended transactions or has not been provided important information regarding its portfolio or investment objectives.

The NASD states that the factors contained in the proposed Suitability Interpretation are merely guidelines that will be utilized to determine whether a member has fulfilled its suitability obligations with respect to a specific institutional customer transaction. The inclusion or absence of any of the factors is not dispositive of the determination of suitability. Such a determination can only be made on a case-by-case basis taking into consideration all the facts and circumstances of a particular member/customer relationship, assessed in the context of a particular transaction.

The NASD states that it is important to clarify when a member may consider its suitability obligations fulfilled pursuant to the guidelines provided by the proposed Suitability Interpretation. Therefore, the proposed Suitability Interpretation provides that where the broker-dealer has reasonable grounds for concluding that the institutional customer is making independent

<sup>19</sup>This interpretation does not address the obligation related to suitability that requires that a member have " \* \* \* a 'reasonable basis' to believe that the recommendation could be suitable for at least some customers." In the Matter of the Application of F.J. Kaufman and Company of Virginia and Frederick J. Kaufman, Jr., 50 SEC 164 (1989).

<sup>20</sup>The NASD also states that a customer who initially needed help understanding a potential investment may ultimately develop an understanding and make an independent investment decision.

investment decisions and is capable of independently evaluating investment risk, then a member's obligation to determine that a recommendation is suitable for a particular customer is fulfilled.<sup>21</sup>

Finally, for purposes of the proposed Suitability Interpretation, the NASD states that the term "institutional customer" should not be arbitrarily defined by referencing a threshold institutional asset size or portfolio size or various statutory designations. Rather, the NASD states that for purposes of the Suitability Interpretation, an institutional customer shall be any entity other than a natural person. The NASD states that it believes the Interpretation is more appropriately applicable to an entity having at least \$10 million invested in securities in the aggregate in its portfolio or under management.

#### IV. Summary of Comments

The Commission received 16 comment letters from a total of 13 commenters.<sup>22</sup> Most of the comment

<sup>21</sup> See *supra* note 19.

<sup>22</sup> The Commission received letters from the following: (1) Brian C. Underwood, Vice President-Director of Compliance, A.G. Edwards & Sons, Inc., to Jonathan G. Katz, Secretary, SEC, dated November 14, 1995 ("Edwards Letter"); (2) David J. Master, Chairman and CEO, Coastal Securities Ltd., to Jonathan G. Katz, Secretary, SEC, dated November 28, 1995 ("Coastal Letter"); (3) Betsy Dotson, Assistant Director, Federal Liaison Center, Government Finance Officers Association, to Jonathan G. Katz, Secretary, SEC, dated November 14, 1995 ("GFOA Letter No. 1"); (4) Thomas M. Selman, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated November 14, 1995 ("ICI Letter"); (5) Jane D. Carlin, Principal and Counsel, Morgan Stanley & Co. Incorporated, to Jonathan G. Katz, Secretary, SEC, dated December 5, 1995 ("Morgan Stanley Letter"); (6) Paul Saltzman, Senior Vice President and General Counsel, Public Securities Association, to Jonathan G. Katz, Secretary, SEC, dated November 30, 1995 ("PSA Letter No. 1"); (7) Scott H. Rockoff, Managing Director, Director of Compliance, and Assistant General Counsel, Nomura Securities International, Inc., to Jonathan G. Katz, Secretary, SEC, dated December 14, 1995 ("Nomura Letter"); (8) Robert F. Price, Chairman, Federal Regulation Committee, and Zachary Snow, Chairman, OTC Derivatives Products Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1995 ("SIA Letter No. 1"); (9) David Rosenau, President, The Winstar Government Securities Company L.P., to Jonathan G. Katz, Secretary, SEC, dated December 27, 1995 ("Winstar Letter"); (10) Steven Alan Bennett, Senior Vice President and General Counsel, Banc One Corporation, to Jonathan G. Katz, Secretary, SEC, dated April 16, 1996 ("Banc One Letter"); (11) Betsy Dotson, Assistant Director/Legislative Counsel, Federal Liaison Center, Government Finance Officers Association, to Jonathan G. Katz, Secretary, SEC, dated April 22, 1996 ("GFOA Letter No. 2"); (12) Paul Saltzman, Senior Vice President and General Counsel, Public Securities Association, to Jonathan G. Katz, Secretary, SEC, dated April 22, 1996 ("PSA Letter No. 2"); (13) Marshall Bennett, President, National Association of State Auditors, Comptrollers and

letters addressed the proposed Suitability Interpretation of the rule proposal. The NASD responded to most of the comment letters in Amendment No. 3.

#### A. Application of the Rules of Fair Practice to Government Securities

##### 1. Prompt Receipt and Delivery Interpretation

One commenter requested that the "long sale" provisions of the Prompt Receipt and Delivery Interpretation,<sup>23</sup> which would require a member to make affirmative determinations regarding whether a customer is "long" the security at the time the dealer is purchasing a government security from a customer, prior to accepting a long sale from any customer, not apply to transactions in government securities.<sup>24</sup> This commenter argued that an affirmative determination requirement is contrary to the practice in the government securities market that permits a customer to sell a security to a dealer and then cover that sale with a subsequent purchase or repurchase transaction in the "specials market." The commenter noted that this practice has been recognized by the Board of Governors of the Federal Reserve System. In response to this comment, the NASD amended its proposal to exempt government securities from the long sales requirements.<sup>25</sup>

##### 2. Best Execution Interpretation

One commenter had reservations about the application of the "best execution" concept to government securities that are executed on a principal basis at a "net price."<sup>26</sup> Two commenters noted that members would have difficulty complying with the procedural requirements of the best execution concept because the government securities market lacks

Treasurers, to Secretary, SEC, dated April 22, 1996 ("NASACT Letter"); (14) C. Evan Stewart, Chairman, Federal Regulation Committee, Zachary Snow, Chairman, OTC Derivatives Products Committee, and Richard O. Scribner, Chairman, Self-Regulation and Supervisory Practices Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC, dated April 23, 1996 ("SIA Letter No. 2"); (15) Sarah A. Miller, General Counsel, American Bankers Association and the American Bankers Association Securities Association to Jonathan G. Katz, Secretary, SEC, dated April 24, 1996 ("ABA Letter"); and (16) William R. Rothe, Chairman, and John L. Watson III, President, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated April 29, 1996 ("STA Letter").

<sup>23</sup> See Article III, Section 1 of the Rules of Fair Practice.

<sup>24</sup> See PSA Letter No. 1, *supra* note 22.

<sup>25</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 9.

<sup>26</sup> See PSA Letter No. 1, *supra* note 22.

systems similar to the Consolidated Quotation System ("CQS") and the Intermarket Trading System ("ITS").<sup>27</sup> The NASD responded that it believes the general concept of the Best Execution Interpretation (e.g., that a member should seek in executing customer transactions to obtain the best price for the customer)<sup>28</sup> should apply to the government securities market, just as it applies to all other markets subject to the NASD's jurisdiction.<sup>29</sup> The NASD stated that it would further consider whether an amendment to the Best Execution Interpretation is necessary to clarify its position as it applies to government securities, but it considered such an amendment unnecessary at this time.

##### 3. Front Running Policy

One commenter sought clarification on whether and how the front running interpretation would apply to government securities brokers and dealers.<sup>30</sup> The commenter noted that the interpretation was designed for the equity securities. In response, the NASD noted that its front running interpretation was designed for the equity securities markets and, accordingly, amended its proposal so that the front running interpretation would not apply to the government securities market.<sup>31</sup> The NASD, however, stated that because the member conduct prohibited by the front running interpretation may occur in the government securities market under certain circumstances, it will review the application of the front running interpretation to this market. In the interim, the NASD reminded members that actions for front running conduct occurring in the government securities market may be brought under Article III, Section 1 of the Rules of Fair Practice.<sup>32</sup>

<sup>27</sup> See PSA Letter No. 1 and Winstar Letter, *supra* note 22.

<sup>28</sup> See Article III, Section 1 of the Rules of Fair Practice.

<sup>29</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 11.

<sup>30</sup> See PSA Letter No. 1, *supra* note 22.

<sup>31</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 12.

<sup>32</sup> Similarly, the NASD noted that the Interpretation of the Board of the Governors regarding the trading ahead of customer limit orders and the Interpretation of the Board of Governors—trading Ahead of Research Reports, are drafted to apply to equity securities. The NASD stated that it intends to review the application of these Interpretations to the government securities market because it believes that the conduct addressed by these Interpretations may occur under certain circumstances in the government securities market.

#### 4. Article III, Section 23 of the Rules of Fair Practice

One commenter sought clarification on the effect of the provision "Net Prices to Persons Not in Investment Banking or Securities Business" on government securities transactions.<sup>33</sup> In response, the NASD determined that the requirements contained in Article III, Section 23 are superseded and more clearly provided for under: (i) Rule 10b-10 of the Act relating to Confirmation of Transactions; and (ii) Article III, Section 25 of the Rules of Fair Practice relating to Dealing with Non-Members.<sup>34</sup> The NASD amended the proposal to reflect this change.

#### 5. Article III, Section 35A of the Rules of Fair Practice/Schedule C to the By-Laws

One commenter requested clarification as to whether the proposed rule change would require a government securities broker or dealer to register an associated person as its "Compliance Registered Options Principal" under Part II, Section 2(f) of Schedule C to comply with Section 35A(b) of the Rules of Fair Practice, which requires the registration of such a Principal to approve certain options advertisements, sales materials, and other literature for government securities options transactions.<sup>35</sup> In response, the NASD stated that it is currently reviewing the issue of whether a "Compliance Registered Options Principal" should be required for members that trade options on government securities. The NASD further noted that it intends to file a proposed rule change regarding this registration issue and, therefore, the NASD amended to Applicability Table to indicate that Article III, Section 35A(b) is "Not Applicable/Under Review."<sup>36</sup>

#### 6. Customer Account Statements

One commenter suggested that the implementation of Article III, Section 45 ("Customer Account Statements") be delayed for three months after the effective date of the rule change to give affected members sufficient time to set up appropriate procedures to comply with the requirements of Section 45.<sup>37</sup>

The NASD agreed and amended the proposal.<sup>38</sup>

#### B. Suitability Obligations to Institutional Customers

##### 1. General Comments

Most of the commenters agreed with the general principles expressed in the Suitability Interpretation, although some commenters disagreed on the proper allocation of responsibility between members and institutional customers for investment making decisions.<sup>39</sup> Two commenters did not support the proposal.<sup>40</sup> One commenter believed that the proposal would create both greater confusion and uncertainty and additional duties for NASD members with respect to institutional accounts.<sup>41</sup> The other commenter believed that the proposal would impose unnecessary regulatory burdens on members.<sup>42</sup>

One commenter believed that the proposal would create confusion because it does not define the terms "recommendation" and "institutional investor."<sup>43</sup> The NASD responded that neither term lent itself to definition. First, it noted that Article III, Section 2 of the Rules of Fair Practice has been applicable to members' recommendations since the inception of the NASD and a significant amount of case law has developed from NASD disciplinary actions with respect to this provision.<sup>44</sup> The NASD further believes that defining the term "recommendation" is unnecessary and would raise many complex issues in the absence of the specific facts of a particular case. Second, the NASD believes that an objective definition of "institutional investor" would arbitrarily discriminate between institutional investors based on factors such as asset size, portfolio size or institutional type. The NASD stated that the proposed Suitability Interpretation would provide guidance to members on relevant considerations that should be examined by a member in fulfilling its suitability obligations to all institutional customers and would not unfairly

discriminate between institutional customers based on such factors.<sup>45</sup>

#### 2. Considerations in Determining the Scope of a Member's Suitability Obligations in Making Recommendations to an Institutional Customer

Several commenters had concerns about the specific guidelines included in the proposal that the NASD stated could be used by a member in determining the scope of the member's suitability obligations.

##### (i) Member Determination Regarding the Institutional Customer's Capability to Evaluate Investment Risk Independently

One commenter asserted that the relevance of the customer's use of consultants, investment advisers or a bank trust department would depend on the extent of the use of the outside advice and what, if any, contractual arrangement exists between the customer and the outside adviser.<sup>46</sup> This commenter questioned whether outside managers of investment pools and trustees would fall within this guideline. In response, the NASD agreed that the relevance of a customer's use of professional advisers would depend on the extent of the use of such outside advice.<sup>47</sup> Moreover, the NASD believes that the proposed Suitability Interpretation would apply to any delegated agents of the customer, including outside managers for investment pools, trustees, and other agents.<sup>48</sup>

One commenter stated that the usefulness of the customer's general level of experience in the financial markets and with the type of instruments under consideration would depend not only on the expertise of the customer's staff but also on the nature of the changing markets.<sup>49</sup> This commenter also argued that the relevance of a customer's ability to understand economic features of a security would depend on the nature of information provided to the investor by the NASD member about the features of a specific instrument. The commenter further contended that a customer's track record in making investment decisions or an affirmative statement by the customer that it has the ability to

<sup>38</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 16.

<sup>39</sup> See Coastal Letter, GFOA Letter No. 1, PSA Letter Nos. 1 and 2, SIA Letter Nos. 1 and 2, Banc One Letter, NASACT Letter, STA Letter, and Morgan Stanley Letter, *supra* note 22.

<sup>40</sup> See Nomura Letter and ABA Letter, *supra* note 22.

<sup>41</sup> See Nomura Letter, *supra* note 22.

<sup>42</sup> See ABA Letter, *supra* note 22.

<sup>43</sup> See Nomura Letter, *supra* note 22.

<sup>44</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 39-40.

<sup>45</sup> See *id.* at 39.

<sup>46</sup> See GFOA Letter No. 1, *supra* note 22.

<sup>47</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 26.

<sup>48</sup> In fact, the Suitability Interpretation specifically states that where a customer has delegated decision-making authority to an agent, such as an investment adviser or a bank trust department, the Interpretation shall be applied to the agent.

<sup>49</sup> See GFOA Letter No. 1, *supra* note 22.

<sup>33</sup> See PSA Letter No. 1, *supra* note 22.

<sup>34</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 14.

<sup>35</sup> See PSA Letter, No. 1, *supra* note 22.

<sup>36</sup> Article III, Section 35A(b) will not be applicable to options advertisements, sales materials and other literature for government securities options transactions during this interim review period. See Securities Exchange Act Release No. 36973, *supra* note 14, at 15.

<sup>37</sup> See PSA Letter No. 1, *supra* note 22.

evaluate independently the effect of the market on a security, are not reliable indicators of a customer's ability to independently evaluate the effects of the market on the security. The NASD agreed that the relevance of the factors listed in the proposed Suitability Interpretation would vary depending on numerous circumstances.<sup>50</sup> The NASD also noted its belief that a customer's track record and an affirmative statement by the customer regarding its capability are helpful, but not dispositive, factors pertaining to the customer's capability to evaluate investment risk dependently.

One commenter suggested three additional factors that should be considered by a member in determining whether an institutional customer has the capability to evaluate investment risk independently: (1) whether the customer is engaged in either the financial industry or the business of managing its or others' investments, (2) whether the customer has in-house investment professionals charged with responsibility for recommending or making investment decisions on behalf of the customer, and (3) whether the customer independently adopted investment guidelines and whether the customer provides explicit investment guidelines to the member broker-dealer.<sup>51</sup> In response, the NASD acknowledged that additional factors may be valuable to members in considering whether an institutional customer is capable of evaluating investment risk independently or may be pertinent to a specific situation.<sup>52</sup>

*(ii) Member Determination Regarding Whether the Institutional Customer is Exercising Independent Judgment*

One commenter pointed out that one of the factors in determining the scope of a member's suitability obligation—the extent to which the customer *intends* to exercise independent judgment—is inconsistent with a member's obligation to determine that a customer *is making* independent investment decisions.<sup>53</sup> In response to this comment, the NASD

amended the proposal to replace the phrase “intends to exercise” with the phrase “is exercising” to eliminate any confusion.<sup>54</sup>

One commenter sought clarification that the lack of a written agreement would not work against investors in disputed cases and that the inclusion of written or oral understandings as a relevant consideration in the proposal does not indicate a preference for such agreements.<sup>55</sup> The NASD responded that whereas developing such agreements with a customer may be helpful to a member in determining its suitability obligations to the customer, the existence or absence of such an agreement is not intended to create a presumption as to whether the member has or has not fulfilled its suitability obligation.<sup>56</sup>

One commenter argued that the factor referencing the “presence or absence of a pattern of acceptance of a member's recommendation” was too broad and should refer only to captive accounts, where a single broker-dealer is effectively controlling substantially all investment decisions of an account.<sup>57</sup> The NASD disagreed and stated that the presence or absence of a pattern of customer acceptance of a member's recommendation should be considered whenever appropriate and reasonable and should not be limited to “captive accounts.”<sup>58</sup>

One commenter believed that the factor referencing the use by the customer of ideas, suggestions and information obtained from other NASD members or market professionals may discourage investors from becoming more informed and responsible.<sup>59</sup> The NASD disagreed, stating that institutional customers often rely on financial information other than that provided by the member and may be required by a fiduciary obligation to do so.<sup>60</sup>

One commenter believed that a member's consideration of “the extent to which the member has received from the customer current comprehensive portfolio information in connection with discussing recommended transactions” may not be prudent for the institutional investor with concerns that a member's detailed knowledge of the

institution's holdings may affect the institution's ability to trade certain portions of the portfolio or may adversely affect the market for the institution's holdings.<sup>61</sup> This commenter recommended first, replacing this factor with a requirement to provide “material relevant to a particular transaction” and, second a requirement that the broker-dealer make a reasonable request to obtain relevant portfolio or investment objectives information. The NASD agreed that any material relevant to a particular transaction provided by a customer would assist members in fulfilling their suitability obligations under the proposed Interpretation. The NASD believes, however, that the “material information” referred to by the commenter would include current comprehensive portfolio information in connection with the transaction. The NASD also believes that the more specific guideline is appropriate even though a customer may not be willing to provide such information.<sup>62</sup>

*(iii) Portfolio Threshold*

One commenter believed that the \$10 million portfolio designation is contrary to the language in the congressional report on the GSAA and contradicts the intent of the suitability rule.<sup>63</sup> This commenter argued that the portfolio designation would be difficult to apply and requested clarification on how the standard would be implemented in the context of a government unit. The commenter also urged that if the NASD retains the portfolio designation, an amount higher than \$10 million be used because the Interpretation inappropriately could be applied to small governmental entities with portfolios that are nominal in the context of government operations. The commenter further requested more explanation on how institutional investors with a portfolio less than the designated amount will be treated. The NASD responded that there is greater likelihood that the member could apply the proposed Suitability Interpretation to an institutional customer with at least \$10 million invested in securities in the aggregate in its portfolio and/or under management, but it had not intended to create a presumption either above or below that aggregate dollar amount that the Interpretation will apply to a

<sup>50</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 27.

<sup>51</sup> See Morgan Stanley Letter, *supra* note 22. Another commenter believed that institutions with the first two characteristics are capable of making their own independent investment decisions. See SIA Letter Nos. 1 and 2, *supra* note 22. This commenter suggested that the proposal be amended to state that a rebuttable presumption exists that institutions are capable of making their own independent investment decisions. See SIA Letter Nos. 1 and 2, *supra* note 22. For more discussion on rebuttable presumptions, see *infra* Section (B)(3) of the Summary of Comments.

<sup>52</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 24–25.

<sup>53</sup> See Morgan Stanley Letter, *supra* note 22.

<sup>54</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 22.

<sup>55</sup> See GFOA Letter No. 1, *supra* note 22.

<sup>56</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 28.

<sup>57</sup> See Morgan Stanley Letter, *supra* note 22.

<sup>58</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 27–28.

<sup>59</sup> See GFOA Letter No. 1, *supra* note 22.

<sup>60</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 29.

<sup>61</sup> See GFOA Letter No. 1, *supra* note 22.

<sup>62</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 30. The NASD notes that all the factors are guidelines and the inclusion or absence of any factor is not dispositive of the suitability interpretation.

<sup>63</sup> See GFOA Letter No. 1, *supra* note 22.

particular institutional customer.<sup>64</sup> Moreover, the NASD stated that in calculating the \$10 million test, it intends to look to SEC Rule 144A for guidance.

One commenter recommended that the \$10 million threshold not be considered for registered investment companies accounts.<sup>65</sup> This commenter argued that all registered investment companies are equally subject to the Investment Company Act of 1940 and must operate within the same competitive environment in which they are expected to obtain professional experienced investment management for their shareholders. The commenter argued that an interpretation that liberalizes the suitability requirements of its members with respect to larger investment companies could inadvertently lead to discrimination against smaller investment companies. Another commenter also believed that the proposal would have an adverse effect on smaller institutional clients by reducing competition for these accounts.<sup>66</sup>

The NASD responded that the reference to \$10 million does not imply a definitive threshold that distinguishes capable from non-capable institutional customers.<sup>67</sup> Therefore, the NASD believed that the \$10 million threshold should not result in inadvertent discrimination against investment companies or other institutional customers with less than \$10 million invested in securities.

One commenter criticized the definition of non-institutional customer as being too broad and stated that the information-gathering requirement in Article III, Section 2(b) should only apply to customers that are not considered institutional customers under the proposed Suitability Interpretation.<sup>68</sup> This commenter argued

that a member may reasonably conclude that an institutional customer with less than \$50 million in assets is capable of understanding the risks of the recommended transaction and intends to exercise reasonable judgment in evaluating the member's recommendation, but the member would still have to gather information required by Article III, Section 2(b) from that customer. The commenter suggested that the definition of non-institutional customer be amended by eliminating the reference to Section 21(c)(4) and incorporating a definition of institutional customer in Section 2(b) that is consistent with the proposed Suitability Interpretation.

In response, the NASD stated that the proposed rule change to Article III, Section 2(b) of the Rules of Fair Practice is meant to distinguish this requirement from the suitability obligations under Article III, Section 2(a) of the Rules of Fair Practice and the proposed Suitability Interpretation.<sup>69</sup> The NASD stated that fulfilling the suitability obligation under the proposed Suitability Interpretation would not reduce the member's other obligation under Article III, Section 2(b) to customers that do not qualify as institutional accounts under Article III, Section 21(c)(4) of the Rules of Fair Practice, even though some of these customers may be considered institutional customers according to the proposed Suitability Interpretation.

### 3. Safe Harbor/Rebuttable Presumption

Several commenters were concerned that the proposal would in effect make the member a guarantor of a recommended investment's performance and inappropriately shift responsibility for poor investment decisions to the broker-dealer.<sup>70</sup> Some commenters recommended that the proposal include a safe harbor for broker-dealers that comply with the proposed interpretation.<sup>71</sup> Other commenters believed that if the

Investment Advisers Act of 1940; or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million.

<sup>69</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 35.

<sup>70</sup> See Nomura Letter, Edwards Letter, Morgan Stanley Letter, and ABA Letter *supra* note 22. One commenter was concerned that market participants were inappropriately using the suitability concept to make the dealer the guarantor of an investment's performance. See PSA Letter No. 1, *supra* note 22.

<sup>71</sup> See ABA Letter and Coastal Letter, *supra* note 22. Alternatively, one of the commenters believed that compliance with the interpretive guidance should create a rebuttable presumption that a member's suitability obligations with respect to institutional customers have been satisfied. See ABA Letter, *supra* note 22.

institutional investor employs an investment professional, the investment professional should bear the responsibility for the investment decisions it makes.<sup>72</sup>

In response, the NASD stated that it would not be appropriate to create a safe harbor for member's suitability obligations or to change or reduce members' obligations under the suitability rule in Article III, Section 2 of the Rules of Fair Practice.<sup>73</sup> The NASD stated that there are no safe harbors in the Suitability Interpretation.<sup>74</sup>

Rather than a safe harbor, one commenter suggested that the proposal provide a rebuttable presumption that a member's recommendations to institutional customers are suitable.<sup>75</sup> This commenter believed that the existence of an advisory relationship should be the primary consideration and that, absent extraordinary circumstances, an advisory relationship should be deemed to exist only if the parties evidence such an agreement in writing.<sup>76</sup>

In response, the NASD stated that a member's suitability obligation under Article III, Section 2(a) of the Rules of Fair Practice remains with the member until fulfilled and therefore, the creation of a rebuttable presumption through the fulfillment of certain procedures would not be appropriate.<sup>77</sup> Moreover, the NASD stated that such a rebuttable presumption would only be acceptable if a definable class of institutional investors could be identified that would not need the protection of the NASD's

<sup>72</sup> See Edwards Letter, Morgan Stanley Letter, PSA Letter No. 1, and STA Letter, *supra* note 22. One commenter, however, disagreed because there may be variation in the type and degree of services offered by a third-party professional to its clients. See GFOA Letter No. 2, *supra* note 22.

<sup>73</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 30-31.

<sup>74</sup> See *id.* at 45.

<sup>75</sup> See Nomura Letter, *supra* note 22. One commenter stated that there should be a cutoff for institutions with more than a stated amount of assets under management. See STA Letter, *supra* note 22. One commenter argued, however, that there should be no rebuttable presumption that recommendations made to institutional investors are suitable. See GFOA Letter No. 2, *supra* note 22. Another commenter agreed that the broker-dealers should be held responsible for their recommendations to institutional investors. See NASACT Letter, *supra* note 22.

<sup>76</sup> See Nomura Letter, *supra* note 22. Moreover, one commenter argued that three particular situations warrant reconsideration as determinative factors or rebuttable presumptions that the member has fulfilled its suitability obligation: the presence of an investment advisor; transactions executed consistent with investment guidelines or permitted investment statutes; and the execution of a written agreement. See PSA Letter Nos. 1 and 2, *supra* note 22.

<sup>77</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 40.

<sup>64</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 32.

<sup>65</sup> See ICI Letter, *supra* note 22.

<sup>66</sup> See Edwards Letter, *supra* note 22.

<sup>67</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 34.

<sup>68</sup> See PSA Letter No. 1, *supra* note 22. Pursuant to Article III, Section 2(b), prior to the execution of a transaction recommended to a non-institutional customer (other than transactions with customers where investments are limited to money market mutual funds), a NASD member must make reasonable efforts to obtain information concerning: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer. For purposes of this information gathering requirement, an institutional customer means: (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered under Section 203 of the

suitability rule under all conceivable circumstances. The NASD was unable to define such a class.<sup>78</sup>

#### 4. Additional Obligations on Members

Several commenters argued that the NASD's proposed Suitability Interpretation would impose new or additional duties on its members. One commenter was concerned that the proposal would create an obligation to document affirmative determinations of the factors referenced under the two principal considerations because it believed that the proposal implies that NASD examiners will expect to see an affirmative determination on all or some of the described criteria for compliance purposes.<sup>79</sup> Another commenter believed that these analyses will greatly increase a member's responsibility to gather detailed information about its institutional customers and to keep extensive records of any information gathered.<sup>80</sup>

One commenter requested that the NASD incorporate explicit language stating that it did not intend to create: (1) a checklist for NASD compliance examinations; (2) an affirmative obligation on NASD members to make trade-by-trade or continual suitability determinations based on the designated considerations; or (3) new NASD member suitability determination documentation or record maintenance requirements.<sup>81</sup>

On the other hand, other commenters supported imposing additional obligations on members. One commenter suggested that the proposal require the broker-dealer to provide certain specific types of information to customers with regard to specific transactions such as an instrument's behavior under a variety of conditions, types of risk incurred with certain instruments, and valuation information.<sup>82</sup> This commenter also supported the inclusion of an affirmative duty to inquire about a customer's risks and constraints, including any investment policies.<sup>83</sup>

The NASD responded that it was not imposing through the proposed Suitability Interpretation additional duties on members that are not already imposed by current Article III, Section 2 of the Rules of Fair Practice, general anti-fraud principles in Section 10(b) of the Act and other provisions of the federal securities laws, or in Article III,

Section 18 of the NASD's Rules of Fair Practice.<sup>84</sup> The NASD stated that Article III, Section 2(a) of the Rules of Fair Practice does not contain books and records requirements and, similarly, the proposed Suitability Interpretation does not contain books and records requirements.<sup>85</sup> The NASD warned, however, that members are responsible for demonstrating the fulfillment of their suitability obligation under Article III, Section 2(a) in NASD examinations and that members would have the same responsibility under the proposed Suitability Interpretation. The NASD also stated that it had intended to eliminate the appearance that the listed factors create an evidentiary checklist for NASD compliance review. The NASD stated that the responsibilities of the member are limited under Article III, Section 2(a) of the Rules of Fair Practice in that the member is not the guarantor of the investment nor responsible for the absence of information not provided by the institutional customer.

#### V. Discussion

The government securities market, widely considered to be the largest and most liquid securities market in the world, has enabled the U.S. government to meet its large financing needs in an effective manner. In 1991, however, certain events threatened the public confidence in the fairness and integrity of this market and prompted the Treasury Department, the Board of Governors of the Federal Reserve System and the Commission to undertake an informal review of the government securities market.<sup>86</sup> As a result of this review, and Congressional inquiries into the government securities market in general, in 1993 Congress decided to modify the limited regulatory structure in the Government Securities Act of 1986 by enacting the GSAA.

In the GSAA, Congress provided the NASD and bank regulators with the authority to issue rules aimed at preventing fraudulent or manipulative acts and practices and to promote just and equitable principles of trade in the government securities market.<sup>87</sup>

<sup>84</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 25.

<sup>85</sup> See *id.* at 38.

<sup>86</sup> The Treasury Department, the Board of Governors of the Federal Reserve System, and the Commission produced a report on this review of the government securities market. See Joint Report on the Government Securities Market (Jan. 1992).

<sup>87</sup> H.R. Rep. 103-255, 103d Cong., 1st Sess. (1993) (Congress believed that "it is appropriate to extend normal sales practice standards and other registered securities association rules to transactions in the government securities market by removing the

Pursuant to this legislation, the NASD has proposed rule changes to impose for the first time various provisions of the Rules of Fair Practice to transactions in exempted securities, including government securities, other than municipals. The GSAA also stimulated the NASD to provide further guidance to members on their suitability obligations in Section 2, Article III when making recommendations to institutional customers.<sup>88</sup>

For the reasons discussed below, the Commission has determined that the NASD's proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A<sup>89</sup> and the rules and regulations thereunder.<sup>90</sup> The Commission believes that the proposed rule change is consistent with the Section 15A(b)(6) requirements that the rules of the association be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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.<sup>91</sup>

#### A. Application of the Rules of Fair Practice to Exempted Securities Except Municipals and Merger of Government Securities Rules

To implement the authority conferred by the GSAA to address abusive and manipulative practices in the government securities market, the NASD has proposed to merge certain provisions of its current Government Securities Rules into the Rules of Fair Practice, and to apply certain provisions of the Rules of Fair Practice to exempted securities (except municipals) for the first time. The Commission believes that the application of the various sections of the NASD's Rules of Fair Practice, which the NASD deems to be appropriate and necessary for regulating

statutory restrictions on the authority of such associations in the government securities market").

<sup>88</sup> The Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), and the Board of Governors of the Federal Reserve System ("Board") also have solicited comment on rules, largely similar to those proposed by the NASD, to apply to government securities brokers and dealers under the jurisdiction of these agencies. See Government Securities Sales Practices, 61 FR 18470 (Apr. 25, 1996) (joint notice of proposed rulemaking).

<sup>89</sup> 15 U.S.C. 78o-3.

<sup>90</sup> The GSAA also requires the Commission to consult with the Treasury Department prior to the adoption of the NASD proposal. The Commission has consulted with the Treasury Department.

<sup>91</sup> 15 U.S.C. 78o-3(b)(6).

<sup>78</sup> See *id.* at 42.

<sup>79</sup> See Nomura Letter, *supra* note 22.

<sup>80</sup> See ABA Letter, *supra* note 22.

<sup>81</sup> See SIA Letter Nos. 1 and 2, *supra* note 22.

<sup>82</sup> See GFOA Letter No. 1, *supra* note 22.

<sup>83</sup> See GFOA Letter No. 2, *supra* note 22.

transactions in exempted securities, including government securities, other than municipals, is consistent with the purposes of the Act and the intention of Congress in enacting the GSAA.<sup>92</sup>

Under the proposal, the NASD has determined to exempt government securities transactions from certain provisions of the Rules of Fair Practice. The NASD found some provisions not to be applicable to the government securities market while others will be considered for further review. A few of the provisions under further review are especially worthy of note.

First, the NASD acknowledged that its current front running interpretation applies only to equity securities. The NASD has committed, however, to review the application of its front running interpretation to the government securities market because the NASD believes that front running may occur in this market under certain circumstances.<sup>93</sup> Moreover, in the interim, the NASD has represented that actions for front running conduct occurring in the government securities market may be brought under its rule requiring members to adhere to just and equitable principles of trade.<sup>94</sup>

Second, with the proposed rule change, the NASD will not apply its prohibitions against trading ahead of customer limit orders and trading ahead of research reports to the government securities market. As with the front running interpretation, the NASD intends to review the application of these interpretations to the government securities market because the NASD believes that conduct addressed by the interpretations may occur in this market under certain circumstances.<sup>95</sup> In the meantime, the NASD will bring action for such conduct under its just and equitable principles of trade rule.

The Commission believes that the NASD's determination to apply certain of its general rules, only formerly applicable to equity or corporate debt securities, to government securities is consistent with the Act, and that the NASD has made a reasonable determination regarding which of its general rules should be applicable to government securities. With respect to those provisions of the Rules of Fair Practice that the NASD plans to consider further for application to the government securities markets, the Commission anticipates that the NASD

will undertake a prompt and thorough evaluation and submit proposed rule changes with the Commission as appropriate.

#### *B. Suitability Interpretation*

The concept of suitability, rooted in notions of just and equitable principles of trade and the protection of investors, plays an important role in the scheme of the federal securities laws. Prohibitions against making unsuitable recommendations arise under the rules of all self-regulatory organizations.<sup>96</sup> They lay the foundation for good and sound business practices by broker-dealers and help avoid potential abusive sales practices regarding customers. The NASD's articulation of the suitability principles as set forth in Article III, Section 2 of the Rules of Fair Practice has applied to members' recommendations since the inception of the NASD. Article III, Section 2(a) requires that in recommending to a customer the purchase, sale or exchange of any security, a member must have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and financial situation and needs. With the enactment of the GSAA, and NASD has decided to provide further guidance to members on their suitability obligations and has proposed guidelines for its members regarding how members may fulfill their "customer-specific" suitability obligations when making recommendations to institutional customers.<sup>97</sup>

The current version of the Suitability Interpretation is the product of the NASD's extensive consultation with broker-dealers, investors and other participants in the securities industry over a period of several years. It reflects much discussion and great diversity of input by various parties. The first draft of the proposed Suitability Interpretation was published for

comment in Notice to Members 94-62 (August 1994). Fourteen commenters submitted 15 comment letters on the draft proposals. In response to the comments received, the NASD amended the proposal and published a second draft for comment in Notice to Members 95-21 (April 1995). Sixteen comments were received on the second draft. The NASD, again, amended the proposal Suitability Interpretation in response to the comments received, before filing a proposed interpretation with the Commission. The NASD provided further clarification and amendments to the proposal in March 1996, when Amendment No. 3 to the proposal was filed. Thus, the final proposal currently before the Commission reflects the NASD's effort to consider all comments on the numerous versions of the proposal and balance the issues raised in those comments.

The NASD's Suitability Interpretation is predicated on a determination that the two most important considerations in determining the scope of a member's suitability obligation in making recommendations to an institutional customer are (1) the customer's capability to evaluate investment risk independently, and (2) the extent to which the customer is exercising independent judgment. The Suitability Interpretation further describes factors that may be relevant in a member's evaluation of these two important considerations. The NASD has emphasized that these factors are guidelines that will be utilized to determine whether a member has fulfilled suitability obligations with respect to a specific institutional customer transaction and that the absence or inclusion of any of these factors is not dispositive of the suitability determination.

The Commission believes that the NASD's approach to determining the scope of a member's suitability obligation in making recommendations to an institutional customer appropriately responds to the varied nature of institutional customers and the varied significance of a member's recommendation for different institutional customers. The NASD acknowledges, as does the Commission, that the relationship between a broker-dealer and an institutional customer generally may be different in important respects from the relationship a broker-dealer has with a non-institutional investor. In the latter circumstance, a broker-dealer frequently has knowledge about the investment and its risks and costs that are not possessed by or easily available to the investor. Some

<sup>92</sup> See H.R. Rep. 103-255, 103d Cong., 1st Sess. (1993).

<sup>93</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 12.

<sup>94</sup> See *id.*

<sup>95</sup> See *id.* at 13.

<sup>96</sup> See, e.g., New York Stock Exchange Rule 405, NYSE Guide (CCH) ¶ 2405; American Stock Exchange Rule 411, Amex Guide (CCH) ¶ 9431. See also *Duker & Duker*, 6 S.E.C. 386, 388 (1939). As part of the obligation of fair dealing, all broker-dealers are required to have a reasonable basis for believing that their securities recommendations are suitable for the customer in light of the customer's financial needs, objectives, and circumstances.

<sup>97</sup> The NASD Suitability Interpretation will be applicable to all securities, except for municipals. Municipal Securities Rulemaking Board ("MSRB") rule G-19 governs the suitability obligations for municipal securities. Like Article III, Section 2 of the Rules of Fair Practice, MSRB rule G-19 makes no distinction between institutional and non-institutional customers in requiring that a broker, dealer, or municipal securities dealer must have reasonable grounds for believing that a recommendation is suitable.

sophisticated institutional customers, however, may in fact possess both the capability to understand how a particular securities investment could perform, as well as the desire to make their own investment decisions, without reliance on the knowledge or resources of the broker-dealer. Other investors that meet a definition of "institutional customer" may not possess the requisite capability to understand the particular investment risk, or may not be exercising independent judgment in making a particular investment decision, and so may be largely dependent on the broker-dealer's analysis and recommendation in evaluating whether to purchase a recommended security.

The NASD proposal recognizes the varied nature of investor profiles, even among investors that meet some definition of "institutional investor." It accommodates a wide range of relationships because it does not establish rigid thresholds or requirements, but rather provides its members with some reasonable factors by which an NASD member can determine the nature of its relationship with a customer. The Interpretation correctly recognizes that there can be instances in which an institutional customer possesses a general capability to understand certain kinds of investments, but does not have the requisite capability to understand the particular investment under consideration. In such a circumstance, the NASD appropriately notes that a broker-dealer's suitability obligation would not be diminished based solely on the financial wherewithal of the customer.

The Commission also believes that the factors enumerated in the Interpretation, which could be relevant to the two considerations, provide members with appropriate points to consider in satisfying their suitability obligations. Some commenters were concerned about the relevance of, and the proper weight to be given to, the considerations listed. Some commenters also expressed concern regarding the specific application of these considerations.<sup>98</sup>

<sup>98</sup> For example, some commenters expressed concern about the \$10 million portfolio designation. A few commenters believed that such a threshold may lead to discrimination against smaller institutions or investment companies. One commenter believed that the GSAA prohibited such a portfolio designation. The NASD has represented that it had not intended to create a presumption that the Interpretation would apply to a particular institutional customer either above or below the aggregate dollar amount or to imply that the \$10 million constituted a definitive threshold in determining whether a broker-dealer's suitability obligation was satisfied in dealing with a particular

The NASD acknowledges that these considerations are not necessarily the only relevant factors, but merely guidelines for use in determining whether a member has fulfilled its suitability obligations with respect to a specific institutional customer transaction. They neither create nor reduce a member's suitability obligation and their relevance would vary depending on numerous circumstances.<sup>99</sup> The Commission concurs with the NASD in this regard. Moreover, these enumerated factors are not meant to create a checklist, which the Commission would consider inappropriate in these circumstances because it could lead to a mechanical application of the Interpretation without adequate consideration by the broker-dealer of whether the customer understands the transaction or product.

Some commenters, believing that the suitability responsibility is already unevenly placed on broker-dealers, supported inclusion in the Suitability Interpretation of a safe harbor or a rebuttable presumption. In keeping with its purpose to provide guidance and not to create or reduce a member's suitability obligations, the NASD did not create a safe harbor or provide for a rebuttable presumption in the Suitability Interpretation.<sup>100</sup> In response to the arguments of some industry members that if an investor employs an investment professional, that professional should wholly bear the responsibility for the investment decision it makes, the NASD clarified that while the institution would still be covered by the suitability rule, the factors analysis of the proposed Suitability Interpretation would apply to any delegated agents of customers, including any professional advisers that an investor may employ.

The Commission believes that the NASD's decision not to create a safe harbor or rebuttable presumption is consistent with the purposes of the Act. A safe harbor or a rebuttable

institution. See Securities Exchange Act Release No. 36973, *supra* note 14, at 32, 34. The Commission agrees that the \$10 million portfolio designation will not discriminate against certain institutional customers nor is it contrary to the language of the Congressional report on the GSAA. The \$10 million portfolio designation does not create a presumption that institutions that exceed the \$10 million portfolio amount satisfy the Interpretation's factors and thus are not covered by the protections of the suitability rule; rather, the Interpretation indicates that the analysis of the suitability obligation to be conducted using the factors set forth in the interpretation is more appropriate for these larger institutions than for institutions with a smaller portfolio.

<sup>99</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 27.

<sup>100</sup> See *id.* at 40, 45.

presumption that applied to institutions that were likely to rely on a broker-dealer's guidance regarding a security could lead to serious abuses that are inconsistent with the purposes of the Act. For example, a safe harbor could allow a broker-dealer to recommend a risky security to an institutional investor without consideration of the appropriateness of the investment for the investor, and despite knowing that the customer did not understand the product. Moreover, a safe harbor or a rebuttable presumption that all institutions with similar amounts to invest possess similar or equal financial acumen, which has not proven to be the case. As one commenter noted, "institutional customers" could be educational institutions, churches, charities, or governments, which range from small special districts to large state governments, and the characteristics and portfolios of these customers vary widely.<sup>101</sup> A safe harbor or a rebuttable presumption would depend on the ability of the NASD to define objectively a class of institutional investors that uniformly would not need the protections of the NASD's suitability rule.

The NASD, however, has not sought to define such a class. Rather, the NASD has taken a flexible approach in defining the term "institutional investor" by not including financial criteria in the term; for purposes of the Interpretation, an institutional customer may be any entity other than a natural person. The Suitability Interpretation potentially would apply to all institutional investors, though more appropriately to institutional investors with portfolios of at least \$10 million in securities. The NASD believes that excluding institutional investors from the protections of the suitability rule based on objective financial criteria would arbitrarily discriminate among institutional investors based on factors such as asset size, portfolio size or institutional type that are not necessarily determinative of financial sophistication. The Commission believes that the NASD's choice not to rely on objective criteria that may mask what is really an unsophisticated investor is reasonable in the context of a standard that incorporates factors that reflect the nature of the investor, and where the suitability of the recommendation itself depends on the nature of the investor. Categorizing investors by an isolated financial criteria may improperly attribute the capability to evaluate investment risk independently and the exercise of

<sup>101</sup> See GFOA Letter No. 2, *supra* note 22.

independent judgment to an customer without an appropriate analysis of the investor's true characteristics.<sup>102</sup>

Moreover, in view of the great diversity of institutional customers, the Interpretation affords broker-dealers the flexibility to negotiate understandings and terms with a particular customer. Such agreements, freely negotiated between consenting parties, can be useful in establishing, prior to a transaction, the obligations and responsibilities of both parties. The NASD's approach assists broker-dealers and customers to define their own expectations and roles with respect to their specific relationship.

Some industry members were concerned that the Interpretation would create greater confusion and uncertainty and additional duties on broker-dealers. Industry members were especially concerned that the proposed Interpretation would impose an obligation on members to document and retain extensive records of information gathered or expose them to NASD compliance examinations based on a "checklist." Again, the NASD represented that it was not imposing through the proposed Interpretation additional duties on members that are not already imposed by the NASD's suitability rules, general anti-fraud provisions of the federal securities laws, or Article III, Section 18 of the NASD's Rules of Fair Practice. The NASD confirmed that the proposed Interpretation does not impose a books and records requirement nor does it create an evidentiary checklist for NASD compliance review. The NASD's reassurances that these considerations are provided merely for guidance purposes and not to impose any additional duties or to reduce any existing obligations should alleviate the commenters' concerns regarding the specific application of the Interpretation. Moreover, the NASD has repeatedly indicated that the Interpretation does not make the broker-

dealer a guarantor, which the Commission believes is appropriate.

Moreover, the NASD has committed to continuing its examination of members for compliance with the suitability obligations under Article III, Section 2(a) and, upon the approval of the Interpretation, members' compliance with the Interpretation.<sup>103</sup> The Commission expects the NASD to extend its examinations to members' compliance with the Interpretation once it becomes effective.

Finally, the Commission finds good cause for approving Amendment Nos. 4 and 5 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange's proposal was published in the Federal Register for the full statutory period.<sup>104</sup> Amendment No. 4 merely clarifies the new numbering of the *NASD Manual* and proposes to apply Section 50, Article III, to transactions in exempted securities (except municipals). The NASD's adoption of reporting requirements in Section 50, Article III, was the product of a review by the NASD and the New York Stock Exchange, which was undertaken because of concerns on the part of the Commission and others over the frequency and severity of sales practices abuses.<sup>105</sup> The Commission approved NASD adoption of Section 50, Article III stating that the reporting requirements will provide important regulatory information that will assist in the detection and investigation of sales practice violations. Therefore, the Commission believes that applying this provision to transactions in exempted securities, including government securities, other than municipals is consistent with Congress' mandate to the NASD to extend its sales practice standards and other rules to address abusive and manipulative practices in the government securities market. Moreover, Amendment No. 5 merely clarifies and reminds members that its rules requiring members to adhere to just and equitable principles of trade apply to conduct that may violate the Fair Prices and Commissions provision and the Mark-Up Policy. The Commission believes that this clarification is not substantive because the rule requiring that members adhere to just and equitable principles of trade would have applied to such conduct regardless of this clarification. Based on the above, the Commission finds that

there is good cause, consistent with Section 6(b)(5) of the Act, to accelerate approval of Amendment Nos. 4 and 5.

## VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 4 and 5. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NASD-95-39 and should be submitted by September 17, 1996.

## VII. Conclusion

In conclusion, the Commission believes that the NASD's proposal to impose the Rules of Fair Practice to transactions in exempted securities other than municipals, and to provide further guidance to members on their suitability obligations in Section 2, Article III when making recommendations to institutional customers is consistent with the purposes of the Act and the GSAA. Especially with respect to the proposed suitability Interpretation, the NASD has undergone an extensive consultative process, whereby interested parties were able to participate in the development of the Interpretation. The Commission believes that the suitability Interpretation is a reasoned approach to the concept of suitability, which fosters an environment for dialogue between broker-dealers and customers regarding the nature of their relationship, and, therefore, should promote the protection of investors.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>106</sup> that the proposed rule change (SR-NASD-95-39) is approved.

<sup>102</sup> In testimony before the Subcommittee on Telecommunications and Finance Committee on Commerce, SEC Chairman Arthur Levitt testified against a provision in the proposed legislation that would create a presumption that a broker-dealer is not liable for investment decisions of institutional clients unless the parties have contracted to the contrary. Chairman Levitt testified that the presumption under the federal securities laws that broker-dealers generally are responsible for making suitability recommendations, whether their clients are institutional or individual investors, should be maintained. See Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning H.R. 2131, The "Capital Markets Deregulation and Liberalization Act of 1995," before the Subcomm. on Telecommunications and Finance Committee on Commerce (Nov. 30, 1995).

<sup>103</sup> See Securities Exchange Act Release No. 36973, *supra* note 14, at 38.

<sup>104</sup> See Securities Exchange Act Release Nos. 36383 and 36973, *supra* notes 9 and 14.

<sup>105</sup> See Securities Exchange Act Release No. 36211 (Sept. 8, 1995) 60 FR 48182.

<sup>106</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of  
Market Regulation, pursuant to delegated  
authority.<sup>107</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

## EXHIBIT 1.—OLD-TO-NEW CONVERSION CHART

Former provision	New number
By-Laws .....	Unchanged
* * * * *	*
Schedules to the by-laws:	
Schedule A .....	Unchanged
* * * * *	*
Schedule C .....	1000
* * * * *	*
II. Registration of Principals .....	1020
* * * * *	*
(2) Categories of Principal Registration .....	1022
* * * * *	*
VI. Persons Exempt from Registration .....	1060
* * * * *	*
Rules of fair practice .....	Titled deleted
Article I:	
Adoption and application .....	0110
* * * * *	*
4. Effect on Transactions in Exempted Securities .....	0114
5. Applicability .....	0115
* * * * *	*

## CONDUCT RULES

## Article III—Rules of Fair Practice

1. Business Conduct of Members .....	2110
Interpretation on Execution of Retail Transactions in the Over-the-Counter Market .....	2320
Interpretation on Prompt Receipt and Delivery of Securities .....	3370
Interpretation on Forwarding of Proxy and Other Materials .....	2260
Interpretation on "Free-Riding and Withholding" .....	IM-2110-1
Interpretation on Trading Ahead of Customer Limit Orders .....	IM-2110-2
Interpretation on Front Running Policy .....	IM-2110-3
Interpretation on Trading Ahead of Research Reports .....	IM-2110-4
2. Recommendations to Customers .....	2310
Policy on Fair Dealing with Customers .....	IM-2310-2
3. Charges for Services Performed .....	2430
4. Fair Prices and Commissions .....	2440
Interpretation on NASD Mark-Up Policy .....	IM-2240
5. Publication of Transactions and Quotations .....	3310
Interpretation on Manipulative and Deceptive Quotations .....	IM-3310
6. Offers at Stated Prices .....	3320
Policy with Respect to Firmness of Quotations .....	IM-3320
7. Disclosure of Price in Selling Agreements .....	2770
8. Securities Taken in Trade .....	2730
Interpretation on Safe Harbor and Presumption of Compliance .....	IM-2730
9. Use of Information Obtained in Fiduciary Capacity .....	3120
10. Influencing or Rewarding Employees of Others .....	3060
11. Payment Designed to Influence Market Prices, Other than Paid Advertising .....	3330
12. Disclosure on Confirmations .....	2230
Explanation on "Third Market Confirmations" .....	IM-2230
13. Disclosure of Control .....	2240
14. Disclosure of Participation or Interest in Primary or Secondary Distribution .....	2250
15. Discretionary Accounts .....	2510
16. Offering "At the Market" .....	2760
17. Solicitation of Purchases on an Exchange to Facilitate a Distribution of Securities .....	2780
18. Use of Fraudulent Devices .....	2120
19. Customers' Securities or Funds .....	2330
Explanation of Paragraph (d) of Section 19 .....	IM-2330
20. Installment or Partial Payment Sales .....	2450

<sup>107</sup> 17 CFR 200.30-3(a)(12).



EXHIBIT 1.—OLD-TO-NEW CONVERSION CHART—Continued

Former provision	New number
Appendix: Violations Appropriate For Disposition Under the Minor Rule Violations Plan	IM-9217

[FR Doc. 96-21757 Filed 8-26-96; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-37585; File No. SR-NYSE-96-25]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Listing Criteria for Equity-Linked Debt Securities**

August 20, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 16, 1996, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The New York Stock Exchange, Inc. ("NYSE" or "Exchange") is proposing amendments to its listing standards for Equity-Linked Debt Securities ("ELDS"). These listing standards are contained in Para. 703.21 of its Listed Company Manual.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) *Purpose*—ELDS are non-convertible debt securities of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock or nonconvertible preferred stock (the "underlying security"). The Exchange's listing standards currently permit the listing of ELDS if, among other things, (i) the issuer has a minimum tangible net worth of \$150 million and (ii) the original issue price of the ELDS, combined with all the issuer's other publicly-traded ELDS, does not exceed 25 percent of the issuer's net worth (the "net worth standard").

The proposed rule change makes two amendments to the ELDS listing standards. First, the Exchange proposes to add an alternative net worth standard. Under the new test, a issuer with tangible net worth of at least \$250 million would be able to issue ELDS without being subject to the limit that the ELDS be no more than 25 percent of the issuer's net worth. Issuers with a tangible net worth of at least \$150 million, but less than \$250 million, will still be subject to the 25 percent limit. This will provide the largest issuers with increased flexibility in their financing and capitalization planning.

Second, with respect to the listing of ELDS linked to non-U.S. securities, the Exchange proposes to amend the definition of "Relative U.S. Share Volume" and to delete the definition of "Relative ADR Volume." Specifically, the Exchange proposes collapsing these two definitions into a single definition of "Relative U.S. Volume." The Exchange believes that this change is non-substantive and is proposed solely to clarify and simplify the rule.

(b) *Basis*—The basis under the Act for the 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 foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, 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 does not impose 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 Others**

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-NYSE-96-25 and should be submitted by September 17, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

Margaret H. McFarland,  
*Deputy Secretary.*

[FR Doc. 96-21758 Filed 8-26-96; 8:45 am]

BILLING CODE 8010-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Meeting of the Commission on United States Pacific Trade and Investment Policy

**AGENCY:** Commission on United States-Pacific Trade and Investment Policy/ Office of the United States Trade Representative.

**ACTION:** Notice that the next meeting of the Commission on United States-Pacific Trade and Investment Policy, will be held on September 4, 1996, from 9:30 a.m. to 5:30 p.m. The meeting will be closed to the public.

**SUMMARY:** The Commission on United States-Pacific Trade and Investment Policy will hold a meeting on September 4, 1996, from 9:30 a.m. to 5:30 p.m. The meeting will be closed to the public. At the September 4, 1996 meeting, the Commission will continue internal deliberations on possible recommendations on future policy options.

Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, the USTR has determined that this meeting will address matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

**DATES:** The meeting is scheduled for September 4, 1996, unless otherwise notified.

**ADDRESSES:** The meeting will be held at the Department of the Treasury, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, Room 1115, unless otherwise notified.

**FOR FURTHER INFORMATION CONTACT:** Nancy Adams, Executive Director of the Commission on United States-Pacific Trade and Investment Policy, Room 400, 600 17th Street, NW., Washington, D.C. 20508 (202) 395-9679.

Charlene Barshefsky,

*Acting United States Trade Representative.*

Nancy Adams,

*Executive Director, Commission on United States-Pacific Trade and Investment Policy.*

[FR Doc. 96-21829 Filed 8-26-96; 8:45 am]

BILLING CODE 3190-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### White House Commission on Aviation Safety and Security; Open Meeting

**AGENCY:** Office of the Secretary (OST), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The White House Commission on Aviation Safety and Security will hold a meeting to discuss aviation safety and security issues. The meeting is open to the public.

**DATES:** The meeting will be held on Thursday, September 5, 1996, from 9:00 AM to 5:00 PM, unless adjourned earlier.

**ADDRESSES:** The meeting will take place in the Auditorium on the first floor of the headquarters building of the General Services Administration (GSA), 18th & F Streets, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Pemberton, Administrative Officer, Room 6208, GSA Headquarters, 18th & F Streets, NW, Washington, DC 20405; telephone 202.501.3863; telecopier 202.501.6160.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (5 USC Appendix), DOT gives notice of a meeting of the White House Commission on Aviation Safety and Security ("Commission"). The Commission was established by the President to develop advice and recommendations on ways to improve the level of civil aviation safety and security, both domestically and internationally.

The meeting will be open to the public. Limited seating for the public is

available on a first-come, first-served basis. The public may submit written comments to the Commission at any time; comments should be sent to Richard Pemberton at the address and telecopier number shown above.

Issued in Washington, DC on August 21, 1996.

Nancy E. McFadden,

*General Counsel, Department of Transportation.*

[FR Doc. 96-21859 Filed 8-26-96; 8:45 am]

BILLING CODE 4910-62-P

## Federal Aviation Administration

### RTCA, Inc., RTCA Special Committee 189; FANS System Requirements and Objectives (FANS SR&O)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C.; Appendix 2), notice is hereby given for a RTCA Special Committee (SC)-189 meeting to be held September 10-11, 1996, starting at 9:00 a.m. on September 10. The meeting will be held at RTCA, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036.

The purpose of SC-189 is to develop a FANS System Requirements and Objectives (SR&O) document. The committee will consider the experience gained through the application of initial ARINC 622-based data communications as described in the Boeing 747-400 FANS 1 Air Traffic Services (ATS) SR&O, the Aerospatiale/Airbus FANS A SR&O, the ICAO Informal South Pacific ATS Coordinating Group FANS 1/A Operational Manual, and other documentation that describes the safety objectives and interoperability requirements for related ground systems.

SC-189 will develop guidance material that should consist of at least two separate documents: (1) Interoperability requirements for ARINC 622-based data communications that provide initial ATS in oceanic and remote airspace and (2) assessment methodology and safety objectives for applying ARINC 622-based data communications to provide initial ATS in oceanic and remote airspace.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Terms of Reference Review/ Approval; (4) Presentations; (5) Other Business; (6) Establish Agenda for Next Meeting; (14) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman,

<sup>3</sup> 17 CFR 200.30-3(a)(12).

members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833-9339 (phone) or (202) 833-9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 20, 1996.

Janice L. Peters,

*Designated Official.*

[FR Doc. 96-21854 Filed 8-26-96; 8:45 am]

BILLING CODE 4810-13-M

### Maritime Administration

[Docket No. M-023]

#### Information Collection Available for Public Comments and Recommendations

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

**DATES:** Comments should be submitted on or before October 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jean E. McKeever, Chief, Division of Capital

Assets Management, Office of Ship Financing, Maritime Administration, MAR-530, Room 8126, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-5744 or fax 202-366-7901. Copies of this collection can also be obtained from that office.

#### SUPPLEMENTARY INFORMATION:

*Title of Collection:* Application for Construction Reserve Fund and Annual Statements.

*Type of Request:* Extension of currently approved information collection.

*OMB Control Number:* 2133-0032.

*Form Number:* None.

*Expiration Date of Approval:* October 31, 1996.

*Summary of Collection of Information:* The collection consists of an application required from all citizens who own or operate vessels in the U.S. foreign or domestic commerce and desire "tax" benefits under the Construction Reserve Fund (CRF) program. The annual statements set forth a detailed analysis of the status of the CRF when each income tax return is filed. Checks for withdrawals from the CRF must be sent to MARAD for countersignature and return for effecting the withdrawal.

*Need and Use of the Information:* The application is required in order for MARAD to determine whether the applicant qualifies for the benefits and

for the applicant to obtain benefits under the CRF program. The annual statements are required from each respondent in order for MARAD to assure that the requirements of the program are being satisfied.

*Description of Respondents:* U.S. citizens who own or operate one or more vessels in the foreign or domestic commerce of the United States and wish to receive benefits under the CRF program.

*Annual Responses:* 6.

*Annual Burden:* 54 hours.

*Comments:* Send all comments regarding this information collection to Joel C. Richard, Department of Transportation, Maritime Administration, MAR-120, Room 7210, 400 Seventh Street, SW., Washington, DC 20590. Send comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

By Order of the Maritime Administrator.

Dated: August 21, 1996.

Joel C. Richard,

*Secretary.*

[FR Doc. 96-21820 Filed 8-26-96; 8:45 am]

BILLING CODE 4910-81-P

# Corrections

Federal Register

Vol. 61, No. 167

Tuesday, August 27, 1996

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

[FRL-5543-7]

RIN 2060-AE19

### I/M Program Requirement—On-Board Diagnostic Checks

#### *Correction*

In rule document 96-19409 beginning on page 40940 in the issue of Tuesday, August 6, 1996, make the following correction:

### **§51.372 [Corrected]**

On page 40946, in the first column, in §51.372(b)(3), in the last line, "August 6, 1996" should read "August 6, 1998".

BILLING CODE 1505-01-D

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

RIN 1018-AD41

### Migratory Bird Hunting; Proposal for Approval of Bismuth-Tin Shot as a Nontoxic

#### *Correction*

In proposed rule document 96-20726, beginning on page 42495 in the issue of Thursday, August 15, 1996, in the first column the effective date should read October 15, 1996.

BILLING CODE 1505-01-D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 95-AWA-6]

### Proposed Establishment of Myrtle Beach International Airport Class C Airspace Area, SC; and Revocation of the Myrtle Beach AFB Class D Airspace Area; South Carolina

#### *Correction*

In proposed rule document 96-21479 beginning on page 43320 in the issue of Thursday, August 22, 1996, make the following correction:

On page 43323, in the third column, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc 96-21479; Filed 8-21-96; 8:45 am]

BILLING CODE 1505-01-D

**Federal Register**

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Tuesday  
August 27, 1996

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**Part II**

**Department of  
Health and Human  
Services**

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**Administration for Children and Families**

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**Administration for Native Americans:  
Availability of Financial Assistance;  
Notice**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[Program Announcement No. 93612-971]

#### Administration for Native Americans: Availability of Financial Assistance

**AGENCY:** Administration for Native Americans (ANA), Administration for Children and Families, (ACF), HHS.

**ACTION:** Announcement of availability of competitive financial assistance for projects in competitive areas administered by the Administration for Native Americans for American Indians, Native Hawaiian, Alaska Natives and Native American Pacific Islanders.

**SUMMARY:** The Administration for Native Americans (ANA) announces the anticipated availability of fiscal year 1997 funds in four competitive areas:

- (1) Governance and social and economic development;
- (2) Governance and social and economic development for Alaska Native entities;
- (3) Environmental regulatory enhancement; and
- (4) Native American languages preservation and enhancement.

Financial assistance provided by ANA in support of projects in these four areas is intended to promote the goal of self-sufficiency for Native Americans.

**APPLICATION KIT:** Application kits, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201-0001, Attention: 93612-971, Telephone: (202) 690-7776.

#### SUPPLEMENTARY INFORMATION:

##### Introduction and Purpose

The purpose of this program announcement is to announce the anticipated availability of fiscal year 1997 funds, authorized under the Native American Programs Act (Act), as amended, to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders in four competitive areas.

In order to streamline the application process for eligible applicants under four competitive areas, ANA is issuing

a single program announcement for fiscal year 1997 funds. Therefore, information regarding ANA's mission, policy, goals, application requirements, review criteria and closing dates for each competitive area is included in this comprehensive announcement.

The Administration for Native Americans promotes the goal of self-sufficiency in Native American communities primarily through Social and Economic Development Strategies (SEDS) projects. The Native American Programs Act also authorizes ANA to establish two additional programs for (1) environmental regulatory enhancement, and (2) Native American languages preservation and enhancement.

Funding authorization is provided under sections [803(a), 803(d) and 803C of the Native American Programs Act of 1974, as amended (Public Law 93-644, 88 Stat. 2324, 42 U.S.C. 2991b).]

The Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101-408) authorizes financial assistance for projects to address environmental regulatory concerns (Section 803(d) of the Native American Programs Act of 1974, as amended).

The Native American Languages Act of 1992 (Public Law 102-524) authorizes financial assistance for projects to promote the survival and continuing vitality of Native American languages (Section 803C of the Native American Programs Act of 1974, as amended).

This program announcement is being issued in anticipation of the appropriation of funds for fiscal year 1997 and the availability of funds for the four competitive areas is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented under each competitive area in this announcement.

Eligible applicants may compete for and receive a grant award in each of the three competitive areas (An Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the same closing date.) However, ANA continues its policy that an applicant may only submit one application per competitive area.

This program announcement consists of three parts.

##### Part I—ANA Policy and Goals

Provides general information about ANA's policies and goals for the four competitive areas.

##### Part II—ANA Competitive Areas

Describes the four competitive areas under which ANA is requesting applications:

- Governance, Social and Economic Development (SEDS);

- Governance, Social and Economic Development (SEDS) for Alaska Native entities;

- Environmental Regulatory Enhancement; and
- Native American Languages Preservation and Enhancement.

Each competitive area includes the following sections which provide area-specific information to be used to develop an application for ANA funds:

- A—Purpose and Availability of Funds;
- B—Background;
- C—Proposed Projects to be Funded;
- D—Eligible Applicants;
- E—Grantee Share of the Project;
- F—Review Criteria;
- G—Application Due Date(s); and
- H—Contacts to Obtain Further Information

##### Part III—General Application Information and Guidance

Provides important information and guidance that applies to all four competitive areas and that must be taken into account in developing an application for any of the four areas.

##### Part I—ANA Policy and Goals

The mission of the Administration for Native Americans (ANA) is to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and other Native American Pacific Islanders.

The Administration for Native Americans believes that a Native American community is self-sufficient when it can generate and control the resources necessary to meet its social and economic goals, and the needs of its members.

The Administration for Native Americans also believes that the responsibility for achieving self-sufficiency resides with the governing bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. A community's progress toward self-sufficiency is based on its efforts to plan, organize, and direct resources in a comprehensive manner which is consistent with its established long-range goals.

The Administration for Native Americans' policy is based on three interrelated goals:

1. *Governance:* To assist tribal and Alaska Native village governments, Native American institutions, and local leadership to exercise local control and decision-making over their resources.
2. *Economic Development:* To foster the development of stable, diversified local economies and economic activities which will provide jobs and promote economic well-being.
3. *Social Development:* To support local access to, control of, and coordination of services and programs which safeguard the health, well-being and culture of people, provide support

services and training so people can work, and which are essential to a thriving and self-sufficient community.

The Administration for Native Americans assists eligible applicants for the four competitive areas to undertake one to three year development projects that are part of long-range comprehensive plans to move toward governance, social, and/or economic self-sufficiency.

For each type of project, applicants must describe a concrete locally-determined strategy to carry out a proposed project with fundable objectives and activities.

Local long-range planning must consider the maximum use of all available resources, how the resources will be directed to development opportunities, and present a strategy for overcoming the local issues that hinder movement toward self-sufficiency in the community.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community.

An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

Note: If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

## Part II—ANA Competitive Areas

The four competitive areas under this Part describe ANA's funding authorities, priorities, special initiatives, requirements, and review criteria. However, most of the requirements are standard for all applications to be submitted under this program announcement. The standard requirements necessary for each application, as well as standard ANA program guidance and technical

guidance are described in Part III of this announcement.

An applicant may submit a separate application under any of the competitive areas described in this Part, as long as the applicant meets the eligibility requirements that are listed separately under each area. Applications for SEDS grants from Alaska Native entities may be submitted under either Competitive Area 1 or Competitive Area 2. An Alaska Native entity may not submit an application under both Competitive Areas 1 and 2 for the same closing date.

### *ANA Competitive Area 1. Social and Economic Development Strategies (SEDS) Projects*

#### A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1997 financial assistance to promote the goal of social and economic self-sufficiency for American Indians, Alaska Natives, Native Hawaiians, and Native American Pacific Islanders through locally developed social and economic development strategies (SEDS).

Approximately \$14 million of financial assistance is anticipated to be available under this priority area for governance, social and economic development projects. In fiscal year 1997, ANA anticipates awarding approximately 120 competitive grants ranging from \$30,000 to \$1,000,000 under this competitive area.

#### B. Background

To achieve its goals, ANA supports tribal and village governments, and Native American organizations, in their efforts to develop and implement community-based, long-term governance, social and economic development strategies (SEDS). These strategies must promote the goal of self-sufficiency in local communities.

The SEDS approach is based on ANA's program goals and incorporates two fundamental principles:

1. The local community and its leadership are responsible for determining goals, setting priorities, and planning and implementing programs aimed at achieving those goals. The local community is in the best position to apply its own cultural, political, and socio-economic values to its long-term strategies and programs.

2. Governance and social and economic development are interrelated. In order to move toward self-sufficiency, development in one area should be balanced with development in the others. Consequently, comprehensive

development strategies should address all aspects of the governmental, economic, and social infrastructures needed to promote self-sufficient communities.

ANA's SEDS policy is based on the use of the following definitions:

- "Governmental infrastructure" includes the constitutional, legal, and administrative development requisite for independent governance.
- "Economic infrastructure" includes the physical, commercial, industrial and/or agricultural components necessary for a functioning local economy which supports the life-style embraced by the Native American community.
- "Social infrastructure" includes those components through which health, economic well-being and culture are maintained within the community and that support governance and economic goals.

These definitions should be kept in mind as a local social and economic development strategy is developed as part of a grant application.

A community's movement toward self-sufficiency could be jeopardized if a careful balance between governmental, economic and social development is not maintained. For example, expansion of social services, without providing opportunities for employment and economic development, could lead to dependency on social services.

Conversely, inadequate support services and training could seriously impede productivity and local economic development. Additionally, the necessary infrastructures must be developed or expanded at the community level to support social and economic development and growth. In designing their social and economic development strategies, ANA encourages an applicant to use or leverage all available human, natural, financial, and physical resources.

In discussing their community-based, long-range goals, and the objectives for the proposed projects, ANA recommends that non-Federally recognized and off-reservation groups include a description of what constitutes their specific community.

ANA encourages the development and maintenance of comprehensive strategic plans which are an integral part of attaining and supporting the balance necessary for successful activities that lead to self-sufficiency.

#### C. Proposed Projects to be Funded

This section provides descriptions of activities which are consistent with the SEDS philosophy. Proposed activities should be tailored to reflect the

governance, social and economic development needs of the local community and should be consistent and supportive of the proposed project objectives.

The types of projects which ANA may fund include, but are not limited to, the following:

#### *Governance*

- Improvements in the governmental, judicial and/or administrative infrastructures of tribal and village governments (such as strengthening or streamlining management procedures or the development of tribal court systems);

- Increasing the ability of tribes, villages, and Native American groups and organizations to plan, develop, and administer a comprehensive program to support community social and economic self-sufficiency (including strategic planning);

- Increasing awareness of and exercising the legal rights and benefits to which Native Americans are entitled, either by virtue of treaties, the Federal trust relationship, legislative authority, executive orders, administrative and court decisions, or as citizens of a particular state, territory, or of the United States.

- Status clarification activities for Native groups seeking Federal or State tribal recognition, such as performing research or any other function necessary to submit a petition for Federal acknowledgement or in response to any obvious deficiencies cited by the Bureau of Acknowledgement and Research (BAR), Department of the Interior, in a petition from a Native group seeking Federal recognition; and

- Development of and/or amendments to tribal constitutions, court procedures and functions, by-laws or codes, and council or executive branch duties and functions.

#### *Economic Development*

- Development of a community economic infrastructure that will result in businesses, jobs, and an economic support structure.

- Establishment or expansion of businesses and jobs in areas such as tourism, specialty agriculture, light and/or heavy manufacturing, construction, housing and fisheries or aquaculture;

- Stabilizing and diversifying a Native community's economic base through business development ventures;

- Creation of microenterprises or private sector development;

- Establishment or expansion of businesses and jobs that utilize Indian tax incentives passed in the Omnibus Budget Reconciliation Act of 1993; and

#### *Social Development*

- Enhancing tribal capabilities to design or administer programs aimed at strengthening the social environment desired by the local community;

- Developing local and intertribal models related to comprehensive planning and delivery of services;

- Developing programs or activities to preserve and enhance tribal heritage and culture; and

- Establishing programs which involve extended families or tribal societies in activities that strengthen cultural identity and promote community development or self-esteem.

#### D. Eligible Applicants

Current ANA SEDS grantees whose project period terminates in fiscal year 1997 (October 1, 1996–September 30, 1997) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the "Financial Assistance Award" document).

Additionally, provided they are not current ANA SEDS grantees, the following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-federally recognized Tribes;

- Incorporated nonprofit multi-purpose community-based Indian organizations;

- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;

- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;

- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;

- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;

- Nonprofit Native organizations in Alaska with village specific projects;

- Public and nonprofit private agencies serving Native Hawaiians;

- Public and nonprofit private agencies serving native peoples from Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and

- Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau,

or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Note: Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

#### E. Grantee Share of the Project

Grantees must provide at least 20 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 \$300,000 in Federal funds must include a match of at least \$75,000 (20% total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of the Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of the Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Note: Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under Section 501(d) of Public Law 95-134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under \$200,000 (including in-kind contributions).

#### F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and program goals (described in the Background section of this competitive area), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

##### (1) *Long-Range Goals and Available Resources.* (15 points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;

- The relationship between the long-range goals and the applicant's comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and
- A clearly delineated social and economic development strategy (SEDS).

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community you serve will determine the type of documentation necessary.

For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should define their membership and describe how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.
- "Letters and other documents of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of \$200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be

human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.)

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under \$200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

##### (2) *Organizational Capabilities and Qualifications.* (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

##### (3) *Project Objectives, Approach and Activities.* (45 points)

The application proposes specific project Objective Work Plans with activities related to each specific objective.

The Objective Work Plan(s) in the application includes project objectives and activities for each budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;

- Can be accomplished with the available or expected resources during the proposed project period;

- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or Benefits Expected.* (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

Note: (Applicants from the Native American Pacific Islands are exempt from the \$200,000 non-Federal share requirement).

G. *Application Due Date*

The closing dates for submission of applications under this competitive area are: October 25, 1996, February 14, 1997, and May 23, 1997.

H. *For Further Information Contact*

Sharon McCully (202) 690-5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, S.W., Room 348-F, Washington, D.C. 20201-0001

### *Competitive Area 2. Alaska-Specific Social and Economic Development Strategies (SEDS) Projects*

#### A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1997 funds for Alaska Native social and economic development projects. Approximately \$1.5 million of financial assistance is anticipated to be available under this competitive area for Alaska Native governance, social and economic development projects.

ANA plans to award approximately 15-18 grants under this competitive area. For individual village projects, the funding level for a budget period of 12 months will be up to \$100,000; for regional nonprofit and village consortia, the funding level for a budget period of 12 months will be up to \$150,000, commensurate with approved multi-village objectives.

#### B. Background

Based on the three ANA goals described in Part I, ANA implemented a special Alaska social and economic development initiative in fiscal year 1984. This special effort was designed to provide financial assistance at the village level or for village-specific projects aimed at improving a village's governance capabilities and for social and economic development.

This competitive area continues to implement this special initiative. ANA believes both the nonprofit and for-profit corporations in Alaska can play an important supportive role in assisting individual villages to develop and implement their own locally determined strategies which capitalize on opportunities afforded to Alaska Natives under the Alaska Native Claims Settlement Act (ANCSA), Public Law 92-203.

The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. However, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

#### C. Proposed Projects to be Funded

Examples of the types of projects that ANA may fund include, but are not limited to, projects that will:

##### *Governance*

- Initiate demonstration programs at the regional level to allow Native people to become involved in developing strategies to maintain and develop their economic subsistence base;

- Assist villages in developing land use capabilities and skills in the areas of land and natural resource management and protection, resource assessment and conducting environmental impact studies;

- Assist village consortia in the development of tribal constitutions, ordinances, codes and tribal court systems;
- Develop agreements between the State and villages that transfer programs jurisdictions, and /or control to Native entities;

- Strengthen village government control of land management, including land protection, through coordination of land use planning with village corporations and cities, if appropriate;

- Assist in status clarification activities;
- Initiate village level mergers between village councils, village corporations and others to coordinate programs and services which safeguard the health, well being and culture of a community and its people;

- Strengthen local governance capabilities through the development of village consortia and regional IRAs (Indian Reorganization Act councils organized under the Indian Reorganization Act, 25 U.S.C. 473a);

- Assist villages in preparing and coordinating plans for the development and/or improvement of water and sewer systems within the village boundaries;

- Assist villages in establishing initiatives through which youth may participate in the governance of the community and be trained to assume leadership roles in village governments; and

- Consider strategies and plans to protect against, monitor, and assist when catastrophic events occur, such as oil spills or earthquakes.

##### *Economic Development*

- Assist villages in developing businesses and industries which: 1) use local materials; 2) create jobs for Alaska Natives; 3) are capable of high productivity at a small scale of operation; and 4) complement traditional and necessary seasonal activities;

- Substantially increase and strengthen efforts to establish and improve the village and regional infrastructure and the capabilities to develop and manage resources in a highly competitive cash-economy system;

- Assist villages, or consortia of villages, in developing subsistence compatible industries that will retain local dollars in villages;

- Assist in the establishment or expansion of new native-owned businesses; and
- Assist villages in labor export; i.e., people leaving the local communities for seasonal work and returning to their communities.

#### *Social Development*

- Assist in developing training and education programs for local jobs in education, government, and health-related fields; and work with these agencies to encourage job replacement of non-Natives by trained Natives;
- Develop local models related to comprehensive planning and delivery of social services;
- Develop new service programs, initially established with ANA funds, which will be funded for continued operation (after the ANA grant terminates) by local communities or the private sector;
- Develop or coordinate with State-funded projects, activities designed to decrease the incidence of child abuse and neglect, fetal alcohol syndrome, and/or suicides;
- Assist in obtaining licenses to provide housing or related services from State or local governments; and
- Develop businesses to provide relief for caretakers needing respite from human service-related care work.

#### D. Eligible Applicants

Current ANA SEDS grantees in Alaska whose project period terminates in fiscal year 1997 (October 1, 1996–September 30, 1997) are eligible to apply for a grant award under this program announcement. (The Project Period is noted in Block 9 of the “Financial Assistance Award” document).

Additionally, provided they are not current ANA SEDS grantees, the following organizations are eligible to apply under this competitive area:

- Federally recognized Indian Tribes in Alaska;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects; and
- Nonprofit Native organizations in Alaska with village specific projects.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Although for-profit regional corporations established under ANCSA are not eligible applicants, individual villages and Indian communities are encouraged to use the for-profit corporations as subcontractors and to collaborate with them in joint-venture projects for promoting social and economic self-sufficiency. ANA encourages the for-profit corporations to assist the villages in developing applications and to participate as subcontractors in a project.

Note: Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

#### E. Grantee Share of the Project

Grantees must provide at least 20 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 \$100,000 in Federal funds must include a match of at least \$25,000 (20% total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as “the value of non-cash contributions provided by non-Federal third parties. Third party-in-kind contributions may be in the form of real property, equipment,

supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.”

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

#### F. Review Criteria

A proposed project should reflect the purposes of ANA's SEDS policy and goals (described in the Background section of this competitive area and in the Background section of Competitive Area 1), include a social and economic development strategy which reflects the needs and specific circumstances of the local community, and address the specific developmental steps that the tribe or Native American community is undertaking toward self-sufficiency.

The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *Long-Range Goals and Available Resources.* (15 points)

(a) The application describes the long-range goals and strategy, including:

- How specific social, governance and economic long-range community goals relate to the proposed project and strategy;
- How the community intends to achieve these goals;
- The relationship between the long-range goals and the applicant's

comprehensive community social and economic development plan. (Inclusion of the community's entire development plan is not necessary); and

- A clearly delineated social and economic development strategy (SEDS).

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community you serve will determine the type of documentation necessary.

For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

- "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.

- "Letters and other documents of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of \$200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal

resources. (Applicant statements that additional funding will be sought from other specific sources are *not* considered a binding commitment of outside resources.)

(2) *Organizational Capabilities and Qualifications.* (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is demonstrated. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) *Project Objectives, Approach and Activities.* (45 points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's social and economic development strategy;
- Clearly relates to the community's long-range goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and
- Supports a project that will be completed, self-sustaining, or financed

by other than ANA funds at the end of the project period.

(4) *Results or Benefits Expected.* (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

For business development projects, the proposal demonstrates that the expected return on the funds used to develop the project provides a reasonable operating income and return within a future specified time frame.

G. Application Due Date

The closing date for submission of applications under this competitive area is: May 23, 1997.

H. For Further Information Contact

Sharon McCully (202) 690-5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Avenue, SW., Room 348-F, Washington, DC 20201-0001

*Competitive Area 3. Indian Environmental Regulatory Enhancement Projects*

A. Purpose and Availability of Funds

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1997 funds for environmental regulatory enhancement projects. Approximately \$3 million of financial assistance is anticipated to be available under this announcement for environmental regulatory enhancement projects. ANA expects to award approximately 35 grants under this

competitive area. The funding level for a budget period of 12 months will be up to \$250,000.

#### B. Background

Despite an increasing environmental responsibility and growing awareness of environmental issues on Indian lands, there has been a lack of resources available to tribes to develop tribal environmental programs that are responsive to tribal needs. In many cases, this lack of resources has resulted in a delay in action on the part of the tribes.

Some of the critical issues identified by tribes before Congressional committees include:

- the need for assistance to train professional staff to monitor and enforce tribal environmental programs;
- the lack of adequate data for tribes to develop environmental statutes and establish environmental quality standards; and
- the lack of resources to conduct studies to identify sources of pollution and the ability to determine the impact on existing environmental quality.

As a result, Congress enacted the Indian Environmental Regulatory Enhancement Act of 1990 (Public Law 101-408) to strengthen tribal governments through building capacity within the tribes in order to identify, plan, develop, and implement environmental programs in a manner that is consistent with tribal culture. ANA is to support these activities on a government-to-government basis in a way that recognizes tribal sovereignty and is consistent with tribal culture.

The Administration for Native Americans believes that responsibility for achieving environmental regulatory enhancement rests with the governing bodies of Indian tribes, Alaska Native villages, and with the leadership of Native American groups.

"Environmental regulatory enhancement" includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental laboratories and other facilities, and associated regulatory activities to strengthen the tribal government's capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

Progress toward the goal of environmental regulatory enhancement would include the strengthening of tribal environmental laws, providing for the training and education of those employees responsible for ensuring

compliance with and enforcement of these laws, and the development of programs to conduct compliance and enforcement functions.

Other functions leading toward enhancing local regulatory capacity include, but are not limited to:

- Environmental assessments;
- Development and use of environmental laboratories; and
- Development of court systems for enforcement of tribal and Federal environmental laws.

Ultimate success in this program will be realized when the applicant's desired level of environmental quality is acquired and maintained.

#### C. Proposed Projects to be Funded

Financial assistance provided by ANA is available for developmental projects designed to assist tribes in advancing their capacity and capability to plan for and:

- Develop or enhance the tribal environmental regulatory infrastructure required to support a tribal environmental program, and to regulate and enforce environmental activities on Indian lands pursuant to Federal and Indian law;
- Develop regulations, ordinances and laws to protect the environment;
- Develop the technical and program capacity to carry out a comprehensive tribal environmental program and perform essential environmental program functions;
- Promote environmental training and education of tribal employees;
- Develop technical and program capability to meet tribal and Federal regulatory requirements;
- Develop technical and program capability to monitor compliance and enforcement of tribal environmental regulations, ordinances, and laws; and
- Ensure the tribal court system enforcement requirements are developed in concert with and support the tribe's comprehensive environmental program.

#### D. Eligible Applicants

The following organizations are eligible to apply under this competitive area:

- Federally recognized Indian tribes;
- Incorporated non-federally recognized Indian tribes;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Nonprofit Alaska Native Regional Corporations/Associations with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.

The following organizations are not eligible to apply:

- Urban Indian Centers;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Public and nonprofit private agencies serving: Native Hawaiians, peoples from Guam, American Samoa, Palau, or the Commonwealth of Northern Mariana Islands;
- Incorporated nonprofit Alaska Native multi-purpose community based organizations; and
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Note: Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe or Native American community. If a Tribe or Alaska native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

#### E. Grantee Share of the Project

Grantees must provide at least 20 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 requirement through cash contributions.

Therefore, a project requesting \$250,000 in Federal funds must include a match of at least \$62,500 (20% of total project cost).

As per 45 CFR Part 74.2, In-Kind contributions is defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition it may include other Federal funding sources where its legislation or regulations authorizes using specific types of funds for a match and provided the source relates to the ANA project, as follows:

- Indian Child Welfare funds, through the Department of Interior;
- Indian Self-Determination and Education Assistance funds, through the Department of Interior and the Department of Health and Human Services; and
- Community Development Block Grant funds, through the Department of Housing and Urban Development.

An itemized budget detailing the applicant's non-Federal share, and its source, must be included in an application.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

#### F. Review Criteria

A proposed project should reflect the environmental regulatory purposes stated and described in the Background section of this competitive area. The evaluation criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to this competitive area and these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

##### (1) Long-Range Goals and Available Resources. (15 points)

(a) The application describes the long-range goals and strategy, including:

- how specific environmental regulatory enhancement long-range goal(s) relate to the proposed project and strategy;
- how the community intends to achieve these goals;

- the applicant's specific environmental regulatory needs; and
- a clearly delineated strategy to improve the capability of the governing body of a tribe to regulate environmental quality through enhancing local capacity to perform necessary regulatory functions.

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community you serve will determine the type of documentation necessary.

For example, a tribal organization may submit resolutions supporting the project proposal from each of its member tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

(b) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, not merely letters of support.

• "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources.

• "Letters and other documents of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds.

For example, a letter from another Federal agency or foundation pledging a commitment of \$200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. (Applicant statements that additional funding will be sought from other specific sources are *not* considered a binding commitment of outside resources.)

##### (2) Organizational Capabilities and Qualifications. (15 points)

(a) The management and administrative structure of the applicant

is described and explained. Evidence of the applicant's ability to manage a project of the scope proposed is well documented. The application clearly shows the successful management of projects of similar scope by the organization, and/or by the individuals designated to manage or consult on the project. The tribe itself may not have experience to meet this requirement but the proposed staff and consultants should have the required qualifications and experience. The application should clearly describe any previous or current activities of the applicant organization or proposed staff and/or consultants in support of environmental regulatory enhancement.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes indicate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

##### (3) Project Objectives, Approach and Activities. (40 points)

The application proposes specific project objective work plans with activities related to each specific objective. The objective work plan(s) in the application includes project objectives and activities for *each* budget period proposed and demonstrates that each of the objectives and its activities:

- Is measurable and/or quantifiable in terms of results or outcomes;
- Supports the community's strategy for environmental regulatory enhancement;
- Clearly relates to the community's long-range environmental goals;
- Can be accomplished with the available or expected resources during the proposed project period;
- Indicates when the objective, and major activities under each objective, will be accomplished;
- Specifies who will conduct the activities under each objective; and

- Supports a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) *Results or Benefits Expected.* (20 points)

Completion of the proposed objectives will result in specific, measurable results. The application shows how the expected results will help the community meet its long-range environmental goals. The specific information provided in the narrative and objective work plans on expected results or benefits for each objective is the standard upon which its achievement can be evaluated at the end of each budget year.

(5) *Budget.* (10 points)

A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

G. *Application Due Date*

The closing date for submission of applications under this competitive area is March 7, 1997.

H. *For Further Information Contact*

Sharon McCully (202) 690-5780, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., S.W., Room 348-F, Washington, D.C. 20201-0001

*Competitive Area 4. Native American Languages Preservation and Enhancement Projects*

A. *Purpose and Availability of Funds*

The purpose of this competitive area is to announce the anticipated availability of fiscal year 1997 funds for projects which assist Native Americans to assure the survival and continuing vitality of their languages. Approximately \$1 million of financial assistance is anticipated to be available under this competitive area.

For Category I, Planning Grants, the funding level for a budget period of 12 months will be up to \$50,000. For Category II, Design and/or

Implementation Grants, the funding level for a budget period of 12 months will be up to \$125,000.

B. *Background*

The Congress has recognized that the history of past policies of the United States toward Indian and other Native American languages has resulted in a dramatic decrease in the number of Native American languages that have survived over the past five hundred years. Consequently, the Native American Languages Act was enacted in 1990 (Title I, Public Law 101-477) to address this decline.

This Act invested the United States government with the responsibility to work together with Native Americans to ensure the survival of cultures and languages unique to Native America. This law declares that it is the policy of the United States to "preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages." The Congress made a significant first step in passing this legislation in 1990, but it served only as a declaration of policy. No program initiatives were proposed, nor were funds authorized to begin a significant program to carry out this policy.

In 1992, Congressional testimony highlighted that of the several hundred Native American languages that once existed, only about 155 languages are still spoken or remembered today. However, only 20 are spoken by persons of all ages, 30 are spoken by adults of all ages, about 60 are spoken by middle-aged adults, and 45 are spoken only by the most elderly.

In response to this testimony, the Congress passed the Native American Languages Act of 1992 (Public Law 102-524) to assist Indian tribes, Alaska villages, and Native American groups to assure the survival and continuing vitality of their languages. Passage of this law is an important second step to support the survival and continuation of Native American languages. It provides a basic building block foundation upon which Tribal nations can rebuild economic strength and maintain rich cultural diversity.

The Federal government recognizes that substantial loss of Native American languages has occurred over the past several hundred years. The nature and magnitude of the status of Native American languages will become better defined as language assessments are made.

The Administration for Native Americans (ANA) believes that responsibility for achieving language(s) project results rests with the governing

bodies of Indian tribes, Alaska Native villages, and in the leadership of Native American groups. The local community and its leadership are responsible for determining its own goals, setting priorities, and planning and implementing programs which support the community's long-range language goals.

Preserving a language and ensuring its continuation is generally one of the first steps taken toward strengthening a group's identity. Therefore, projects proposed under this program announcement will contribute to the balanced development in a native community and can significantly contribute to its path toward self-sufficiency.

Under this competitive area eligible applicants will have the opportunity to develop their own language plans, increase their technical capabilities, and have access to financial and technical resources in order to assess, plan, develop and implement programs to address the survival and continuing vitality of their languages. ANA recognizes that potential applicants may have various levels of specialized knowledge and capabilities to address their specific language concerns. This competitive area is designed to take into account these special needs and circumstances.

"Language preservation" is the maintenance of a language so that it will not decline into non-use.

"Language vitality" is the active use of a language in a wide range of domains of human life.

"Language replication" is defined as the application of a language program model developed in one community to other linguistically similar communities.

"Language survival" is defined as the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

C. *Proposed Projects to be Funded*

There are two types of projects applicants may apply for:

- Category I—"Planning Grants"—for projects up to 12 months, the funding level will be up to \$50,000 or,
- Category II—"Design and/or Implementation Grants"—for projects up to 36 months, the funding level for a budget period of 12 months will be up to \$125,000.

*Category I—Planning Grants*

The purpose of a Planning Grant is to conduct an assessment and to develop the plan needed to describe the current status of the language(s) to be addressed

and to establish community long-range language goal(s) to ensure its survival.

Project activities may include, but are not limited to:

- To collect data, organize it, and determine and describe current language status through a "formal" method (e.g., work performed by a linguist, and/or a language survey conducted by community members) or an "informal" method (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members);
- To establish the community's long-range language goals; and
- To get the necessary training and technical assistance to administer the project and achieve the project goal(s).

#### *Category II—Design and/or Implementation Grants*

The purpose of providing an option for a Design and/or an Implementation Grant is:

*Option One:* So tribes or communities can design and/or implement a language program to achieve the community's long-range language goal(s); and

*Option Two:* To accommodate where the Tribe or community is in their long-term language(s) goals continuum.

Applicants under Category II must be able to document that:

- (a) Language information has been collected and analyzed, and that it is current (compiled within 36 months prior to the grant application);
- (b) The community has established long-range language goals; and
- (c) Community representatives are adequately trained so that the proposed project goals can be achieved.

Category II applications may include purchasing specialized equipment (including audio and video recording equipment, computers, and software) necessary to achieve the project objectives. The applicant must fully justify the need for this equipment and explain how it will be used to achieve the project objectives.

The types of projects and activities ANA can fund under Category II include, but are not limited to:

- Establishment and support of a community Native American language project to bring older and younger Native Americans together to facilitate and encourage the teaching of Native American languages skills from one generation to another;
- Establishment of a project to train Native Americans to teach Native American languages to others or to enable them to serve as interpreters or translators of such languages;
- Development, printing, and dissemination of materials to be used for

the teaching and enhancement of Native American languages;

- Establishment or support of a project to train Native Americans to produce or participate in television or radio programs to be broadcast in Native American languages; and
- Compilation, transcription, and analysis of oral testimony to record and preserve Native American languages.

#### *Policy*

It is ANA's policy that funds will not be awarded for projects addressing dead languages.

#### *Requirement*

The Institute of American Indian and Alaska Native Culture and Arts Development has been established by the Act, or an alternative repository as determined by the Commissioner, shall be the repository for copies of products from Native American languages grants funded under this program announcement. At the end of the project period, products or project models of Native American languages grants funded by this program announcement should be sent to the designated repository. Specific information about the repository is in the ANA application kit.

Federally recognized Indian Tribes are not required to comply with this requirement.

#### **D. Eligible Applicants**

The following organizations are eligible to apply for funding under this competitive area:

- Federally recognized Indian Tribes;
- Consortia of Indian Tribes;
- Incorporated non-Federally recognized Tribes;
- Incorporated nonprofit multi-purpose community-based Indian organizations;
- Urban Indian Centers;
- National or regional incorporated nonprofit Native American organizations with Native American community-specific objectives;
- Alaska Native villages as defined in the Alaska Native Claims Settlement Act (ANCSA) and/or nonprofit village consortia;
- Incorporated nonprofit Alaska Native multi-purpose community-based organizations;
- Nonprofit Alaska Native Regional Corporations/Associations in Alaska with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects;
- Public and nonprofit private agencies serving Native Hawaiians;
- Public and nonprofit private agencies serving native peoples from

Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands. (The populations served may be located on these islands or in the United States); and

- Tribally Controlled Community Colleges, Tribally Controlled Post-Secondary Vocational Institutions, and colleges and universities located in Hawaii, Guam, American Samoa, Palau, or the Commonwealth of the Northern Mariana Islands which serve Native American Pacific Islanders.

#### *Participating Organizations*

If a tribal organization, or other eligible applicant, decides that the objectives of its proposed Native American language project would be accomplished more effectively through a partnership arrangement with a tribal school, college, or university, the applicant shall identify such school, college, or university as a participating organization in its application. Under a partnership agreement, the applicant will be responsible for the fiscal, administrative and programmatic management of the grant.

Proof of an applicant's nonprofit status, such as an IRS determination of nonprofit status under IRS Code 501(c)(3), must be included in the application.

If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community to be served. An organization can conclusively establish that it meets this requirement through a signed statement or resolution stating that its duly elected or appointed board of directors are either Native Americans or Native Alaskans or a copy of the organizational charter or by-laws that clearly states that the organization has a board drawn from members of those groups.

Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe or Native American community. If a Tribe or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation.

In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that

specific competitive area for the duration of the approved grant period.

#### E. Grantee Share of the Project

Grantees must provide at least 20 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 \$125,000 in Federal funds must include a match of at least \$31,250 (20% total project cost).

As per 45 CFR part 74.2, In-Kind contributions is defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

In addition the non-Federal share may include certain funds distributed to a tribe, including interest, by the Federal government:

- Funds from the satisfaction of a claim made under Federal law;
- Funds collected and administered on behalf of such tribe or its constituent members; or
- Funds for general tribal administration or tribal development under a formula or subject to a tribal budgeting priority system, such as, but not limited to, funds involved in the settlement of land or other judgment claims, severance or other royalty payments, or payments under the Indian Self-Determination Act (25 U.S.C. 450f et seq.) or tribal budget priority system.

A complete itemized budget must also detail the applicant's non-Federal share, and its source.

If an applicant plans to charge indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

A request for a waiver of the non-Federal share requirement may be submitted in accordance with 45 CFR 1336.50(b)(3) of the Native American Program Regulations.

Applications submitted as a partnership arrangement with a school, college, or university, may use contributions from the "partner" organization(s) to meet the non-Federal share, as appropriate.

Applications originating from American Samoa, Guam, Palau, or the Commonwealth of the Northern Mariana Islands are covered under section 501(d)

of Public Law 95-134, as amended (48 U.S.C. 1469a) under which HHS waives any requirement for local matching funds under \$200,000 (including in-kind contributions).

#### F. Review Criteria

The proposed project should address the Native American languages purposes stated and described in the Background (Section B) of this competitive area.

Planning grant applications may not have all the information requested about their current language status, since obtaining this data may be part of the planning grant application being submitted.

The evaluation criteria below are closely inter-related. They are considered as a whole in judging the overall quality of an application.

Points are awarded only to applications which respond to this competitive area and to these criteria. Proposed projects will be reviewed on a competitive basis using the following evaluation criteria:

(1) *The Current Status of Native American Language(s) is Described and Description(s) of Existing Programs/Projects (if any) Which Support the Language(s) are Included.* (10 points)

(a) The application fully describes the current status of the Native American language(s) in the community. ("Current status" is defined as data compiled within the previous 36 months.) Applicants applying for Category I—Planning grants can meet their current language status by providing a detailed description of any circumstances or barriers which have prevented the collection of community language data.

The description of "current status" minimally includes the following information:

- (1) Number of speakers of the language(s);
- (2) Age of speakers;
- (3) Gender of speakers;
- (4) Level(s) of fluency;
- (5) Number of first language speakers (the Native language is the first language acquired);
- (6) Number of second language speakers (the Native language is the second language acquired);
- (7) Where the language is used (specific uses such as: home, court system, religious ceremonies, church, multimedia, school, governance activities and other, as appropriate to applicant);
- (8) Source of data; (formal and/or informal); and
- (9) Rate of language loss or gain.

The application has clearly described the current status of the Native

American language(s) to be addressed by the project.

Note: Planning Grant applicants may not have all the information requested about their current language status, since obtaining this data may be part of the planning grant application being reviewed. Applicants applying for Category I—Planning Grants can meet this requirement by explaining their current language status and providing a detailed description of any circumstances or barriers which have prevented the collection of community language data.

(b) The application fully describes existing community language or language training programs and projects, if any, that support the Native American language to be addressed by the proposed project.

Existing programs and projects may be "formal" (e.g., work performed by a linguist, and/or a language survey conducted by community members) or "informal" (e.g., a community consensus of the language status based on elders, tribal scholars, and/or other community members).

The description should answer the following:

- (1) Has applicant had a community language or language training program within the last 36 months?
- (2) Has applicant had a community language or language training program within the last 10 years?

Applicants that answer "no" to either question (1) or (2) should provide a detailed explanation of what barriers or circumstances prevented the establishment or implementation of a community language program.

Applicants that answer "yes" to either questions (1) or (2) should describe recent language program(s), including:

- (1) Program goal(s);
- (2) Number of program participants;
- (3) Number of speakers;
- (4) Age range of participants (e.g., 0-5; 6-10; 11-18, etc.);
- (5) Number of language teachers;
- (6) Criteria used to acknowledge competency of language teachers;
- (7) Resources available, if any, to the applicant (e.g., valid grammars, dictionaries, and/or orthographics or describe other suitable resources); and
- (8) What has been achieved.

(2) *Long-Range Goals and Available Resources.* (25 points)

(a) The application describes the proposed project's long-range goal(s) and strategy, including:

- how the specific Native American(s) long range community goal(s) relate to the proposed project;
- how the goals fit within the context of the applicant's current language status; and
- a clearly delineated strategy to assist in assuring the survival and

continued vitality of the Native American language(s) addressed in the community.

(b) The application explains how the community or tribal government (where one exists) intends to achieve these goals.

The application documents the type of involvement and support of the community in the planning process and implementation of the proposed project. A Tribe may meet this requirement by submitting a resolution stating that community involvement has occurred in the project planning. All other eligible applicants may meet this requirement by providing documentation of community support/involvement. The type of community served will determine the type of documentation necessary.

For example, a tribal organization may submit resolutions supporting the project proposal from each of its member's tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

Applications from National Indian and Native organizations must clearly demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project. National Indian and Native organizations should describe their membership and define how the organization operates.

(c) Available resources (other than ANA and the non-Federal share) which will assist and be coordinated with the project are described. These resources should be documented by letters or documents of commitment of resources, and not "letters of support."

- "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or documents that factually establish the authenticity of other resources.

- "Letters and other documents of commitment" are binding and specifically state the nature, amount and conditions under which another agency or organization will support a project funded with ANA funds. These resources may be human, natural or financial, and may include other Federal and non-Federal resources.

Applicant statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources.

If the applicant proposes to enter into a partnership arrangement with a school, college, or university, documentation of this commitment must be included in the application.

Note: Applicants from the Native American Pacific Islands are not required to provide a 20% match for the non-Federal share if it is under \$200,000 and may not have points reduced for this policy. They are, however, expected to coordinate non-ANA resources for the proposed project, as are all ANA applicants.

(3) *Project Objectives, Approach and Activities.* (25 points)

The proposed objectives in the Objective Work Plan(s) relate to the competitive area goal to ensure the survival and continuing vitality of Native American language(s). More specifically, together they will achieve the Tribe or community's language goals for the proposed project. If the project is for more than one year, the application includes Objective Work Plans for each year (budget period) proposed.

Each Objective Work Plan proposed clearly describes:

- The Tribal government's, or community's active involvement in the continuing participation of Native American language speakers;
- Measurable or quantifiable results or outcomes;
- How they relate to the community's long-range language goals;
- How the project can be accomplished with the available or expected resources during the project period;
- How the main activities will be accomplished;
- Who specifically will conduct the activities under each objective;
- For Category I projects, what the next steps may be after the Planning project is completed; and
- For Category II projects, how the project will be completed, become self-sustaining, or be financed by other than ANA funds at the end of the project period.

(4) *Evaluation Plan.* (15 points)

A section of the application includes an "Evaluation Plan" with a baseline to measure project outcomes, including, but not limited to, describing effective language growth in the community (e.g., an increase of Native American language use). This plan will be the basis for evaluating the community's progress in achieving its language goals and objectives.

(5) *Sharing Plan and Plan to Preserve Project Products* (10 points).

A section of the application includes two plans:

(a) A *Sharing Plan* that identifies how the project's methodology, research

data, outcomes or other products can be shared and used or modified, by other tribes or communities. If this is not feasible or culturally appropriate, provide the reasons. The goal is to provide opportunities to ensure the survival and continuing vitality of Native American languages.

(b) A *Plan to Preserve Project Products* describes how the products of the project will be preserved through archival or other culturally appropriate methods, for the benefit of future generations.

(6) *Organizational Capabilities/Qualifications and Budget.* (15 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of projects of similar scope by the organization and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes demonstrate that the proposed staff are qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications, and/or specialized skills, necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(c) A detailed and fully explained budget is provided for each budget period requested which:

- Justifies each line item, with a well-written justification, in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source;
- Includes and justifies sufficient cost and other necessary details to facilitate the determination of cost allowability and the relevance of these costs to the proposed project; and
- Requests funds which are appropriate and necessary for the scope of the proposed project.

Note: (Applicants from the Native American Pacific Islands are exempt from the \$200,000 non-Federal share requirement).

#### G. Application Due Date

The closing date for submission of applications under this competitive area is March 21, 1997.

#### H. For Further Information Contact

Deborah Yatsko, (202) 690-7843, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 200 Independence Ave., S.W., Room 348-F, Washington, D.C. 20201-0001.

### Part III—General Application Information and Guidance

#### A. Definitions

Funding areas in this program announcement are based on the following definitions:

- A “multi-purpose community-based Native American organization” is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.

- A “multi-year project” is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

- “Budget Period” is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

- “Core administration” is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

- “Environmental regulatory enhancement” includes (but is not limited to) the planning, development, and application of laws, training, monitoring, and enforcement procedures, tribal courts, environmental

laboratories and other facilities, and associated regulatory activities to strengthen the tribal government’s capacity to enhance the quality of reservation life as measured by the reduction of pollutants in the air, water, soil, food and materials encountered by inhabitants of tribes and villages.

- “Language preservation” is the maintenance of a language so that it will not decline into non-use.

- “Language vitality” is the active use of a language in a wide range of domains of human life.

- “Language replication” is the application of a language program model developed in one community to other linguistically similar communities.

- “Language survival” is the maintenance and continuation of language from one generation to another in a wide range of aspects of community life.

#### B. General Considerations

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

Costs of fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization’s indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization’s indirect costs.

All projects funded by ANA must be completed, or self-sustaining or supported with other than ANA funds at the end of the project period.

“Completed” means that the project ANA funded is finished, and the desired result(s) have been attained. “Self-sustaining” means that a project will continue without outside resources. “Supported by other than ANA funds” means that the project will continue beyond the ANA project period, but will

be supported by funds other than ANA’s.

#### C. Activities That Cannot be Funded by ANA

The Administration for Native Americans does not fund projects that operate indefinitely or require ANA funding on a recurring basis. The Administration for Native Americans does not fund objectives or activities for the core administration of an organization. “Core administration” is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project.

Under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered “core administration” and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part III, Section H, General Guidance to Applicants, below.

#### D. Multi-Year Projects

Applicants may apply for projects of up to three years. A multi-year project is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. Applicants are encouraged to develop multi-year projects. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.

Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for three years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the three-year project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that

continued funding would be in the best interest of the Government. Therefore, this program announcement does not apply to current ANA grantees with multi-year projects that apply for continuation funding for their second or third year budget periods.

#### E. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372 or 45 C.F.R. Part 100.

#### F. The Application Process

##### 1. Availability of Application Forms

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201-0001, Attention: 93612-971, Telephone: (202) 690-7776.

##### 2. Application Submission

One signed original, and two copies, of the grant application, including all attachments, must be mailed on or before the specific closing date of each ANA competitive area to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, S.W., Mail Stop 6C-462, Washington, D.C. 20447, Attention: William J. McCarron, ANA No. 93612-971.

Hand delivered applications are accepted 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 at:

Administration for Children and Families, Division of Discretionary Grants, Aerospace Center, ACF Mail Room, Second Floor Loading Dock, 901 D Street, S.W., Washington, D.C. 20024.

The application (Form 424) must be signed by an individual authorized (1) to act for the applicant tribe or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award, including Native American Program statutory and regulatory requirements.

Each tribe, Native American organization, or other eligible applicant may compete and receive a grant award in each of the three competitive areas under this announcement. The Administration for Native Americans

will accept only one application per competitive area from any one applicant. Alaska Native entities may submit a SEDS application under either competitive area 1 or 2, but not under both.

If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

##### 3. Application Consideration

The ANA Commissioner determines the final action to be taken on each grant application received under this program announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.

- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process (discussed in section G below). Independent review panels consisting of reviewers familiar with (1) American Indian Tribes and Native American communities and organizations, (2) environmental issues, and (3) Native American languages, as appropriate, evaluates each application using the published criteria in each funding competitive area. As a result of the review, a numerical score will be assigned to each application.

- The Commissioner's funding decision is based on the review panel's analysis of the application, recommendation and comments of ANA staff, State and Federal agencies having contract and grant performance related information, and other interested parties.

- The Commissioner makes grant awards consistent with the purpose of the Act, all relevant statutory and regulatory requirements, this program announcement, and the availability of funds.

- After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within approximately 120 days of the closing date. The notification will be accompanied by a critique including recommendations for improving the application. Successful applicants are notified through an official Financial Assistance Award (FAA) document. ANA staff cannot respond to requests for information regarding funding decisions prior to the official

notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-ACF matching share requirement.

#### G. The Review Process

##### 1. Initial Application Review

Applications submitted by the closing date and verified by the postmark under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement; and
- The application narrative, forms and materials submitted are adequate to allow the review panel to undertake an in depth evaluation. (All required materials and forms are listed in the Grant Application Checklist in the Application Kit).

##### 2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria listed in Part II. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

##### 3. Determination of Ineligibility

Applicants who are initially rejected from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the Federal Register on August 19, 1996 (61 FR 42817).

#### H. General Guidance to Applicants

The following information is provided to assist applicants in developing a competitive application.

##### 1. Program Guidance

- The Administration for Native Americans funds projects that demonstrate the strongest prospects for addressing the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.

- In discussing the goals, strategy, and problems being addressed in the application, include sufficient background and/or history of the community concerning these issues and/or progress to date, as well as the

size of the population to be served. This material will assist the reviewers in determining the appropriateness and potential benefits of the proposed project.

- In the discussion of community-based, long-range goals, non-Federally recognized and off-reservation groups are encouraged to include a description of what constitutes their specific "community."

- Applicants must document the community's support for the proposed project and explain the role of the community in the planning process and implementation of the proposed project. For tribes, a current signed resolution from the governing body of the tribe supporting the project proposal stating that there has been community involvement in the planning of this project will suffice as evidence of community support/involvement. For all other eligible applicants, the type of community you serve will determine the type of documentation necessary. For example, a tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

- Applications from National Indian and Native American organizations must demonstrate a need for the project, explain how the project was originated, state who the intended beneficiaries will be, and describe how the recipients will actually benefit from the project.

- An application should describe a clear relationship between the proposed project, the social and economic development strategy, or environmental or language goals, as appropriate, and the community's long-range goals or plan.

- The project application, including the Objective Work Plans, must clearly identify in measurable terms the expected results, benefits or outcomes of the proposed project, and the positive or continuing impact that the project will have on the community.

- Supporting documentation, including letters of support, if available, or other testimonies from concerned interests other than the applicant should be included to demonstrate support for the feasibility of the project and the commitment of other resources to the proposed project.

- In the ANA Project Narrative, Section A of the application package, "Resources Available to the Proposed Project," the applicant should describe

any specific financial circumstances which may impact on the project, such as any monetary or land settlements made to the applicant, and any restrictions on the use of those settlements. When the applicant appears to have other resources to support the proposed project and chooses not to use them, the applicant should explain why it is seeking ANA funds and not utilizing these resources for the project.

- Reviewers of applications for ANA indicate they are better able to evaluate whether the feasibility has been addressed and the practicality of a proposed economic development project, or a new business, if the applicant includes a business plan that clearly describes its feasibility and the approach for the implementation and marketing of the business. (ANA has included sample business plans in the application kit). It is strongly recommended that an applicant use these materials as guides in developing a proposal for an economic development project or business that is part of the application.

- Applications which were disapproved under a previous closing date and revised for resubmission should make reference to the changes in their current application which are based on ANA panel review comments.

#### Technical Guidance

- It is strongly suggested that the applicant follow the Supplemental Guide included in the ANA application kit to develop an application. The Guide provides practical information and helpful suggestions, and is an aid to help applicants prepare ANA applications.

- Applicants are encouraged to have someone other than the author apply the evaluation criteria in the program announcement and score the application prior to its submission, in order to gain a better sense of the application's quality and potential competitiveness in the ANA review process.

- For purposes of developing an application, applicants should plan for a project start date approximately 120 days after the closing date under which the application is submitted.

- The Administration for Native Americans will not fund essentially identical projects serving the same constituency.

- If a project could be supported by other Federal funding sources, the applicant should fully explain its reasons for not pursuing other Federal funds for the project.

- Applicants are strongly encouraged to submit proposals addressing

environmental regulatory enhancement and Native American languages preservation and enhancement under the issue-specific competitive areas described in this announcement.

- For purposes of this announcement, ANA is using the Bureau of Indian Affairs' list of Federally recognized Indian tribes which includes nonprofit Alaska Native community entities or tribal governing bodies (IRA or traditional councils). Other Federally recognized Indian tribes which are not included on this list (e.g., those Tribes which have been recently recognized or restored by the United States Congress) are also eligible to apply for ANA funds.

- The Administration for Native Americans will accept only one application, per competitive area, from any one applicant. If an eligible applicant sends in two applications for the same competitive area, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization. ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

- Under each competitive area, ANA will only accept one application which serves or impacts a reservation, Tribe, or Native American community. If a Tribe, or Alaska Native village chooses not to submit an application under a specific competitive area, it may support another applicant's project (e.g., a tribal organization) which serves or impacts the reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area for the duration of the approved grant period.

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents

be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.

- An application with an original signature and two additional copies are required.

- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

- The Approach page (Section B of the ANA Program Narrative) for each Objective Work Plan proposed should be of sufficient detail to become a monthly staff guide for project responsibilities if the applicant is funded.

- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application's contents propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as governing.

- Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

- If a profit-making venture is being proposed, profits must be reinvested in the business in order to decrease or eliminate ANA's future participation. Such revenue must be reported as general program income. A decision will be made at the time of grant award regarding appropriate use of program income. (See 45 CFR part 74 and part 92.)

- Applicants may propose a 17 month project period. However, the project period for the first year of a multi-year project may only be 12 months.

- Applicants proposing multi-year projects must fully describe each year's project objectives and activities. Separate Objective Work Plans (OWPs) must be presented for each project year and a separate itemized budget of the Federal and non-Federal costs of the project for each budget period must be included.

- Applicants for multi-year projects must justify the entire time-frame of the project (i.e., why the project needs funding for more than one year) and clearly describe the results to be achieved for each objective by the end of each budget period of the total project period.

- The Administration for Native Americans will critically evaluate applications in which the acquisition of equipment is a major component of the Federal share of the budget. "Equipment is tangible, non-expendable personal property having a useful life of more

than one year and an acquisition cost of \$5,000 or more per unit." During negotiation, such expenditures may be deleted from the budget of an otherwise approved application, if not fully justified by the applicant and not deemed appropriate to the needs of the project by ANA.

- Applicants are encouraged to request a legibly dated receipt from a commercial carrier or U.S. Postal Service as proof of timely mailing.

### 3. Projects or Activities That Generally Will Not Meet the Purposes of This Announcement

- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable. In addition, T/TA is an allowable activity for environmental regulatory enhancement projects submitted under Competitive Area 3, and Native American languages projects submitted under Competitive Area 4.

- Projects that request funds for feasibility studies, business plans, marketing plans or written materials, such as manuals, that are not an essential part of the applicant's long-range development plan. As an objective of a larger project, business plans are allowable. However, ANA is not interested in funding "wish lists" of business possibilities. ANA expects written evidence of the solid investment of time and consideration on the part of the applicant with regard to the development of business plans. Business plans should be developed based on market analysis and feasibility studies regarding the potential success to the business prior to the submission of the application.

- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.

- Core administration functions, or other activities, which essentially support only the applicant's on-going administrative functions. However, under Competitive Area 2, ANA will consider funding core administrative capacity building projects at the village government level if the village does not have governing systems in place.

- Project goals which are not responsive to one or more of the funding competitive areas.

- Proposals from consortia of tribes that are not specific with regard to support from, and roles of, member tribes. ANA expects an application from a consortium to have goals and objectives that will create positive impacts and outcomes in the communities of its members. Proposals from consortia of tribes should have individual objectives which are related to the larger goal of the proposed project. Project objectives may be tailored to each consortia member, but within the context of a common goal for the consortia. In situations where both a consortia of tribes and the tribes who belong to the consortia receive ANA funding, ANA expects that consortia groups will not seek funding that duplicates activities being conducted by their member tribes.

- Projects that will not be completed, self-sustaining, or supported by other than ANA funds, at the end of the project period.

- ANA will not fund the purchase of real estate (see 45 CFR 1336.50 (e)) or construction (see ACF Grants Administration Manual § 3.12).

- ANA will not fund investment capital for purchase or takeover of an existing business, for purchase or acquisition of a franchise, or for purchase of stock or other similar investment instruments.

- Renovation or alteration unless it is essential for the project. Renovation or alteration costs may not exceed the lesser of \$150,000 or 25 percent of the total direct costs approved for the entire budget period.

- Projects originated and designed by consultants who provide a major role for themselves in the proposed project and are not members of the applicant organization, tribe or village.

### I. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104-13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

### J. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section F, The Application Process: Application Submission. The Administration for Native Americans will not accept applications submitted

via facsimile (FAX) equipment. Videotapes and cassette tapes may not be included as part of a grant application for panel review.

#### 1. Deadlines

Applications mailed through the U.S. Postal Service or a commercial delivery service shall be considered as meeting an announced closing date if they are either:

- Received on or before the deadline date at the address specified in Section F2, Application Submission; or
- Sent on, or before, the deadline date and received in time for the ANA independent review. (Applicants are cautioned to request a legibly dated receipt from a commercial carrier or U.S. Postal Service or a legible postmark

date from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

- No additional material will be accepted, or added to an application, unless it is postmarked by the deadline date.

#### 2. Late applications

Applications which do not meet the criteria in the above paragraph of this section are considered late applications and will be returned to the applicant. The Administration for Children and Families shall notify each late applicant that its application will not be considered in the current competition.

#### 3. Extension of Deadlines

The Administration for Children and Families may extend the deadline for all

applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if ACF does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

(Catalog of Federal Domestic Assistance Program Numbers: 93.612 Native American Programs; 93.581 Improving the Capability of Indian Tribal Governments to Regulate Environmental Quality; and 93.587 Promoting the Survival and Continuing Vitality of Native American Languages.)

Dated: August 21, 1996.

Gary N. Kimble,

*Commissioner, Administration for Native Americans.*

[FR Doc. 96-21712 Filed 8-26-96; 8:45 am]

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# Federal Register

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Tuesday  
August 27, 1996

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**Part III**

## **The President**

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**Proclamation 6913—Minority Enterprise  
Development Week, 1996**



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**Presidential Documents**

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Title 3—

Proclamation 6913 of August 23, 1996

The President

Minority Enterprise Development Week, 1996

By the President of the United States of America

## A Proclamation

As our Nation continues to surge forward in the competitive arena of international business, minority entrepreneurs are playing an increasingly important role. In the new global economy, minority-owned businesses represent a unique advantage for the United States; the diversity of our national business community is one of its main strengths. Behind this success lies the daily work of thousands of minority business men and women who are continuing to renew the validity of the American Dream. Moreover, they are showing that the Dream is strongest when all can participate.

These Americans have stepped forward to accept several challenges: the challenge of opening economic participation to all citizens; the challenge of overcoming the under-representation of minorities in business ownership and management; and the challenge of creating jobs in the communities where they are needed most. These minority entrepreneurs entered the marketplace with no guarantees of success, and their achievements have helped level the playing field for others who wish to follow in their footsteps.

Minority business leaders contribute to our country's cultural and social heritage as well as to its economic health. As business pioneers, they are valuable role models to our youth, living heroes whose hard work and self-empowerment are strong examples for others to follow. These are the people whose work we celebrate during this 14th annual observance of Minority Enterprise Development Week. This year's observance is particularly poignant. It comes just months after our Nation lost Commerce Secretary Ron Brown and a group of talented and dedicated Federal employees and American business people in a tragic plane crash during a trade mission to open commercial opportunities for American businesses in Bosnia.

Ron Brown worked hard to include minority business interests in our Nation's business and economic development policies, and as we carry forward his legacy, it is our responsibility to ensure that all Americans can see business ownership as more than just a dream. Our future as a world economic power rests on the notion that business ownership can be attained by anyone willing to work toward that goal. Minority Enterprise Development Week is a time to spotlight the minority men and women who provide the goods, services, and jobs that keep this Nation strong. These Americans support their communities and inspire future generations. They are confident and competent people whose commercial accomplishments show them to be equal to any fair competition, whether here or abroad.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 22 through September 28, 1996, as Minority Enterprise Development Week. I call on all citizens to commemorate this week with appropriate ceremonies and activities, joining together to recognize the contributions that minority entrepreneurs make to our Nation's economy.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-third day of August, 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 twenty-first.

*William Clinton*

[FR Doc. 96-22061

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**REMINDERS**

The items 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****Commodity Credit Corporation**

Conservation and environmental programs:

Conservation Reserve Programs (1986-1990 and 1991-2002); published 8-27-96

**AGRICULTURE DEPARTMENT****Farm Service Agency**

Agricultural conservation programs:

Conservation reserve programs (1986-1990 and 1991-2002); published 8-27-96

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Alaska; published 6-28-96  
California; published 8-27-96  
Kentucky; published 6-28-96

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

HUD-owned properties:

Sale of HUD-held single family mortgages; published 8-27-96

**INTERIOR DEPARTMENT****Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Wyoming; published 8-27-96

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives:

Boeing; published 8-12-96

**TREASURY DEPARTMENT****Customs Service**

Merchandise, special classes: New nonroad spark-ignition engines at or below 19 kilowatts; published 8-27-96

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Kiwifruit grown in California; comments due by 9-4-96; published 8-5-96

Marketing orders; expenses and assessment rates; comments due by 9-6-96; published 8-7-96

Olives grown in California and imported; comments due by 9-4-96; published 8-5-96

**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Animal welfare:

Humane treatment of dogs and cats--

Tethering and temperature requirements; comments due by 9-3-96; published 7-2-96

Wire flooring; comments due by 9-3-96; published 7-2-96

Plant-related quarantine, domestic:

Karnal bunt disease--

Arizona et al.; comments due by 9-3-96; published 7-15-96

Public forum; comments due by 9-3-96; published 7-15-96

Seed planting and regulated articles movement; comments due by 9-3-96; published 8-2-96

Seed planting and regulated articles movement; comments due by 9-3-96; published 8-19-96

Plant-related quarantine, foreign:

Camellia, gardenia, rhododendron, rose, and lilac; imported cut flowers; comments due by 9-3-96; published 8-2-96

Fruits and vegetables; importation; comments due by 9-3-96; published 8-16-96

**AGRICULTURE DEPARTMENT****Food and Consumer Service**

Child nutrition programs:

National school lunch, school breakfast, child and adult care food, and summer food service programs--

Meat alternates; comments due by 9-3-96; published 8-15-96

**AGRICULTURE DEPARTMENT****Rural Utilities Service**

Electric loans:

Electric borrowers; merger and consolidation policies; comments due by 9-6-96; published 8-7-96

**COMMERCE DEPARTMENT**

Patents:

Acquisition and protection of foreign rights in inventions, licensing of foreign patents acquired by Government, etc.

Federal regulatory reform; comments due by 9-6-96; published 8-7-96

**COMMERCE DEPARTMENT****National Oceanic and Atmospheric Administration**

Fishery conservation and management:

Bering Sea and Aleutian Islands groundfish; comments due by 9-5-96; published 8-27-96

Summer flounder and scup; comments due by 9-3-96; published 8-6-96

**COMMERCE DEPARTMENT****Patent and Trademark Office**

Patents:

Acquisition and protection of foreign rights in inventions, licensing of foreign patents acquired by Government, etc.

Federal regulatory reform; comments due by 9-6-96; published 8-7-96

**ENERGY DEPARTMENT**

Conflict of interests; comments due by 9-3-96; published 7-5-96

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Michigan; comments due by 9-4-96; published 8-5-96

Missouri; comments due by 9-4-96; published 8-5-96

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Michigan; comments due by 9-4-96; published 8-5-96

Hazardous waste program authorizations:

Illinois; comments due by 9-4-96; published 8-5-96

Superfund program:

National oil and hazardous substances contingency plan--

National priorities list update; comments due by 9-3-96; published 8-2-96

Toxic chemical release reporting; community right-to-know--

Metal mining, coal mining, etc.; industry group list additions; comments due by 9-4-96; published 8-21-96

Water pollution; effluent guidelines for point source categories:

Leather tanning and finishing; comments due by 9-6-96; published 7-8-96

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:

Satellite communications--  
Licensing procedures; comments due by 9-3-96; published 8-6-96

Telecommunications Act of 1996; implementation--

Telemessaging, electronic publishing, and alarm monitoring services; comments due by 9-4-96; published 7-29-96

Radio stations; table of assignments:

Mississippi; comments due by 9-3-96; published 8-15-96

Virginia; comments due by 9-3-96; published 8-23-96

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Assessments:

Oakar institutions; interpretive rules; comments due by 9-3-96; published 7-3-96

Contractors suspension and exclusion and contracts termination; comments due by 9-3-96; published 7-5-96

**FEDERAL ELECTION COMMISSION**

Rulemaking petitions:

Democratic Senatorial Campaign Committee et al.; comments due by 9-6-96; published 8-7-96

**FEDERAL HOUSING FINANCE BOARD**

Federal home loan bank system:

Advances; terms and conditions; comments due by 9-3-96; published 8-2-96

**FEDERAL RESERVE SYSTEM**

Electronic fund transfers (Regulation E):  
Home banking services disclosure; new accounts error resolution, and store-value cards, etc.; comments due by 9-6-96; published 7-17-96

**GENERAL SERVICES ADMINISTRATION**

Federal Information Resources Management Regulation:  
Federal information processing multiple award schedule contracts; provisions removed; comments due by 9-6-96; published 7-8-96

**HEALTH AND HUMAN SERVICES DEPARTMENT****Food and Drug Administration**

Administrative practice and procedure:  
Miscellaneous amendments; Federal regulatory review; comments due by 9-3-96; published 6-4-96

Animal drugs, feeds, and related products:  
Carcinogenicity testing of compounds used in food-producing animals; comments due by 9-3-96; published 6-20-96

**HEALTH AND HUMAN SERVICES DEPARTMENT****Health Care Financing Administration**

Medicare:  
Physician fee schedule (1997 CY); payment policies; revisions; comments due by 9-3-96; published 7-2-96

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Lead-based paint hazards in federally owned residential property and housing receiving Federal assistance; notification, evaluation, and reduction; comments due by 9-5-96; published 6-7-96

Mortgage and loan insurance program:  
Single family mortgage insurance; loss mitigation procedures; comments

due by 9-3-96; published 7-3-96

**INTERIOR DEPARTMENT Indian Affairs Bureau**

Education:  
Special education; Federal regulatory review; comments due by 9-3-96; published 7-2-96

Land and water:  
Irrigation projects and systems; comments due by 9-3-96; published 7-5-96  
Patents in fee, certificates of competency, restrictions removal, and Indian lands sale; issuance; comments due by 9-3-96; published 7-2-96

Law and order:  
Indian country law enforcement; comments due by 9-3-96; published 7-5-96

**INTERIOR DEPARTMENT Land Management Bureau**

Minerals management:  
Mineral materials disposal; bonding and certificates of deposit requirements; comments due by 9-3-96; published 8-2-96

**INTERIOR DEPARTMENT Fish and Wildlife Service**

Migratory bird hunting:  
Annual hunting regulations; and late season migratory bird hunting; comments due by 9-3-96; published 8-15-96

**INTERIOR DEPARTMENT National Park Service**

Special regulations:  
Voyageurs National Park, MN; aircraft operations; designation of areas; comments due by 9-5-96; published 5-8-96

**INTERIOR DEPARTMENT Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:  
Oklahoma; comments due by 9-3-96; published 8-2-96

**JUSTICE DEPARTMENT Immigration and Naturalization Service**

Immigration:

Visa waiver pilot program-- Argentina; comments due by 9-6-96; published 7-8-96

Nationality:  
Citizenship acquisition; equal treatment of women in conferring citizenship on children born abroad; comments due by 9-3-96; published 7-5-96

**LABOR DEPARTMENT**

Wage rates predetermination procedures; and construction and nonconstruction contracts; labor standards provisions:

Davis-Bacon helper regulations suspension continuation; comments due by 9-3-96; published 8-2-96

**LABOR DEPARTMENT Wage and Hour Division**

Wage rates predetermination procedures; and construction and nonconstruction contracts; labor standards provisions:

Davis-Bacon helper regulations suspension continuation; comments due by 9-3-96; published 8-2-96

**NATIONAL CREDIT UNION ADMINISTRATION**

Credit unions:  
Corporate credit unions; capital strengthening risk management and control; comments due by 9-3-96; published 7-23-96

Corporate credit unions; capital strengthening risk management and control; comments due by 9-3-96; published 6-4-96

**NATIONAL LABOR RELATIONS BOARD**

Summary judgment motions and advisory opinions; Federal regulatory review; comments due by 9-5-96; published 8-2-96

**NUCLEAR REGULATORY COMMISSION**

Agreement State licenses; recognition of areas under exclusive Federal jurisdiction within agreement State; comments due by 9-3-96; published 6-18-96

Rulemaking petitions:

Amersham Corp.; comments due by 9-3-96; published 6-18-96

University of Cincinnati; comments due by 9-4-96; published 6-21-96

**POSTAL SERVICE**

Domestic Mail Manual:  
Mail classification reform; implementation standards; comments due by 9-5-96; published 8-15-96

**TRANSPORTATION DEPARTMENT****Coast Guard**

Pollution:  
Tank vessel and facility response plans; hazardous substances response equipment; comments due by 9-3-96; published 5-3-96

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives:  
Aerospace Technologies of Australia Pty Ltd.; comments due by 9-6-96; published 7-8-96

Boeing; comments due by 9-3-96; published 7-5-96

Fokker; comments due by 9-3-96; published 7-24-96

Raytheon; comments due by 9-6-96; published 7-8-96

Airworthiness standards:

Special conditions--  
de Havilland DHC-8-400 airplane; comments due by 9-5-96; published 7-22-96

Class E airspace; comments due by 9-3-96; published 7-17-96

**TREASURY DEPARTMENT****Internal Revenue Service**

Income taxes:  
Qualified small business stock; 50 percent exclusion for gain; comments due by 9-4-96; published 6-6-96

Section 467 rental agreements; comments due by 9-3-96; published 6-3-96