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### WASHINGTON, DC

**WHEN:** November 18, 1997 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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**Separate Parts In This Issue**

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

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## CFR PARTS AFFECTED IN THIS ISSUE

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

# Rules and Regulations

Federal Register
Vol. 62, No. 202
Monday, October 20, 1997



## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Parts 401 and 457

### General Crop Insurance Regulations, Canning and Processing Tomato Endorsement; and Common Crop Insurance Regulations, Processing Tomato Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of processing tomatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current canning and processing tomato endorsement with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current canning and processing tomato endorsement to the 1997 and prior crop years.

**EFFECTIVE DATE:** November 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 6413, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order 12866, and therefore, this rule has not been reviewed by OMB.

#### Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements currently being reviewed by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under OMB control number 0563–0053. No public comments were received.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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. 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. Therefore, this rule is not subject to the requirements of sections 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 economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of large entities. 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. 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. 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 published at 7 CFR part 11 must be exhausted before any 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

On Monday, June 23, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 33763–33768 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.160, Processing Tomato Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring canning and processing tomatoes found at 7 CFR part 401 (Canning and Processing Tomato Endorsement). FCIC

also amends 7 CFR 401.114 to limit its effect to the 1997 and prior crop years.

Following publication of that proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 62 comments were received from an insurance service organization, reinsured companies, agents, a California Tomato Growers Association, and tomato growers. The comments received, and FCIC's responses are as follows:

*Comment:* An insurance service organization recommended that a number of definitions common to most crops be removed from the crop provisions and placed into the Basic Provisions.

*Response:* FCIC agrees and is currently in the regulatory review process that will move commonly used definitions from the crop provisions to the Basic Provisions and this rule will be revised to delete the definitions when the Basic Provisions are published as a final rule.

*Comment:* A reinsured company and a crop insurance agent recommended changing the sales closing date in California from January 15 to February 28. The commenter indicated that the sales closing date of January 15 causes inefficiency because it differs from the February 28 sales closing date for most other spring crops.

*Response:* The Federal Crop Insurance Reform Act of 1994 required the sales closing date to be moved from February 15 to January 15. This date cannot be extended without appropriate legislative changes. Therefore, no change has been made.

*Comment:* An insurance service organization recommended changing the definition of ''bypassed acreage'' to read as follows: ''Land on which production is ready for harvest but is left unharvested in favor of harvesting other fields.''

*Response:* The definition of *bypassed acreage* has been revised to clarify that land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

*Comment:* An insurance service organization expressed concern with the definition of ''good farming practice,'' which makes reference to cultural practices generally in use in the county and that are recognized by the Cooperative State Research, Education, and Extension Service (CSREES) as compatible with agronomic and weather conditions in the county. The comment questioned whether cultural practices exist that are not necessarily recognized (or possible known) by the CSREES. The comment suggested changing the term ''county'' to ''area.''

*Response:* FCIC believes that the CSREES recognizes farming practices that are considered acceptable for producing processing tomatoes. If a producer is following practices not recognized as acceptable by the CSREES, such recognition can be sought by interested parties. Although cultural practices recognized by the CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. No change has been made.

*Comment:* An insurance service organization recommended changing the definition of ''planted acreage'' so that either initially or replanted acreage must be planted in rows to be considered planted.

*Response:* FCIC agrees and has amended the definition as suggested. The definition of replanting has also been changed accordingly.

*Comment:* An insurance service organization recommended that the definition of ''replanting'' be clarified by inserting ''processing tomato'' between the last two words (''successful'' and ''crop'') in the sentence.

*Response:* To be consistent with language contained in the proposed rule of the Basic Provisions, FCIC has revised the definition to clarify that ''replanting'' is performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed crop and then replacing the seed or plants in the insured acreage.

*Comment:* An insurance service organization recommended that the definition of ''timely planted'' be clarified by inserting the word ''initially'' at the beginning of the definition.

*Response:* To be consistent with language contained in the proposed rule of the Basic Provisions, FCIC believes the definition is clearly stated. Therefore, no change has been made.

*Comment:* An insurance service organization, a reinsured company, insurance agents, a tomato growers association, and a tomato grower disagreed with the provisions that remove ''units by share'' in California (section 2(a.). The comments indicated that: (1) Unit division by share is no more difficult to administer for tomatoes than it is for other crops in California; (2) The change will give producers a greater incentive to purchase CAT than buy-up, since the CAT Endorsement allows basic units by share; and (3) Inequitable loss payments between tenants and landlords would result.

*Response:* FCIC agrees that optional units based on share should be provided. Section 2(a) has been deleted and the remaining sections have been redesignated accordingly. The language in 8(b) is intended to cover a producer who has a crop share agreement, who rents, or who owns acreage. This should be separate from the unit issue.

*Comment:* An insurance service organization, reinsured companies, a grower association, insurance agents, and tomato producers stated that section 2(b) eliminates optional units for nearly all California producers since most contracts are written for a specific amount of production. Removal of this benefit will have a detrimental impact on producers who had optional units in the past. For example: A producer with 6,000 contracted tons, 200 acres of land, an approved yield of 30 tons per acre, and a production guarantee of 22.5 tons per acre, receives no benefit if only one unit is allowed and 4,500 tons of tomatoes are produced. However, if two 100 acre units are allowed, the first unit produces 3,000 tons and the second unit produces 1,500 tons (4,500 total tons), an indemnity based on 750 tons would be allowed on the second unit.

*Response:* FCIC agrees that optional units should remain available in California and has amended section 2(b) (redesignated 2(a)) accordingly. Premium rates also will reflect adoption of this change.

*Comment:* An insurance service organization and reinsured companies indicated that the ''earlier of'' * * * aspect of section 3(b) eliminates the need for item (1). Item (2), the acreage reporting date, will always be earlier than item (1) (August 20). One comment questioned why the provision allows until August 20 to obtain signed contracts in all but a few counties in California.

*Response:* Section 3(b) was not intended to indicate the earlier of item (1) or (2). It was intended to indicate the earlier of August 20 or the date of damage only in those counties with a July 15 acreage reporting date, and the earlier of the acreage reporting date or the date of damage in all other counties. In years of high production, it is common for contracts in northern California counties to be signed as late as August 20. The provision was designed to accommodate this practice and permit insurance to continue for all contracted tonnage. The provision has been clarified accordingly.

*Comment:* Five comments from reinsured companies asked why section 3(c) was changed to reduce the price election rather than the production guarantee.

*Response:* The Federal Crop Insurance Act authorizes FCIC to reduce the payment to producers who elect catastrophic coverage for acreage that is not harvested or for any other costs that are not incurred if the crop is lost prior to harvest. The change is in compliance with this provision of law.

*Comment:* An insurance service organization and a reinsured company stated that provisions in section 6 that require the producer to provide a copy of the processor contract no later than the acreage reporting date: (1) Could allow producers to wait until the acreage reporting date to decide if they want coverage; and (2) will be nearly impossible to implement since processor contracts will not be finalized by the dates specified in section 3.

*Response:* Virtually all processor contracts should be completed within the time frame provided for in the policy. Production covered by contracts completed after these time frames will not be insured. Therefore, no change has been made.

*Comment:* A reinsured company questioned why the price election for unharvested acreage is used in the premium calculations in section 7.

*Response:* The provision should have referred to the price election for the third (final) stage. The provision has been revised accordingly.

*Comment:* An insurance service organization and a reinsured company stated that section 8(b) is confusing and seems to indicate that the landlord does not have a share unless the landlord's name is written on the tomato contract. Another reinsured company interpreted the provision to mean that a tenant cannot have a share since that person does not retain possession of the acreage.

*Response:* The language in 8(b) is intended to cover a producer who has a crop share arrangement, who rents, or who owns acreage. The provision has been clarified by indicating that control of the acreage is retained rather than possession.

*Comment:* An insurance service organization stated that section 8(a)(4) would allow coverage by written agreement or Special Provisions on tomatoes following tomatoes in either of the two previous years, interplanted with another crop or planted into an established grass or legume and asked if these practices would ever be allowed by the processor contract. The comment indicated that consideration should be given to inserting some of this language into the Basic Provisions since it is duplicated in most Crop Provisions.

*Response:* Some processor contracts may not stipulate rotation or planting practices. Therefore, the provisions have been retained to limit insurance when a crop is interplanted, planted into a grass or legume, or is planted in an unusual rotation. These provisions vary among Crop Provisions and therefore, should not be moved to the Basic Provisions. Therefore, no change has been made.

*Comment:* An insurance service organization and a reinsured company questioned whether the provisions in sections 10(a) and (b) that end the insurance period on the date sufficient production is harvested to fulfill the producers processor contract: (a) Eliminate unit division benefits or (b) conflict with the provision in section 12(a) that states ''We will determine your loss on a unit basis.'' The commenters questioned whether production to count from an appraisal prior to harvest would be included when determining fulfillment of the processor contract. The insurance service organization questioned whether the insured would know when enough production is harvested to fulfill the processor contract. This commenter asked if production exceeding the contracted amount is considered production to count for APH or loss adjustment or whether the processor settlement sheet is the only acceptable record. One commenter also questioned whether ''delivered to'' is the same as ''acceptable by'' the processor.

*Response:* Sections 10(a) and (b) do not eliminate unit division provisions or conflict with section 14(a). All indemnities will be paid on a unit basis. Once acreage is harvested and the processor contract is fulfilled, the insurance period ends. If there is unharvested production and the processor contract has not been fulfilled, due to an insured cause of loss is still covered. Appraised acreage will not be used to determine whether the contract has been fulfilled and the insurance period ends, although it will be used to determine production to count and in determining the producer's APH. When determining production to count, only the harvested production shown on the settlement sheet or rejected as a result of uninsured cause of loss will be used. FCIC has revised section 10(a) to clarify that insurance ceases ''the date you harvest sufficient production to fulfill your processor contract if your processor contract stipulates a specific amount of production to be delivered.'' The contract is not fulfilled if the production is not accepted by the processor. However, rejected production maybe considered as production to count unless damaged by an insurable cause of loss occurring during the insurance period. Further, records are maintained as production is delivered to the processor. Therefore, the insured should know when the contract is fulfilled.

*Comment:* An insurance service organization questioned the summary of changes to the proposed rule in section 13(a)(2). The commenter stated the summary of changes says ''the producer must give notice on or before the date the tomatoes should be harvested if any acreage on a unit will not be harvested,'' but the provision states the producer must give notice ''not later than 48 hours after: (1) Total destruction of the tomatoes in the unit; or (2) Discontinuance of harvest on a unit on which production remains.

*Response:* FCIC agrees that the summary was in error and the provisions as proposed are correct.

*Comment:* An insurance service organization questioned the notification requirement in section 13(b), which states that the insured must notify the insurance provider ''within 3 days of the date harvest should have started on any acreage that will not be harvested...'' The commenter stated there is a difference between notice ''within 3 days'' as the policy provision indicates and ''on or before'' as item 21 of the summary of changes indicates. The commenter also asked how the date tomatoes should have been harvested will be determined.

*Response:* The summary of changes was not correct. It should have indicated ''within 3 days after the date harvest should have started....'' The insured is best able to assess the date tomatoes should be harvested based on the maturity of the crop. Therefore, no change has been made.

*Comment:* An insurance service organization stated that the language in 13(c) does not address timely notice if damage is discovered less than 15 days prior to harvest.

*Response:* The notice requirement in section 13 are in addition to the requirements in section 14 of the Basic Provisions that require notice of loss within 72 hours of initial discovery of damage. Notice within this time period would be required if damage is discovered less than 15 days before harvest. If damage is discovered during harvest, notice must be given immediately. FCIC believes that these provisions, as a whole, are adequate. Therefore, no change has been made.

*Comment:* An insurance service organization stated that section 14(c)(1)(iii) should not allow the insured to defer settlement and wait for a later, generally lower appraisal, especially on crops that have a short ''shelf life.''

*Response:* A later appraisal will only be necessary if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change has been made.

*Comment:* A reinsured company recommended removal of the requirement to renew written agreements each year if there are no significant changes to the farming operation.

*Response:* Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue from year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. FCIC has proposed that the written agreement provision be included in the Basic Provisions. Therefore, no change has been made.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following Processing Tomato Provisions:

1. The paragraph preceding section 1 is amended to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Added a definition of ''approved yield''. The definitions of ''bypassed acreage,'' ''planted acreage'' ''practical to replant'' ''production guarantee (per acre)'' and ''replanting'' have been revised for clarification.

3. Removed the reference to ''written agreement'' in section 2(a) of the proposed rule and added it to section 2(e)(4) of the final rule to clarify which provisions may be revised by written agreement.

4. Section 2(a)—Added provisions to clarify that no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

5. Section 3(b)—Has been revised for clarification.

6. Section 3(e)—Added provisions to clarify when appraised production on bypassed acreage not bypassed due to an insurable cause of loss will be used when determining the producer's approved yield.

7. Section 3(f)—Added provisions to clarify when acreage is bypassed because it was damage by an insurable cause of loss to the extent that the processor cannot use the product will be considered to have a zero yield when determining your approved yield.

8. Section 6—Clarify a producer must provide a copy of all processor contracts to us on or before the acreage reporting date in all counties, unless otherwise specified in the Special Provisions.

9. Sections 8(b), (c)(1), (2), and (3)—Have been revised for clarification.

10. Section 10(a)—Revised to conform this provision with other processing crop provisions, which specify that once the processor contract has been fulfilled, the insurance period will end if the processor contract stipulates a specific amount of production.

11. Section 10(b)—Clarify that the insurance period will end when the crop should have been harvested.

12. Section 11(a)(5)—Clarified the wildlife cause of loss by deleting the language ''unless proper measures to control wildlife have not been taken'' to be consistent with other crop provisions.

13. Section 11(a)(ii)—Has been revised for clarification.

14. Section 11(a)(9)—Deleted this provision because it is unnecessary since other listed causes of loss are what results in physical damage.

15. Section 11(b)(4)—Deleted this provision since such damage would occur outside the insurance period specified in section 10.

16. Section 13(b)—Clarified that the insured must give notice of loss within 3 days after the date harvest should have started is the acreage will not be harvested. The insured must also provide documentation stating why the acreage was bypassed.

17. Section 14(b)(1) thru (7)—Revised and added an example of settlement of claim.

18. Section 14(c)(E)—Deleted this provision as proposed.

19. Section 14(c)(iii)—Added provisions to clarify production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract. 14(c)(iii) as proposed has been redesignated as 14(c)(iv).

20. Section 14(d)—Clarified that once harvest has begun on acreage covered by a processor contract that specifies the number of tons to be delivered, the total indemnity payable will be limited to an amount based on the lesser of the guaranteed tons, or the tons remaining unfulfilled under the processor contract.

21. Section 15—Added statement that late and prevented planting is not applicable to processing tomatoes.

22. Section 16—Written agreements had been redesignated. Clarify when provisions of the policy may be altered by written agreement.

### List of Subjects in CFR Parts 401 and 457

Crop insurance, Canning and processing tomato endorsement, Processing tomato.

### Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 as follows:

## PART 401—GENERAL CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 401 is revised to read as follows:

**Authority:** 7 U. S. C. 1506(1), 1506(p).

2. Section 401.114 introductory text is revised to read as follows:

#### § 401.114 Canning and processing tomato endorsement.

The provisions of the Canning and Processing Tomato Crop Insurance Endorsement for the 1988 through the 1997 crop years are as follows:

* * * * *

## PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(p).

4. Section 457.160 is added to read as follows:

#### § 457.160 Processing tomato crop insurance provisions.

The Processing Tomato Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured polices:

Processing Tomato Crop Provisions

If a conflict exists among the policy provisions the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions (§ 457.8) with (1) controlling (2) etc.

1. Definitions

*Acre*. 43,560 square feet of land on which row widths do not exceed 6 feet, or the land on which at least 7,260 linear feet rows are planted if row widths exceed 6 feet.

*Approved yield*. The yield determined in accordance with 7 CFR part 400, subpart (g).

*Bypassed acreage*. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

*Days*. Calendar days.

*FSA*. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

*Final planting date*. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

*First fruit set*. The reproductive stage of the plant at which 30 percent of the plants have produced a fruit that has reached a minimum of one inch in diameter.

*Good farming practices*. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the tomato processor contract with the processing company, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

*Harvest*. The severance of tomatoes from the vines.

*Interplanted*. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

*Irrigated practice*. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

*Plant stand*. The number of plants per acre considered to be normal for the applicable tomato variety and growing area.

*Planted acreage*. Land in which seed or plants have been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Tomatoes must initially be placed in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

*Practical to replant*. In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless the replanted acreage can produce at least 75% of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

*Processor*. Any business enterprise regularly engaged in processing tomatoes for human consumption, that possesses all licenses and permits for processing tomatoes required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted processing tomatoes within a reasonable amount of time after harvest.

*Processor contract*. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow processing tomatoes, and to deliver the tomato production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A price per ton that will be paid for the production.

*Production guarantee (per acre)*. The number of tons determined by multiplying the approved yield per acre by the coverage level percentage you elect.

*Replanting*. Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed crop and then replacing the seed or plants in the insured acreage.

*Timely planted*. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

*Ton*. Two thousand (2,000) pounds avoirdupois.

*USDA*. United States Department of Agriculture.

*Written agreement*. A written document that alters designated terms of this policy in accordance with section 16.

2. Unit Division

(a) Unless limited by the Special Provisions, a basic unit, as defined in section in section 1 of the Basic Provisions, may be divided into optional units if, for each optional unit, you meet all the conditions of this section. Notwithstanding the provisions of this section on unit division, no indemnity will be paid for any loss of production on any unit if the insured produced a crop sufficient to fulfill the processor contracts forming the basis for the guarantee, and any indemnity will be limited to the amount necessary to compensate for loss in yield at the price elected between production to count and the contract requirements.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have provided records by the production reporting date, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) For each crop year, records of marketed production or measurement of stored production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(4) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

(i) *Optional units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure, such as Spanish grants, as the equivalent of their sections for unit purposes. In areas that have not been surveyed using sections are equivalent systems, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *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 and non-irrigated acreage (in those counties where ''non-irrigated'' practice is allowed in the actuarial table) 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 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 a part of the unit containing the irrigated acreage. 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.

(iii) *Optional Units on Separate Acreage Planted to Tomatoes:* In California only, in addition to or instead of establishing optional units by section, section equivalent, or FSA Farm Serial Number, optional units may be established if acreage planted to tomatoes is separated by a field that is not planted to tomatoes, or by a permanent boundary such as a permanent waterway, fence, public road or woodland. Such optional unit must consist of the minimum number of acres stated in the Special Provisions. Acreage planted to tomatoes that is less than the minimum number of acres required will attach to the closest unit within the section, section equivalent or FSA Farm Serial Number.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the processing tomatoes in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price election you choose for one type will be applicable to all other types insured under this policy. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) Liability under this policy will not exceed the number of tons required to be accepted by the processor under a processor contract in effect on or before:

(1) The earlier of August 20 or the date of damage to the insured crop in all counties with an acreage reporting date of July 15; or

(2) The earlier of the acreage reporting date or the date of damage in all other counties. (Exclude indemnities that occur in stage one and replant payments.)

(c) The price election used to determine the amount of an indemnity is progressive by stage and increases, at specified intervals, to the price used for final stage losses. Stages will be determined on an acre basis. The stages and applicable price elections are:

(1) First stage is from planting until first fruit set. If any acreage of the insured crop is destroyed in this stage, the price used to establish the amount of any indemnity owed for such acreage will be 50 percent of your price election;

(2) Second stage is from the first fruit set until harvest. If any acreage of the insured crop is destroyed in this stage, the price used to establish the amount of any indemnity owed for such acreage will be 80 percent of your price election; and

(3) Third stage (final stage) is harvested acreage. The price election used in this stage to establish the amount of any indemnity owed will be 100 percent of your price election.

(d) Any acreage of tomatoes damaged to the extent, that the majority of producers in the area would not normally further care for the tomatoes, will be deemed to have been destroyed even though you may continue to care for it. The price election used to determine the amount of an indemnity will be that applicable to the stage in which the tomatoes were destroyed.

(e) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(f) Acreage that is bypassed because it was damaged by an insurable cause of loss to the extent that the processor cannot use the product will be considered to have a zero yield when determining your approved yield.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date for California and November 30 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 15 in California and March 15 in all other states.

6. Report of Acreage

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date in all counties, unless otherwise specified in the Special Provisions.

7. Annual Premium

In lieu of the premium amount determinations contained in section 7 of the Basic Provisions, the annual premium amount per acre is determined by multiplying the production guarantee per acre by the price election for the third (final) stage; by the premium rate; by the insured acreage; by the applicable share at the time of planting; and ultimately by any applicable premium adjustment factors contained in the Actuarial Table.

8. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the tomatoes in the county for which a premium rate is provided by the actuarial table:

(1) In which you have a share;

(2) That are planted for harvest as processing tomatoes;

(3) That are grown under, and in accordance with, the requirements of a processor contract executed on or before August 20 in all counties with an acreage reporting date of July 15, or on or before the acreage reporting date in all other counties, and are not excluded from the processor contract for or during the crop year; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Grown on acreage on which tomatoes were grown in either of the two previous years, except in California;

(ii) Interplanted with another crop; or

(iii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the tomatoes are grown, you are at risk of loss, and the processor contract provides for delivery of processing tomatoes under specified conditions and at a stipulated price.

(c) A tomato producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The processor must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a contract under this policy; and

(3) Our inspection provides that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

9. Insurable Acreage

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

10. Insurance Period

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of the date:

(a) You harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(b) The tomatoes should have been harvested but was not harvested;

(c) The tomatoes were abandoned;

(d) Harvest was completed;

(e) Final adjustment of a loss was completed; or

(f) The following calendar date for the end of the insurance period

(1) October 20 in California; and

(2) October 10 in all other states.

11. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents the harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production being beyond the capacity of the processor, either of which causes the acreage to be bypassed;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in sections

11(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Acreage being bypassed, if the acreage is bypassed because:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment;

(2) The processing tomatoes not being timely harvested, unless such delay in harvesting is solely and directly due to an insured cause of loss; or

(3) Your failure to follow the requirements contained in the processor contract.

12. Replanting Payment

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the crop sustained a loss exceeding 50 percent of the plant stand and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or three tons, multiplied by your third stage (final) price election, multiplied by your share.

13. Duties in the Event of Damage or Loss

In addition to the notice required by section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the tomatoes in the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains;

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect the damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

14. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 14(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 14(b)(2) if there are more than one type;

(4) Multiplying the total production to counted (see section 14(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 14(b)(4) if there are more than one type;

(6) Subtracting the result of section 14(b)(4) from the result of section 14(b)(2) if there is only one type or subtracting the result of section 14(b)(5) from the result of section 14(b)(3) if there are more than one type; and

(7) Multiplying the result of section 14(b)(6) by your share.

For example:

You have a 100 percent share in 50 acres of type A processing tomatoes in the unit, with a guarantee of 18.8 tons per acre and a price election of $50.00 per ton. You are only able to harvest 10.0 tons. Your indemnity would be calculated as follows:

(1) 50.0 acres × 18.8 tons = 940.0 tons guarantee;

(2) 940.0 tons × $50.00 price election = $47,000.00 value guarantee;

(4) 10.0 tons × $50.00 price election = $500.00 value of production to count;

(6) $47,000.00 − $500.00 = $46,500.00 loss; and

(7) $46,500 × 100 percent = $46,500.00 indemnity payment.

You also have a 100 percent share in 50 acres of type B processing tomatoes in the same unit, with a guarantee of 15.0 tons per acre and a price election of $35.00 per ton. You are only able to harvest 5.0 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 50.0 acres × 18.8 tons = 940.0 ton guarantee for type A and 50.0 acres × 15.0 tons = 750.0 ton guarantee for type B;

(2) 940.0 ton guarantee × $50.00 price election = $47,000.00 value of guarantee for type A and 750.0 ton guarantee × $35.00 = $26,500.00 value of guarantee for type B;

(3) $47,000.00 + $26,500.00=$72,500.00 total value of guarantee;

(4) 10.0 tons × $50.00 price election=$500.00 value of production to count for type A and 5.0 tons × $35.00 price election=$175.00 value of production to count for type B;

(5) $500.00 + $175.00=$675.00 total value of production to count;

(6) $72,500.00 − $675.00=$71,575.00 loss; and

(7) $71,575 loss × 100 percent=$71,575.00 indemnity payment.

(c) The total production to count, specified in tons, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us.

(ii) Production lost due to uninsured causes;

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract;

(iv) Potential production on insured acreage that you intend to put to another use or abandoned, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us, (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested;

(2) All harvested production (in tons) delivered to the processor which meets the quality requirements of the processor contract (expressed as usable or payable weight).

(3) All harvested tomato production delivered to processor which does not meet the quality requirements of the processor contract due to not being timely delivered.

(d) Once harvest has begun on any acreage covered by a processor contract that specifies the number of tons to be delivered, the total indemnity payable will be limited to an amount based on the lesser of the guaranteed tons, or the tons remaining unfulfilled under the processor contract.

15. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

16. Written Agreements.

Terms of this policy which are specifically designated for the use of written agreements may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 16(e);

(b) The application for a written agreement must contain all variable terms of the

contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will 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); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after 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 October 10, 1997.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

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**BILLING CODE 3410–08–P**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Parts 213a and 299

**[INS No. 1807–96]**

**RIN 1115–AE58**

### Affidavits of Support on Behalf of Immigrants

**AGENCY:** Immigration and Naturalization Service, Justice.

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

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations by establishing that an individual (the sponsor) who files an affidavit of support under section 213A of the Immigration and Nationality Act (the Act) on behalf of an intending immigrant incurs an obligation that may be enforced by a civil action. This rule also specifies the procedures that Federal, State, or local agencies or private entities must follow to seek reimbursement from the sponsor for provision of means-tested public benefits, and provides procedures of imposing the civil penalty provided for under section 213A of the Act, if the sponsor fails to give notice of any change of address. This rule is necessary to ensure that sponsors of aliens meet their obligations under section 213A of the Act.

**DATES:** *Effective Date:* This interim rule is effective on December 19, 1997.

*Comment Date:* Written comments must be submitted on or before February 17, 1998.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1807–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Miriam J. Hetfield, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536; telephone (202) 514–5014; or Lisa S. Roney, Office of Policy and Planning, 425 I Street NW., Room 6052, Washington, DC 20536; telephone (202) 514–3242.

**SUPPLEMENTARY INFORMATION:** On September 30, 1996, the President approved enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208. Section 531(a) of IIRIRA amends section 212(a)(4) of the Act to provide that an alien is inadmissible as an alien likely to become a public charge if the alien is seeking an immigrant visa, admission as an immigrant, or adjustment of status as: (a) An immediate relative, (b) a family-based immigrant, or (c) an employment-based immigrant, of a relative if the alien is the petitioning employer or owns a significant ownership interest in the entity that is the petitioning employer. To overcome this ground of inadmissibility, the alien must be the beneficiary of an affidavit of support filed under the new section 213A of the Act. Section 213A of the Act specifies the conditions that must be met in order for an affidavit of support to be sufficient to overcome the public charge inadmissibility ground.

Under 531(b) of IIRIRA, the new affidavit of support will be required for all applications for immigrant visas or for adjustment of status filed on or after December 19, 1997. Section 531(b) of IIRIRA excuses an applicant for admission from the affidavit of support requirement if the applicant had ''an official interview with an *immigration* officer'' before December 19, 1997. Because of the massive administrative burden that would result from requiring aliens who obtain immigrant visas before December 19, 1997, but do not apply for admission until on or after December 19, 1997, this interim rule designates Consular Officers as Immigration Officers, solely for purposes of section 531 of IIRIRA and this new part 213a. Thus, an alien who is issued an immigrant visa before December 19, 1997 will not be required to present an affidavit of support that complies with the requirements of section 213A of the Act, even if the alien does not apply for admission until December 19, 1997, or later.

Under section 213A of the Act, Form I–864, Affidavit of Support Under Section 213A of the Act, is a legally enforceable contract between the sponsor and the Federal Government, for the benefit of the sponsored immigrant and of any Federal, State, or local government agency or private entity that provides the sponsored immigrant with any means-tested public benefit. The sponsor must sign the Form I–864 before a notary public or a United States Immigration Officer or Consular Officer. By executing Form I–864, the sponsor agrees to provide the financial support necessary to maintain the sponsored immigrant at an income that is at least 125 percent of the Federal poverty line, unless the obligation has terminated. The sponsor also agrees to reimburse any agencies which provide means-tested public benefits to a sponsored immigrant. The sponsor must, under civil penalty, notify the Service and the State(s) in which the sponsored immigrant(s) reside of any change in the sponsor's address. Should the sponsored immigrant obtain any means-tested public benefit, with certain exceptions, the agency that provides the means-tested public benefit may, after first making a written request for reimbursement, sue the sponsor in Federal or State court to recover the unreimbursed costs of the means-tested public benefit, including costs of collection and legal fees. This interim rule implements section 213A of the Act by adding a new 8 CFR part 213a. Intending immigrants who require an affidavit of support under section 213A of the Act

Under section 212(a)(4)(C) of the Act, all family-sponsored immigrants, including immediate relatives, are inadmissible unless the petitioner has executed an affidavit of support under section 213A of the Act. Aliens who immigrate under the classification for battered spouses and children and widow/widowers (see sections 204(a)(1)(A) (ii), (iii), or (iv) and 204(a)(1)(B) (ii) or (iii) of the Act) do not require a Form I–864 to overcome the public charge ground of inadmissibility.

The Act also provides that certain employment-based immigrants under section 203(b) of the Act are

inadmissible unless an affidavit of support has been executed on their behalf. Sections 212(a)(4(D) and 213A(f)(4)(A) of the Act state that an employment-based immigrant requires an affidavit of support if a relative of the immigrant, or an entity in which a relative of the immigrant has a significant ownership interest, filed the employment-based immigrant petition. This interim rule defines a relative for purposes of this section as a spouse, parent, child, adult son or daughter, or sibling, which are relationships recognized in the Act as according immigration benefits. Neither the statute nor the legislative history defines the term ''significant ownership interest.'' The Service examined the use of the term in other statutes and regulations. Several statutes and regulations defined ''significant ownership interest'' as a 5 percent ownership interest in a for-profit entity. See 26 U.S.C. 613A(d)(3) and 26 CFR 1.613A–7 (for determining relationship between entities for purposes of determining limits on oil and natural gas depletion allowances); 42 CFR 424.22(d)(1) (physician's interest in a home health agency); 45 CFR 94.3 and 42 CFR 50.603 (for determining researcher's interest in an entity receiving research grants); 48 CFR 952.204–73(c) (for questions relating to foreign ownership of certain Department of Energy contractors). In only one situation was ''significant ownership interest'' defined to mean more than a 5 percent interest; 17 CFR 104.735–2 (for limiting investments of members of the Commodity Futures Trading Commission). And, in that case, it is a 10 percent ownership interest that is deemed significant. Accordingly, this interim regulation defines the term ''significant ownership interest'' as a 5 percent or greater ownership interest in a for-profit entity.

Aliens who are ''accompanying or following to join'' the beneficiary of a petition pursuant to section 203(d) of the Act are seeking an immigrant visa or adjustment of status under the same immigrant visa category as the beneficiary of the immigrant visa petition. See section 203(d) of the Act. This interim regulation, therefore, provides that a Form I–864 must be executed on behalf of any accompanying or following to join spouse or child under section 203(d) of the Act, if they are filing applications for immigrant visas or adjustment of status after December 19, 1997 in a classification for which an affidavit of support is required.

**Affidavit of Support Sponsors Under Section 213A of the Act**

Section 212(a)(4)(C)(ii) of the Act states that the person petitioning for the alien's admission on an immigrant relative visa petition must execute an affidavit of support in order for the alien to overcome the ground of inadmissibility. United States citizens who petition for an orphan under 8 CFR 204.3 must also execute a Form I–864. Similarly, under section 212(a)(4)(D) of the Act, the relative who filed an employment-based petition on behalf of the immigrant or a relative who has a significant ownership interest in the entity which filed an employment-based petition on behalf of the immigrant must also execute an affidavit of support. The petitioner must also sign and submit a separate Form I–864 on behalf of any spouse or children who accompany or follow to join the principal beneficiary of the immigrant visa petition. This interim rule uses the term ''sponsor'' to define the individual who executes an affidavit of support. A sponsor must be a natural person and cannot be a corporation or other entity.

If there is a spouse or any children immigrating with a sponsored immigrant, the sponsor may complete the Form I–864 for the principal immigrant and sign and submit photocopies of the completed form and all accompanying documentation for each spouse and/or child listed in part 3 of the Form I–864. The sponsor must sign each photocopy of the form I–864 with an original signature before a notary public or an Immigration or Consular Officer. If a spouse or child files an application for an immigrant visa or adjustment of status 6 months or more after the sponsor originally signed the affidavit of support, the sponsor must execute a new Form I–864 on his or her behalf.

**Sponsorship Requirements**

Section 213A(f)(1) of the Act sets forth the requirements to be a sponsor. The individual executing the Form I–864 must be a citizen or national of the United States or a lawful permanent resident of the United States, be at least 18 years of age, be domiciled in the United States or any of its territories or possessions, and demonstrate the means to maintain an income of at lease 125 percent of the Federal poverty guideline (100 percent of the poverty guideline for sponsors on active duty in the Armed Forces of the United States who are petitioning for their spouse or child).

The term ''domicile'' is defined in accordance with the generally accepted definition of the term. A lawful permanent resident who is living abroad is considered to have a domicile in the United States if he or she has applied for and obtained preservation of residence benefit under section 316(a) or 317 of the Act. A U.S. citizen living abroad whose employment meets the requirements of section 319(b)(1) of the Act will be considered to have a domicile in the United States.

Sections 213A(f)(1)(E) and 213A(f)(5) of the Act state that a sponsor, including a joint sponsor, must demonstrate the means to maintain an annual income equal to at least 125 percent of the Federal poverty line. Section 213A(f)(3) of the Act reduces the income requirements to 100 percent of the Federal poverty line for persons on active duty (other than active duty for training) in the Armed Forces of the Untied States who are filing petitions on behalf of their spouse or child. Under section 213A(h) of the Act, the ''Federal poverty line'' means the level of income equal to the official poverty line, as defined by the Director of the Office of Management and budget and revised annually by the Secretary of Health and Human Services, that is applicable to the size of the sponsor's household. For purposes of the Form I–864, the Service and Consular Posts will use the most recent income-poverty guidelines published in the **Federal Register** by the Department of Health and Human Services. These guidelines are updated annually, and the Service and Consular Posts will begin to use updated guidelines on the first day of the second month after the date the guidelines are published in the **Federal Register.**

Section 213A(f)(6)(A)(iii) of the Act defines the size of the sponsor's household for purposes of determining ability to maintain income. The sponsor's household size includes the sponsor, all persons who are related to the sponsor by birth, marriage, or adoption and who live at the same residence as the sponsor, including the sponsor's spouse, and any other dependents whom the sponsor has lawfully claimed on the sponsor's personal Federal income tax return (even if those dependents do no live with the sponsor), plus all aliens included in the current affidavit of support, and any immigrants who have been previously sponsored under section 213A of the Act, unless the obligation has terminated.

By signing the new affidavit of support under section 213A of the Act, the sponsor agrees to provide support to maintain the sponsored immigrant(s) at or above 125 percent of the Federal poverty line. See section 213A(a)(1)(A) of the Act. Because the sponsor has an

obligation to support the sponsored immigrant(s) at or above 125 percent of the poverty line, for purposes of the Form I–864, the sponsor's household size is increased by the number of immigrants sponsored in the affidavit of support. This applies to all affidavits of support under section 213A of the Act, regardless of whether the sponsored immigrant(s) will be living in the same residence as the sponsor. Therefore, under this interim rule, the sponsor's ability to maintain income is measured against the number of family members residing with the sponsor and other dependents, plus any persons for whom the sponsor has previously executed a Form I–864 for whom the support obligation has not terminated, and the number of immigrants sponsored in the current affidavit of support.

Section 213A(f)(6)(A)(i) of the Act provides that a sponsor must provide a copy of the sponsor's individual Federal income tax return for each of the 3 most recent tax years, and that the sponsor must certify under penalty of perjury that the copies are true and correct copies of the returns as filed with the Internal Revenue Service (IRS). The new Form I–864 includes a certification that any attached tax returns are true and correct copies. Accordingly, this interim rule requires the sponsor to attach his or her Federal income tax returns as filed with the IRS for each of the 3 most recent tax years. If the sponsor has not filed tax returns for any of the 3 most recent tax years, he or she must explain his or her failure to file. For purposes of demonstrating means to maintain income, the total income, before deductions, in the sponsor's tax return for the most recent taxable year will be generally determinative. See section 213A(f)(6)(B) of the Act. If the sponsor can establish that he or she was not legally obligated to file a Federal income tax return for any of the 3 most recent tax years, other evidence of annual income may be considered.

In order to meet the income threshold, the sponsor may rely on his or her own income, the income of his or her spouse, and the income of any other individuals who are related to the sponsor by birth, marriage, or adoption, and have been living in the sponsor's residence for the previous 6 months or who are listed as dependents on the sponsor's most recent income tax return. In order to rely on the income of these other persons, however, the sponsor must include with the affidavit of support a written contract on Form I–864A, Contract Between Sponsor and Household Member, between the sponsor and each person whose income the sponsor will rely on to meet the income threshold. This written contract will provide that each person whose income the sponsor will rely on has agreed, in consideration of the sponsor's signing of the Form I–864, to assist the sponsor in supporting the sponsored immigrant(s), to be held jointly and severally liable for payment of any reimbursement obligation that the sponsor may incur, and to submit to the personal jurisdiction of any competent court.

If the sponsor will rely on the income of a member of the sponsor's household who is also the immigrant who is sponsored in the affidavit of support being filed, the sponsored immigrant need not sign a Form I–864A, unless the sponsored immigrant's income will be used to determine the sponsor's ability to support a spouse or any children listed in Part 3 of Form I–864 who are immigrating with the sponsored immigrant. If there is no spouse or child immigrating with the sponsored immigrant, then there will be no need for the sponsored immigrant to sign a Form I–864A. If, however, the sponsor seeks to rely on a sponsored immigrant's income to establish the sponsor's ability to support the sponsored immigrant's spouse and/or children, then the sponsored immigrant whose income is to be relied on must sign the Form I–864A, agreeing to make his or her income available to support the other sponsored immigrants. Either the sponsor, as a party to the contract, or the sponsored immigrant(s) and any Federal, State, local, or private agency, as third party beneficiaries, will be able to bring a civil action to enforce the written contract.

Federal individual income tax returns for the 3 most recent tax years must be attached to the Form I–864 for each individual whose income is used to qualify. These individuals must certify on Form I–864A, under penalty of perjury, that any attached tax returns are true and correct copies of the returns as submitted to the IRS. If any of these individuals has no legal obligation to file a Federal income tax return for any of the 3 most recent tax years, he or she must explain his or her failure to file and provide other evidence of annual income. The sponsor and any other individual whose income is used to a qualify must also submit current evidence of employment or self-employment (if any).

After calculating household income, the sponsor must determine whether his or her total income level meets or exceeds the poverty guidelines, based on the applicable household size, including family members residing with the sponsor, dependents, and any immigrants sponsored in the Form I–864 being filed or in a previous Form I–864 where the obliagion has not terminated. There may be instances in which an Immigration or Consular Officer may question the sponsor's ability to maintain income based on the sponsor's current employment situation, on the Federal income tax returns for the 3 most recent tax years, or on receipt of welfare benefits.

If the petitioner is unable to demonstrate the means to maintain income equal to at least 125 percent of the poverty line, the intending immigrant is inadmissible under section 212(a)(4) of the Act, unless the petitioner and/or the sponsored immigrant(s) demonstrate significant assets which are available for the support of the sponsored immigrant(s) or a joint sponsor also executes a Form I–864. In order to be a joint sponsor, the individual must execute a separate Form I–864 and must accept joint legal responsibility with the petitioning sponsor and have an income and/or assets, based on his or her household size, including dependents and the number of persons previously and currently sponsored on Form I–864, which meets or exceeds 125 percent of the Federal poverty line. See section 213A(f)(5) of the Act.

Under section 213A(f)(6)(A)(ii) of the Act, a sponsor may demonstrate the means to maintain income through demonstration of significant assets of the sponsor and/or the sponsored immigrant(s), if such assets are available for the support of the sponsored immigrant(s). This section allows either the sponsor or the sponsored immigrant(s) to demonstrate that he or she owns significant assets which enable the sponsor to demonstrate that sufficient resources exist to support the sponsored immigrant(s), even if the sponsor's household income is below the Federal poverty line. The sponsor may also rely on the assets of any individuals who are listed as dependents on the sponsor's tax return for the most recent tax year or any individuals who are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months, provided that such individuals execute a contract on Form I–864A. Because section 213A(f)(6)(A)(ii) of the Act specifically permits the sponsor to rely on the assets of the immigrant sponsored in the affidavit of support being filed, the sponsored immigrant is not required to sign Form I–864A in order for the Consular Officer or Immigration Officer to consider the sponsored immigrant's assets. To

reiterate, a sponsored immigrant who is a member of the sponsor's household is required to sign a Form I–864A only if the sponsor will rely on that sponsored immigrant's *income* to show the sponsor's ability to support a spouse or child immigrating with the sponsored immigrant.

The Service has determined that assets must be sufficient to support the intending immigrant(s) for at least 5 years, if necessary. Under section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–194, any alien (with certain exceptions) who obtains lawful permanent resident status after enactment is ineligible for any Federal means-tested public benefit for a period of 5 years. In addition, 5 years is the general residency requirement to qualify for naturalization. See section 316(a) of the Act. This interim rule, therefore, provides that significant assets must total at least five times the difference between the Federal poverty line and the sponsor's household income.

**Effect of Affidavit of Support**

Under section 213A(a)(1) of the Act, the execution of an affidavit of support under section 213A of the Act, coupled with the sponsored immigrant's acquisition of permanent residence, creates a contract between the sponsor and the U.S. Government which is legally enforceable against the sponsor by the sponsored immigrant, any Federal, State, or local governmental agency, or by any other entity which provides any means-tested public benefits to the sponsored immigrant. The sponsor is obligated to reimburse government agencies and private entities which provide means-tested public benefits to the sponsored alien. Section 423(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 specifically exempts some benefits from the reimbursement requirement. This interim rule defines ''means-tested public benefit'' as both a ''Federal means-tested public benefit'' and a ''State means-tested public benefit.'' The former is defined as any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds defines as a ''Federal means-tested public benefit.'' As of the date of the publication of this interim rule, two Federal agencies had published notices stating which of the programs they administer are considered ''Federal means-tested public benefits.'' The Department of Health and Human Services has determined that payments under the Medicaid and Temporary Assistance to Needy Families (TANF) programs are the only ''Federal means-tested public benefits'' paid by that agency which are not otherwise exempted from reimbursement and relevant provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. See 62 FR 45256 (August 26, 1997). The Social Security Administration has determined that the only ''Federal means-tested public benefits'' paid by that agency which are not otherwise exempted from reimbursement and relevant provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 are Supplemental Security Income (SSI) payments made under Title XVI of the Social Security Act. See 62 FR 45284 (August 26, 1997).

''State means-tested public benefit'' is defined as any public benefit for which no Federal funds are provided that a State, State agency, or political subdivision of a State defines as a ''means-tested public benefit.'' This interim rule also indicates that Federal agencies and States should issue determinations of which benefits are considered ''means-tested public benefits'' before the effective date of this rule or as soon as possible thereafter. In addition, no benefit is considered to be a means-tested public benefit if it is a benefit described in sections 401(b), 411(b), 422(b), or 423(d) of Public Law 104–193. Means-tested benefits may be determined on such bases as income, resources, or the financial need of an individual, household, or unit.

Under section 213A(a)(2) of the Act, the sponsor's obligation terminates upon the sponsored immigrant's naturalization or when the sponsored immigrant has worked or can be credited with 40 qualifying quarters of work. This interim rule also provides that the sponsor's obligation terminates if the sponsor or the sponsored immigrant dies, or if the sponsored immigrant ceases to hold permanent resident status and has departed the United States. Termination of the support obligation does not relieve the sponsor, or the sponsor's estate, of any liability for reimbursement that accrued before the termination of the support obligation. If the sponsor can establish that the obligation to support an immigrant under a previous Form I–864 no longer exists, that immigrant will not be considered as part of the sponsor's household size for purposes of determining the sponsor's income requirement when executing a new affidavit of support on behalf of another alien.

**Sponsor's Change of Address Obligations**

Under section 213A(d) of the Act, the sponsor must notify the Attorney General and the State in which each sponsored immigrant is currently a resident of the sponsor's new address within 30 days of any change of address. If the sponsor fails to do so, the sponsor may be subject to a civil penalty. The sponsor meets the obligation of reporting a change of address by completing Form I–865, Sponsor's Notice of Change of Address, and filing the completed Form I–865 with the Service. Any agency which provides means-tested public benefits may obtain information on the sponsor's current address through the Service's established system for verifying alien status. Since this information will be available to an agency through this verification procedure, the Service will consider the sponsor's filing of Form I–865 with the Service as sufficient for complete compliance with requirements of section 213A(d)(1) of the Act. This is, a sponsor will be considered to have given notice to both the Service and the State where the sponsored immigrant resides, and so will avoid a civil penalty under section 213A(d)(2) of the Act, if the sponsor files a properly completed Form I–865 with the Service in accordance with new 8 CFR 213a.3. The States do not have independent authority to impose a civil penalty under section 213A(d) of the Act; section 213A(d)(2) expressly gives enforcement authority to the Attorney General. This rule is not intended to preempt a State from requiring a sponsor to file a change of address with the State, as well as with the Service. But failure to comply with a State's requirement, if any, will not subject the sponsor to a civil penalty under section 213A(d) of the Act, if the sponsor filed the Form I–865 with the Service.

The Service will adjudicate cases involving imposition of the civil penalty for failure to comply with the section 213A(d) change of address requirement under the previously established procedures for cases involving civil penalties under the Act. These procedures are codified at 8 CFR part 280. If the sponsor is a lawful permanent resident, the sponsor must also comply with the change of address requirement imposed by 8 CFR 265.1, in addition to the change of address requirement of section 213A(d) of the Act.

**Actions for Reimbursement**

This interim rule implements section 213A(b) of the Act by specifying the

manner in which an agency or entity requesting reimbursement must notify the sponsor of his or her obligations and how a Federal, State, or local agency or private entity may take judicial action to obtain reimbursement. Requests for reimbursement must be served by personal service, as defined by 8 CFR 103.5a(a)(2). The request for reimbursement shall specify the date the sponsor's affidavit of support was received by the Service or Consular office, the sponsored immigrant's name, alien registration number, address, and date of birth, as well as the type(s) of means-tested public benefit that the sponsored immigrant received, the dates the sponsored immigrant received the means-tested public benefit(s), and the total amount of the means-tested public benefit(s) received. It is not necessary to make a separate request for each type of means-tested public benefit, nor for each separate payment. The agency may instead aggregate in a single request all benefit payments the agency has made as of the date of the request. The request for reimbursement shall also notify the sponsor that the sponsor must, within 45 days of the date of service, respond to the request for reimbursement either by paying the reimbursement or by arranging to commence payments pursuant to a payment schedule that is agreeable to the program official. If the sponsor fails to respond to a formal request for reimbursement issued by a nongovernmental entity or a government agency within 45 days by indicating a willingness to commence payment, the agency or entity may sue the sponsor in State or Federal court. Section 213A(b)(2) of the Act sets forth the procedures to compel reimbursement. Section 213A(b)(2)(C) fixes a 10-year statute of limitations on suits to collect reimbursement.

**Reports to Congress**

Section 213A(i)(3) of the Act and section 565 of IIRIRA require the Attorney General to make periodic reports to Congress. This interim rule incorporates these reporting requirements into 8 CFR 213a.4(b). Under section 421 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, an agency that provides means-tested public benefits may deem the income and resources of an immigrant to include the income of any sponsor (including the income of the sponsor's spouse) who has executed an affidavit of support on behalf of the immigrant. However, if an agency determines that without its assistance the immigrant would be unable to obtain food and shelter, the amount of income that may be attributed to the immigrant is limited to the support the sponsor and spouse actually provide to the sponsored immigrant. If the agency makes this determination, section 421(e)(2) requires the agency to notify the Attorney General of information that the Attorney General would need to make the report required under section 565 of IIRIRA.

**Notice and Comment Requirements**

Sections 531(b) and 551(c) of the IIRIRA, Public Law 104–208, make the new affidavit of support requirement effective as of the date that is 60 days after promulgation of the new affidavit of support form. The Service is promulgating the new affidavit of support form simultaneously with the publication of this interim rule. To begin using the new affidavit of support form without this accompanying rule would cause widespread confusion about these new requirements. Only by having this rule in effect on the date that aliens must begin submitting the new affidavit of support can this confusion be mitigated. For this reason, the Commissioner finds that good cause exists to make this rule effective without observing the provisions of 5 U.S.C. 553 for prior notice and comment. The Commissioner nevertheless invites written comments on this interim rule and, in formulating the final rule, will consider any written comments that are received timely.

**Regulatory Flexibility Act**

The Commissioner has determined, in accordance with 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is that this rule applies to the individual sponsor and the sponsored immigrant, who are not within the definition of small entities established by 5 U.S.C. 601(6). In this regard, it is important to note that it is the immigrant's relative in that relative's individual capacity, and not the firm, that incurs the obligation to support an employment-based immigrant who is subject to the affidavit of support requirement. Since the duties imposed on the sponsor arise from the sponsor's participation in a voluntary Federal program, this rule is not a Federal private sector mandate, as defined by 2 U.S.C. 658(7)(A)(ii). The rule implements statutory requirements placed on Federal, State, and local government agencies related to seeking reimbursement of benefits from a sponsor under an affidavit of support. Agencies must also make certain reports to the Service. Under 2 U.S.C. 1531, however, no Federal Intergovernmental Mandate Assessment is required because this rule ''incorporate[s] requirements specifically set forth in law.''

**Executive Order 12866**

The Commissioner considers this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, because, over time, it will have a significant economic impact on the Federal Government in excess of $100 million.

Under provisions included in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, most immigrants are barred from receiving SSI benefits and food stamps until they become U.S. citizens or can be credited with 40 quarters of work. This restriction applies to most newly arriving immigrants, and to any aliens who were already admitted as immigrants, but whose eligibility for benefits was not preserved under the Balanced Budget Act of 1997, Public Law 105–33. Most immigrants are also barred from most other Federal means-tested public benefits for their first 5 years in the United States. Veterans and persons on active duty in the U.S. military, their spouses and dependent children and their unremarried surviving spouses are exempt from the 5-year ban. Refugees, asylees, aliens whose deportation or removal is being withheld, immigrants who are Cuban-Haitian entrants and certain Amerasian immigrants are also exempt. American Indians born in Canada referred to in section 289 of the Act are exempt from the 5-year ban with respect to SSI and Medicaid benefits only. The number of newly admitted permanent residents in these categories who are subject to the affidavit of support requirement in section 213A of the Act is small.

This regulation implements provisions of the Personal Responsibility Act and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 which require that all family-based and certain employment-based immigrants be sponsored through legally enforceable affidavits of support. If a sponsored immigrant applies for Federal means-tested public benefits, all of the income and resources of the sponsor and the sponsor's spouse will be deemed to be available to the sponsored immigrant in determining eligibility for the benefit. In most cases this would make the sponsored immigrant ineligible for the benefit sought. Affidavits of support will be enforceable against sponsors by any agency providing Federal, State, or local means-tested benefits, with certain

exceptions (notably emergency medical care, disaster relief, school lunches, foster care, student loans, and Head Start benefits) to sponsored immigrants until the sponsored immigrants become U.S. citizens or can be credited with 40 quarters of work.

Significant savings due to deeming of the income and resources of sponsors and their spouses to sponsored immigrants will accrue only after the fifth anniversary of welfare and illegal immigration reform implementation. Before that time, savings would be minimal since very few new immigrants would be exempt from the bar to receiving benefits, and only a small fraction of that group would be expected to apply for Federal means-tested benefits, resulting in the deeming of sponsors' income and resources.

Estimates of cost savings due to the deeming of sponsors' incomes to immigrants who seek benefits made in early 1996 during consideration of illegal immigration reform legislation are not applicable because they could not take into account the enactment of welfare reform in August 1996 which preempted the impacts of sponsor deeming by making most permanent resident aliens, with or without sponsors, ineligible for Federal means-tested public benefits for 5 years, and potentially longer for SSI and food stamps.

Because of the 5-year ban on immigrant access to means-tested public benefits, the Congressional Budget Office has projected that savings due to the deeming of sponsor's income will not begin to be realized until the first immigrants who arrived after the enactment of welfare reform are no longer subject to the 5-year ban. According to the Congressional Budget Office, the greatest savings to the Federal Government will be realized in the Medicaid program since most permanent residents will remain ineligible for SSI and food stamp benefits until they become U.S. citizens, at which time sponsor deeming will no longer apply. Therefore, savings in the Medicaid program due to the deeming of sponsor income and resources through the legally enforceable affidavit of support are projected as first becoming significant in the sixth full year following implementation, fiscal year 2003. Based on Congressional Budget Office data, savings to the Medicaid program resulting from the new sponsorship deeming provisions are estimated to be about $300 million in that year. Savings due to the deeming of sponsor income and resources to sponsored immigrants who would otherwise apply for Medicaid are estimated to increase to about $600 million in 2004, $900 million in 2005, $1.3 billion in 2006, and $1.7 billion in 2007. Reduced Federal outlays beginning in 2003 are transfers from permanent resident aliens and their families to the U.S. Treasury to the extent that third parties such as States and charities do not increase their spending to cover these benefits.

There will also be administrative costs to the Federal Government associated with these provisions. Some of these costs may be offset by subsequent adjustments to fees for Consular immigrant visa and Service adjustment of status applications, a cost borne primarily by new family-based immigrants to the United States. The Department of State and the Immigration and Naturalization Service will print and distribute the new affidavits of support forms to their offices in the United States and overseas, and will review affidavits of support for an estimated 565,000 family-based immigrants annually. The number of employment-based immigrants who will need affidavits of support is unknown but assumed to be small.

Under current procedures Consular and Immigration Officers determine whether each new immigrant is likely to become a public charge, either through examining a non-legally binding affidavit of support or other documentation, including demonstration of significant assets or job offers in the United States. The new legally enforceable affidavit and supporting documentation are likely to take longer to review for many principal immigrants. The cost of the additional review of the new affidavit of support is not expected to exceed $1 million annually.

The Immigration and Naturalization Service will also maintain automated sponsorship information on some 565,000 new family-based immigrants annually and make this information available to benefit-providing agencies. Federal and State agencies administering Federal means-tested public benefit programs will also have costs associated with deeming sponsor income and resources and recovering the costs of any benefits provided to sponsored immigrants. These costs will depend on the number of cases where sponsored immigrants apply for means-tested benefits and the number of instances in which agencies provide means-tested public benefits and subsequently request sponsors to reimburse the cost of the benefits and/or sue for recovery of these funds.

This regulation may also have an economic impact on State and local governments, either because they choose to deem sponsor income and resources for their own programs or because they choose to make their own locally or State-funded assistance programs available to permanent residents while they are not eligible for Federal means-tested programs. Savings to States from reduced use of Federally funded means-tested public benefits toward which States match funds may be offset by some increased use of locally and State-funded programs. In the absence of information about what actions States will choose to take, costs and savings to State and local governments are not estimated.

Supporting immigrants so that they will not become public charges may also impose costs on sponsors. These costs are hard to quantify since in many cases the sponsored immigrants will become largely or entirely self-supporting. Under the sponsorship provisions of the law, sponsors are required to support the immigrants for whom they have signed affidavits of support at 125 percent of the poverty line until the sponsorship obligation terminates, usually through the naturalization of the sponsored immigrants.

**Executive Order 12612**

This rule does 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. The rule will benefit the States by protecting their treasuries from the burden of supporting immigrants who are not entitled to receive means-tested public benefits. The burdens on the States under this rule are the requirements (a) to request reimbursement from the sponsor before suing the sponsor for reimbursement and (b) to notify the Service, if the State elects to make a determination under section 421(e) of the Personal Responsibility and Work Opportunity Act of 1996. These requirements simply incorporate requirements that already exist by statute. Moreover, the States remain free to determine whether to sue for reimbursement in a given case, or to make a determination under section 421(e). Therefore, in accordance with Executive Order 12612, the Commissioner determines that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Executive Order 12988 Civil Justice Reform**

This interim rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule may result in an annual effect on the economy of $100 million or more, as discussed in the preceding paragraphs pertaining to Executive Order 12866.

**Paperwork Reduction Act**

The information collection requirements contained in this rule (Form I–864, Affidavit of Support Under Section 213A of the Act, Form I–864A, Contract Between Sponsor and Household Member, and Form I–865, Sponsor's Notice of Change of Address), have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

**List of Subjects**

*8 CFR Part 213a*

Administrative practice and procedure, Aliens, Affidavits of Support, Immigrants Immigration and Nationality Act.

*8 CFR Part 299*

Aliens, Forms, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

1. A new part 213a is added, to read as follows:

## PART 213a—AFFIDAVITS OF SUPPORT ON BEHALF OF IMMIGRANTS

Sec.



**Authority:** 8 U.S.C. 1183a; 8 CFR part 2.

### § 213a.1 Definitions.

As used in this part, the term:

*Domicile* means the place where a sponsor has a residence, as defined in section 101(a)(33) of the Act, in the United States, with the intention to maintain that residence for the foreseeable future, *provided*, that a permanent resident who is living abroad temporarily shall be considered to be domiciled in the United States if the permanent resident has applied for and obtained the preservation of residence benefit under section 316(b) or section 317 of the Act, *and provided further*, that a citizen who is living abroad temporarily shall be considered to be domiciled in the United States if the citizen's employment abroad meets the requirements of section 319(b)(1) of the Act.

*Federal poverty line* means the level of income equal to the poverty guidelines as issued by the Secretary of Health and Human Services in accordance with 42 U.S.C. 9902 that is applicable to a household of the size involved. For purposes of considering the Form I–864, Affidavit of Support Under Section 213A of the Act, the Service and Consular Posts will use the most recent income-poverty guidelines published in the **Federal Register** by the Department of Health and Human Services. These guidelines are updated annually, and the Service and Consular Posts will begin to use updated guidelines on the first day of the second month after the date the guidelines are published in the **Federal Register.**

*Household income* means the income used to determine whether the sponsor meets the minimum income requirements under sections 213A(f)(1)(E), 213A(f)(3), or 213A(f)(5) of the Act. It includes the sponsor's income and may also include the incomes of any individuals who either are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months or are lawfully listed as dependents on the sponsor's Federal income tax return for the most recent tax year, even if such dependents do not live at the same residence as the sponsor.

*Household size* means the number obtained by adding: (1) The sponsor and all persons living at the same residence with the sponsor who are related to the sponsor by birth, marriage, or adoption; (2) all persons whom the sponsor has claimed as a dependent on the sponsor's Federal income tax return for the most recent tax year, even if such persons do not live at the same residence as the sponsor; and (3) the number of aliens the sponsor has sponsored under any prior Forms I–864 for whom the sponsor's support obligation has not terminated, plus the number of aliens to be sponsored under the current Form I–864, even if such aliens do not or will not live at the same residence as the sponsor.

*Immigration Officer*, solely for purposes of this part, includes a Consular Officer, as defined by section 101(a)(9) of the Act, as well as an Immigration Officer, as defined by § 103.1(j) of this chapter.

*Income* means an individual's gross income, for purposes of the individual's Federal income tax liability, including a joint income tax return.

*Intending immigrant* means any beneficiary of an immigrant visa petition filed under section 204 of the Act, including any alien who will accompany or follow-to-join the principal beneficiary.

*Means-tested public benefit* means either a Federal means-tested public benefit, which is any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds has determined to be a Federal means-tested public benefit under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, or a State means-tested public benefit, which is any public benefit for which no Federal funds are provided that a State, State agency, or political subdivision of a State has determined to be a means-tested public benefit. No benefit shall be considered to be a means-tested public benefit if it is a benefit described in sections 401(b), 411(b), 422(b) or 423(d) of Public Law 104–193.

*Program official* means the officer or employee of any Federal, State, or local government agency or of any private agency that administers any means-tested public benefit program who has authority to act on the agency's behalf in seeking reimbursement of means-tested public benefits.

*Relative* means a husband, wife, father, mother, child, adult son, adult daughter, brother, or sister.

*Significant ownership interest* means an ownership interest of 5 percent or more in a for-profit entity that filed an immigrant visa petition to accord a prospective employee an immigrant status under section 203(b) of the Act.

*Sponsor* means a person who either is eligible to execute or has executed an affidavit of support under this part.

*Sponsored immigrant* means an immigrant on whose behalf a sponsor has executed an affidavit of support under this part, including any spouse or child who will accompany or follow-to-join the beneficiary of an immigrant visa petition filed by a sponsor.

**§ 213a.2 Use of affidavit of support.**

(a) *General.* (1) In any case specified in paragraph (a)(2) of this section, an intending immigrant is inadmissible as an alien likely to become a public charge, unless a sponsor has executed on behalf of the intending immigrant a Form I–864, Affidavit of Support Under Section 213A of the Act, in accordance with section 213A of the Act, this section, and the instructions on Form I–864. An affidavit of support is executed when a sponsor signs a Form I–864 before a notary public or an Immigration or Consular Officer and that form I–864 is submitted to an Immigration or Consular officer. The sponsor must execute a separate affidavit of support for each visa petition beneficiary and for each alien who will accompany or follow-to-join a visa petition beneficiary. For any spouse or children immigrating with a sponsored immigrant, the sponsor may execute an affidavit of support by submitting photocopies of the Form I–864 and all accompanying documentation, but each photocopy of the Form I–864 must have an original signature. Under this rule, a spouse or child is immigrating with a sponsored immigrant if he or she is listed in Part 3 of Form I–864 and applies for an immigrant visa or adjustment of status within 6 months of the date the Form I–864 is originally signed. The signature on the Form I–864, including photocopies, must be notarized by a notary public or signed before an Immigration or Consular Officer.

(2) (i) Except for cases specified in paragraph (a)(2)(ii) of this section, paragraph (a)(1) of this section applies to any application for an immigrant visa or for adjustment of status filed on or before December 19, 1997, in which an intending immigrant seeks an immigrant visa, admission as an immigrant, or adjustment of status as:

(A) An immediate relative under section 201(b)(2)(A)(i) of the Act;

(B) A family-based immigrant under section 203(a) of the Act; or

(C) An employment-based immigrant under section 203(b) of the Act, if a relative of the intending immigrant either filed the employment-based immigrant petition or has a significant ownership interest in the entity that filed the immigrant visa petition on behalf of the intending immigrant.

(ii) Paragraph (a)(1) of this section shall not apply if the intending immigrant:

(A) Filed a visa petition on his or her own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act, or who seeks to accompany or follow-to-join an immigrant who filed a visa petition on his or his own behalf pursuant to section 204(a)(1)(A)(ii), (iii), or (iv) or section 204(a)(1)(B)(ii) or (iii) of the Act; or

(B) Seeks admission as an immigrant on or after December 19, 1997, in a category specified in paragraph (a)(2)(i) of this section with an immigrant visa issued before December 19, 1997.

(b) *Affidavit of support sponsors.* The following individuals must execute Form I–864 on behalf of the intending immigrant in order for the intending immigrant to be found admissible on public charge grounds:

(1) *For immediate relatives and family-based immigrants.* The person who filed the immigrant visa petition, the approval of which forms the basis of the intending immigrant's eligibility to apply for an immigrant visa or adjustment of status as an immediate relative or as a family-sponsored immigrant, must execute a Form I–864 on behalf of the intending immigrant.

(2) *For employment-based immigrants.* A relative of an intending immigrant seeking an immigrant visa under section 203(b) of the Act who either filed the immigrant visa petition on behalf of the intending immigrant or owns a significant ownership interest in an entity that filed an immigrant visa petition on behalf of the intending immigrant.

(c) *Sponsorship requirements.* (1) *General.* A sponsor must:

(i) Be at least 18 years of age;

(ii) Be domiciled in the United States or any territory or possession of the United States; and

(iii) (A) Be a citizen of the United States or an alien lawfully admitted for permanent residence in the case described in paragraph (a)(2)(i)(A) or (B) of this section; or

(B) Be a citizen or national of the United States or an alien lawfully admitted for permanent residence in the case described in paragraph (a)(2)(i)(C) of this section or if the individual is a joint sponsor.

(2) *Demonstration of ability to support sponsored immigrants.* In order for the intending immigrant to overcome the public charge ground of inadmissibility, the sponsor must demonstrate the means to maintain an annual income of at least 125 percent of the Federal poverty line. If the sponsor is on active duty in the Armed Forces of the United States (other than active duty for training) and the intending immigrant is the sponsor's spouse or child, the sponsor's income must equal at least 100 percent of the Federal poverty line.

(i) *Proof of income.* (A) The sponsor must file with the Form I–864 a copy of his or her Federal income tax returns for each of the 3 most recent taxable years, if he or she had a legal duty to file. By executing Form I–864, the sponsor certifies under penalty of perjury under United States law that each return is a true and correct copy of the return that the sponsor filed with the Internal Revenue Service for that taxable year.

(B) If the sponsor had no legal duty to file a Federal income tax return for any of the 3 most recent tax years, the sponsor must explain why he or she had no legal duty to a file a Federal income tax return for each year for which no Federal income tax return is available. If the sponsor had no legal obligation to file a Federal income tax return, he or she may submit other evidence of annual income.

(C) (1) The sponsor's ability to meet the income requirement will be determined based on the sponsor's household income. The sponsor may rely entirely on his or her own income as his or her household income if it is sufficient to meet the requirement. If needed, the sponsor may include in his or her household income the incomes of other individuals if they either are related to the sponsor by birth, marriage, or adoption and have been living in the sponsor's residence for the previous 6 months or are lawfully listed as dependents on the sponsor's Federal income tax return for the most recent tax year. In order for the Immigration Officer or Consular Officer to consider the income of any of these individuals, the sponsor must include with the Form I–864 a written contract on Form I–864A between the sponsor and each other individual on whose income the sponsor seeks to rely.

Under this written contract each other individual must agree, in consideration of the sponsor's signing of the Form I–864, to provide to the sponsor as much financial assistance as may be necessary to enable the sponsor to maintain the sponsored immigrants at the annual income level required by section 213A(a)(1)(A) of the Act, to be jointly and severally liable for any reimbursement obligation that the sponsor may incur, and to submit to the personal jurisdiction of any court that has subject matter jurisdiction over a civil suit to enforce the contract or the affidavit of support. The sponsor, as a party to the contract, may bring suit to enforce the contract. The sponsored immigrants and any Federal, State, or local agency or private entity that provides a means-tested public benefit to a sponsored immigrant are third party beneficiaries of the contract between the sponsor and the other individual or individuals on whose income the

sponsor relies and may bring an action to enforce the contract in the same manner as third party beneficiaries of other contracts. If there is no spouse or child immigrating with the sponsored immigrant, then there will be no need for the sponsored immigrant to sign a Form I–864A, even if the sponsor will rely on the income of the sponsored immigrant to meet the income requirement. If, however, the sponsor seeks to rely on a sponsored immigrant's income to establish the sponsor's ability to support the sponsored immigrant's spouse or children, then the sponsored immigrant whose income is to be relied on must sign the Form I–864A.

(2) If the sponsor relies on the income of any other individual, the sponsor must also attach that individual's Federal income tax returns for each of the 3 most recent tax years. That individual must certify, under penalty of perjury, on Form I–864A that each tax return submitted is a true and correct copy of the Federal income tax return filed with the Internal Revenue Service. If that individual has no legal obligation to file a Federal income tax return, he or she must explain and submit other evidence of annual income. If the individual whose income the sponsor will rely on is not lawfully claimed as a dependent on the sponsor's Federal income tax return for the most recent tax year, then the sponsor must also attach proof of the relationship between the sponsor and that individual and proof of residency in the sponsor's residence during at least the preceding 6 months.

(ii) *Proof of employment or self-employment.* The sponsor must attach evidence of current employment which provides the sponsor's salary or wage, or evidence of current self employment. If the sponsor is unemployed or retired, the sponsor must state the length of his or her unemployment or retirement. The same information must be provided for any other person whose income is used to qualify under this section.

(iii) *Determining the sufficiency of an affidavit of support.* The sufficiency of an affidavit of support shall be determined in accordance with this paragraph.

(A) *Income.* The sponsor shall first calculate the total income attributable to the sponsor under paragraph (c)(2)(i)(C) of this section.

(B) *Number of persons to be supported.* The sponsor shall then determine his or her household size as defined in § 213a.1.

(C) *Sufficiency of Income.* The sponsor's income shall be considered sufficient if the household income calculated under paragraph (c)(2)(iii)(A) of this section would equal at least 125 percent of the Federal poverty line for the sponsor's household size as defined in § 213a.1, except that the sponsor's income need only equal at least 100 percent of the Federal poverty line for the sponsor's household size, if the sponsor is on active duty (other than for training) in the Armed Forces of the United States and the intending immigrant is the sponsor's spouse or child.

(iv) *Inability to meet income requirement.* If the sponsor is unable to meet the minimum income requirement in paragraph (c)(2)(iii) of this section, the intending immigrant is inadmissible unless the sponsor and/or the intending immigrant demonstrates significant assets or a joint sponsor executes a separate Form I–864.

(A) *Significant assets.* The sponsor may submit evidence of the sponsor's ownership of significant assets, such as savings accounts, stocks, bonds, certificates of deposit, real estate, or other assets. A sponsored immigrant may submit evidence of the sponsored immigrant's assets as a part of the affidavit of support, even if the sponsored immigrant is not required to sign a Form I–864A. The assets of any person who has signed a Form I–864A will also be considered in determining whether the assets are sufficient to meet this requirement. The combined cash value of all the assets (the total value of the assets less any offsetting liabilities) must exceed five times the difference between the sponsor's household income and the Federal poverty line for the sponsor's household size (including all immigrants sponsored in any affidavit of support in force under this section).

B. *Joint sponsor.* A joint sponsor must execute a separate Form I–864 on behalf of the intending immigrant(s) and be willing to accept joint and several liability with the sponsor. A joint sponsor must meet the eligibility requirements under paragraph (c)(1) of this section. A joint sponsor's household income must meet or exceed the income requirement in paragraph (c)(2)(iii) of this section unless the joint sponsor can demonstrate significant assets as provided in paragraph (c)(2)(iv)(A) of this section.

(v) *Immigration or Consular Officer's determination of insufficient income and/or assets.* Notwithstanding paragraphs (c)(2)(iii) (C) and (c)(2)(iv) (A) and (B) of this section, an Immigration Officer or Consular Officer may determine the income and/or assets of the sponsor or a joint sponsor to be insufficient if the Immigration Officer or Consular Officer determines, based on the sponsor's or joint sponsor's employment situation, income for the previous 3 years, assets, or receipt of welfare benefits, that the sponsor or joint sponsor cannot maintain his or her income at the required level.

(vi) *Verification of employment, income and assets.* The Government may pursue verification of any information provided on or with Form I–864, including information on employment, income, or assets, with the employer, financial or other institutions, the Internal Revenue Service, or the Social Security Administration.

(vii) *Effect of fraud or material concealment or misrepresentation.* If the Consular Officer or Immigration Officer finds that the sponsor or joint sponsor has concealed or misrepresented facts concerning income, or household size, or any other material fact, the Consular Officer or Immigration Officer shall conclude that the affidavit of support is not sufficient to establish that the sponsored immigrant is not likely to become a public charge, and the sponsor or joint sponsor may be liable for criminal prosecution under the laws of the United States.

(d) *Legal effect of affidavit of support.* Execution of a Form I–864 under this section creates a contract between the sponsor and the U.S. Government for the benefit of the sponsored immigrant, and of any Federal, State, or local governmental agency or private entity that administers any means-tested public benefits program. The sponsored immigrant, or any Federal, State, or local governmental agency or private entity that provides any means-tested public benefit to the sponsored immigrant after the sponsored immigrant acquires permanent resident status, may seek enforcement of the sponsor's obligations through an appropriate civil action.

(e) *Termination of support obligation.* (1)(i) The sponsor's support obligation with respect to a sponsored immigrant terminates by operation of law when the sponsored immigrant:

(A) Becomes a citizen of the United States;

(B) Has worked, or can be credited with, 40 qualifying quarters of work; *provided,* that the sponsored immigrant is not credited with any quarter beginning after December 31, 1996, during which the sponsored immigrant receives any Federal means-tested public benefit;

(C) Ceases to hold the status of an alien lawfully admitted for permanent residence and has departed the United States; or

(D) Dies.

(ii) The sponsor's support obligation also terminates if the sponsor dies.

(2) The termination of the sponsor's support obligation does not relieve the sponsor (or the sponsor's estate) of any reimbursement obligation under section 213A(b) of the Act that accrued before the support obligation terminated.

(f) In the case of an alien who seeks to follow-to-join the principal sponsored immigrant, as provided for by section 203(d) of the Act, the same sponsor who filed the visa petition and affidavit of support for the principal sponsored immigrant must, at the time that the alien seeks to follow-to-join the principal sponsored immigrant, sign an affidavit of support on behalf of the alien who seeks to follow-to-join the principal sponsored immigrant. If that sponsor has died, then the alien who seeks to follow-to-join the principal sponsored immigrant shall be held to be inadmissible, unless another person, who would qualify as a joint sponsor if the principal sponsor were still alive, submits on behalf of the alien who seeks to follow-to-join the principal sponsored immigrant, an affidavit of support that meets the requirements of this section. If the original sponsor is deceased and no other eligible sponsor is available, the principal sponsored immigrant may sign an affidavit of support on behalf of the alien seeking to follow-to-join the principal immigrant, if the principal sponsored immigrant can meet the requirements of paragraph (c) of this section.

**§ 213a.3 Notice of change of address.**

(a) *General.* If the address of a sponsor (including a joint sponsor) changes for any reason while the sponsor's support obligation under the affidavit of support remains in effect with respect to any sponsored immigrant, the sponsor shall file Form I–865, Sponsor's Notice of Change of Address, with the Service no later than 30 days after the change of address becomes effective.

(b) *Civil penalty.* (1) *Amount of penalty.* (i) Except as provided in paragraph (b)(1)(ii) of this section, if the sponsor fails to give notice in accordance with paragraph (a) of this section, the Service may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(A) of the Act.

(ii) If the sponsor, knowing that the sponsored immigrant has received any means-tested public benefit, fails to give notice in accordance with paragraph (a) of this section, the Service may impose on the sponsor a civil penalty in an amount within the penalty range established in section 213A(d)(2)(B) of the Act.

(2) *Procedure for imposing penalty.* The procedure for imposing a civil penalty under this paragraph follows that which is established at 8 CFR part 280.

(c) *Change of address.* If the sponsor is an alien, filing Form I–865 under this section does not satisfy or substitute for the change of address notice required under § 265.1 of this chapter.

**§ 213a.4 Actions for reimbursement, public notice, and congressional reports.**

(a) *Requests for reimbursement.*

Requests for reimbursement under section 213A(b)(2) of the Act must be served by personal service, as defined by § 103.5a(a)(2) of this chapter. The request for reimbursement shall specify the date the sponsor's affidavit of support was received by the Service, the sponsored immigrant's name, alien registration number, address, and date of birth, as well as the types of means-tested public benefit(s) that the sponsored immigrant received, the dates the sponsored immigrant received the means-tested public benefit(s), and the total amount of the means-tested public benefit(s) received. It is not necessary to make a separate request for each type of means-tested public benefit, nor for each separate payment. The agency may instead aggregate in a single request all benefit payments the agency has made as of the date of the request. The request for reimbursement shall also notify the sponsor that the sponsor must, within 45 days of the date of service, respond to the request for reimbursement either by paying the reimbursement or by arranging to commence payments pursuant to a payment schedule that is agreeable to the program official. Prior to filing a lawsuit against a sponsor to enforce the sponsor's support obligation under section 213A(b)(2) of the Act, a Federal, State, or local governmental agency or a private entity must wait 45 days from the date it issues a written request for reimbursement under section 213A(b)(1) of the Act. If a sponsored immigrant, a Federal, State, or local agency, or a private entity sues the sponsor and obtains a final civil judgment against the sponsor, the sponsored immigrant, the Federal, State, or local agency, or the private entity shall mail a certified copy of the final civil judgment to the Service's Statistics Branch, 425 I Street, NW., Washington, DC 20536. The copy should be accompanied by a cover letter that includes the reference ''Civil Judgments for Congressional Reports under section 213A(i)(3) of the Act.'' Failure to file a certified copy of the final civil judgment in accordance with this section has no effect on the plaintiff's ability to collect on the judgment pursuant to law.

(b) Federal, State, and local government agencies should issue public notice of determinations regarding which benefits are considered ''means-tested public benefits'' prior to December 19, 1997, the date the new affidavit of support goes into effect, or as soon as possible thereafter. Additional notices should be issued whenever an agency revises its determination of which benefits are considered ''means-tested public benefits.''

(c) *Congressional reports.* (1) For purposes of section 213A(i)(3) of the Act, a sponsor shall be considered to be in compliance with the financial obligations of section 213A of the Act unless the sponsored immigrant or a Federal, State, or local agency or private entity has sued the sponsor, obtained a final judgment enforcing the sponsor's obligations under section 213A(a)(1)(A) or 213A(b) of the Act, and mailed a certified copy of the final judgment to the Service's Statistics Branch, 425 I Street, NW., Washington, DC 20536.

(2) If a Federal, State, or local agency or private entity that administers any means-tested public benefit makes a determination under section 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 in the case of any sponsored immigrant, the program official shall send written notice of the determination, including the name of the sponsored immigrant and of the sponsor, to the Service's Statistics Branch. The written notice should include the reference ''Determinations under 421(e) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.''

**§ 213a.5 Relationship of this part to other affidavits of support.**

Nothing in this part precludes the continued use of Form I–134, Affidavit of Support (other than INA section 213A), or of Form I–361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97–359 Amerasian, in any case, other than a case described in § 213a.2(a)(2), in which these forms were used prior to enactment of section 213A of the Act. The obligations of section 213A of the Act do not bind a person who executes Form I–134 or Form I–361, although the person who executes Form I–361 remains subject to the provisions of section 204(f)(4)(B) of the Act and of § 204.4(i) of this chapter.

## PART 299—IMMIGRATION FORMS

2. The authority citation for part 299 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103; 8 CFR part 2.

3. Section 299.1 is amended by adding the entries for Forms ''I–864,'' ''I–864A,'' and ''I–865'' to the listing of forms, in proper numerical sequence, to read as follows:

**§ 299.1 Prescribed forms.**

* * * * *

| Form No. | Edition date | Title |
|---|---|---|
| * | * | * * * |
| I–864 ..... | 10–06–97 | Affidavit of Support Under Section 213A of the Act. |
| I–864A ... | 10–06–97 | Contract Between Sponsor and Household Member. |
| I–865 ..... | 10–06–97 | Sponsor's Notice of Change of Address. |
| * | * | * * * |

4. Section 299.5 is amended by adding to the list of forms, in proper numerical sequence, the entries for Forms ''I–864,'' ''I–864A'' and ''I–865'' to read as follows:

**§ 299.5 Display of control numbers.**

* * * * *

| INS form No. | INS form title | Currently assigned OMB control No. |
|---|---|---|
| * | * | * * * |
| I–864 ..... | Affidavit of Support under Section 213A of the Act. | 1115–0214 |
| I–864A ... | Contract between Sponsor and Household Member. | 1115–0214 |
| I–865 ..... | Sponsor's Notice of Change of Address. | 1115–0215 |
| * | * | * * * |

Dated: October 8, 1997.

**Doris Meissner,**

*Commissioner, Immigrant and Naturalization Service.*

[FR Doc. 97–27605 Filed 10–17–97; 8:45 am]

**BILLING CODE 4410–10–M**

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 261

**[Docket No. R–0975]**

### Rules Regarding Availability of Information

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System (Board) hereby amends its Rules Regarding Availability of Information (Rules) to reflect recent changes in the Freedom of Information Act (FOIA) as a result of the Electronic Freedom of Information Act Amendments (EFOIA). In order to account for future amendments to the Rules, the sections have been renumbered.

The review of the Board's Rules that produced this final rule was conducted in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994. In this regard, the amendments to the Rules clarify certain provisions and simplify the processing of requests for access to information in certain circumstances.

**EFFECTIVE DATE:** November 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boutilier, Senior Counsel, (202/452–2418), Legal Division; or Susanne K. Mitchell, Manager, Freedom of Information Office (202/452–2407). For the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD)(202/452–3544), Board of Governors of the Federal Reserve System, 20th and Constitution, N.W., Washington, D.C. 20551.

**SUPPLEMENTARY INFORMATION:** Last year, Congress passed the Electronic Freedom of Information Act Amendments of 1996, Public Law 104–231, which amends the Freedom of Information Act, 5 U.S.C. 552. Among other things, EFOIA requires agencies to promulgate regulations that provide for expedited processing of requests for records, and permits agencies to promulgate regulations that provide for multitrack processing of requests. In addition to amending its Rules to comply with EFOIA, the Board has taken this opportunity, in accordance with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, to review and streamline those Rules.[1] In addition, the Board is amending the Rules to take account of various statutes that have been enacted since the Rules were last revised in 1988.[2]

To implement these changes, the Board published proposed changes to Subparts A, B, and D of its Rules on June 10, 1997 (62 FR 31526). The Board received four comments: one from a Federal Reserve Bank, one from a commercial bank, one from a credit union, and one from a community group. Three of the comments supported the proposal; the community group, however, opposed some of the proposed changes. A discussion of the specific comments is included in the section-by-section analysis. In 1996, the Board published for comment proposed amendments to the Rules (61 FR 7436, February 28, 1996) that primarily concerned Subpart C of the Rules and the definitions in Subpart A of terms that are used in Subpart C. In addition, the Board had proposed changes to certain portions of Subpart B and Subpart D, which were republished in the June 1997 proposed rule. The changes to Subparts A, B and D are being adopted in this final rule; the proposed amendments to Subpart C are still under consideration.

#### Subpart A

Subpart A contains the General Provisions, describing the authority, purpose, and scope; listing the definitions applicable to this part, and explaining the responsibilities of the Secretary of the Board as custodian of the Board's records. The changes to this subpart are primarily in the ''Authority'' section to clarify the ability of the Board to provide exempt records to certain entities outside of the FOIA process in specific circumstances. In addition, certain definitions that were included in the section on FOIA fees and fee waivers have been moved forward to the ''Definitions'' section. One commenter noted that the definition of ''records'' specifically excludes handwritten notes, and questions the authority for this exclusion. The intention was to exclude personal notes that are not a part of official Board records. This, however, is accomplished by the exclusion of personal files, so the reference to handwritten notes has been deleted.

Section 261.3 is amended to clarify that authority delegated to the General Counsel and other officers of the Board may be subdelegated. An additional change to § 261.3(c) states that the Secretary of the Board is the Board's agent for service of all process, and that

[1] The regulatory citations contained in this final rule refer to the regulation, as amended. As noted above, the sections have been renumbered.

[2] The Board's Rules have been implemented in a manner consistent with these and other changes described in this final rule.

the Board will not accept process on behalf of employees in connection with purely private matters except as specifically provided by law.

**Subpart B**

Subpart B is amended to comply with the EFOIA requirements for expedited processing. The Board also is implementing multitrack processing. In addition, the Board has revised the section on fees and fee waivers; and portions of this Subpart have been reorganized and streamlined.

Section 261.10 lists the information that the Board publishes on a regular or intermittent basis. This section has been streamlined. No substantive changes have been made.

Section 261.11 describes the information that is made available for inspection or copying, either in the Board's reading room or over the Internet, as required by EFOIA. The records provided over the Internet cover a much smaller scope than those available in the Board's reading room, because the requirement to provide records over the Internet covers only records created by the Board after November 1, 1996. One of the commenters suggested that the Board expand the categories of documents provided over the Internet to include policies, interpretations, orders, and requests for comments, as well as provide indexing and an appropriate search mechanism on the website. The Board is in the process of expanding the information that is made available over the Internet. Legal interpretations dating from January 1996, and Press Releases, which include some Board orders, have been placed on the website. The remaining Board orders dating after November 1, 1996, will be provided in the near future. Other information that the Board believes is of interest to the public is being provided as quickly as the Board's resources permit. With regard to indexing or a search mechanism, there is a general index provided on the site, and the Board expects to install a search mechanism soon. Another commenter requested that the Board place the text of the public sections of its Community Reinvestment Act examination reports on its website. The Board expects to have this information on its website by the end of this year. This commenter also noted that the Board has not placed its administrative manuals on its website. EFOIA requires such manuals to be made available in the reading room if they are not published and offered for sale. All Board manuals of this type are published and offered for sale.

Section 261.12 describes the procedures for requesting records that are not published or routinely made available for inspection. This section includes the requirement that FOIA requests not be combined with any other requests to the Board except requests under the Privacy Act. This requirement is intended to ensure that FOIA requests are delivered promptly to the Board's Freedom of Information Office (FOI Office) when they are received, which may not occur if the FOIA request is included in a request for other action by the Board. One commenter opposed this amendment on grounds that it would prohibit a requester from combining a FOIA request with comments submitted in connection with an application under the Bank Holding Company Act of 1956 (BHCA), 12 U.S.C. 1841 *et seq.* The commenter believes that it should be permissible to combine a FOIA request with substantive comments regarding an application, or in the alternative, a process should be established for making requests under the Board's ex parte rules for processing BHCA applications. A separate, clearly identified FOIA request delivered directly to the Secretary insures a faster FOIA response, however, because comment letters are not routinely sent to the FOIA office for action. Procedures for BHCA applications are set forth in the Board's Regulation Y, which was recently revised after notice and comment.

Section 261.13 describes the Board's procedures for processing FOIA requests. This section has been extensively revised to reflect the changes required by EFOIA. In the review process, one sentence was inadvertently dropped from the section when it was published for comment. The existing rule states that the Secretary will assign responsible staff to process particular requests. This provision has been restored to section 261.13(d) to provide the Secretary with the authority to assign the requests to the appropriate staff at the Board.

The revised regulation provides for multitrack processing. Fast-track processing will apply to records that are easily identifiable by the FOI Office staff and that have already been cleared for release to the public. Fast-track requests will be handled as expeditiously as possible, in the order in which they are received. All information requests that do not meet the fast-track processing standards will be handled under regular processing procedures. A requester who desires fast-track processing but whose request does not meet those standards may contact the FOI Office staff to narrow the request so that it will qualify for fast-track processing. The statutory time limit for regular-track processing is extended to twenty business days, from the previous ten business days.

Expedited processing may be provided where a requester has demonstrated a compelling need for the records, or where the Board has determined to expedite the response. The time limit for determination whether to grant expedited processing is set at ten days, with expedited procedures for an appeal of the Secretary's determination not to provide expedited processing. Under EFOIA, there are only two types of circumstances that can meet the compelling need standard: where failure to obtain the records expeditiously could pose an imminent threat to the life or physical safety of a person, or where the requester is a person primarily engaged in disseminating information and there is an urgency to inform the public concerning actual or alleged agency activity. For ease of administration and consistency, the section uses the term ''representative of the news media,'' to describe a person primarily engaged in disseminating information, because this term is used for the FOIA fee schedule, and thus, is known to those familiar with FOIA and the Board's Rules. To demonstrate a compelling need, a requester must submit a certified statement. A form for the certified statement may be obtained from the FOI Office. One commenter objected that the definition of ''compelling need'' does not include public interest requesters who wish to comment on pending BHCA applications. The definition of compelling need is established by EFOIA, not the Board.

Section 261.14 lists the exemptions from disclosure under FOIA. This section has been reorganized and streamlined, but no substantive changes have been made.

Sections 261.15 and 261.16, which were previously located in Subpart D, have been moved to Subpart B for clarity, since they apply only to FOIA requests. Accordingly, a separate Subpart D is no longer necessary. These provisions implement Executive Order 12,600, June 23, 1987, by establishing certain predisclosure notification procedures for confidential business or financial information that may be exempt under (b)(4) of the FOIA, 5 U.S.C. 552(b)(4).[3]

[3] These provisions are intended only to address matters of the kind covered by Executive Order 12,600. This, however, does not preclude the Board

Continued

Section 261.15 sets forth the procedures for requesting confidential treatment. The Board wishes to emphasize that failure to properly segregate confidential material from other material may result in the release of that material without prior notice to the submitter. This is particularly important in light of the Board's intention, in connection with processing BHCA applications, to provide, upon request, the public portion of an application within three business days of the request. In order to meet this deadline, the Board's and Reserve Bank's staff must rely on the applicant to properly designate the material submitted. A careful review of the material designated as ''Confidential'' will be made and any information improperly labeled as ''Confidential'' will be provided to requesters immediately upon identification as publicly available.

Section 261.16 sets forth the procedures for responding to a FOIA request for information that has been designated by the submitter as confidential. It provides for notice to the submitter that permits the submitter to provide written objections to the release of the confidential information. Section 261.16(e) describes the information that a submitter should include in its written submission objecting to the release of the documents, including whether the information was provided voluntarily under the standards set by the court case, *Critical Mass Energy Project* v. *NRC*, 975 F. 2d. 871 (D.C. Cir. 1992). If the information was not provided voluntarily, the submitter must provide detailed facts and arguments showing either the likelihood of substantial competitive harm resulting from release of the information, or that release would impair the Board's ability to obtain necessary information in the future.

Section 261.17 contains the FOIA fee schedules and the standards for waiver of fees. The fee schedule provisions have been revised to clarify that the processing time of a FOIA request does not begin until payment is received in cases where advance payment is required. Where a person has requested a waiver of the fees and has not agreed to pay the fees, the processing time does not begin until a fee waiver has been granted, or if the waiver is denied, until the requester has agreed to pay the applicable fees. One commenter objected to this provision, stating that it unfairly affects nonprofit groups with limited budgets that must promise to pay the fees for an application in order to receive it in a timely manner. This commenter requested that the Board establish a procedure to certify groups, on an ongoing basis, for fee waivers, instead of making the determination on a case-by-case basis.

FOIA, itself, establishes certain categories that receive favorable treatment with regard to fees, *e.g.*, the news media and educational institutions. FOIA also provides for fee waivers where disclosure of the information is in the public interest (not based on the requester's status). Thus, a requester must meet the standards for a fee waiver in each request. This requirement is supported by the legislative history (see, 132 Cong. Rec. H. 9463 (Oct.8, 1986)(Rep. English)) and court decisions (see, *National Wildlife Federation* v. *Hamilton*, No. 95–017–BU(D. Mont. July 15, 1996)). The Board reviews each fee waiver request pursuant to the standards set forth in the Act and its Rules. If a non-profit community group demonstrates in its request for a waiver of fees that the requested information will be distributed to the public and will contribute significantly to the public understanding of the activities of the Board, then the requester should qualify under the Act and the Board's Rules for a waiver of the fees.

The standards under which the Secretary may grant a request for waiver of fees have been modified to reflect the development of case law in this area. Additionally, the regulation provides for administrative appeal of a denial of a waiver request, which reflects the Board's current procedure of permitting such administrative appeals.

**Subpart C**

The sections in Subpart C have been renumbered to be consistent with the renumbering of Subparts A and B in this proposal. No substantive changes have been made at this time. Proposed changes to this Subpart were published in 1996 (61 FR 7436, February 28, 1996), and the comments received on these changes are still under consideration.

**Regulatory Flexibility Act Analysis**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Board certifies that the amendments will not have a significant economic impact on a substantial number of small entities. These amendments simplify some of the procedures regarding release of information and require disclosure of information in certain instances in accordance with law. The requirements to disclose apply to the Board, therefore they should not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act Analysis**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100–0281.

The collection of information requirements in this regulation are found in 12 CFR 261.12, 261.13, 261.16, and 261.17. (The hour burden for requests for confidential treatment made under 261.15 are included in the hour burden associated with the information collections for which the respondent desires confidential treatment.) The information will be used to fulfill requests for information made under the Freedom of Information Act, or to determine the appropriateness of fulfilling such requests. The respondents may include small entities. This information is required to obtain a benefit (5 U.S.C. 552). Generally, requests made under 12 CFR 261.12, 261.13, 261.16, and 12 CFR 261.17 are not exempt from disclosure under the Freedom of Information Act.

The annual hour burden estimates are presented in the following table. There is estimated to be no annual cost burden over the annual hour burden, and no associated capital or start up cost. One comment specifically addressing the burden estimates was received from a federal credit union, stating that the burden estimates seemed accurate.

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or its staff from giving notice to submitters in other situations where, for example, documents obtained pursuant to a confidentiality commitment are subpoenaed in civil litigation. The Board exercises its discretion in such cases consistent with applicable law. The Board does not disclose its receipt of federal grand jury subpoenas, however, except in accordance with law following consultation with appropriate law enforcement authorities.

| | Estimated annual frequency | Estimated response time (hours) | Estimated annual burden hours |
|---|---|---|---|
| Initial request (261.12 (b) and (c) and 261.13(c)) | 4,900 | .5 | 2,450 |
| Limits on an earlier request that included a request for expedited processing that has been denied (261.13(b)(2)) | 100 | .5 | 50 |
| Appeal of denial of request (261.13(i)) | 30 | 2 | 60 |
| Written objections by submitter to release of data (261.16(e)) | 30 | 2 | 60 |
| Request to waive or reduce fees (261.17(f)) | 100 | .5 | 50 |
| Total | | | 2,670 |

The Federal Reserve has a continuing interest in the public's opinions of its collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0281), Washington, DC 20503.

**List of Subjects in 12 CFR Part 261**

Confidential business information, Federal Reserve System, Freedom of Information, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 261 as follows:

## PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

1. The authority citation for part 261 is revised to read as follows:

**Authority:** 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.*, 611 *et seq.*, 1442, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.*, 2601, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.*; 42 U.S.C. 3601; 44 U.S.C. 3510.

### Subpart D—[Removed]

2. Subpart D, consisting of §§ 261.15 through 261.17, is removed.

**§§ 261.11–261.14 [Redesignated as §§ 261.20–261.23]**

3. Sections 261.11 through 261.14 in Subpart C are redesignated as §§ 261.20 through 261.23, respectively, in Subpart C.

4. Subparts A and B are revised to read as follows:

**Subpart A—General Provisions**

Sec.


**Subpart B—Published Information and Records Available to Public; Procedures for Requests**



### Subpart A—General Provisions

**§ 261.1 Authority, purpose, and scope.**

(a) *Authority.* (1) This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Freedom of Information Act, 5 U.S.C. 552; Sections 9, 11, and 25A of the Federal Reserve Act, 12 U.S.C. 248(i) and (k), 321 *et seq.*, (including 326), 611 *et seq.*; Section 22 of the Federal Home Loan Bank Act, 12 U.S.C 1442; the Federal Deposit Insurance Act, 12 U.S.C. 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o); section 5 of the Bank Holding Company Act, 12 U.S.C. 1844; the Bank Secrecy Act, 12 U.S.C. 1951 *et seq.*, and Chapter 53 of Title 31; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.*; the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.*; the International Banking Act, 12 U.S.C. 3101 *et seq.*; the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.*; the Securities and Exchange Act, 15 U.S.C. 77uuu(b), 78q(c)(3); the Employee Retirement Income Security Act, 29 U.S.C. 1204; the Money Laundering Suppression Act, 31 U.S.C. 5301, the Fair Housing Act, 42 U.S.C. 3601; the Paperwork Reduction Act, 44 U.S.C. 3510; and any other applicable law that establishes a basis for the exercise of governmental authority by the Board.

(2) This part establishes mechanisms for carrying out the Board's statutory responsibilities under statutes in paragraph (a)(1) of this section to the extent those responsibilities require the disclosure, production, or withholding of information. In this regard, the Board has determined that the Board, or its delegees, may disclose exempt information of the Board, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the Board's supervisory or regulatory authorities, including but not limited to, authority granted to the Board in the Federal Reserve Act, 12 U.S.C. 221 *et seq.*, the Bank Holding Company Act, 12 U.S.C. 1841 *et seq.*, and the International Banking Act, 12 U.S.C. 3101 *et seq.* The Board has determined that all such disclosures, made in accordance with the rules and procedures specified in this part, are authorized by law.

(3) The Board has also determined that it is authorized by law to disclose information to a law enforcement or other federal or state government agency that has the authority to request and receive such information in carrying out its own statutory responsibilities, or in response to a valid order of a court of competent jurisdiction or of a duly constituted administrative tribunal.

(b) *Purpose.* This part sets forth the categories of information made available to the public, the procedures for obtaining documents and records, the procedures for limited release of exempt and confidential supervisory information, and the procedures for protecting confidential business information.

(c) *Scope.* (1) This subpart A contains general provisions and definitions of terms used in this part.

(2) Subpart B of this part implements the Freedom of Information Act (FOIA) (5 U.S.C. 552).

(3) Subpart C of this part sets forth:

(i) The kinds of exempt information made available to supervised institutions, supervisory agencies, law enforcement agencies, and others in certain circumstances;

(ii) The procedures for disclosure; and

(iii) The procedures with respect to subpoenas, orders compelling production, and other process.

**§ 261.2 Definitions.**

For purposes of this part:

(a) *Board's official files* means the Board's central records.

(b) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(c)(1) *Confidential supervisory information* means:

(i) Exempt information consisting of reports of examination, inspection and visitation, confidential operating and condition reports, and any information derived from, related to, or contained in such reports;

(ii) Information gathered by the Board in the course of any investigation, suspicious activity report, cease-and-desist orders, civil money penalty enforcement orders, suspension, removal or prohibition orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, Pub.L. 89-695, 80 Stat. 1028 (codified as amended in scattered sections of 12 U.S.C.), the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*,the Federal Reserve Act, 12 U.S.C. 221 *et seq.*, the International Banking Act of 1978, Pub.L. 95–369, 92 Stat. 607 (codified as amended in scattered sections of 12 U.S.C.), and the International Lending Supervision Act of 1983, 12 U.S.C. 3901 *et seq.*; except—

(A) Such final orders, amendments, or modifications of final orders, or other actions or documents that are specifically required to be published or made available to the public pursuant to 12 U.S.C. 1818(u), or other applicable law, including the record of litigated proceedings; and

(B) The public section of Community Reinvestment Act examination reports, pursuant to 12 U.S.C. 2906(b); and

(iii) Any documents prepared by, on behalf of, or for the use of the Board, a Federal Reserve Bank, a federal or state financial institutions supervisory agency, or a bank or bank holding company or other supervised financial institution.

(2) *Confidential supervisory information* does not include documents prepared by a supervised financial institution for its own business purposes and that are in its possession.

(d) *Direct costs* mean those expenditures that the Board actually incurs in searching for, reviewing, and duplicating documents in response to a request made under § 261.12.

(e) *Duplication* refers to the process of making a copy of a document in response to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Among others, such copies may take the form of paper, microform, audiovisual materials, or machine-readable documentation (e.g., magnetic tape or disk).

(f) *Educational institution* refers to a preschool, a public or private elementary or secondary school, or an institution of undergraduate higher education, graduate higher education, professional education, or an institution of vocational education, which operates a program of scholarly research.

(g) *Exempt information* means information that is exempt from disclosure under § 261.14.

(h) *Noncommercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis (as that term is used in this section) and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(i)(1) *Records of the Board* include:

(i) In written form, or in nonwritten or machine-readable form; all information coming into the possession and under the control of the Board, any Board member, any Federal Reserve Bank, or any officer, employee, or agent of the Board or of any Federal Reserve Bank, in the performance of functions for or on behalf of the Board that constitute part of the Board's official files; or

(ii) That are maintained for administrative reasons in the regular course of business in official files in any division or office of the Board or any Federal Reserve Bank in connection with the transaction of any official business.

(2) *Records of the Board* does not include personal files of Board members and employees; tangible exhibits, formulas, designs, or other items of valuable intellectual property; extra copies of documents and library and museum materials kept solely for reference or exhibition purposes; unaltered publications otherwise available to the public in Board publications, libraries, or established distribution systems.

(j) *Report of examination* means the report prepared by the Board, or other federal or state financial institution supervisory agency, concerning the examination of a financial institution, and includes reports of inspection and reports of examination of U.S. branches or agencies of foreign banks and representative offices of foreign organizations, and other institutions examined by the Federal Reserve System.

(k) *Report of inspection* means the report prepared by the Board concerning its inspection of a bank holding company and its bank and nonbank subsidiaries.

(l) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(1) The term ''news'' means information that is about current events or that would be of current interest to the public.

(2) Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public.

(3) ''Freelance'' journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though they are not actually employed by it.

(m)(1) *Review* refers to the process of examining documents, located in response to a request for access, to determine whether any portion of a document is exempt information. It includes doing all that is necessary to excise the documents and otherwise to prepare them for release.

(2) *Review* does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(n)(1) *Search* means a reasonable search, by manual or automated means, of the Board's official files and any other files containing Board records as seem reasonably likely in the particular circumstances to contain information of the kind requested. For purposes of computing fees under § 261.17, search time includes all time spent looking for material that is responsive to a request, including line-by-line identification of material within documents. Such activity is distinct from ''review'' of material to determine whether the material is exempt from disclosure.

(2) *Search* does not mean or include research, creation of any document, or extensive modification of an existing program or system that would significantly interfere with the operation of the Board's automated information systems.

(o) *Supervised financial institution* includes a bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or any other institution that is supervised by the Board.

**§ 261.3 Custodian of records; certification; service; alternative authority.**

(a) *Custodian of records.* The Secretary of the Board (Secretary) is the official custodian of all Board records, including records that are in the possession or control of the Board, any Federal Reserve Bank, or any Board or Reserve Bank employee.

(b) *Certification of record.* The Secretary may certify the authenticity of any Board record, or any copy of such record, for any purpose, and for or before any duly constituted federal or state court, tribunal, or agency.

(c) *Service of subpoenas or other process.* Subpoenas or other judicial or administrative process, demanding access to any Board records or making any claim against the Board, shall be addressed to and served upon the Secretary of the Board at the Board's office at 20th and C Streets, N.W., Washington, D.C. 20551. Neither the Board nor the Secretary are agents for service of process on behalf of any employee in respect of purely private legal disputes, except as specifically provided by law.

(d) *Alternative authority.* Any action or determination required or permitted by this part to be done by the Secretary, the General Counsel, or the Director of any Division may be done by any employee who has been duly designated for this purpose by the Secretary, General Counsel, or the appropriate Director.

## Subpart B—Published Information and Records Available to Public; Procedures for Requests

**§ 261.10 Published information.**

(a) **Federal Register**. The Board publishes in the **Federal Register** for the guidance of the public:

(1) Descriptions of the Board's central and field organization;

(2) Statements of the general course and method by which the Board's functions are channeled and determined, including the nature and requirements of procedures;

(3) Rules of procedure, descriptions of forms available and the place where they may be obtained, and instructions on the scope and contents of all papers, reports, and examinations;

(4) Substantive rules, interpretations of general applicability, and statements of general policy;

(5) Every amendment, revision, or repeal of the foregoing in paragraphs (a)(1) through (a)(4) of this section;

(6) Notices of proposed rulemaking;

(7) Notices of applications received under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) and the Change in Bank Control Act (12 U.S.C. 1817);

(8) Notices of all Board meetings, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b);

(9) Notices identifying the Board's systems of records, pursuant to the Privacy Act of 1974 (5 U.S.C. 552a); and

(10) Notices of agency data collection forms being reviewed under the Paperwork Reduction Act (5 U.S.C. 3501 *et seq.*).

(b) *Board's Reports to Congress.* The Board's annual report to Congress pursuant to the Federal Reserve Act (12 U.S.C. 247), which is made public upon its submission to Congress, contains a full account of the Board's operations during the year, the policy actions by the Federal Open Market Committee, an economic review of the year, and legislative recommendations to Congress. The Board also makes periodic reports to Congress under certain statutes, including but not limited to the Freedom of Information Act (5 U.S.C. 552); the Government in the Sunshine Act (5 U.S.C. 552b); the Full Employment and Balanced Growth Act of 1978 (12 U.S.C. 225a); and the Privacy Act (5 U.S.C. 552a).

(c) *Federal Reserve Bulletin.* This publication is issued monthly and contains economic and statistical information, articles relating to the economy or Board activities, and descriptions of recent actions by the Board.

(d) *Other published information.* Among other things, the Board publishes the following information:

(1) *Weekly publications.* The Board issues the following publications weekly:

(i) A statement showing the condition of each Federal Reserve Bank and a consolidated statement of the condition of all Federal Reserve Banks, pursuant to 12 U.S.C. 248(a);

(ii) An index of applications received and the actions taken on the applications, as well as other matters issued, adopted, or promulgated by the Board; and

(iii) A statement showing changes in the structure of the banking industry resulting from mergers and the establishment of branches.

(2) *Press releases.* The Board frequently issues statements to the press and public regarding monetary and credit actions, regulatory actions, actions taken on certain types of applications, and other matters.

(3) *Call Report and other data.* Certain data from Reports of Condition and Income submitted to the Board are available through the National Technical Information Service and may be obtained by the procedure described in § 261.11(c)(2).

(4) *Federal Reserve Regulatory Service.* This is a multivolume looseleaf service published by the Board, containing statutes, regulations, interpretations, rulings, staff opinions, and procedural rules under which the Board operates. Portions of the service are also published as separate looseleaf handbooks relating to consumer and community affairs, monetary policy and reserve requirements, payments systems, and securities credit transactions. The service and each handbook contain subject and citation indexes, are updated monthly, and may be subscribed to on a yearly basis.

(e) *Index to Board actions.* The Board's Freedom of Information Office maintains an index to Board actions, which is updated weekly and provides identifying information about any matters issued, adopted, and promulgated by the Board since July 4, 1967. Copies of the index may be obtained upon request to the Freedom of Information Office subject to the current schedule of fees in § 261.17.

(f) *Obtaining Board publications.* The Publications Services Section maintains a list of Board publications that are available to the public. In addition, a partial list of publications is published in the *Federal Reserve Bulletin.* All publications issued by the Board, including available back issues, may be obtained from Publications Services, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (pedestrian entrance is on C Street, N.W.). Subscription or other charges may apply to some publications.

**§ 261.11 Records available for public inspection and copying.**

(a) *Types of records made available.* Unless they were published promptly and made available for sale or without charge, the following records shall be made available for inspection and copying at the Freedom of Information Office:

(1) Final opinions, including concurring and dissenting opinions, as well as final orders and written agreements, made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Board that are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect the public;

(4) Copies of all records released to any person under § 261.12 that, because

of the nature of their subject matter, the Board has determined are likely to be requested again;

(5) A general index of the records referred to in paragraph (a)(4) of this section; and

(6) The public section of Community Reinvestment Act examination reports.

(b) *Reading room procedures.* (1) Information available under this section is available for inspection and copying, from 9:00 a.m. to 5:00 p.m. weekdays, at the Freedom of Information Office of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (the pedestrian entrance is on C Street, N.W.).

(2) The Board may determine that certain classes of publicly available filings shall be made available for inspection and copying only at the Federal Reserve Bank where those records are filed.

(c) *Electronic records.* (1) Except as set forth in paragraph (c)(2) of this section, information available under this section that was created by the Board on or after November 1, 1996, shall also be available on the Board's internet site (which can be found at http://www.bog.frb.fed.us).

(2) *NTIS.* The publicly available portions of Reports of Condition and Income of individual banks and certain other data files produced by the Board are distributed by the National Technical Information Service. Requests for these public reports should be addressed to: Sales Office, National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650.

(3) *Privacy protection.* The Board may delete identifying details from any record to prevent a clearly unwarranted invasion of personal privacy.

**§ 261.12 Records available to public upon request.**

(a) *Types of records made available.* All records of the Board that are not available under §§ 261.10 and 261.11 shall be made available upon request, pursuant to the procedures and exceptions in this Subpart B.

(b) *Procedures for requesting records.* (1) A request for identifiable records shall reasonably describe the records in a way that enables the Board's staff to identify and produce the records with reasonable effort and without unduly burdening or significantly interfering with any of the Board's operations.

(2) The request shall be submitted in writing to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551; or sent by facsimile to the Freedom of Information Office, (202) 872–7562 or 7565. The request shall be clearly marked *FREEDOM OF INFORMATION ACT REQUEST.*

(3) A request may not be combined with any other request to the Board except for a request under 12 CFR 261a.3(a) (Rules Regarding Access to and Review of Personal Information under the Privacy Act of 1974) and a request made under § 261.23(b)(1)(ii).

(c) *Contents of request.* The request shall contain the following information:

(1) The name and address of the requester, and the telephone number at which the requester can be reached during normal business hours;

(2) Whether the requested information is intended for commercial use, and whether the requester is an educational or noncommercial scientific institution, or news media representative;

(3) A statement agreeing to pay the applicable fees, or a statement identifying any desired fee limitation, or a request for a waiver or reduction of fees that satisfies § 261.17(h); and

(4) If the request is being made in connection with on-going litigation, a statement indicating whether the requester will seek discretionary release of exempt information from the General Counsel upon denial of the request by the Secretary. A requester who intends to make such a request to the General Counsel may also address the factors set forth in § 261.23(b).

(d) *Defective requests.* The Board need not accept or process a request that does not reasonably describe the records requested or that does not otherwise comply with the requirements of this section. The Board may return a defective request, specifying the deficiency. The requester may submit a corrected request, which will be treated as a new request.

(e) *Oral requests.* The Freedom of Information Office may honor an oral request for records, but if the requester is dissatisfied with the Board's response and wishes to seek review, the requester must submit a written request, which shall be treated as an initial request.

**§ 261.13 Processing requests.**

(a) *Receipt of requests.* Upon receipt of any request that satisfies § 261.12(b), the Freedom of Information Office shall assign the request to the appropriate processing schedule, pursuant to paragraph (b) of this section. The date of receipt for any request, including one that is addressed incorrectly or that is referred to the Board by another agency or by a Federal Reserve Bank, is the date the Freedom of Information Office actually receives the request.

(b) *Multitrack processing.* (1) The Board provides different levels of processing for categories of requests under this section. Requests for records that are readily identifiable by the Freedom of Information Office and that have already been cleared for public release may qualify for fast-track processing. All other requests shall be handled under normal processing procedures, unless expedited processing has been granted pursuant to paragraph (c)(2) of this section.

(2) The Freedom of Information Office will make the determination whether a request qualifies for fast-track processing. A requester may contact the Freedom of Information Office to learn whether a particular request has been assigned to fast-track processing. If the request has not qualified for fast-track processing, the requester will be given an opportunity to limit the request in order to qualify for fast-track processing. Limitations of requests must be in writing.

(c) *Expedited processing.* When a person requesting expedited access to records has demonstrated a compelling need for the records, or when the Board has determined to expedite the response, the Board shall process the request as soon as practicable.

(1) To demonstrate a compelling need for expedited processing, the requester shall provide a certified statement, a sample of which may be obtained from the Freedom of Information Office. The statement, which must be certified to be true and correct to the best of the requester's knowledge and belief, shall demonstrate that:

(i) The failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) The requester is a representative of the news media, as defined in § 261.2, and there is urgency to inform the public concerning actual or alleged Board activity.

(2) In response to a request for expedited processing, the Secretary shall notify a requester of the determination within ten calendar days of receipt of the request. If the Secretary denies a request for expedited processing, the requester may file an appeal pursuant to the procedures set forth in paragraph (i) of this section, and the Board shall respond to the appeal within ten working days after the appeal was received by the Board.

(d) *Priority of responses.* The Secretary will assign responsible staff to process particular requests. The

Freedom of Information Office will normally process requests in the order they are received in the separate processing tracks, except when expedited processing is granted. However, in the Secretary's discretion, or upon a court order in a matter to which the Board is a party, a particular request may be processed out of turn.

(e) *Time limits.* The time for response to requests shall be 20 working days, except:

(1) In the case of expedited treatment under paragraph (c) of this section;

(2) Where the running of such time is suspended for payment of fees pursuant to § 261.17(b)(2);

(3) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B). In such circumstances, the time limit may be extended for a period of time not to exceed:

(i) 10 working days as provided by written notice to the requester, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched; or

(ii) Such alternative time period as mutually agreed to by the Freedom of Information Office and the requester when the Freedom of Information Office notifies the requester that the request cannot be processed in the specified time limit.

(f) *Response to request.* In response to a request that satisfies § 261.12(b), an appropriate search shall be conducted of records of the Board in existence on the date of receipt of the request, and a review made of any responsive information located. The Secretary shall notify the requester of:

(1) The Board's determination of the request;

(2) The reasons for the determination;

(3) The amount of information withheld;

(4) The right of the requester to appeal to the Board any denial or partial denial, as specified in paragraph (i) of this section; and

(5) In the case of a denial of a request, the name and title or position of the person responsible for the denial.

(g) *Referral to another agency.* To the extent a request covers documents that were created by, obtained from, or classified by another agency, the Board may refer the request to that agency for a response and inform the requester promptly of the referral.

(h) *Providing responsive records.* (1) Copies of requested records shall be sent to the requester by regular U.S. mail to the address indicated in the request, unless the requester elects to take delivery of the documents at the Freedom of Information Office or makes other acceptable arrangements, or the Board deems it appropriate to send the documents by another means.

(2) The Board shall provide a copy of the record in any form or format requested if the record is readily reproducible by the Board in that form or format, but the Board need not provide more than one copy of any record to a requester.

(i) *Appeal of denial of request.* Any person denied access to Board records requested under § 261.12 may file a written appeal with the Board, as follows:

(1) The appeal shall prominently display the phrase *FREEDOM OF INFORMATION ACT APPEAL* on the first page, and shall be addressed to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551; or sent by facsimile to the Freedom of Information Office, (202) 872–7562 or 7565.

(2) An initial request for records may not be combined in the same letter with an appeal.

(3) The appeal shall be filed within 10 working days of the date on which the denial was issued, or the date on which documents in partial response to the request were transmitted to the requester, whichever is later. The Board may consider an untimely appeal if:

(i) It is accompanied by a written request for leave to file an untimely appeal; and

(ii) The Board determines, in its discretion and for good and substantial cause shown, that the appeal should be considered.

(4) The Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Freedom of Information Office, and the determination letter shall notify the appealing party of the right to seek judicial review.

(5) The Secretary may reconsider a denial being appealed if intervening circumstances or additional facts not known at the time of the denial come to the attention of the Secretary while an appeal is pending.

### § 261.14 Exemptions from disclosure.

(a) *Types of records exempt from disclosure.* Pursuant to 5 U.S.C. 552(b), the following records of the Board are exempt from disclosure under this part:

(1) *National defense.* Any information that is specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and is in fact properly classified pursuant to the Executive Order.

(2) *Internal personnel rules and practices.* Any information related solely to the internal personnel rules and practices of the Board.

(3) *Statutory exemption.* Any information specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), if the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) *Trade secrets; commercial or financial information.* Any matter that is a trade secret or that constitutes commercial or financial information obtained from a person and that is privileged or confidential.

(5) *Inter- or intra-agency memorandums.* Information contained in inter- or intra-agency memorandums or letters that would not be available by law to a party (other than an agency) in litigation with an agency, including, but not limited to:

(i) Memorandums;

(ii) Reports;

(iii) Other documents prepared by the staffs of the Board or Federal Reserve Banks; and

(iv) Records of deliberations of the Board and of discussions at meetings of the Board, any Board committee, or Board staff, that are not subject to 5 U.S.C. 552b (the Government in the Sunshine Act).

(6) *Personnel and medical files.* Any information contained in personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) *Information compiled for law enforcement purposes.* Any records or information compiled for law enforcement purposes, to the extent permitted under 5 U.S.C. 552(b)(7); including information relating to administrative enforcement proceedings of the Board.

(8) *Examination, inspection, operating, or condition reports, and confidential supervisory information.* Any matter that is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, including a state financial institution supervisory agency.

(b) *Segregation of nonexempt information.* The Board shall provide any reasonably segregable portion of a record that is requested after deleting

those portions that are exempt under this section.

(c) *Discretionary release.* (1) Except where disclosure is expressly prohibited by statute, regulation, or order, the Board may release records that are exempt from mandatory disclosure whenever the Board or designated Board members, the Secretary of the Board, the General Counsel of the Board, the Director of the Division of Banking Supervision and Regulation, or the appropriate Federal Reserve Bank, acting pursuant to this part or 12 CFR part 265, determines that such disclosure would be in the public interest.

(2) The Board may make any exempt information furnished in connection with an application for Board approval of a transaction available to the public in accordance with § 261.12, and without prior notice and to the extent it deems necessary, may comment on such information in any opinion or statement issued to the public in connection with a Board action to which such information pertains.

(d) *Delayed release.* Publication in the **Federal Register** or availability to the public of certain information may be delayed if immediate disclosure would likely:

(1) Interfere with accomplishing the objectives of the Board in the discharge of its statutory functions;

(2) Interfere with the orderly conduct of the foreign affairs of the United States;

(3) Permit speculators or others to gain unfair profits or other unfair advantages by speculative trading in securities or otherwise;

(4) Result in unnecessary or unwarranted disturbances in the securities markets;

(5) Interfere with the orderly execution of the objectives or policies of other government agencies; or

(6) Impair the ability to negotiate any contract or otherwise harm the commercial or financial interest of the United States, the Board, any Federal Reserve Bank, or any department or agency of the United States.

(e) *Prohibition against disclosure.* Except as provided in this part, no officer, employee, or agent of the Board or any Federal Reserve Bank shall disclose or permit the disclosure of any unpublished information of the Board to any person (other than Board or Reserve Bank officers, employees, or agents properly entitled to such information for the performance of official duties).

**§ 261.15 Request for confidential treatment.**

(a) *Submission of request.* Any submitter of information to the Board who desires confidential treatment pursuant to 5 U.S.C. 552(b)(4) and § 261.14 (a)(4) shall file a request for confidential treatment with the Board (or in the case of documents filed with a Federal Reserve Bank, with that Federal Reserve Bank) at the time the information is submitted or a reasonable time after submission.

(b) *Form of request.* Each request for confidential treatment shall state in reasonable detail the facts supporting the request and its legal justification. Conclusory statements that release of the information would cause competitive harm generally will not be considered sufficient to justify confidential treatment.

(c) *Designation and separation of confidential material.* All information considered confidential by a submitter shall be clearly designated *CONFIDENTIAL* in the submission and separated from information for which confidential treatment is not requested. Failure to segregate confidential information from other material may result in release of the nonsegregated material to the public without notice to the submitter.

(d) *Exceptions.* This section does not apply to:

(1) Data collected on forms that are approved pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and are deemed confidential by the Board. Any such form deemed confidential by the Board shall so indicate on the face of the form or in its instructions. The data may, however, be disclosed in aggregate form in such a manner that individual company data is not disclosed or derivable.

(2) Any comments submitted by a member of the public on applications and regulatory proposals being considered by the Board, unless the Board or the Secretary determines that confidential treatment is warranted.

(3) A determination by the Board to comment upon information submitted to the Board in any opinion or statement issued to the public as described in § 261.14(c).

(e) *Special procedures.* The Board may establish special procedures for particular documents, filings, or types of information by express provisions in this part or by instructions on particular forms that are approved by the Board. These special procedures shall take precedence over this section.

**§ 261.16 Request for access to confidential commercial or financial information.**

(a) *Request for confidential information.* A request by a submitter for confidential treatment of any information shall be considered in connection with a request for access to that information. At their discretion, appropriate Board or staff members (including Federal Reserve Bank staff) may act on the request for confidentiality prior to any request for access to the documents.

(b) *Notice to the submitter.* When a request for access is received pursuant to the Freedom of Information Act (5 U.S.C. 552):

(1) The Secretary shall notify a submitter of the request, if:

(i) The submitter requested confidential treatment of the information pursuant to 5 U.S.C. 552(b)(4); and

(ii) The request by the submitter for confidential treatment was made within 10 years preceding the date of the request for access.

(2) Absent a request for confidential treatment, the Secretary may notify a submitter of a request for access to information provided by the submitter if the Secretary reasonably believes that disclosure of the information may cause substantial competitive harm to the submitter.

(3) The notice given to the submitter shall:

(i) Be given as soon as practicable after receipt of the request for access;

(ii) Describe the request; and

(iii) Give the submitter a reasonable opportunity, not to exceed ten working days from the date of notice, to submit written objections to disclosure of the information.

(c) *Exceptions to notice to submitter.* Notice to the submitter need not be given if:

(1) The Secretary determines that the request for access should be denied;

(2) The requested information lawfully has been made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The submitter's claim of confidentiality under 5 U.S.C. 552(b)(4) appears obviously frivolous or has already been denied by the Secretary, except that in this last instance the Secretary shall give the submitter written notice of the determination to disclose the information at least five working days prior to disclosure.

(d) *Notice to requester.* At the same time the Secretary notifies the submitter, the Secretary also shall notify

the requester that the request is subject to the provisions of this section.

(e) *Written objections by submitter.* Upon receipt of notice of a request for access to its information, the submitter may provide written objections to release of the information. Such objections shall state whether the information was provided voluntarily or involuntarily to the Board.

(1) If the information was voluntarily provided to the Board, the submitter shall provide detailed facts showing that the information is customarily withheld from the public.

(2) If the information was not provided voluntarily to the Board, the submitter shall provide detailed facts and arguments showing:

(i) The likelihood of substantial harm that would be caused to the submitter's competitive position; or

(ii) That release of the information would impair the Board's ability to obtain necessary information in the future.

(f) *Determination by Secretary.* The Secretary's determination whether or not to disclose any information for which confidential treatment has been requested pursuant to this section shall be communicated to the submitter and the requester immediately. If the Secretary determines to disclose the information and the submitter has objected to such disclosure pursuant to paragraph (e) of this section, the Secretary shall provide the submitter with the reasons for disclosure, and shall delay disclosure for ten working days from the date of the determination.

(g) *Notice of lawsuit.* (1) The Secretary shall promptly notify any submitter of information covered by this section of the filing of any suit against the Board to compel disclosure of such information.

(2) The Secretary shall promptly notify the requester of any suit filed against the Board to enjoin the disclosure of any documents requested by the requester.

**§ 261.17 Fee schedules; waiver of fees.**

(a) *Fee schedules.* The fees applicable to a request for records pursuant to §§ 261.11 and 261.12 are set forth in Appendix A to this section. These fees cover only the full allowable direct costs of search, duplication, and review. No fees will be charged where the average cost of collecting the fee (calculated at $5.00) exceeds the amount of the fee.

(b) *Payment procedures.* The Secretary may assume that a person requesting records pursuant to § 261.12 will pay the applicable fees, unless the request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (f) of this section.

(1) *Advance notification of fees.* If the estimated charges are likely to exceed $100, the Freedom of Information Office shall notify the requester of the estimated amount, unless the requester has indicated a willingness to pay fees as high as those anticipated. Upon receipt of such notice, the requester may confer with the Freedom of Information Office to reformulate the request to lower the costs. The time period for responding to requests under § 261.13(e), and the processing of the request will be suspended until the requester agrees to pay the applicable fees.

(2) *Advance payment.* The Secretary may require advance payment of any fee estimated to exceed $250. The Secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion. The time period for responding to requests under § 261.13(e), and the processing of the request will be suspended until the Freedom of Information Office receives the required payment.

(3) *Late charges.* The Secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest is at the rate prescribed in 31 U.S.C. 3717 and accrues from the date of the billing.

(c) *Categories of uses.* The fees assessed depend upon the intended use for the records requested. In determining which category is appropriate, the Secretary shall look to the intended use set forth in the request for records. Where a requester's description of the use is insufficient to make a determination, the Secretary may seek additional clarification before categorizing the request.

(1) *Commercial use.* The fees for search, duplication, and review apply when records are requested for commercial use.

(2) *Educational, research, or media use.* The fees for duplication apply when records are not sought for commercial use, and the requester is a representative of the news media or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. The first 100 pages of duplication, however, will be provided free.

(3) *All other uses.* For all other requests, the fees for document search and duplication apply. The first two hours of search time and the first 100 pages of duplication, however, will be provided free.

(d) *Nonproductive search.* Fees for search and review may be charged even if no responsive documents are located or if the request is denied.

(e) *Aggregated requests.* A requester may not file multiple requests at the same time, solely in order to avoid payment of fees. If the Secretary reasonably believes that a requester is separating a request into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests and charge accordingly. It is considered reasonable for the Secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(f) *Waiver or reduction of fees.* A request for a waiver or reduction of the fees, and the justification for the waiver, shall be included with the request for records to which it pertains. If a waiver is requested and the requester has not indicated in writing an agreement to pay the applicable fees if the waiver request is denied, the time for response to the request for documents, as set forth in § 261.13(e), shall not begin until a waiver has been granted; or if the waiver is denied, until the requester has agreed to pay the applicable fees.

(1) *Standards for determining waiver or reduction.* The Secretary shall grant a waiver or reduction of fees where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. In making this determination, the following factors shall be considered:

(i) Whether the subject of the records concerns the operations or activities of the government;

(ii) Whether disclosure of the information is likely to contribute significantly to public understanding of government operations or activities;

(iii) Whether the requester has the intention and ability to disseminate the information to the public;

(iv) Whether the information is already in the public domain;

(v) Whether the requester has a commercial interest that would be furthered by the disclosure; and, if so,

(vi) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(2) *Contents of request for waiver.* A request for a waiver or reduction of fees shall include:

(i) A clear statement of the requester's interest in the documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit for such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the documents;

(iv) A description of the method by which the information will be disseminated to the public; and

(v) If specialized use of the information is contemplated, a statement of the requester's qualifications that are relevant to that use.

(3) *Burden of proof.* The burden shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(4) *Determination by Secretary.* The Secretary shall make a determination on the request for a waiver or reduction of fees and shall notify the requester accordingly. A denial may be appealed to the Board in accordance with § 261.13(j).

(g) *Employee requests.* In connection with any request by an employee, former employee, or applicant for employment, for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived where the total charges (including charges for information provided under the Privacy Act of 1974 (5 U.S.C. 552a) are $50 or less; but the Secretary may waive fees in excess of that amount.

(h) *Special services.* The Secretary may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail or overnight delivery.

APPENDIX A TO § 261.17.—FREEDOM OF INFORMATION FEE SCHEDULE

| | |
|---|---|
| Duplication: | |
| Photocopy, per standard page .... | $0.10 |
| Paper copies of microfiche, per frame ..... | .10 |
| Duplicate microfiche, per microfiche ..... | .35 |
| Search and review: | |
| Clerical/Technical, hourly rate ..... | 20.00 |
| Professional/Supervisory, hourly rate ..... | 38.00 |
| Manager/Senior Professional, hourly rate ..... | 65.00 |
| Computer search and production: | |
| Computer operator search, hourly rate ..... | 32.00 |
| Tapes (cassette) per tape ..... | 6.00 |
| Tapes (cartridge), per tape ..... | 9.00 |
| Tapes (reel), per tape ..... | 18.00 |
| Diskettes (3½″), per diskette ..... | 4.00 |
| Diskettes (5¼″), per diskette ..... | 5.00 |
| Computer Output (PC), per minute ..... | .10 |
| Computer Output (mainframe) .... | (1) |

1 Actual cost.

By order of the Board of Governors of the Federal Reserve System, October 10, 1997.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 97–27566 Filed 10–17–97; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 96–NM–137–AD; Amendment 39–10159; AD 97–21–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model CN–235 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN–235 series airplanes, that requires repetitive inspections of the torsion tubes and fittings of the elevator and rudder assemblies to detect stress corrosion cracking, and replacement of cracked parts. This action also requires accomplishment of a modification that constitutes terminating action for the repetitive inspections. This amendment is prompted by reports indicating that stress corrosion cracking in these parts has been found on some airplanes. The actions specified by this AD are intended to prevent loss of control of the elevator and/or rudder, due to failure of the elevator and/or rudder assemblies as a result of stress corrosion cracking.

**DATES:** Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 24, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes was published in the **Federal Register** on February 7, 1997 (62 FR 5785). That action proposed to require repetitive inspections of the torsion tubes and fittings of the elevator and rudder assemblies to detect stress corrosion cracking, and replacement of discrepant parts. In addition, that action proposed to require eventual installation of newly designed torsion tube assemblies on all airplanes, which, when accomplished, would constitute terminating action for the required inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 1 CASA Model CN–235 series airplane of U.S. registry will be affected by this AD.

It will take approximately 6 work hours per airplane to accomplish each required visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on the single affected U.S. operator is estimated to be $360, per inspection cycle.

It will take approximately 40 work hours to accomplish the required terminating modification, at an average labor rate of $60 per work hour. (The work hour figure does not include the time needed for preparation of the airplane or equipment; familiarization with the service bulletin; curing times for adhesive, sealant, paint, etc.; tool

collection; or down time). Required parts will cost approximately $8,900 per airplane. Based on these figures, the cost impact of the required modification on the single affected U.S. operator is estimated to be $11,300.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**97–21–06 CASA:** Amendment 39–10159. Docket 96–NM–137–AD.

*Applicability:* CASA Model CN–235 airplanes; as listed in CASA Service Bulletin SB–235–27–05, Revision 1, dated September 29, 1993 (non-military airplanes), and CASA Service Bulletin SB–235–27–05M, Revision 2, dated January 25, 1996 (military 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 (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 loss of control of the elevator and/or rudder, due to failure of the elevator and/or rudder assemblies as a result of stress corrosion cracking in the torsion tubes and fittings, accomplish the following:

**Note 2:** Actions required by this AD that were accomplished previous to the effective date of this AD, and in accordance with earlier versions of the specified CASA service bulletins, are considered acceptable for compliance with the applicable requirements of this AD.

(a) At the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD, conduct a visual inspection of the torsion (torsion) tubes on the elevator and rudder assemblies to detect stress corrosion cracking, in accordance with CASA Service Bulletin SB–235–27–05, Revision 1, dated September 29, 1993 (for non-military airplanes) or CASA Service Bulletin SB–235–27–05M, Revision 2, dated January 25, 1996 (for military airplanes), as applicable.

(1) For airplanes that have accumulated more than 600 total hours time-in-service, or more than 1,000 total landings, as of the effective date of this AD: Conduct the inspection required by paragraph (a) of this AD prior to the accumulation of 50 hours time-in-service, or 100 landings, or within 3 months, after the effective date of this AD, whichever occurs first.

(2) For all other airplanes: Conduct the inspection required by paragraph (a) of this AD prior to the accumulation of 600 total hours time-in-service, or 1,000 total landings, or within 6 months, after the effective date of this AD, whichever occurs first.

(b) If no cracking is detected during the inspection required by paragraph (a) of this AD, repeat that inspection at intervals not to exceed 600 hours time-in-service, or 1,000 landings, or 6 months, whichever occurs first.

(c) If any cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Replace cracked parts with a new parts of the original design, in accordance with the service bulletin. After replacement, repeat the visual inspection required by paragraph (a) of this AD at intervals not to exceed 600 hours time-in-service, or 1,000 landings, or 6 months, whichever occurs first. OR

(2) Replace cracked parts with a newly-designed parts, in accordance with CASA Service Bulletin SB–235–27–05, Revision 1, dated September 29, 1993 (for non-military airplanes); or CASA Service Bulletin SB–235–27–05M, Revision 2, dated January 25, 1996 (for military airplanes); as applicable. This replacement constitutes terminating action for the repetitive visual inspections of that part required by paragraph (b) of this AD.

(d) Within 2 years after the effective date of this AD, replace all original design parts comprising the torsion tube assemblies on the elevator and rudder assemblies with newly-designed parts, in accordance with CASA Service Bulletin SB–235–27–05, Revision 1, dated September 29, 1993 (for non-military airplanes); or CASA Service Bulletin SB–235–27–05M, Revision 2, dated January 25, 1996 (for military airplanes); as applicable. This action constitutes terminating action for the inspection requirements of this AD.

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

**Note 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.

(f) Special flight permits may be issued in accordance with sections 21.197 and P21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with CASA Service Bulletin SB–235–27–05, Revision 1, dated September 29, 1993; and CASA Service Bulletin SB–235–27–05M, Revision 2, dated January 25, 1996; as applicable; which contain the specified effective pages:

| Service bulletin referenced and date | Page No. | Revision level shown on page | Date shown on page |
|---|---|---|---|
| SB–235–27–05, Revision 1, September 29, 1993 | 1, 2 | 1 | September 29, 1993. |
| | 3–23 | Original | February 5, 1993. |
| SB–235–27–05M, Revision 2, January 25, 1996 | 1 | 2 | January 25, 1996. |
| | 2–23 | Original | October 28, 1991. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Spanish airworthiness directive 06/94, dated August 1994.

(h) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 8, 1997.

**James V. Devany,**

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

[FR Doc. 97–27222 Filed 10–17–97; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–NM–274–AD; Amendment 39–10158; AD 97–21–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Model DH.125–400A; BH.125–400A and –600A; HS.125–600A and –700A; BAe 125–800A Series Airplanes; and Hawker 800 and Hawker 800 XP Series Airplanes Including Military Variants

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model DH.125–400A; BH.125–400A and –600A; HS.125–600A and –700A; BAe 125–800A series airplanes; and Hawker 800 and Hawker 800 XP series airplanes (including military variants C29A, U125, U125A). This amendment requires a one-time inspection to determine if certain high pressure oxygen hose assemblies are installed, and, if installed, replacement of those hose assemblies with new, improved hose assemblies. This amendment is prompted by a report that certain high pressure oxygen hose assemblies are susceptible to leakage due to those hose assemblies not meeting design specifications during manufacturing. The actions specified by this AD are intended to prevent leaks in high pressure oxygen hose assemblies, which, if not detected and corrected, could result in insufficient oxygen available to the passengers or crew if the cabin pressure altitude should rise to a level requiring emergency oxygen.

**DATES:** Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Michael Imbler, Aerospace Engineer, Systems and Propulsion Branch, ACE–115W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4147; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model DH.125–400A; BH.125–400A and –600A; HS.125–600A and –700A; BAe 125–800A series airplanes; and Hawker 800 and Hawker 800 XP series airplanes (including military variants C29A, U125, U125A), was published in the **Federal Register** on July 24, 1997 (62 FR 39787). That action proposed to require a one-time inspection to determine if certain high pressure oxygen hose assemblies are installed, and, if installed, replacement of those hose assemblies with new, improved hose assemblies.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 404 Raytheon Model DH.125–400A; BH.125–400A and –600A; HS.125–600A and –700A; BAe 125–800A; and Hawker 800 and Hawker 800 XP series airplanes (including military variants) of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the initial inspection required by this AD on U.S. operators is estimated to be $24,240, or $60 per airplane.

Should an operator be required to accomplish the replacement, it would take approximately 1 work hour per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**97–21–05 Raytheon Aircraft Company** (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddeley, et al.): Amendment 39–10158. Docket 96–NM–274–AD.

*Applicability:* All Model DH.125–400A, BH.125–400A and –600A, HS.125–600A and –700A, and BAe 125–800A series airplanes; and Model Hawker 800 and Hawker 800 XP series airplanes (including Military Variants C29A, U125, and U125A airplanes); having serial numbers 1 through 258294 inclusive; on which Modification 252036 has been installed with a high pressure oxygen hose assembly having part number WKA 34609; 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

**Note 2:** Raytheon (Beech) Model DH.125–400B, BH.125–400B and –600B, HS. 125–600B and –700B, and BAe 125–800B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD, and therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which those models are approved for operation should consider adopting corrective action, applicable to these models, that is similar to the corrective action required by this AD.

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

To prevent leaks in high pressure oxygen hose assemblies, which could result in insufficient oxygen quantity available to the passengers or crew if the cabin pressure altitude should rise to a level requiring emergency oxygen, accomplish the following:

(a) Within 90 days after the effective date of this AD, perform a one-time inspection to determine whether any high pressure oxygen hose assembly having a discrepant part number WKA 34609 is installed, in accordance with Raytheon Service Bulletin SB.35–46, dated September 30, 1996. If no discrepant part number is detected, no further action is required by this AD. If any hose assembly having discrepant part number WKA 34609 is installed, prior to further flight, replace the hose assembly with a hose assembly having part number 58179–101, in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install a high pressure oxygen hose having part number WKA 34609 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

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

(e) The actions shall be done in accordance with Raytheon Service Bulletin SB.35–46, dated September 30, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 8, 1997.

**James V. Devany,**

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

[FR Doc. 97–27223 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–NM–64–AD; Amendment 39–10157; AD 97–21–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes Equipped With Pratt & Whitney Turbofan Engines

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that requires flow checks of the hydraulic pump drain system to ensure that the system is not clogged, and correction of any discrepancy. Additionally, this amendment requires replacement of the existing seal of the accessory gearbox with a new, improved seal assembly; this replacement terminates the requirement for repetitive

flow checks. This amendment is prompted by reports indicating that hydraulic fluid had contaminated the engine oil system as a result of failure of the seal of the hydraulic pump shaft. The actions specified by this AD are intended to prevent clogging of the hydraulic pump drain system, which could cause failure of the seal of the hydraulic pump shaft and subsequent contamination of the engine accessory gearbox oil; this condition could result in an in-flight engine shutdown.

**DATES:** Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

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

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax(425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes was published in the **Federal Register** on February 18, 1997 (62 FR 7184). That action proposed to require repetitive flow checks of the hydraulic pump drain system to ensure that the system is not clogged, and correction of any discrepancy. Additionally, the action proposed to require replacement of the existing seal of the accessory gearbox with a new, improved seal assembly. This replacement, when accomplished, would provide terminating action for the repetitive flow checks.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

**References to Service Bulletin Change Notices**

Since the issuance of the proposal, Airbus has issued Service Bulletin Change Notice No. O.A., dated June 17, 1993, for Airbus Service Bulletin A300–72–6018 (for Model A300–600 series airplanes equipped with Pratt & Whitney JT9D–7R4 engines). This change notice revises the service bulletin by specifying the latest French airworthiness directive: 92–231–136(B)R1, dated March 27, 1993.

Airbus also has issued Service Bulletin Change Notice No. O.A., dated June 17, 993, for Airbus Service Bulletin A300–72–6019 (for Model A300–600 series airplanes equipped with Pratt & Whitney PW 4000 engines). This change notice also revises the service bulletin by referencing the French airworthiness directive specified previously. Additionally, the change notice revises the service bulletin effectivity by specifying the operators of airplanes having certain manufacturer's serial numbers.

The FAA has revised the final rule to include references to these service bulletin change notices.

**Conclusion**

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

**Cost Impact**

The FAA estimates that 3 Airbus Model A300–600 and A310 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required one-time inspection, and that the average labor rate is $60 per work hour. It will take approximately 10 work hours per airplane to accomplish the required terminating modification, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,500 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,840, or $2,280 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

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

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

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

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§39.13 [Amended]**

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

**97–21–04 Airbus:** Amendment 39–10157. Docket 96-NM–64-AD.

*Applicability: Model A300B4–620, –622, –622R, and A300C4–620; and Model A310–221, –222, –322, –324, and –325 series airplanes; equipped with Pratt & Whitney turbofan engines; on which Airbus Modification 10399 or 10400 has not been accomplished; certificated in any category.*

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

AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent clogging of the hydraulic pump drain system, which could cause failure of the seal of the hydraulic pump shaft and subsequent contamination of the engine accessory gearbox oil, and could result in an in-flight engine shutdown, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a flow check of the hydraulic pump drain system to ensure that it is not clogged and, prior to further flight, correct any discrepancies, in accordance with either paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the flow check, thereafter, at intervals not to exceed 500 flight hours until the modification required by paragraph (b) of this AD is accomplished.

(1) For Model A310 series airplanes: Perform the flow checks and correct discrepancies in accordance with Airbus Service Bulletin A310–72–2022, dated February 16, 1993 (for airplanes on which Pratt & Whitney JT9D–7R4D1 and –7R4E1 engines are installed); or Airbus Service Bulletin A310–72–2023, Revision 1, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4152 and PW4156A engines are installed); as applicable.

**Note 2:** Flow checks accomplished prior to the effective date of this AD in accordance with the original issuance of Airbus Service Bulletin A310–72–2023 are considered acceptable for compliance with the applicable action specified in this AD.

(2) For Model A300–600 series airplanes: Perform the flow checks and correct discrepancies in accordance with Airbus Service Bulletin A300–72–6018, Revision 1, dated December 22, 1993, as revised by Service Bulletin Change Notice No. O.A., dated June 17, 1993 (for airplanes on which Pratt & Whitney JT9D–7R4H1 engines are installed); or Airbus Service Bulletin A300–72–6019, Revision 1, dated December 22, 1993, as revised by Service Bulletin Change Notice No. O.A., dated June 17, 1993 (for airplanes on which Pratt & Whitney PW4158 engines are installed); as applicable.

**Note 3:** Flow checks accomplished prior to the effective date of this AD in accordance with the original issuance of Airbus Service Bulletin A300–72–6018 or Airbus Service Bulletin A300–72–6019 are considered acceptable for compliance with the applicable action specified in this AD.

(b) Within 12 months after the effective date of this AD, replace (on both engines) the existing seal of the green hydraulic system gearbox with a new, improved seal assembly in accordance with either paragraph (b)(1) or (b)( 2) of this AD, as applicable. Accomplishment of this replacement terminates the repetitive flow check requirements for this AD.

(1) For Model A310 series airplanes: Accomplish the replacement in accordance with Airbus Service Bulletin A310–72–2018, Revision 2, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW JT9D–7R4D1 and -7R4E1 engines are installed); or Airbus Service Bulletin A310–72–2019, Revision 2, dated December 22, 1993 (for airplanes on which Pratt & Whitney PW4152 and PW4156A engines are installed); as applicable.

**Note 4:** Replacement of the existing seal on the green hydraulic system gearbox with a new, improved seal assembly accomplished prior to the effective date of this AD, in accordance with the original issuance or Revision 1 of Airbus Service Bulletin A310–72–2019, or with the original issuance or Revision 1 of Airbus Service A310–72–2018, is considered acceptable for compliance with the applicable action specified in this AD.

(2) Model A300–600 series airplanes: Accomplish the replacement in accordance with Airbus Service Bulletin A300–72–6014, dated March 15, 1993 (for airplanes on which Pratt & Whitney PW JT9D–7R4H1 engines are installed); or Airbus Service Bulletin A300–72–6015, dated March 15, 1993 (for airplanes on which Pratt & Whitney PW4158 engines are installed); as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, 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 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(e) The actions shall be done in accordance with the following Airbus service bulletins, as applicable, which include the specified effective pages:

| Service bulletin No. | Page No. | Revision level shown on page | Date shown on page |
|---|---|---|---|
| A310–72–2022, February 16, 1993 | 1–7 | Original | February 16, 1993. |
| A310–72–2023, Revision 1, December 22, 1993 | 1, 2, 4–6 | 1 | December 22, 1993 |
| | 3, 7 | Original | February 16, 1993. |
| A300–72–6018, Revision 1, December 22, 1993 | 1, 2, 4 | 1 | December 22, 1993. |
| | 3, 5–7 | Original | February 16, 1993. |
| A300–72–6018, Service Bulletin Change Notice No. O.A., June 17, 1993 | 1 | Original | June 17, 1993. |
| A300–72–6019, Revision 1, December 22, 1993 | 1–6 | 1 | December 22, 1993. |
| | 7 | Original | February 16, 1993. |
| A300–72–6019, Service Bulletin Change Notice No. O.A., June 17, 1993 | 1–2 | Original | June 17, 1993. |
| A310–72–2018, Revision 2, December 22, 1993 | 1–3, 5–7 | 2 | December 22, 1993. |
| | 4, 9 | Original | March 15, 1993. |
| | 8 | 1 | August 6, 1993. |
| A310–72–2019, Revision 2, December 22, 1993 | 1–3, 5–7 | 2 | December 22, 1993. |
| | 4, 9 | Original | March 15, 1993. |
| | 8 | 1 | August 6, 1993. |
| A300–72–6014, March 15, 1993 | 1–7 | Original | March 15, 1993. |
| A300–72–6015, March 15, 1993 | 1–9 | Original | March 15, 1993. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 8, 1997.

**James V. Devany,**

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

[FR Doc. 97–27221 Filed 10–17–97; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–NM–126–AD; Amendment 39–10165; AD 97–21–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Construcciones Aeronauticas, S. A. (CASA) Model CN–235 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain CASA Model CN–235 series airplanes, that requires a one-time inspection to detect fatigue cracking in the area of the center wing-to-fuselage attachment fitting, and repair, if necessary. This amendment also would require installation of a reinforcing plate in the attachment area of that fitting. This amendment is prompted by a report from the manufacturer indicating that, during full-scale fatigue testing, fatigue cracks were detected in this area. The actions specified by this AD are intended to prevent fatigue cracking, which consequently could reduce the structural integrity of this area.

**DATES:** Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Greg Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain CASA Model CN–235 series airplanes was published in the **Federal Register** on March 3, 1997 (62 FR 9388). That action proposed to require a one-time inspection to detect fatigue cracking in the area where the center wing-to-fuselage attachment fitting is located, and repair, if necessary. In addition, that action proposed the installation of a reinforcing plate in the attachment area of the center wing-to-fuselage attachment fitting, after inspection and any necessary repairs have been accomplished.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 2 CASA Model CN–235 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 25 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $645 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,290, or $2,145 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§39.13 [Amended]**

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

**97–21–12 Construcciones Aeronauticas, S.A. CASA: Amendment 39–10165.Docket 96–NM–126–AD.**

*Applicability:* Model CN–235 series airplanes, as listed in CASA Service Bulletin SB–235–53–20, Revision 2, dated June 9, 1994 (for non-military airplanes); and Service Bulletin SB–235–53–20M, Revision 1, dated November 27, 1995 (for military 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent fatigue cracking in the area of the center wing-to-fuselage attachment fitting, which consequently could reduce the structural integrity of this area, accomplish the following:

(a) For non-military airplanes: Prior to the accumulation of 17,000 total landings, accomplish the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Remove all parts and other items in the area of the center wing-to-fuselage attachment fitting, in accordance with Paragraph 2.B. (''Removal'') of the Accomplishment Instructions of CASA Service Bulletin SB–235–53–20, Revision 2, dated June 9, 1994.

(2) After all parts and other items have been removed in accordance with paragraph (a)(1) of this AD, conduct a visual inspection, using a magnifier of at least 10x magnitude, to detect fatigue cracking in this area (ref: Figure 1, Sheet 1, of the service bulletin). If any cracking is detected, prior to further flight and prior to installing the reinforcing plate in accordance with paragraph (a)(3) of this AD, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(3) Install a reinforcing plate having CASA part number (P/N) 35–25010–0101 in the attachment area of the center wing-to-fuselage attachment fitting, in accordance with the service bulletin.

(b) For military airplanes: Prior to the accumulation of 15,000 total landings, accomplish the actions specified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD:

(1) Remove all parts and other items in the area of the center wing-to-fuselage attachment fitting, in accordance with Paragraph 2.B. (''Removal'') of the Accomplishment Instructions of CASA Service Bulletin SB–235–53–20M, Revision 1, dated November 27, 1995.

(2) After all parts and other items have been removed in accordance with paragraph (b)(1) of this AD, conduct a visual inspection, using a magnifier of at least 10x magnitude, to detect fatigue cracking in this area (ref: Figure 1, Sheet 1, of the service bulletin). If any cracking is detected, prior to further flight and prior to installing the reinforcing plate in accordance with paragraph (b)(3) of this AD, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA.

(3) Install a reinforcing plate having CASA part number (P/N) 35–25010–0101 in the attachment area of the center wing-to-fuselage attachment fitting, in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. 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.

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

(e) Certain actions shall be done in accordance with CASA Service Bulletin SB–235–53–20M, Revision 1, dated November 27, 1995 (for military airplanes); and CASA Service Bulletin SB–235–53–20, Revision 2, dated June 9, 1994 (for non-military airplanes), which contains the following list of effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1 ..... | 1 ..... | April 13, 1994. |
| 2 ..... | 2 ..... | June 9, 1994. |
| 3–11 ..... | Original ..... | July 29, 1993. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Spanish airworthiness directive 03/94, dated August 1994.

(f) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 9, 1997.

**James V. Devany,**

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

[FR Doc. 97–27354 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–ANE–18–AD; Amendment 39–10161; AD 97–21–08]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company CT58 Series Turboshaft Engines

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company CT58 series turboshaft engines, that requires removal from service of certain stage 1 and 2 forward cooling plates, and stage 2 aft cooling plates, and replacement with serviceable parts. This amendment is prompted by reports of certain cooling plates forged with contaminated alloy that could reduce the lives of the parts. The actions specified by this AD are intended to prevent cooling plate fracture, which could result in a contained engine failure, and an inflight engine shutdown.

**DATES:** Effective December 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 19, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from General Electric Company (GE), 1000 Western Ave., Lynn, MA 01909; telephone (781) 594–9894, fax (781) 594–1527. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) Models CT58–110–1, –110–2, –140–1, –140–2, and T58–GE–3/–5/–8F/–10/–100 turboshaft engines was published in the **Federal Register** on June 9, 1997 (62 FR 31370). That action proposed to require removal from service of certain stage 1 and 2 forward cooling plates, and stage 2 aft cooling plates, and replacement with serviceable parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public.

Since publication of the proposed rule, GE Aircraft Engines has issued GE Aircraft Engines CT58 Service Bulletin (SB) No. 72–188 (CEB–293), Revision 1, dated July 15, 1997. This final rule references this current revision.

The FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

There are approximately 400 engines of the affected design in the worldwide fleet. The FAA estimates that 126 engines installed on aircraft of U.S. registry will be affected by this AD, that it will not take any additional work hours per engine to accomplish the required actions at next part exposure. Required parts will cost approximately $2,730 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $343,980. The manufacturer, however, has advised the FAA of a program to prorate the cost of required parts downward by a factor equal to the quotient of the difference between the original life limit of 4,000 hours time in service and the total cycles of life consumed at time of removal, divided by the original life limit. Therefore, the actual cost to operators may be less than the FAA's estimate.

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### §39.13 [Amended]

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

**97–21–08 General Electric Company:** Amendment 39–10161. Docket 97–ANE–18–AD.

*Applicability:* General Electric Company (GE) Models CT58–110–1, –110–2, –140–1, and –140–2, and T58–GE–3/–5/–8F/–10/–100 series turboshaft engines, with stage 1 forward cooling plate, Part Number (P/N) 37C300055P101, stage 2 forward cooling plate, P/N 3000T88P02, and stage 2 aft cooling plate, P/N 3002T27P01, installed. These engines are installed on but not limited to Boeing Vertol 107 series, and Sikorsky S61 and S62 series aircraft.

**Note 1:** This airworthiness directive (AD) applies to each engine 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 engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent cooling plate fracture, which could result in a contained engine failure and an inflight engine shutdown, accomplish the following:

(a) Remove from service affected cooling plates, listed by serial number in GE Aircraft Engines CT58 Service Bulletin (SB) No. 72–188 (CEB–293), Revision 1, dated July 15, 1997, and replace with serviceable parts, at the next part exposure, or next light overhaul, whichever occurs first, but not to exceed 1,000 hours time in service (TIS) for engines installed on aircraft that have engaged in Repetitive Heavy Lift (RHL) operations, or 2,000 hours TIS for engines installed on aircraft that have never engaged in RHL operations, in accordance with that SB.

(b) For the purpose of this AD, the following definitions apply:

(1) RHL operation is defined as performing more than 10 lift-carry-drop cycles per hour TIS without landing, or more than 10 takeoffs and landings per hour TIS.

(2) Light overhaul is defined as scheduled engine maintenance that allows the engine to continue in service until scheduled major overhaul time is reached.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request shall be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(e) The actions required by this AD shall be done in accordance with the following GE Aircraft Engines SB:

| Document No | Pages | Revision | Date |
|---|---|---|---|
| 72–188 (CEB–293) ..... Total Pages: 7. | 1–7 | 1 | July 15, 1997 |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Company (GE), 1000 Western Ave., Lynn, MA 01909; telephone (781) 594–9894, fax (781) 594–1527. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 19, 1997.

Issued in Burlington, Massachusetts, on October 8, 1997.

**Jay J. Pardee,**

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

[FR Doc. 97–27351 Filed 10–17–97; 8:45 am]

**BILLING CODE 4910–13–U**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 97–NM–05–AD; Amendment 39–10168; AD 97–21–15]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace Model Avro 146–RJ Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model Avro 146–RJ series airplanes, that requires a modification of the electrical system in the equipment bay area by replacing certain cables, clamps, and fairleads with new components. This amendment is prompted by a report indicating that the incorrect size of electrical cables were used in the generator feeder circuit to certain busbars from the generator contactors. As a result, the electrical cables are not compatible with generator rating requirements and can overheat. The actions specified by this AD are intended to prevent possible overheating of electrical generator feeder cables and consequent damage, which could lead to possible fire or the loss of essential electrical systems.

**DATES:** Effective November 24, 1997.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of November 4, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tim H. Backman, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model Avro 146–RJ series airplanes was published in the **Federal Register** on February 28, 1997 (62 FR 9111). That action proposed to require modifying the electrical system in the equipment bay area by replacing certain cables, clamps, and fairleads with new components.

### Consideration of Comment Received

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

### Request to Revise the Summary Section of the Preamble of the Proposed AD

The commenter requests that the description of what prompted the NPRM that appeared in the Summary section of the preamble to the NPRM be revised to read, ''* * * the generator feeder circuit to certain busbars from the generator contactors. As a result, the cables are not compatible * * *.'' The commenter suggests that this statement is more accurate. The FAA acknowledges that the commenter's wording is more accurate and has revised the final rule to reflect the suggested changes. In addition, the FAA has included the word ''electrical'' to identify which type of cables are not compatible.

### Request to Revise Other Sections of the Preamble of the Proposed AD

The commenter also requests that the description of what the CAA advises that appeared in the Discussion section of the preamble to the NPRM be revised to read, ''* * * generator feeder circuit to busbars AC1 and AC2.''

In addition, the commenter requests that a description of the procedures referenced in the service bulletin that appeared in the Explanation of Relevant Service Information section of the preamble to the NPRM be revised to read ''* * * existing 6ANC generator feeder cables installed to the AC1 and AC2 busbars from the generator contactors * * *.''

The commenter states that these statements will improve the technical accuracy of the proposal. The FAA recognizes that the suggested changes to these sections provide improved technical accuracy. However, since neither the Discussion nor the Explanation of Relevant Service Information sections of the preamble to the NPRM are restated in the final rule, no change to the final rule is necessary.

### Explanation of Changes Made to the Proposal

For clarification purposes, the FAA has revised the description of the unsafe condition that appeared throughout the NPRM to read, ''* * * possible overheating of the electrical generator feeder cables and consequent damage, which could lead to a possible fire or the loss of essential electrical systems.''

The FAA also has revised the final rule to reflect the corporate name change of British Aerospace Regional Aircraft Limited, Avro International Aerospace Division to British Aerospace Regional Aircraft. In addition, the address for obtaining service information has been revised to AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171.

Furthermore, the FAA has revised the area code from (206) to (425) of the telephone numbers in the For Further Information Contact section of the final rule.

### Conclusion

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

### Cost Impact

The FAA estimates that 10 British Aerospace Model Avro 146–RJ series airplanes of U.S. registry will be affected by this AD. Modification of the electrical system will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $300 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,400, or $540 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**97–21–15 British Aerospace Regional Aircraft** (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–10168. Docket 97–NM–05–AD.

*Applicability:* All Model Avro 146–RJ 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 possible overheating of the electrical generator feeder cables and consequent damage, which could lead to possible fire or loss of essential electrical systems, accomplish the following:

(a) Prior to the accumulation of 500 flight cycles after the effective date of this AD, modify the electrical system in the electrical equipment bay in accordance with British Aerospace Service Bulletin SB.24–113–01532A, dated March 12, 1996, or British Aerospace Service Bulletin SB.24–113–01532A, Revision 1, dated June 18, 1996.

(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 to through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

(d) The modification shall be done in accordance with British Aerospace Service Bulletin SB.24–113–01532A, dated March 12, 1996; or British Aerospace Service Bulletin SB.24–113–01532A, Revision 1, dated June 18, 1996, which contains the following list of effective pages:

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1, 2 ..... | 1 ..... | June 18, 1996. |
| 3–15 ..... | Original ..... | March 12, 1996. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 006–03–96, dated March 12, 1996.

(e) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 10, 1997.

**James V. Devany,**

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

[FR Doc. 97–27576 Filed 10–17–97; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–NM–120–AD; Amendment 39–10167; AD 97–21–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA) Model C–212 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all CASA Model C–212 series airplanes, that requires an initial inspection of the restrictor pistons on the shock absorbers of the left and right main landing gear (MLG) to determine the number and condition of threaded screw pins that are installed; replacement of any discrepant pin; and repetitive inspections of certain pistons. Modification of certain pistons by the installation of two additional pins terminates these inspections. This amendment is prompted by reports indicating that the threaded screw pin that holds the restrictor piston on the slide tube of the shock absorber has been found to have loosened on some airplanes. The actions specified by this AD are intended to prevent the loss of hydraulic damping in the MLG, due to failure of the screw pins that hold the restrictor pistons on the slide tubes of the shock absorbers, and consequent structural damage to the airplane.

**DATES:** Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Gregory Dunn, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all CASA Model C–212 series airplanes was published in the **Federal Register** on March 7, 1997 (62 FR 10488). That action proposed to require an initial inspection of the restrictor pistons on the shock absorbers of the left and right main landing gear (MLG) to determine the number and condition of threaded screw pins that are installed; replacement of any discrepant pin; and repetitive inspections of certain pistons. Pistons on which one pin is installed are required to be modified by drilling two new holes and unsealing two previously drilled holes, and installing two additional pins. This modification terminates these repetitive inspection requirements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

The FAA estimates that 41 CASA Model C–212 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 20 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $11 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $49,651, or $1,211 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### §39.13 [Amended]

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

**97–21–14 Construcciones Aeronauticas, S.A. (CASA):** Amendment 39–10167. Docket 96–NM–120–AD.

*Applicability:* All Model C–212 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 the loss of hydraulic damping in the main landing gear, due to failure of the screw pins that hold the restrictor pistons on the slide tubes of the shock absorbers, and consequent structural damage to the airplane, accomplish the following:

(a) Prior to the accumulation of 600 hours time-in-service after the effective date of this AD, conduct an inspection of each restrictor piston to detect the number and condition of installed threaded screw pins; in accordance with CASA Service Bulletin SB–212–32–38, dated June 16, 1994. Prior to further flight, replace any loose pin, in accordance with the service bulletin and accomplish the following, as applicable:

(1) For any piston on which three threaded screw pins are installed: No further action is required by this AD for this piston.

(2) For any piston on which one pin is installed and two holes are sealed with epoxy: Remove the epoxy, and install two additional threaded screw pins, in accordance with the service bulletin. Thereafter, no further action is required by this AD for this piston.

(3) For any piston on which one pin is installed and no other holes exist:

(i) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 600 hours time-in-service until the modification required by paragraph (a)(3)(ii) of this AD is accomplished.

(ii) Prior to the accumulation of 1,800 hours time-in-service after the effective date of this AD, or within 3 years after the effective date of this AD, whichever occurs later, modify this piston in accordance with the service bulletin. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(3)(i) of this AD. Thereafter, no further action is required by this AD with regard to that piston.

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

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

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

(d) The actions shall be done in accordance with CASA Service Bulletin SB–212–32–38, dated June 16, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Construcciones Aeronauticas, S.A., Getafe, Madrid, Spain. Copies may be

inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Spanish airworthiness directive 07/94, dated October 1994.

(e) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 10, 1997.

**James V. Devany,**

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

[FR Doc. 97–27581 Filed 10–17–97; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–08–AD; Amendment 39–10166; AD 97–21–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Lockheed Model 382 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model 382 series airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit the positioning of the power levers below the flight idle stop, and to provide a statement of the consequences of positioning the power levers below the flight idle stop. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller beta was used improperly during flight. The actions specified by this AD are intended to prevent loss of airplane controllability, or engine overspeed and consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight.

**DATES:** Effective November 24, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 24, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (707) 703–6063; fax (707) 703–6097.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Lockheed Model 382 series airplanes was published in the **Federal Register** on March 26, 1997 (62 FR 14369). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit the positioning of the power levers below the flight idle stop, and to provide a statement of consequences of positioning the power levers below the flight idle stop.

### Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 18 Lockheed Model 382 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,080, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**97–21–13 Lockheed Aeronautical Systems Company:** Amendment 39–10166. Docket 97–NM–08–AD.

*Applicability:* All Model 382 series airplanes, certificated in any category.

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

airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 loss of airplane controllability, or engine overspeed with consequent loss of engine power caused by the power levers being positioned below the flight idle stop while the airplane is in flight, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statements. This may be accomplished by inserting a copy of this AD or Lockheed AFM 382/E/G, Revision 24, dated November 15, 1996, into the AFM.

Positioning of power levers below the flight idle stop while the airplane is in-flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(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, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

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

(d) Except as provided by paragraph (a) of this AD, the AFM revision shall be done in accordance with Lockheed Airplane Flight Manual (AFM) 382/E/G, Revision 24, dated November 15, 1996, which contains the following list of effective pages:

| Page No. | Revision level shown on page |
|---|---|
| Log of Revisions ..... Page viE/(viF Blank) | 24 |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on November 24, 1997.

Issued in Renton, Washington, on October 10, 1997.

**James V. Devany,**

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

[FR Doc. 97–27579 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–ANM–02]**

## Amendment of Class E Airspace; Alamosa, CO

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

**ACTION:** Final rule.

**SUMMARY:** This action modifies the Alamosa, CO, Class E airspace by increasing the radius of the Class E surface area, and by expanding the lateral boundaries of the Class E airspace at and above 1,200 feet Above Ground Level (AGL). The additional controlled airspace is necessary to contain two Standard Instrument Approach Procedures (SIAP) which have recently been developed for the Alamosa Airport. The intended effect of this action is to provide the additional controlled airspace necessary to enable the FAA to provide Instrument Flight Rules (IFR), Air Traffic Control (ATC) services and separation to IFR aircraft operating on the SIAP's and transitioning between the terminal and en route environments. The areas will be depicted on aeronautical charts for pilot reference.

**EFFECTIVE DATE:** 0901 UTC, November 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ted Melland, ANM–520.1, Federal Aviation Administration, Docket No. 97–ANM–02, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2536.

**SUPPLEMENTARY INFORMATION:**

### History

On April 2, 1997, the FAA proposed to amend Part 71 of Federal Aviation Regulations (14 CFR part 71) to provide additional Class E airspace area at Alamosa, Colorado (62 FR 15635). The recent commissioning of the Alamosa Instrument Landing System (ILS), and Global Positioning System (GPS) SIAP requires adjustment of Class E airspace in order to segregate aircraft operating in instrument flight conditions from aircraft operating in visual flight conditions. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received. The coordinates for this airspace docket are based on North American Datum 83. This action is the same as described in the proposal. Class E airspace designated as a surface area for an airport and airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6002 and paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Rule

This action amends 14 CFR part 71 Class E airspace at Alamosa, CO. The portion of the existing airspace area extending upward from the surface will be expanded by increasing the radius of the area from 4.3 nautical miles (NM) to 5 NM. Where a SIAP has been designated for the airport and communications and weather reporting criteria are met, the FAA establishes Class E airspace extending upward from the surface to the base of overlying controlled airspace to contain terminal instrument operations if such action is justified and/or in the pubic interest. This action also expands and simplifies the portion of the area extending upward from 1,200 feet AGL by redefining the lateral boundaries of the area. The FAA establishes Class E airspace extending upward from 1,200 feet AGL where necessary to contain aircraft transitioning between the terminal and en route environments. The FAA has recently established GPS and ILS SIAP's for use by aircraft arriving at the Alamosa Airport. The additional Class E airspace established by this rule is necessary to accommodate the new SIAP's. The intended effect of this action is to provide the controlled airspace necessary to enable the FAA to provide IFR ATC services and separation to IFR aircraft operating on the GPS and ILS SIAP's, and while transitioning between the en route and terminal environments. The areas will be dipicted on appropriate aeronautical charts for pilot reference.

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. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

**ANM CO E2 Alamosa, CO [Revised]**

Alamosa, San Luis Valley Regional/Bergman Field, CO
(lat. 37°26′06″ N, long. 105°52′01″ W)
Alamosa VORTAC
(lat. 37°20′57″ N, long. 105°48′56″ W)

Within a 5-mile radius of the San Luis Valley Regional/Bergman Field, and within 3 miles each side of the Alamosa VORTAC 127° and 335° radials extending from the 5-mile radius to 10.1 miles southeast of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

**ANM CO E5 Alamosa, CO [Revised]**

Alamosa, San Luis Valley Regional/Bergman Field, CO
(lat. 37°26′06″ N, long. 105°52′01″ W)
Alamosa VORTAC
(lat. 37°20′57″ N, long. 105°48′56″ W)

That airspace extending upward from 700 feet above the surface within 8.7 miles northeast and miles southwest of the Alamosa VORTAC 335° and 155° radials extending from 20.1 miles northwest to 10.5 miles southeast of the VORTAC, and within 1.8 miles northwest and 5.3 miles southeast of the Alamosa VORTAC 200° radial extending from the VORTAC to 14 miles southwest of the VORTAC; that airspace extending upward from 1,200 feet above the surface within an area bounded by a point beginning at lat. 37°37′00″ N, long. 106°14′00″ W; lat. 37°44′00″ N, long. 105°55′00″ W; lat. 37°52′00″ N; long 105°43′00″ W; lat. 37°49′00″ N, long. 105°31′00″ W; lat. 37°20′30″ N, long. 105°18′00″ W; lat. 37°03′30″ N, long. 105°18′00″ W; lat. 37°01′30″ N, long. 105°46′00″ W; lat. 37°05′25″ N, long. 106°02′00″ W; lat. 37°09′00″ N, long. 106°19′00″ W; lat. 37°17′00″ N, long. 106°21′00″ W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on September 9, 1997.

**Glenn A. Adams III,**

*Assistant Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 97–27364 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–13–M

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 14 CFR Part 1203

**RIN 2700–AC26**

## Information Security Program

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** NASA is amending 14 CFR Part 1203 by revising subpart H, ''Delegation of Authority to Make Determinations in Original Classification Matters.'' This amendment changes the designated officials for Secret and Confidential authority, deletes old NASA position titles, replaces them with current NASA organization position titles, and adds original declassification authorities in compliance with Executive Order 12958.

**EFFECTIVE DATE:** October 20, 1997.

**FOR FURTHER INFORMATION CONTACT:** Erwin V. Minter, 202–358–2314.

**SUPPLEMENTARY INFORMATION:** NASA published 14 CFR Part 1203 subpart H in the **Federal Register** on November 9, 1988 (53 FR 45259). It identified NASA officials who are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. This amendment reflects NASA's current organizational position titles.

Since this action is internal and administrative in nature and does not affect the existing regulations, notice and public comment are not required.

The National Aeronautics and Space Administration has determined the following:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This rule is not a major rule as defined in Executive Order 12866.

**List of Subjects in 14 CFR Part 1203**

Security Classified information, Foreign relations, Security measures.

For reasons set out in the Preamble, 14 CFR part 1203 is amended as follows:

## PART 1203—INFORMATION SECURITY PROGRAM

1. The authority citation for Part 1203 is revised to read as follows:

**Authority:** 42 U.S.C. 2451 *et seq.* and E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p. 333.

2. Subpart H is revised to read as follows:

**Subpart H—Delegation of Authority to Make Determinations in Original Classification Matters.**

Sec.
1203.800 Delegations.
1203.801 Redelegation.
1203.802 Reporting.

## Subpart H—Delegation of Authority to Make Determinations in Original Classification

**§ 1203.800 Delegations.**

(a) The NASA officials listed in paragraph (b) (1) and (2) of this section are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. Such

actions shall be in accordance with currently applicable criteria, guidelines, laws, and regulations, and they shall be subject to any contrary determination that has been made by the Senior Agency Official for Classified National Security Information, or by any other NASA official authorized to make such a determination. The Director, Security Management Office, is designated to act as the Senior Agency Official for Classified National Security Information. The NASA officials listed in paragraph (b)(3) of the section are authorized to declassify top Secret security classification assignments over 25 years old to information under their jurisdiction for which NASA has original classification authority. The NASA officials listed in paragraphs (b)(4) of this section are authorized to declassify Secret and Confidential security classification assignments to information under their jurisdiction for which NASA has original classification authority.

(b) *Designated officials.* (1) *TOP SECRET Classification Authority—(i) Administrator.*

(ii) Deputy Administrator.

(iii) Associate Deputy Administrator.

(iv) Associate Deputy Administrator (Technical).

(v) Senior Agency Official for Classified National Security Information.

(2) *SECRET and CONFIDENTIAL Classification Authority.* Officials listed in paragraph (b)(1) of this section.

(3) *Declassification Authority, Top Secret Assignments over 25 years Old.* (i) Agency Security Program Manager, NASA Headquarters.

(ii) Such other officials as may be delegated declassification authority, in writing, by the Senior Agency Official for Classified National Security Information.

(4) *Declassification Authority, Secret and Confidential.* (i) Security Administrative Team Leader, Headquarters NASA.

(ii) Such other officials as may be delegated declassification authority, in writing, by the Senior Agency Official for Classified National Security Information.

(c) Written requests for original classification authority or declassification authority shall be forwarded to the Senior Agency Official for Classified National Security Information, with appropriate justification appended thereto.

(d) The Senior Agency Official for Classified National Security Information shall maintain a list of all delegations of original classification of declassification authority by name or title of the position held.

(e) The Senior Agency Official for Classified National Security Information shall conduct a periodic review of delegation lists to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

(f) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

**§ 1203.801 Redelegation.**

Redelegation of TOP SECRET, SECRET, or CONFIDENTIAL original classification authority or declassification authority is not authorized.

**§ 1203.802 Reporting.**

The officials to whom original classification authority has been delegated under this section shall ensure that feedback is provided to the Senior Agency Official for National Security Information. The Senior Agency Official for National Security Information shall keep the Administrator currently informed of all significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

**Daniel S. Goldin,**

*Administrator.*

[FR Doc. 97–27651 Filed 10–17–97; 8:45 am]

BILLING CODE 7510–01–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 15 CFR Part 922

**[Docket No. 971014245–7245–01]**

## Temporary Rule Prohibiting Anchoring by Vessels 50 Meters or Greater in Length on Tortugas Bank Within the Florida Keys National Marine Sanctuary

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS) National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Temporary rule.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) issues a temporary rule prohibiting anchoring by vessels 50 meters in length or greater on the Tortugas Bank within the Florida Keys National Marine Sanctuary (Sanctuary). This temporary rule is necessary to prevent future injury to, and destruction of, living coral on Tortugas Bank caused by such anchoring.

**EFFECTIVE DATES:** This temporary rule is effective from 12:01 am October 17, 1997 until February 12, 1998.

**FOR FURTHER INFORMATION CONTACT:** Billy D. Causey, Superintendent, Florida Keys National Marine Sanctuary (FKNMS), Post Office Box 500368, Marathon, Florida 33050. (305) 743–2437.

**SUPPLEMENTARY INFORMATION:** In accordance with 15 CFR 922.165 of the Florida Keys National Marine Sanctuary regulations (62 FR 32154, June 12, 1997) and the Co-Trustees Agreement for Cooperative Management of the Florida Keys National Marine Sanctuary made between the Governor and Cabinet of the State of Florida and NOAA dated May 19, 1997, NOAA has consulted with and received approval from the Governor of the State of Florida concerning the issuance of this temporary rule.

Section 922.165 provides that, where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource, any and all activities are subject to immediate temporary regulation, including prohibition, for up to 120 days. Emergency regulations cannot take effect in Florida territorial waters until approved by the Governor of the State of Florida.

### Background

This temporary rule is necessitated by the recent discovery of significant injury to, and destruction of, living coral on Tortugas Bank, west of the Dry Tortugas National Park, caused by the anchoring of vessels 50 meters or greater in length, and the need to prevent future injury.

Current 15 CFR 922.163(a)(5)(ii) prohibits having vessels anchored in the Sanctuary on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen. However, this regulation does not protect the coral located in the area covered by this temporary rule because the water there is deeper than 40 feet.

Anchoring of vessels 50 meters or greater in length on Tortugas Bank has been documented as having caused significant injury to living coral reef resources. Vessels of such size have anchoring gear of massive weight and

size with heavy chains hundreds of feet in length weighing as much as 8 to 10 tons. Vessels smaller than 50 meters in length have not been documented as having caused injury or loss of living coral on Tortugas Bank. Their anchoring gear generally is less massive in size and weight. Therefore, this temporary rule only prohibits anchoring by vessels of 50 meters or greater in length on the Tortugas Bank. The location by coordinates of the prohibited anchoring area is set forth below.

Transit, fishing and all other activities currently allowed in the area are not affected by this temporary rule. Alternative anchor sites for vessels 50 meters or greater in length are located within approximately two nautical miles of the prohibited area. The close proximity of these alternative anchoring sites should mitigate any potential economic impact on such vessels since cost of the time and fuel to maneuver to this area and the additional time and labor in letting out and pulling in the additional anchor chain should be minimal.

The location of alternative anchoring sites for vessels greater than 50 meters in length are provided below.

**Location and Boundary of Area Where Anchoring by Vessels 50 Meters or Greater in Length is Prohibited**

The coordinates of the area on the Tortugas Bank, west of the Dry Tortugas National Park, closed to anchoring by vessels 50 meters or greater in length are:

(1) 24° 45.75′ N 82° 54.40′ W
(2) 24° 45.60′ N 82° 54.40′ W
(3) 24° 39.70′ N 83° 00.05′ W
(4) 24° 32.00′ N 83° 00.05′ W
(5) 24° 37.00′ N 83° 06.00′ W
(6) 24° 40.00′ N 83° 06.00′ W

**Alternative Anchoring Sites**

Alternative anchoring locations in the vicinity of the area closed to anchoring are:

Areas to the west of the Sanctuary boundary in depths greater than the 20 fathom contour line, indicated on NOAA Nautical Chart Numbers 11434 and 11420. The bottom type in these areas is sand/mud or sand/shell. This location is approximately 2 nautical miles west of the living coral reefs that form Tortugas Bank where anchoring damage to the corals is occurring. Mariners should note the existence of a submerged shipwreck located at 24° 38′ N 83° 08.00′ W. This shipwreck is a landing ship transport which was lost in 1948.

**Penalties**

Pursuant to 15 CFR 992.45, any violation of the rule is subject to a maximum civil penalty of $110,000 per violation per day. Furthermore, the NMSA and regulations authorize a proceeding *in rem* against any vessel used in violation of any such regulation.

**Classification**

Under 5 USC 553(b)(B), the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA for good cause finds that providing prior notice and public procedure thereon with respect to this rule is contrary to the public interest. This is due to recent evidence that has come to light that severe damage to coral in the area has been caused by the chains and anchors of vessels 50 meters or greater in length. Further damage to the living coral reef will occur if the prohibition implemented by this rule is delayed to provide prior notice and opportunity for public comment.

Likewise, under 5 U.S.C. 553(d)(3), the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA for good cause finds that delaying the effective date of this rule for 30 days is contrary to the public interest. First, if the rule is delayed for 30 days, significant damage to the living coral resources could result. Further, 30 days is not necessary to give notification to vessels which might anchor in the area in the future or for any vessel presently anchored to move to an alternative anchoring site. The U.S. Coast Guard will give immediate notification to vessels and they then can, in a short period of time, move and re-anchor in the recommended location. Notification will be made by the U.S. Coast Guard via notice to mariners, Sanctuary radio announcements, press releases, press conferences, and with assistance by the U.S. Coast Guard and Dry Tortugas National Park staff on the water within the area. This rule is effective on 12:01 am on the second day after the filing of this rule at the Office of the Federal Register, to allow adequate time for any vessels to relocate.

**Executive Order 12866**

The Office of Management and Budget (OMB) has concurred that this rule is not significant within the meaning of Section 3(f) of Executive Order 12866.

**Executive Order 12612**

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

**Regulatory Flexibility Act**

Because this rule is not required to be issued with prior notice and opportunity for public comment by 5 U.S.C. 553 or by any other law, it is not subject to the Regulatory Flexibility Act requirement for preparation of a regulatory flexibility analysis, and none has been prepared.

**Paperwork Reduction Act**

This rule does not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

Dated: October 17, 1997.

**Nancy Foster,**

*Assistant Administrator.*

[FR Doc. 97–27700 Filed 10–15–97; 12:17 pm]

BILLING CODE 3510–08–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1910

**RIN 1218–AAA95**

### Methylene Chloride; Amendment; Extension of Start-up Dates

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Final Rule; amendment; extension of start-up dates of compliance.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is extending the start-up date for most provisions of the methylene chloride standard for larger employers by 45 days to December 21, 1997. Larger employers were required to commence initial monitoring by September 7, 1997, and that date is unchanged. OSHA is also extending the start-up date for initial monitoring for foam manufacturers with 20 to 99 employees by 45 days to December 21, 1997, Employers with fewer than 20 employees have later start-up dates, which are not changed.

**DATES:** The effective date of this amendment is October 20, 1997.

*Compliance:* The start-up date for all provisions of the methylene chloride standard except initial monitoring and engineering controls for employers specified in § 1910.1052(n)(2)(iii)(C) is extended to December 21, 1997 (255 days after the effective date of the standard). The start-up date for the initial monitoring provision of the

methylene chloride standard is extended to December 21, 1997 (255 days after the effective date of the standard) for employers specified in § 1910.1052(n)(2)(i)(B).

**FOR FURTHER INFORMATION CONTACT:** Bonnie Friedman, Director, OSHA Office of Public Affairs, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 219–8151.

**SUPPLEMENTARY INFORMATION:** OSHA published a new methylene chloride standard January 10, 1997 (62 FR 1494). That standard included extended start-up dates for its various provisions depending on the size of the employer. The three categories of employers were employers with fewer than 20 employees, foam manufactures with 20–99 employees, and ''all other employers.''

OSHA published notification of OMB approval of information collection requirements on August 8, 1997 (62 FR 42666). As the start-up date for initial monitoring for ''all other employers'' was August 8, 1997, OSHA extended that date to September 7, 1997 to provide added notice to implement compliance.

On September 15, 1997 (62 FR 48175), OSHA published a notice extending the start-up date for all provisions of the standard except initial monitoring (and engineering controls, which already had a later start-up date) from October 7, 1997 to November 6, 1997 for ''all other employers.'' Other start-up dates were left unchanged.

OSHA has concluded that an additional 45 days (to December 21, 1997) is needed for implementation of the provisions except initial monitoring and engineering controls for ''all other employers.'' This allows for a more efficient and effective implementation of those provisions. OSHA has also concluded that an additional 45 days (to December 21, 1997) is needed for foam manufacturers with between 20 and 29 employees to comply with the initial monitoring requirements. OSHA is amending paragraphs § 1910.1052(n)(2)(i)(B) and § 1910.1052(n)(2)(iii)(C) to implement this decision.

The date for completion of initial monitoring for employers with fewer than 20 employees is February 4, 1998, and remains unchanged. See 62 FR 1606 (January 10, 1997) for a listing of effective and start-up dates.

OSHA finds that there is good cause to issue this extension without notice and public comment because following such procedures would be impractical, unnecessary or contrary to the public interest in this case. OSHA believes that it is in the public interest to give certain employers additional time to implement certain provisions.

### Authority And Signature

This document was prepared under the direction of Gregory R. Watchman, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Signed at Washington, DC this 15th day of October 1997.

**Gregory R. Watchman,**

*Acting Assistant Secretary of Labor.*

### List of Subjects in 29 CFR Part 1910

Chemicals, Hazardous Substances, Occupational safety and health, Reporting and recordkeeping requirements.

## PART 1910—[AMENDED]

1. The general authority citation for subpart Z of CFR 29 part 1910 continues to read, in part, as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657 ); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 6–96 (62(FR 111), as applicable; and 29 CFR Part 1911.

* * * * *

2. Paragraphs (n)(2)(i)(B) and (n)(2)(iii)(C) of § 1910.1052 are revised to read as follows:

**§ 1910.1052 Methylene Chloride.**

* * * * *

(n) * * *

(2) * * *

(i) * * *

(B) for polyurethane foam manufactures with 20 to 99 employees with 255 days after the effective date of this section.

(ii) * * *

(iii) * * *

(C) For all other employers within 255 days after the effective date of this section.

* * * * *

[FR Doc. 97–27691 Filed 10–17–97; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 199

**[DoD 6010.8–R]**

**RIN–0720–AA42**

## OCHAMPUS; State Victims of Crime Compensation Programs; Voice Prostheses

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

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

**SUMMARY:** This interim final rule establishes OCHAMPUS as primary payer to State Victims of Crime Compensation Programs and establishes voice prostheses as a CHAMPUS benefit.

**DATES:** The amendments to § 199.2 and § 199.8 are effective September 13, 1994 and the revision of § 199.4(g)(48) is effective October 5, 1994. Written comments will be accepted until December 19, 1997.

**ADDRESSES:** Forward comments to the OCHAMPUS, Program Development Branch, Aurora, CO 80045–6900.

**FOR FURTHER INFORMATION CONTACT:** Connie Kiese, OCHAMPUS, Program Development Branch, telephone (303) 361–1178.

**SUPPLEMENTARY INFORMATION:** Under 10 U.S.C. 1079(j)(1), no CHAMPUS benefits shall be available for the payment for any service or supply for persons enrolled in any other insurance, medical service, or health plan to the extent that the service or supply is a benefit under the other plan, except in the case of those plans administered under title XIX of the Social Security Act (Medicaid)(51 FR 24008). Therefore, in all double coverage situations, and for all classes of beneficiaries, CHAMPUS shall be secondary payer except when the other medical coverage is provided through Medicaid.

However, on September 13, 1994, Public Law 103–322 was signed into effect. Section 230202 of that law states that notwithstanding any other law, if the compensation paid by an eligible crime victim compensation plan would cover costs that a Federal program or a federally financed State or local program would otherwise pay,——

(1) Such crime compensation program shall not pay that compensation; and

(2) The other program shall make its payments without regard to the existence of the crime victim compensation program.

This provision mandates that CHAMPUS assume primary payer status

to State Victims of Crime Compensation Programs.

This interim final rule is being published and no previous public comment period has been requested. The change is mandated through public law signed into effect on September 13, 1994, and we do not believe it is in the public interest to delay the implementation through the publication of a proposed rule. However, for a period of 60 days following the date of publication of this interim final rule in the **Federal Register**, we will accept public comments and, when appropriate, will revise the amendment. A notice advising of any revision prompted by public comments will be published in the **Federal Register** not later than 90 days following the end of the comment period. Benefits will be granted retroactively, effective September 13, 1994 for State Victims of Crime Compensation Programs and voice prostheses.

The National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337), section 705, October 5, 1994, added voice prostheses to the benefits available under CHAMPUS. Benefits will be granted retroactively, effective October 5, 1994.

Because this change is also mandated through public law, we do not believe it is in the public interest to delay the implementation through the publication of a proposed rule. A comment period of 60 days following the date of publication of this amendment in the **Federal Register** is provided.

Effective September 13, 1994, CHAMPUS is considered primary payer to state victims of crime compensation programs. The effective date for the new CHAMPUS benefit of voice prosthesis is October 5, 1994.

### Regulatory Procedures

The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This interim final rule is not a significant regulatory action under Executive Order 12866. The changes set forth in this interim final rule are minor revisions to the existing regulation. Since this interim final rule does not impose information collection requirements, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–511).

### List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

## PART 199—[AMENDED]

Accordingly, 32 CFR part 199 is amended as follows:

1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; and 10 U.S.C. Chapter 55.

2. Section 199.2(b) is amended by adding a definition ''State Victims of Crime Compensation Programs'' in alphabetical order to read as follows:

**§ 199.2 Definitions.**

* * * * *

(b) * * *

*State Victims of Crime Compensation Programs.* Benefits available to victims of crime under the Violent Crime Control and Law Enforcement Act.

* * * * *

3. Section 199.4 is amended by revising paragraph (g)(48) to read as follows:

**§ 199.4 Basic program benefits.**

* * * * *

(g) * * *

(48) *Prosthetic devices.* Prostheses, except artificial limbs, voice prostheses and eyes, or if an item is inserted surgically in the body as an integral part of a surgical procedure. All dental prostheses are excluded, except for those specifically required in connection with otherwise covered orthodontia directly related to the surgical correction of a cleft palate anomaly.

* * * * *

4. Section 199.8 is amended by revising paragraphs (b)(3)(iii), (b)(3)(iv) and by adding paragraph (b)(3)(v) as follows:

**§ 199.8 Double coverage.**

* * * * *

(b) * * *

(3) * * *

(iii) Entitlement to receive care from Uniformed Services medical care facilities;

(iv) Certain Federal Government programs, as prescribed by the Director, OCHAMPUS, that are designed to provide benefits to a distinct beneficiary population and for which entitlement does not derive from either premium payment of monetary contribution (for example, the Indian Health Service); or

(v) State Victims of Crime Compensation Programs.

* * * * *

Dated: October 10, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–27641 Filed 10–17–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD01–97–018]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Bronx River, NY

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulations governing the Bruckner Boulevard Bridge, over the Bronx River in the Bronx, New York. In addition, the location of the bridge in this section will be more clearly identified and redundant language regarding openings for public vessels and vessels in distress is removed. The owner of the bridge has requested that a 4 hours notice for openings be provided, except between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m., Monday through Friday, when the bridge need not open for the passage of vessels. This change is expected to provide for the needs of navigation and relieve the bridge owner of the burden of crewing the bridge at all times.

**DATES:** This final rule is effective November 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Arca, project officer, First Coast Guard District, Bridge Branch at the Battery Park Bldg., New York, New York 10004. The telephone number is (212) 668–7069.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

On April 30, 1997, the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Bronx River, New York'' in the **Federal Register** (62 FR 23410). The Coast Guard received two comments on the notice of proposed rulemaking. No public hearing was requested, and one was not held.

### Background and Purpose

The Bruckner Boulevard Bridge, at mile 1.1, over the Bronx River in the Bronx, New York, has vertical clearances of 27′ above mean high water (MHW) and 34′ above mean low water (MLW) in the closed position. The

existing rules at 33 CFR part 117.771(a) require the Bruckner Boulevard Bridge to open on signal, except during designated rush hour periods. On September 27, 1988, the Coast Guard approved plans for the rehabilitation of the bridge. To facilitate the work, a temporary final rule (54 FR 18281, April 28, 1989) was approved, permitting the bridge to remain closed for 36 months from April 9, 1989, through April 9, 1992. Prior to the rehabilitation of the bridge, there were three openings recorded in 1988. Since the rehabilitation was completed in 1992, there have been no requests for openings.

**Discussion of Comments and Changes**

Two comments were received in response to the notice of proposed rulemaking. Both offered no objection.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This conclusion is based on the fact that this rule will not prevent mariners from passing through the bridge as long as they provide four hours advance notice. This rule will not prevent mariners from passing through the Bruckner Boulevard Bridge so long as they provide advance notice.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities.

*Small entities* include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdiction with populations of less than 50,000. For the reasons discussed in the Regulatory Evaluation above, the Coast Guard has determined that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Federalism**

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

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, (as revised by 60 FR 32197, June 20, 1995), this rule promulgates operating regulations for drawbridges and is categorically excluded from further environmental documentation.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulation**

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.771 is revised to read as follows:

**§ 117.771 Bronx River.**

(a) The draw of the Bruckner Boulevard Bridge, mile 1.1, at the Bronx, New York, shall open on signal if at least 4 hours notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline, or NYCDOT Bridge Operations office, except that between 7 a.m. and 9 a.m., and 4 p.m. and 6 p.m. Monday through Friday, the bridge need not be opened for the passage of vessels.

(b) The draw of the Conrail Bridge, mile 1.6 at the Bronx, New York, need not be opened for the passage of vessels.

(c) The owners of the Bruckner Boulevard Bridge, mile 1.1, and the Conrail Bridge, mile 1.6, both at the Bronx, New York, shall provide and keep in good legible condition two clearance gauges designed, installed and maintained in accordance with the provisions of § 118.160 of this chapter.

Dated: September 29, 1997.

**R.M. Larrabee,**

*Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.*

[FR Doc. 97–27707 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–14–M

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 187

**[CGD 89–050]**

**RIN 2115–AD35**

## Vessel Identification System

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim final rule; re-opening of comment period.

**SUMMARY:** The Coast Guard is re-opening the comment period for its interim final rule establishing a system to identify vessels numbered or titled under the laws of a State. This action is necessary to respond to questions raised by States, banking interests, and legal associations.

**DATES:** Comments must reach the Coast Guard on or before December 4, 1997.

**ADDRESSES:** You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 89–050), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LT James Whitehead, Marine Safety and Environmental Protection, Office of Information Resources (G–MRI), 202–267–0385.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, arguments, or data. Persons submitting comments should include their names and addresses, identity this rulemaking (CGD 89–050) and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an

unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during this comment period. It may change this rule in view of the comments.

**Background**

The Coast Guard published an Interim Final Rule in the **Federal Register** (60 FR 20310; April 25, 1995). The rule established a vessel identification system (VIS) for vessels numbered or titled by a State that elects to participate in the system, The rule was to go into effect on April 24, 1996. However, on February 23, 1996 (61 FR 6943), the Coast Guard suspended the effective date of subpart D of the rule (33 CFR part 187, subpart D, Guidelines for State Vessel Titling Systems) through April 23, 1998. The suspension was intended to allow the Coast Guard, States, and public more time to review the complexities of the guidelines relating to State titling. Since the suspension began, representatives of the States, marine banks, and legal associations have met several time to discuss issues involving the State titling guidelines. Notes from these meetings have been included in the docket.

**Questions**

We are reopening the comment period to gather further information on all aspects of this rulemaking. We particularly need your help in answering the following questions:

(a) Should the regulations be revised to respond to ownership concerns, rather than just law enforcement concerns? Both concerns are addressed in the VIS statute (46 U.S.C. 12501). Such a revision may allow members of the marine industry to get ownership information from the VIS, such as an individual owner's name and address in order to match that owner with a particular vessel.

(b) Should the information used to identify vessels in 33 CFR 187.103 be the same as that used for a certificate of number in 33 CFR 174.19?

(c) What changes, if any, to 33 CFR part 187, subpart D, are needed to address the complexities of State titling?

Your comments need not be limited to these questions.

Dated: October 14, 1997.

**Joseph J. Angelo,**

*Acting Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 97–27706 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–14–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA–7674]**

### Suspension of Community Eligibility

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

**ACTION:** Final rule.

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

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

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

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

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

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

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

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

**National Environmental Policy Act**

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

**Regulatory Flexibility Act**

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as

amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

**Regulatory Classification**

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

**Paperwork Reduction Act**

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

**Executive Order 12612, Federalism**

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

**Executive Order 12778, Civil Justice Reform**

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

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

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

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

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

**§ 64.6 [Amended]**

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

| State/location | Community No. | Effective date of eligibility | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region V** | | | | |
| Michigan: | | | | |
| Bridgeport, charter township of, Saginaw County. | 260186 | February 18, 1975, Emerg; March 15, 1984, Reg.; October 16, 1997, Susp. | October 16, 1997. | October 16, 1997 |
| Buena Vista, charter township of, Saginaw County. | 260499 | July 30, 1976, Emerg; July 5, 1984, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Carrollton, township of, Saginaw County | 260187 | July 23, 1974, Emerg.; June 15, 1983, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Chesaning, village of, Saginaw County | 260591 | September 20, 1982, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Frankenmuth, city of, Saginaw County .. | 260188 | September 5, 1975, Emerg.; September 2, 1982, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| James, township of, Saginaw County ... | 260802 | April 13, 1987, Emerg.; September 9, 1991, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Kochville, township of, Saginaw County | 260501 | October 26, 1977, Emerg.; January 19, 1983, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Maple Grove, township of, Saginaw County. | 260891 | June 6, 1997, Emerg.; October 16, 1997, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Saginaw, city of, Saginaw County ..... | 260189 | February 26, 1975, Emerg.; November 16, 1983, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Saginaw, township of, Saginaw County | 260190 | July 13, 1973, Emerg.; July 2, 1979, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Spaulding, township of, Saginaw County. | 260303 | August 6, 1974, Emerg.; June 15, 1979, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| St. Charles, village of, Saginaw County | 260593 | April 16, 1979, Emerg.; October 18, 1983, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Swan Creek, township of, Saginaw County. | 260888 | May 12, 1995, Emerg.; October 16, 1997, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Taymouth, township of, Saginaw County. | 260503 | June 2, 1977, Emerg.; December 16, 1988, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Thomas, township of, Saginaw County | 260603 | February 13, 1975, Emerg.; January 19, 1983, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Tittabawassee, township of, Saginaw County. | 260504 | February 16, 1981, Emerg.; February 1, 1987, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Zilwaukee, city of, Saginaw County ..... | 260285 | January 21, 1974, Emerg.; July 2, 1979, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |
| Zilwaukee, township of, Saginaw County. | 260286 | January 21, 1974, Emerg.; July 2, 1979, Reg.; October 16, 1997, Susp. | .....do ..... | Do. |

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

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

Issued: October 9, 1997.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 97–27709 Filed 10–17–97; 8:45 am]

**BILLING CODE 6718–05–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

**[Docket No. FEMA–7233]**

### Changes in Flood Elevation Determinations

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

**ACTION:** Interim rule.

**SUMMARY:** This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

**DATES:** These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

**SUPPLEMENTARY INFORMATION:** The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

### Regulatory Classification

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

### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

### § 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Connecticut: Fairfield. | Town of New Canaan. | June 26, 1997, July 3, 1997, *New Canaan Advertiser.* | Mr. Richard P. Bond, First Selectman of the Town of New Canaan, 77 Main Street, New Canaan, Connecticut 06840. | October 1, 1997 ... | 090010 B |
| Florida: | | | | | |
| Duval ..... | City of Jacksonville. | July 8, 1997, July 15, 1997, *The Florida Times-Union.* | The Honorable John A. Delaney, Mayor of the City of Jacksonville, City Hall, 220 East Bay Street, 14th Floor, Jacksonville, Florida 32202. | July 1, 1997 ..... | 120077 E |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Orange ..... | Unincorporated Areas. | August 18, 1997, August 25, 1997, *The Orlando Sentinel*. | Mr. Ajit Lalchandani, P.E., Director, Orange County Public Works Division, 4200 South John Young Parkway, Orlando, Florida 32829–9205. | August 11, 1997 .. | 120179 C |
| Georgia: Gwinnett | Unincorporated Areas. | July 21, 1997, July 28, 1997, *Gwinnett Daily Post*. | Mr. Wayne Hill, Chairman of the Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, Georgia 30245–6900. | October 26, 1997 | 130322 C |
| Illinois: | | | | | |
| Cook ..... | Village of Chicago Ridge. | August 30, 1996, September 5, 1996, *The Chicago Ridge Citizen*. | The Honorable Eugene Siegel, Mayor of the Village of Chicago Ridge, 10655 South Oak Avenue, Chicago Ridge, Illinois 60415. | August 23, 1996 .. | 170076 B |
| DuPage and Cook. | Village of Bensenville. | September 3, 1997, September 10, 1997, *Press Publications*. | Mr. John C. Geils, President of the Village of Bensenville, 700 West Irving Park Road, Bensenville, Illinois 60106. | August 27, 1997 .. | 170200 C |
| Illinois: | | | | | |
| DuPage ..... | City of Darien ..... | August 21, 1997, August 28, 1997, *Darien Progress*. | The Honorable Carmen D. Soldato, Mayor of the City of Darien, 1702 Plainfield Road, Darien, Illinois 60561. | November 26, 1997. | 170750 A |
| DuPage County. | Village of Lisle ..... | July 25, 1997, August 1, 1997, *The Lisle Sun*. | The Honorable Ronald F. Ghilardi, Mayor of the Village of Lisle, 1040 Burlington Avenue, Lisle, Illinois 60532. | July 18, 1997 ..... | 170211 B |
| Stephenson .... | Unincorporated Areas. | June 11, 1997, June 18, 1997, *The Journal Standard*. | Mr. Dean Danner, Chairman of the Stephenson County Board of Commissioners, 15 North Galena Avenue, Freeport, Illinois 61032. | June 6, 1997 ..... | 170639 B |
| Will and DuPage. | City of Naperville | September 10, 1997, September 17, 1997, *Naperville Sun*. | The Honorable A. George Pradel, Mayor of the City of Naperville, 400 South Eagle Street, Naperville, Illinois 60566. | December 16, 1997. | 170213 C |
| Winnebago ..... | Unincorporated Areas. | June 11, 1997, June 18, 1997, *Rockford Register Star*. | Ms. Christine Cohn, Chairman of the Winnebago County Board of Commissioners, 404 Elm Street, Room 504, Rockford, Illinois 61101. | June 6, 1997 ..... | 170720 B |
| Michigan: Wayne .. | Township of Canton. | August 14, 1997, August 21, 1997, *Canton Observer*. | Mr. Thomas Yack, Canton Township Supervisor, 1150 South Canton Center Road, Canton, Michigan 48188. | November 19, 1997. | 260219 B |
| Maine: York ..... | Town of Kittery ..... | June 3, 1997, June 10, 1997, *Portsmouth Herald*. | Mr. Phil McCarthy, Kittery Town, Manager, P.O. Box 808, Kittery, Maine 03904. | May 23, 1997 ..... | 230171 D |
| Mississippi: Madison. | City of Ridgeland | July 24, 1997, July 31, 1997, *Madison County Journal*. | The Honorable Gene McGee, Mayor of the City of Ridgeland, P.O. Box 217, Ridgeland, Mississippi 39158. | October 29, 1997 | 280110 D |
| New Hamsphire: Grafton. | Town of Bridgewater. | June 11, 1997, June 18, 1997, *Record Enterprise*. | Mr. Terrance Murphy, Head Selectman, Town of Bridgewater, 297 Mayhew Turnpike, Bristol, New Hampshire 03222. | December 5, 1997 | 33046 C |
| New Jersey: | | | | | |
| Ocean ..... | Borough of Island Heights. | July 16, 1997, July 23, 1997, *Ocean County Observer*. | The Honorable David Siddons, Mayor of the Borough of Island Heights, P.O. Box AH, Island Heights, New Jersey 08732. | January 7, 1998 ... | 340374 C |
| Passaic ..... | Borough of West Paterson. | March 5, 1997, March 12, 1997, *North Jersey Herald and News*. | The Honorable Matthew T. Capano, Mayor of the Borough of West Paterson, 5 Brophy Lane, West Paterson, New Jersey 07424. | June 10, 1997 ..... | 340412 B |
| North Carolina: Dare. | Unincorporated Areas. | August 28, 1997, September 4, 1997, *Coastland Times*. | Mr. Robert Z. Owens, Jr., Chairman of the Dare County, Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 17954. | August 21, 1997 .. | 375348 D |
| Ohio: Cuyahoga .... | City of Beachwood | June 30, 1997, July 7, 1997, *The Plain Dealer*. | The Honorable Merle S. Gorden, Mayor of the City of Beachwood, 2700 Richmond Road, Beachwood, Ohio 44122. | December 19, 1997. | 390094 A |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Cuyahoga ..... | City of North Olmsted. | August 28, 1997, September 4, 1997, *Sun Herald*. | The Honorable Edward J. Boyle, Mayor of the City of North Olmsted, 5200 Dover Center Road, North Olmsted, Ohio 44070. | December 3, 1997 | 390120 C |
| Franklin & Fairfield. | City of Columbus | August 12, 1997, August 19, 1997, *The Columbus Dispatch*. | The Honorable Gregory Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215. | August 5, 1997 .... | 390170 G |
| Lake ..... | Unincorporated Areas. | June 18, 1997, June 25, 1997, *The News Herald*. | Ms. Mildred Teuscher, President of the Lake County Board of Commissioners, P.O. Box 490, 105 Main Street, Painesville, Ohio 44077. | June 11, 1997 ..... | 390771 C |
| Pennsylvania: | | | | | |
| Blair ..... | Township of Blair | July 8, 1997, July 15, 1997, *Altoona Mirror*. | Mr. George Harley, Secretary/Treasurer of the Township of Blair, 575 Cedarcrest Drive, Duncansville, Pennsylvania 166635. | June 30, 1997 ..... | 421386 A |
| Bucks ..... | Borough of Chalfont. | August 19, 1997, August 26, 1997, *Intelligencer/Record*. | The Honorable Marilyn J. Becker, Mayor of the Borough of Chalfront, P.O. Box 80, Chalfont, Pennsylvania 18914. | November 24, 1997. | 420184 B |
| Cambria ..... | City of Johnstown | June 13, 1997, June 20, 1997, *Tribune-Democrat*. | The Honorable Linda Weaver, Mayor of the City of Johnstown, 401 Main Street, Johnstown, Pennsylvania 15901. | June 6, 1997 ..... | 420231 C |
| South Carolina: Horry | Unincorporated Areas. | July 10, 1997, July 17, 1997, *The Sun News*. | Ms. Linda Angus, Horry County Administrator, 103 Elm Street, Conway, South Carolina 29526. | October 15, 1997 | 450104 E |
| Virginia: (Independent City). | City of Harrisonburg. | August 15, 1997, August 22, 1997, *Daily News-Record*. | The Honorable Rodney L. Eagle, Mayor of the City of Harrisonburg, City Hall, Harrisonburg, Virginia 22801. | August 5, 1997 .... | 510076 B |
| Wisconsin: Washington. | Village of Germantown. | June 5, 1997, June 12, 1997, *Germantown Banner-Press*. | Mr. Paul Brandenburg, Village of Germantown Administrator, P.O. Box 337, Germantown, Wisconsin 53022–0337. | September 10, 1997. | 550472 B |

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

Dated: October 9, 1997.

**Michael J. Armstrong,**

*Associate Director for Mitigation*.

[FR Doc. 97–27712 Filed 10–17–97; 8:45 am]

**BILLING CODE 6718–03–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

### Changes in Flood Elevation Determinations

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

**ACTION:** Final rule.

**SUMMARY:** Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

**EFFECTIVE DATES:** The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The

community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

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

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

## PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

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

**§ 65.4 [Amended]**

2. The tables published under the authority of § 65.4 are amended as follows:

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Connecticut: Fairfield (FEMA Docket No. 7197). | Town of Darien .... | September 12, 1996, September 19, 1996, Darien News-Review. | Mr. Hank Sanders, First Selectman of the Town of Darien, 2 Renshaw Road, Town Hall, Darien, Connecticut 06820. | September 5, 1996. | 090005 D |
| Florida: | | | | | |
| Pinellas (FEMA Docket No. 7201). | Town of Belleair ... | November 25, 1996, December 2, 1996, St. Petersburg Times. | The Honorable Stephen G. Watts, Mayor of the Town of Belleair, 901 Ponce De Leon Boulevard, Belleair, Florida 34616–1096. | November 18, 1996. | 125088 B |
| Pinellas (FEMA Docket No. 7201). | Unincorporated Areas. | November 15, 1996, November 22, 1996, St. Petersburg Times. | Mr. Fred E. Marquis, Pinellas County Administrator, 315 Court Street, Clearwater, Florida 34616. | November 6, 1996 | 125139 D |
| Illinois: | | | | | |
| Cook and Lake (FEMA Docket No. 7201). | Village of Buffalo Grove. | October 24, 1996, October 31, 1996, Daily Herald. | Mr. Sidney Mathias, Village President, 50 Raupp Boulevard, Municipal Building, Buffalo Grove, Illinois 60089. | October 16, 1996 | 170068 D |
| Cook (FEMA Docket No. 7174). | Village of Matteson. | July 18, 1996, July 25, 1996, The Matteson-Richton Park Star. | Mr. Mark Stricker, Matteson Village President, 3625 West 215th Street, Matteson, Illinois 60443. | February 1, 1996 | 170123 C |
| Tazewell (FEMA Docket No. 7201). | Village of Morton .. | December 11, 1996, December 18, 1996, Tazewell News. | Robert D. Hertenstein, M.D., President of the Village of Morton, Board of Trustees, P.O. Box 28, Morton, Illinois 61550–0028. | December 4, 1996 | 170652 D |
| Indiana: Johnson (FEMA Docket No. 7197). | Unincorporated Areas. | September 16, 1996, September 23, 1996, Daily Journal. | Mr. Alfred Chappel, Chairman of the Johnson County Board of Commissioners, 86 West Court Street, Courthouse Annex Franklin, Indiana 46131. | September 9, 1996. | 180111 C |
| Maryland: Frederick (FEMA Docket No. 7201). | Unincorporated Areas. | September 30, 1996, October 7, 1996, Frederick Post. | Mr. Mark Hoke, President of the Frederick County Board of Commissioners, 12 East Church Street, Frederick, Maryland 21701. | January 5, 1997 ... | 240027 A |
| Minnesota: Anoka (FEMA Docket No. 7201). | City of Centerville | October 8, 1996, October 15, 1996, Quad Community Press. | The Honorable Thomas Wilharber, Mayor of the City of Centerville, 1880 Main Street, Centerville, Minnesota 55038. | January 13, 1997 | 270008 |
| Mississippi: DeSoto County (FEMA Docket No. 7201). | City of Olive Branch. | October 16, 1996, October 23, 1996, DeSoto County Tribune. | The Honorable D.M. Nichols, Mayor of the City of Olive Branch, 9189 East Pigeon Roost Avenue, Olive Branch, Mississippi 38654. | October 8, 1996 ... | 280286 D |

| State and county | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| North Carolina: | | | | | |
| Durham (FEMA Docket No. 7197). | City of Durham ..... | August 30, 1996, September 6, 1996, The Herald-Sun. | The Honorable Sylvia Kerckhoff, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701. | August 23, 1996 .. | 370086 G |
| Edgecombe and Nash (FEMA Docket No. 7201). | City of Rocky Mount. | December 16, 1996, December 23, 1996, Rocky Mount Evening and Sunday Telegram. | Mr. Stephen W. Raper, Rocky Mount City Manager, P.O. Box 1180, Rocky Mount, North Carolina 27802–1180. | December 9, 1996 | 370092 C |
| Wake County (FEMA Docket No. 7201). | Unincorporated Areas. | December 11, 1996, December 18, 1996, The News and Observer. | Mr. Richard Y. Stevens, Wake County Manager, 336 Fayetteville Street, P.O. Box 550, Raleigh, North Carolina 27602. | December 4, 1996 | 370368 E |
| Wilkes (FEMA Docket No. 7201). | North Wilkesboro | November 25, 1996, December 2, 1996, Journal Patriot. | Mr. James H. Bentley, Town Manager, P.O. Box 218, North Wilkesboro, North Carolina 28659. | November 20, 1996. | 370257 B |
| Ohio: | | | | | |
| Franklin (FEMA Docket No. 7201). | City of Dublin ..... | November 14, 1996, November 21, 1996, Columbus Dispatch. | Mr. Tim Hansley, City of Dublin Manager, 6665 Kaufman Road, Dublin, Ohio 43017. | November 7, 1996 | 390673 G |
| Summit (FEMA Docket No. 7197). | City of Hudson ..... | August 28, 1996, September 4, 1996, Hudson Hub. | The Honorable Harold L. Bayleff, Mayor of the City of Hudson, 27 East Main Street, Hudson, Ohio 44236. | August 22, 1996 .. | 390660 B |
| South Carolina: | | | | | |
| Greenville County (FEMA Docket No. 7201). | Unincorporated Areas. | December 9, 1996, December 16, 1996, The Greenville News. | Mr. Gerald Seals, Greenville County Administrator, 301 University Ridge, Suite 100, Greenville, South Carolina 29601. | December 2, 1996 | 450089 B |
| Lancaster (FEMA Docket No. 7201). | City of Lancaster .. | September 27, 1996, October 4, 1996, The Lancaster News. | The Honorable Robert Mobley, Mayor of the City of Lancaster, P.O. Box 1149, Lancaster, South Carolina 29721. | September 5, 1996. | 450121 B |
| Tennessee: Shelby (FEMA Docket No. 7191). | City of Memphis ... | June 14, 1996, June 21, 1996, The Commercial Appeal. | The Honorable W.W. Harrenton, Mayor of the City of Memphis, 125 North Main Street, Memphis, Tennessee 38103. | September 19, 1996. | 470177 E |
| Virginia: Stafford (FEMA Docket No. 7201). | Unincorporated Areas. | July 23, 1996, July 30, 1996, Free Lance-Star. | Mr. C.M. Williams, Jr., Stafford County Administrator, 1300 Courthouse Road, P.O. Box 339, Stafford, Virginia 22555–0339. | October 28, 1996 | 510154 D |

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

Dated: October 9, 1997.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 97–27710 Filed 10–17–97; 8:45 am]

**BILLING CODE 6718–03–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

### Final Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base

flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

**Regulatory Classification**

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

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

**§ 67.11 [Amended]**

2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **CONNECTICUT** | |
| **Wilton (Town), Fairfield County (FEMA Docket No. 7219)** | |
| *West Branch Saugatuck River:* | |
| Approximately 840 feet upstream of Westport/Wilton corporate limits | *95 |
| Approximately 800 feet upstream of Route 53 (Cedar Road) | *159 |
| **Maps available for inspection** at the Inland Wetland Commission, Wilton Town Hall Annex, 238 Danbury Road, Wilton, Connecticut. | |
| **FLORIDA** | |
| **Century (City), Escambia County (FEMA Docket No. 7199)** | |
| *Escambia River:* | |
| Approximately 3.0 miles downstream of State Route 4 | *56 |
| At State Route 4 | *59 |
| **Maps available for inspection** at the Century Town Hall, 7995 North Century Boulevard, Century, Florida. | |
| **Pensacola Beach—Santa Rosa Island Authority (Escambia County) (FEMA Docket No. 7199)** | |
| *Gulf of Mexico:* | |
| At the intersection of Bulevar Mayor and Ensenada Siete | *11 |
| **Maps available for inspection** at the Santa Rosa Island Authority, 1 Viva De Luna, Pensacola Beach, Florida. | |
| **ILLINOIS** | |
| **Lake-In-The-Hills (Village), McHenry County (FEMA Docket No. 7164)** | |
| *Woods Creek:* | |
| Just downstream of Huntley Algonquin Road | *782 |
| Just upstream of Huntley Algonquin Road | *850 |
| *Kishwaukee Creek:* | |
| At State Route 47 | *859 |
| Approximately 0.63 mile upstream of Huntley Crystal Lake Road | *872 |
| **Maps available for inspection** at the Village Hall, 1115 Crystal Lake Road, Lake-In-The-Hills, Illinois. | |
| **INDIANA** | |
| **Peru (City), Miami County (FEMA Docket No. 7223)** | |
| *Prairie Ditch:* | |
| Approximately 0.8 mile downstream of North Broadway Street | *646 |
| At downstream side of Lovers Lane (upstream corporate limits) | *671 |
| *Shallow Flooding Area:* | |
| Approximately 800 feet south of Lovers Lane, approximately 400 feet east of Chili Street, approximately 1,000 feet north of Harrison Avenue | *2 |
| **Maps available for inspection** at the Miami County Courthouse, Room 102, Corner of Main and Broadway Streets, Peru, Indiana. | |
| **MISSISSIPPI** | |
| **Canton (City), Madison County (FEMA Docket No. 7164)** | |
| *Bear Creek:* | |
| Approximately 200 feet upstream of Fulton Street (State Highway 22) | *219 |
| Approximately 340 feet upstream of Illinois Central Railroad | *221 |
| **Maps available for inspection** at the City Hall, 226 East Peace Street, Canton, Mississippi. | |
| **Madison County (Unincorporated Areas) (FEMA Docket No. 7164)** | |
| *Bear Creek:* | |
| At State Highway 22 | *219 |
| At Illinois Central Railroad | *221 |
| **Maps available for inspection** at the Madison County Office and Chancery Court Building, 146 West Center Street, Canton, Mississippi. | |
| **New York** | |
| **Yonkers (City), Westchester County (FEMA Docket No. 7219)** | |
| *Saw Mill River:* | |
| Approximately 1,420 feet downstream of Ashburton Avenue | *95 |
| Approximately 0.4 mile upstream of Hearst Street | *115 |
| *Crestwood Lake:* | |
| Entire shoreline | *161 |
| **Maps available for inspection** at the Engineering Department, Room 313, Yonkers City Hall, Yonkers, New York. | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **North Carolina** | |
| **Brevard (City), Transylvania County (FEMA Docket No. 7223)** | |
| Confluence with Davidson River | *2,113 |
| Divergence from Davidson River | *2,123 |
| *Davidson River:* | |
| Confluence with French Broad River | *2,103 |
| Downstream side of U.S. Highway 64/276 Eastbound | *2,124 |
| *French Broad River:* | |
| Approximately 400 feet downstream of confluence of Davidson River | *2,103 |
| Approximately 0.53 mile upstream of confluence of Unnamed Tributary to French Broad River | *2,124 |
| *Lamb Creek:* | |
| Confluence with French Broad River | *2,104 |
| Approximately 1,630 feet upstream of Lambs Creek Road | *2,251 |
| *Lambo Creek:* | |
| Confluence with French Broad River | *2,104 |
| At footbridge dam | *2,184 |
| *Nicholson Creek:* | |
| Confluence with French Broad River | *2,116 |
| Approximately 25 feet downstream of Southern Railway | *2,149 |
| *King Creek:* | |
| Confluence with French Broad River | *2,105 |
| Approximately 1,430 feet upstream of Mill Brook Drive | *2,266 |
| *Long Branch:* | |
| Confluence with King Creek | *2,139 |
| Approximately 600 feet downstream of Southern Railway | *2,143 |
| *Unnamed Tributary to Davidson River:* | |
| Confluence with Davidson River | *2,108 |
| Approximately 260 feet upstream Southern Railway Spur | *2,109 |
| *Gilbreath Branch:* | |
| Confluence with Lambo Creek | *2,105 |
| Approximately 320 feet downstream Old U.S. Highway 64 | *2,107 |
| *Unnamed Tributary to French Broad River:* | |
| Confluence with French Broad River | *2,124 |
| Approximately 620 feet downstream Country Club Road | *2,128 |
| **Maps available for inspection** at the City of Brevard Planning Department, 151 West Main Street, Brevard, North Carolina. | |
| **North Topsail Beach (Town), Onslow County (FEMA Docket No. 7219)** | |
| *Atlantic Ocean:* | |
| Approximately 225 feet south of the intersection of 14th Avenue and Ocean Boulevard (SR 1583) | *19 |
| Just north of the intersection of Gray Street and North Carolina State Route 210 | *11 |
| *Stump Sound/Intracoastal Waterway:* | |
| Approximately 0.7 mile north of the intersection of Sand Piper Drive and New River Inlet Road | *13 |
| Approximately 0.5 mile northeast of confluence of Normans Creek and Old Sound Channel | *11 |
| **Maps available for inspection** at the North Topsail Beach Town Hall, 2008 Loggerhead Court, North Topsail Beach, North Carolina. | |
| **North Wilkesboro (Town), Wilkes County (FEMA Docket No. 7221)** | |
| *Yadkin River:* | |
| Approximately 2.3 miles downstream of confluence with Reddies River | *957 |
| Approximately 1.4 miles upstream of confluence with Reddies River | *967 |
| *Reddies River:* | |
| At confluence with Yadkin River | *963 |
| Approximately 2,950 feet upstream of confluence with Yadkin River | *969 |
| *Tributary M–1:* | |
| Approximately 375 feet downstream of confluence with Tributary M–1–1 | *1,065 |
| Approximately 225 feet upstream of confluence with Tributary M–1–1 | *1,075 |
| *Tributary Y–1:* | |
| From confluence with Yadkin River | *959 |
| Approximately 750 feet upstream of confluence with Yadkin River | *959 |
| **Maps available for inspection** at the North Wilkesboro Town Hall, 801 Main Street, North Wilkesboro, North Carolina. | |
| **Surf City (Town), Pender and Onslow Counties (FEMA Docket No. 7219)** | |
| *Atlantic Ocean:* | |
| Approximately 250 feet south of the intersection of NC 50 and Reachwood Drive | *19 |
| At intersection of Goldsboro Avenue and New River Drive | *11 |
| *Topsail Sound:* | |
| Approximately 1,250 feet northwest of the intersection of Pender Avenue and Shore Drive | *12 |
| Approximately 1,400 feet northwest of the intersection of NC 50 and Reachwood Drive | *9 |
| **Maps available for inspection** at the Surf City Town Hall, 214 North New River Drive, Surf City, North Carolina. | |
| **Topsail Beach (Town), Pender County (FEMA Docket No. 7219)** | |
| *Atlantic Ocean:* | |
| Approximately 350 feet southeast of the intersection of Clark Avenue and NC State Route 1554 | *20 |
| At intersection of Humphrey Avenue and Shore Drive | *13 |
| *Topsail Sound:* | |
| Approximately 700 feet west of the intersection of Shore Line Drive and Godwin Avenue along Shoreline Drive | *13 |
| Approximately 450 feet northwest of intersection of Fields Avenue and Shore Drive | *10 |
| **Maps available for inspection** at the Topsail Beach Town Hall, 820 South Anderson Boulevard, Topsail Beach, North Carolina. | |
| **OHIO** | |
| **Butler County (Unincorporated Areas) (FEMA Docket No. 7221)** | |
| *Mill Creek:* | |
| At East Crescentville Road | *585 |
| Approximately 0.9 mile upstream of Tylersville Road | *628 |
| *East Fork Mill Creek:* | |
| At East Crescentville Road | *586 |
| Approximately 1,450 feet upstream of Station Road | *661 |
| *Tributary to East Fork Mill Creek:* | |
| At confluence with East Fork Mill Creek | *602 |
| Approximately 1,900 feet upstream of Dimmick Road | *655 |
| *Gregory Creek:* | |
| Approximately 1,680 feet downstream of Hamilton Mason Road | *703 |
| Approximately 1,120 feet upstream of Shawnee Lane | *737 |
| **Maps available for inspection** at the Butler County Administrative Center, 130 High Street, 3rd Floor, Hamilton, Ohio. | |
| **Franklin County (Unincorporated Areas) (FEMA Docket No. 7215)** | |
| *Georges Creek Overland Flow:* | |
| At confluence with Georges Creek | *747 |
| Approximately 2,080 feet upstream of confluence with Georges Creek | *752 |
| **Maps available for inspection** at the Franklin County Zoning Department, 373 South High Street, 15th Floor, Columbus, Ohio. | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **PENNSYLVANIA** | |
| **Castanea (Township), Clinton County (FEMA Docket No. 7215)** | |
| *West Branch Susquehanna River:* | |
| At confluence of Bald Eagle Creek | *564 |
| Approximately 140 feet upstream of Constitution Street | *566 |
| *Bald Eagle Creek:* | |
| At confluence with West Branch Susquehanna River | *564 |
| Approximately 1,750 feet upstream of upstream CONRAIL bridge | *567 |
| *Ponding Areas:* | |
| On west side of U.S. Highway 220 approximately 0.5 mile south of U.S. Highway 220 overpass over Jay Street | *550 |
| Approximately 2,000 feet northeast of the CONRAIL crossing over Bald Eagle Creek | *564 |
| **Maps available for inspection** at the Castanea Municipal Building, 347 Nittany Road, Castanea, Pennsylvania. | |
| **Heidelberg (Township), Berks County (FEMA Docket No. 7195)** | |
| *Tulpehocken Creek:* | |
| Approximately 270 feet downstream of U.S. 422 | *359 |
| Downstream side of U.S. 422 | *359 |
| *Furnace Creek No. 2:* | |
| Approximately 175 feet downstream of upstream corporate limits | *505 |
| At upstream corporate limits | *508 |
| **Maps available for inspection** at the Heidelberg Township Building, 373 Charming Forge Road, Robesonia, Pennsylvania. | |
| **Landingville (Borough), Schuylkill County (FEMA Docket No. 7172)** | |
| *Schuylkill River:* | |
| Approximately 750 feet downstream of CONRAIL | *476 |
| Approximately 1,830 feet upstream of Main Street | *490 |
| **Maps available for inspection** at the Landingville Planning and Zoning Department, 401 North 2nd Street, Pottsville, Pennsylvania. | |
| **Port Clinton (Borough), Schuylkill County (FEMA Docket No. 7172)** | |
| *Schuylkill River:* | |
| Approximately 550 feet downstream of confluence of Little Schuylkill River | *406 |
| Approximately 0.7 mile upstream of CONRAIL | *412 |
| *Little Schuylkill River:* | |
| At confluence with Schuylkill River | *407 |
| Approximately 600 feet upstream of Broad Street | *407 |
| **Maps available for inspection** at the Port Clinton Borough Fire Hall, Broad Street, Port Clinton, Pennsylvania. | |
| **Shoemakersville (Borough), Berks County (FEMA Docket No. 7172)** | |
| *Schuylkill River:* | |
| Approximately 1,050 feet downstream of confluence of Pigeon Creek | *308 |
| Approximately 3,580 feet upstream of Miller Street | *315 |
| *Tributary No. 2 to Schuylkill River:* | |
| At confluence with Schuylkill River | *314 |
| Approximately 100 feet downstream of Private Lane | *347 |
| **Maps available for inspection** at the Shoemakersville Borough Office, 242 Main Street, Shoemakersville, Pennsylvania. | |
| **Winslow (Township), Jefferson County (FEMA Docket No. 7219)** | |
| *Soldier Run:* | |
| Downstream corporate limits | *1,376 |
| Upstream corporate limits | *1,482 |
| **Maps available for inspection** at the Winslow Township Municipal Building, R.D. 1, Reynoldsville, Pennsylvania. | |
| **Wyomissing (Borough), Berks County (FEMA Docket No. 7172)** | |
| *Schuylkill River:* | |
| Approximately 1,200 feet upstream of Buttonwood Street | *212 |
| Approximately 40 feet downstream of confluence of Tulpehocken Creek | *213 |
| *Lauers Run:* | |
| At downstream side of Old Mill Road | *254 |
| Approximately 25 feet downstream of downstream end of Lauer's Lane culvert | *265 |
| *Tributary No. 1 to Lauers Run:* | |
| At confluence with Lauers Run | *261 |
| *Tributary No. 2 to Lauers Run:* | |
| At confluence with Lauers Run | *262 |
| *Wyomissing Creek:* | |
| Approximately 2,000 feet downstream of Wyomissing Boulevard | *220 |
| Approximately 1,300 feet downstream of Wyomissing Boulevard | *227 |
| **Maps available for inspection** at the Wyomissing Borough Hall, 22 Reading Boulevard, Wyomissing, Pennsylvania. | |
| **TENNESSEE** | |
| **Jackson (City), Madison County (FEMA Docket No. 7215)** | |
| *South Fork of Forked Deer River:* | |
| Approximately 1,200 feet downstream of U.S. Route 70 | *346 |
| Approximately 1,200 feet upstream of the confluence of Jones Creek | *357 |
| *Cane Creek:* | |
| At the confluence with South Fork of Forked Deer River | *355 |
| Approximately 200 feet downstream of Hicks Street | *356 |
| *Anderson Branch:* | |
| At the confluence with South Fork of Forked Deer River | *356 |
| Approximately 0.9 mile upstream of Lexington Street | *414 |
| *Bond Creek:* | |
| At the confluence with South Fork of Forked Deer River | *356 |
| Approximately 375 feet downstream of Perry Switch Road | *356 |
| *Meridian Creek:* | |
| At the confluence with South Fork of Forked Deer River | *357 |
| Approximately 250 feet downstream of Illinois Central Railroad | *357 |
| *Moize Creek:* | |
| Approximately 900 feet upstream of Old Humboldt Road | *402 |
| Approximately 0.78 mile upstream of Glen Echo Road | *436 |
| *Bayberry Creek:* | |
| Approximately 0.5 mile upstream of the confluence with South Fork of Forked Deer River | *345 |
| At Old Hickory Boulevard | *424 |
| **Maps available for inspection** at the Jackson City Planning Department, 111 North Church Street, Jackson, Tennessee. | |
| **Madison County (Unincorporated Areas) (FEMA Docket No. 7215)** | |
| *Matthews Creek:* | |
| At confluence with Middle Fork of Forked Deer River | *344 |
| Approximately 0.61 mile upstream of John Smith Road | *410 |
| *Deloach Creek:* | |
| Approximately 250 feet downstream of Illinois Central Railroad | *346 |
| At McClellan Road | *416 |
| *Moize Creek:* | |
| Approximately 250 feet downstream of Illinois Central Railroad | *350 |
| At the upstream side of Old Humboldt Road | *399 |
| *Turkey Creek:* | |
| Approximately 700 feet downstream of Mason Road | *357 |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| At county boundary 2.2 miles upstream of U.S. Road 45E | *393 |
| *Dyer Creek:* | |
| Approximately 0.84 mile downstream of the Florida Steel Railroad | *359 |
| At Christmasville Road | *444 |
| *South Fork of Forked Deer River:* | |
| At Westover Road | *348 |
| Approximately 1.1 miles upstream of U.S. Route 45 (South Highland Avenue) | *357 |
| *Johnson Creek (South Fork Basin):* | |
| Approximately 950 feet downstream of Lower Brownsville Road | *343 |
| At downstream side of Mt. Pinson Road | *424 |
| *North Fork of South Fork of Forked Deer River:* | |
| Approximately 350 feet downstream of Range Road (State Route 8241) | *378 |
| At county boundary | *388 |
| *Jones Creek:* | |
| Approximately 1,500 feet downstream of Illinois Central Railroad | *366 |
| Approximately 650 feet downstream of Bendix Drive | *390 |
| *Dry Branch:* | |
| Entire shoreline of impoundment behind Johnson Creek Watershed Dam No. 5 | *476 |
| *Little Johnson Creek:* | |
| Entire shoreline of impoundment behind Johnson Creek Watershed Dam No. 10 | *478 |
| *Hart Creek:* | |
| Entire shoreline of impoundment behind Johnson Creek Watershed Dam No. 4 | *465 |
| *Lackey Creek:* | |
| Entire shoreline of impoundment behind Johnson Creek Watershed Dam No. 7 | *436 |
| *Sandy Creek:* | |
| At county boundary | *396 |
| Approximately 1.86 miles upstream of Bowman-Collins Road | *492 |
| *Brown Creek:* | |
| At the confluence with North Fork of South Fork of Forked Deer River | *367 |
| Approximately 1.14 miles upstream of Beech Bluff Road | *382 |
| *Sandy Creek Tributary:* | |
| At the confluence with Sandy Creek | *432 |
| Approximately 850 feet upstream of Collins Road | *455 |
| **Maps available for inspection** at the Madison County Commissioner's office building, Madison County Courthouse, 100 East Main Street, Jackson, Tennessee 38301. | |
| **Medon (Town), Madison County (FEMA Docket No. 7215)** | |
| *Sandy Creek:* | |
| Approximately 375 feet downstream of the confluence of Sandy Creek Tributary | *430 |
| Approximately 1,375 feet upstream of Bowman Collins Road | *434 |
| **Maps available for inspection** at the Medon City Hall, 20 College Street, Medon, Tennessee. | |
| **WISCONSIN** | |
| **Chippewa County (Unincorporated Areas) (FEMA Docket Nos. 7199 and 7215)** | |
| *Chippewa River:* | |
| Downstream county boundary | *804 |
| Approximately 6,250 feet upstream of upstream City of Chippewa Falls corporate limits | *853 |
| **Maps available for inspection** at the Chippewa County Courthouse, 711 North Bridge Street, Chippewa Falls, Wisconsin. | |
| **Chippewa Falls (City), Chippewa County (FEMA Docket Nos. 7199 and 7215)** | |
| *Chippewa River:* | |
| Approximately 1 mile downstream of U.S. Highway 53 | *821 |
| Approximately 3.2 miles upstream of Soo Line Railroad | *852 |
| **Maps available for inspection** at the Chippewa Falls City Hall, Inspection Department, 30 West Central Street, Chippewa Falls, Wisconsin. | |
| **Eau Claire (City), Chippewa and Eau Claire Counties (FEMA Docket No. 7219)** | |
| *Chippewa River:* | |
| At Interstate 94 | *773 |
| Upstream corporate limits | *806 |
| *Sherman Creek:* | |
| Confluence with Chippewa River | *776 |
| Approximately 1.0 mile upstream of Menomonie Street | *808 |
| *Eau Claire River:* | |
| At the confluence with Chippewa River | *782 |
| Approximately 1,150 feet upstream of South Dewey Street | *783 |
| **Maps available for inspection** at the Eau Claire City Hall, Inspection Service Office, 203 South Farwell Street, Eau Claire, Wisconsin. | |

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

Dated: October 9, 1997.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 97–27711 Filed 10–17–97; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 586

**[Docket No. 96–20]**

### Port Restrictions and Requirements in the United States/Japan Trade

**AGENCY:** Federal Maritime Commission.

**ACTION:** Petition for amendment to final rule; denial.

**SUMMARY:** The Federal Maritime Commission is denying a request submitted by Japanese liner shipping companies that per-voyage fees owed to the agency pursuant to the final rule in this proceeding be made payable to escrow accounts, rather than to the Commission directly.

**ADDRESSES:** Requests for publicly available information or additional filings should be addressed to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5725.

**FOR FURTHER INFORMATION CONTACT:** Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573, (202) 523–5740.

**SUPPLEMENTARY INFORMATION:** The Commission's final rule in this proceeding (62 FR 9696, amended 62 FR 18532 and 62 FR 18533) assessing per-voyage fees on Japanese liner shipping companies in response to longstanding restrictive and unfavorable requirements for the use of Japanese ports become effective on September 4, 1997. Under the rule, Japanese shipping lines are scheduled to make their first payment of fees, covering the month of September, on October 15.

On October 7, 1997, the Japanese carriers submitted a letter requesting that the Commission ''consider alternative ways and means by which

the Carriers could fulfill their payment obligations.'' Specifically, the Japanese lines urged that the Commission require that the carriers establish escrow accounts and pay the fees into these accounts, rather than paying them directly to the Commission. The carriers further requested that the Commission take any other steps to ''accomplish the objectives of this request.'' As the relief sought by the Japanese lines would involve changing the payment procedures set forth in the final rule, the Commission has determined to treat the letter as a petition for amendment of the final rule, which would have been the appropriate pleading in this instance. Copies of the request were served on other participants in this proceeding; no comments or responses were received from any party.

In their request for alternative payment arrangements, the Japanese carriers have failed to cite any material improvements or reforms in the unfavorable Japanese port conditions that are the subject of this proceeding. Indeed, the Commission is unaware of any such progress since it last suspended the final rule in April. Accordingly, we find no basis for altering the collection procedures set forth in the final rule to postpone or redirect the payment of the fees. The Commission appreciates concerns raised by the Japanese lines regarding the complexity of the matters at issue; however, the Government of Japan has had ample opportunity to develop and implement necessary improvements. It has not, to date, done so.

The Japanese carriers' request for alternative payment arrangements is denied.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 97–27668 Filed 10–17–97; 8:45 am]

BILLING CODE 6730–01–M

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 961107312–7021–02; I.D. 101497A]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Trawl Catcher Vessels in the Bering Sea and Aleutian Islands

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

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for Pacific cod by trawl catcher vessels in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the total allowable catch (TAC) of Pacific cod in that area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 15, 1997, until 2400 hrs, A.l.t., December 31, 1997.

**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 Groundfish of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens 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.

In accordance with §§ 679.20 (a)(7)(i)(B), the portion of the Pacific cod TAC allocated to trawl catcher vessels in the BSAI was established as 63,450 metric tons (mt) by the Final 1997 Harvest Specifications for Groundfish (62 FR 7168, February 18, 1997). The trawl catcher vessel portion was increased by a reallocation of the projected unused amount of the trawl catcher/processor allocation to 65,450 mt (62 FR 51609, October 2, 1997). The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance of 64,450 mt, and set aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. The fishery for Pacific cod by trawl catcher vessels in the BSAI was closed to directed fishing under §§ 679.20(d)(1)(iii) on April 29, 1997, (62 FR 24508, May 2, 1997).

NMFS has determined that as of September 29, 1997, 2,432 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by trawl catcher vessels in the BSAI.

### Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing a portion of the Pacific cod TAC for trawl catcher vessels in the BSAI. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by §§ 679.20 and is exempt from review under E.O. 12866.

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

Dated: October 14, 1997.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–27736 Filed 10–15–97; 3:26 pm]

BILLING CODE 3510–22–U

# Proposed Rules

Federal Register
Vol. 62, No. 202
Monday, October 20, 1997

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 HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 1240

**[Docket No. 97N–0418]**

### Revocation of Lather Brushes Regulation

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

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to revoke its regulation pertaining to the treatment, sterilization, handling, storage, marking, and inspection of lather brushes. FDA is proposing to revoke this regulation because it has tentatively concluded that the regulation is no longer necessary to protect the public health.

**DATES:** Written comments by January 5, 1998.

**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:** Philip L. Chao, Policy Development and Coordination Staff (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3380.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of January 19, 1949 (14 FR 278), the Federal Security Agency issued a regulation to prohibit ''interstate traffic'' in lather brushes unless the brushes complied with 42 CFR 71.151 or with certain requirements in 42 CFR 72.21. 42 CFR 71.151 barred importation of lather brushes made from animal hair or bristles, unless the brushes were permanently marked with the manufacturer's name or identifying mark and a U.S. medical officer had determined that the brushes were free of anthrax spores. The regulation also directed medical officers to sample brushes from each shipment, subject them to laboratory analysis, and to issue a certificate if the shipment appeared to be free of spores. If the shipment contained anthrax spores, the shipment would be denied entry into the United States.

The Federal Security Agency was abolished in a reorganization in 1953, and its functions were transferred to the then newly-created Department of Health, Education, and Welfare. The department later became the Department of Health and Human Services.

42 CFR 72.21, which applied primarily to lather brushes manufactured in the United States, established specific treatment, sterilization, handling, storage, and marking requirements for these products; and it required that persons engaged in processing or handling of hair or bristles for use in lather brushes, as well as persons manufacturing lather brushes, permit inspections by authorized representatives of the Surgeon General. The rule was transferred, without change, from title 42 to title 21 of the Code of Federal Regulations on February 6, 1975 (40 FR 5620), and, as a result, became § 1240.70 (21 CFR 1240.70).

In the **Federal Register** of August 9, 1983 (48 FR 36143 at 36144), the Centers for Disease Control (CDC), now known as the Centers for Disease Control and Prevention, proposed to revoke various foreign quarantine regulations, including 42 CFR 71.151. The preamble to that proposal explained that:

> The proposed regulations will no longer require lather brushes made from animal hair or bristles, imported into the United States, to carry identifying markings or to be certified as treated and stored to prevent possible contamination with spores of *Bacillus anthracis.* No case of cutaneous anthrax in the United States has been associated with lather brushes since 1930, and the continuation of existing requirements is unnecessary to protect the public health. Should the importation of anthrax in lather brushes become a threat to public health in the future, inspection and control measures authorized under provisions of the regulations will be implemented.

CDC revoked 42 CFR 71.151 on January 11, 1985 (50 FR 1516), without any further discussion.

In the **Federal Register** of June 12, 1989 (54 FR 24890), FDA issued a final rule amending various regulations to correct outdated cross-references and typographical errors and to make other corrections. This rule revised § 1240.70, without explanation, to eliminate the reference to 42 CFR 71.151. Yet, in all other respects, § 1240.70 has remained essentially unchanged since 1949.

Recently, FDA has been reexamining its regulations to determine whether any are obsolete or no longer necessary. One regulation that caught the agency's attention is § 1240.70. The agency is unaware of any reliance on the lather brush requirements in this regulation or of any current concerns associated with lather brushes. Additionally, CDC's decision to remove 42 CFR 71.151 because no case of cutaneous anthrax in the United States has been associated with lather brushes since 1930 suggests that § 1240.70 also is no longer necessary to protect the public health. Consequently, FDA is proposing to revoke this regulation.

## II. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). 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). The agency believes that this proposed rule is consistent with the principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by 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. The proposed rule, if finalized, would eliminate certain manufacturing requirements for lather brushes. Consequently, the proposed rule would not impose any additional regulatory burdens on small entities, and so, under the Regulatory Flexibility Act, no further analysis is required.

## III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

### IV. Request for Comments

Interested persons may, on or before January 5, 1998, 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 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.

### List of Subjects in 21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supply.

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 1240 be amended as follows:

## PART 1240—CONTROL OF COMMUNICABLE DISEASES

1. The authority citation for 21 CFR part 1240 continues to read as follows:

**Authority:** 42 U.S.C. 216, 243, 264, 271.

### § 1240.70 [Removed]

2. Section 1240.70 *Lather brushes* is removed.

Dated: October 10, 1997.

**William B. Schultz,**

*Deputy Commissioner for Policy.*

[FR Doc. 97–27694 Filed 10–17–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Parts 1000, 1003, and 1005

**[Docket No. FR–4170–N–14]**

### Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meetings

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Negotiated Rulemaking Committee meetings.

**SUMMARY:** This notice announces the final implementation meetings sponsored by HUD to develop the regulations necessary to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 30, 1996).

**DATES:** The meetings will be held on October 27, 28 and 29, 1997. The October 27 and 28, 1997 meetings will begin at approximately 8:30 a.m. and end at approximately 5:00 p.m., local time. The October 29, 1997 meeting will begin at approximately 8:30 a.m. and end at approximately noon, local time.

**ADDRESS:** The meetings will be held at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, SW, Washington, DC 20024; telephone 1–800–635–5065 or (202) 484–1000; FAX (202) 863–4497 (With the exception of the ''800'' telephone number, these are not toll-free numbers).

**FOR FURTHER INFORMATION CONTACT:** Karen Garner-Wing, Acting Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Secretary of HUD established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing NAHASDA. The proposed rule was published on July 2, 1997 (62 FR 35718) and provided for a 45-day public comment period. The public comment deadline was August 18, 1997.

The Committee met from August 22–29, 1997 in Denver, Colorado and from September 21–26, 1997 in Arlington, Virginia to consider the public comments submitted on the proposed rule. The Committee is meeting for a final time to discuss issues left unresolved and to reach consensus on the Committee's final report to the Secretary of HUD.

*The meeting dates are:* October 27, 28, and 29 1997. The agenda planned for the meetings includes: (1) discussion of the draft Committee report; (2) discussion of issues left unresolved; and (3) approval of a final Committee report for submission to the Secretary of HUD.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meetings, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of Committee meetings will be available for public inspection and copying at the address in the same section.

Dated: October 14, 1997.

**Kevin Emanuel Marchman,**

*Acting Assistant Secretary for Public and Indian Housing.*

[FR Doc. 97–27674 Filed 10–17–97; 8:45 am]

BILLING CODE 4210–33–P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 9

**RIN 1512–AA07**

**[Notice No. 856]**

### Establishment of the San Francisco Bay Viticultural Area and the Realignment of the Boundary of the Central Coast Viticultural Area (97–242)

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of a viticultural area in the State of California to be known as San Francisco Bay. The proposed area is located mainly within five counties which border the San Francisco Bay and partly within two other counties. These counties are: San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and partly in Santa Cruz and San Benito Counties. The proposed San Francisco Bay viticultural area encompasses approximately 3,087 square miles total containing nearly 6,000 acres planted to grapes and over 70 wineries. In conjunction with the petition, ATF received a proposal to amend the boundaries of the current Central Coast viticultural area to include the proposed San Francisco Bay viticultural area. As the current boundaries already encompass part of the proposed San Francisco Bay viticultural area, approximately 1,278 square miles would be added to Central Coast with an additional 3,027 acres planted to grapes and 21 more wineries.

**DATES:** Written comments must be received by January 20, 1997.

**ADDRESSES:** Send written comments to: Chief, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol,

Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 856). Copies of the petitions, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC., 20226.

**FOR FURTHER INFORMATION CONTACT:** David Brokaw, Wine, Beer and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC., 20226 (202) 927–8230.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

## Petition for the Proposed San Francisco Bay Viticultural Area

ATF has received a petition from Mr. Philip Wente, Vice President of Wente Bros., proposing to establish a new viticultural area in Northern California to be known as San Francisco Bay. The proposed San Francisco Bay viticultural area is located mainly within five counties which border the San Francisco Bay and partly within two other counties. These counties are: San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa and partly in Santa Cruz and San Benito Counties. The petitioner claims that Santa Cruz County, although it has no Bay shoreline, has traditionally been associated with the place name San Francisco Bay. The portion of the Santa Clara Valley located in San Benito County has been included. The proposed viticultural area encompasses approximately 3,087 square miles total containing nearly 6000 acres planted to grapes and over 70 wineries.

The petitioner claims that the proposed San Francisco Bay viticultural area is a distinctive grape growing region. According to the petitioner, the area is distinguished by a unique marine climate which is heavily influenced by the proximity of the San Francisco Bay and the Pacific Ocean. Specifically, the San Francisco Bay and the local geographical features surrounding it permit the cooling influence of the Pacific Ocean to reach farther into the interior of California in the Bay Area than elsewhere along the California coast.

In proposing boundaries for the San Francisco Bay viticultural area, the petitioner has purposely included the waters of the San Francisco Bay as well as urban areas, particularly the City of San Francisco. The petitioner feels that the San Francisco Bay is the ''heart and soul of this appellation, its namesake and unifying force, the source of its weather, the focal point of its history.'' As such, the petitioner believes that it should not be cut out of the center of the appellation. Although it is not a feasible vineyard site, the city has long been a wine industry hub.

The evidence submitted by the petitioner is discussed in detail below. Given the scope of the proposals and the wide range of interests that are likely to be affected by the establishment of a San Francisco Bay viticultural area, ATF wishes to solicit public comment particularly with respect to the following questions raised by the petition:

(1) Is there sufficient evidence that the name, ''San Francisco Bay,'' can be associated with regions south and east of the bay such as Santa Clara Valley and Livermore? Do these regions have climatic or geographic differences with other regions of the proposed area to such a degree that they cannot be considered as one viticultural area?

(2) Does the evidence support exclusion from the proposed viticultural area of the regions north of the Bay, *i.e.*, Marin, Napa, Solano, and Sonoma Counties?

(3) Can the regions where grapes cannot be grown in the proposed viticultural area, such as the dense urban settings and the Bay itself, be easily segregated from the rest of the proposed area? Does it undermine the notion of a viticultural area to keep them included?

## Evidence That the Name of the Area is Locally or Nationally Known

According to the petitioner, San Francisco Bay is a locally, nationally and internationally recognized place name. Therefore, the petitioner believes that San Francisco Bay is the appropriate name for the proposed area, since even people who do not know the names of any California counties have an idea where the San Francisco Bay is. The petitioner claims that to people all over the world, San Francisco Bay calls to mind the well-known body of water by that name and, by inference, the land areas that surround it.

The counties of San Francisco, Contra Costa, Alameda, Santa Clara and San Mateo—within which the proposed area is located—border the San Francisco Bay. According to the petitioner, Santa Cruz County, although it has no Bay shoreline, has traditionally been associated with the place name San Francisco Bay. The petitioner also included the portion of the Santa Clara Valley located in San Benito County.

According to the petitioner, the names ''San Francisco Bay area'' or ''San Francisco Bay region'' sometimes refer to an area that is different than the area discussed in this petition. The petitioner claims that although sources differ in how broadly they define the San Francisco Bay region, the various definitions—without exception—include the counties mentioned above. The following sources, are cited by the petitioner as being representative of the consensus among experts that the petitioned area is widely known by the name San Francisco Bay.

According to the petitioner, the name San Francisco Bay is more frequently

and more strongly associated with the counties lying south and east of the San Francisco Bay than with nearby counties to the north. For example, the petitioner cites the 1967 Time Life book entitled ''The Pacific States,'' which describes the San Francisco Bay Area as a megalopolis with the city [of San Francisco] as the center, stretching 40 miles south to San Jose and from the Pacific to Oakland and beyond.

The petitioner also cites weather expert Harold Gilliam, in his book *Weather of the San Francisco Bay Region,* as discussing an area including San Francisco, San Mateo, Alameda, Contra Costa, and Santa Cruz Counties. The petitioner points out that James E. Vance, Jr., Professor of Geography at the University of California, Berkeley, studied the same area in his book entitled *Geography and Urban Evolution in the San Francisco Bay Area.* Also, according to the petitioner, climatologist Clyde Patton studied the same region in his definitive work *Climatology of Summer Fogs in the San Francisco Bay Area.* Mr. Vance's and Mr. Patton's maps of ''Bay Area Place Names'' are included with the petition.

A final source cited by the petitioner is Lawrence Kinnaird, University of California Professor of History, who wrote a *History of the Greater San Francisco Bay Region.* According to the petitioner, Mr. Kinnaird's book also covers the counties of San Francisco, Santa Clara, Alameda, Contra Costa, San Mateo, and Santa Cruz.

**Historical or Current Evidence That the Boundaries of the Viticultural Area Are as Specified in the Petition**

According to the petitioner, within the grape growing and winemaking community, the name San Francisco Bay has always been identified with the area proposed in the petition. In support of this claim, the petitioner cited several references to reflect the industry's perception of this place name.

For example, wine writer Hugh Johnson, in his book *The World Atlas of Wine,* devotes a separate section (''South of the Bay'') to the winegrowing areas of the San Francisco Bay and Central Coast. According to the petitioner, Mr. Johnson describes the traditional centers of wine-growing in this area as concentrated in the Livermore Valley east of the Bay; the western foot-hills of the Diablo range; the towns south of the Bay, and along the slopes of the Santa Cruz mountains down to a cluster of family wineries round the Hecker Pass. The petitioner claims that Mr. Johnson repeatedly distinguishes the winegrowing region south and east of the Bay from areas to the north of the Bay. In support of this claim, the petitioner refers to a statement from Mr. Johnson's book pointing out that the area just south and east of San Francisco Bay is wine country as old as the Napa Valley.

Another writer cited by the petitioner is Robert Lawrence Balzer who devotes a chapter to ''Vineyards and Wineries: Bay Area and Central Coast Counties'' in his book *Wines of California.* According to the petitioner, this chapter and the accompanying map include wineries and vineyards in Alameda, Contra Costa, San Mateo, Santa Clara, and Santa Cruz Counties. The petitioner claims that throughout his book, Mr. Balzer makes it clear that he differentiates the San Francisco Bay area grape growing areas from those north of San Francisco Bay and south of Monterey Bay. In support of this claim, the petitioner cites several quotes from the book. For example, Mr. Balzer states that, ''Logic, as well as geography, dictates our division into these unofficial groups of counties: North Coast, Bay Area and Central Coast, South Central Coast, Central Valley, and Southern California. The vineyard domain south of San Francisco is as rich and colorful in its vintage history as the more celebrated regions north of the Bay Area.'' According to the petitioner, it is clear that this author does not consider Napa and Sonoma Counties as part of the Bay Area. As evidence of this, the petitioner cites the following statement, ''Alameda County does not have the scenic charm of * * * Napa and Sonoma * * *.'' The petitioner points out that the same book contains a photograph showing the Golden Gate Bridge and San Francisco Bay with the caption, ''San Francisco Bay divides the North Coast from the other wine areas of California.''

According to the petitioner, in his book *Vineyards and Wineries of America,* Patrick W. Fegan distinguishes the winegrowing region of the San Francisco Bay Area from Monterey, noting that when urban development around the Bay Area began to threaten vineyard areas, University of California professors proposed planting vineyards in Monterey County.

Another source cited by the petitioner in support of the proposed boundaries is Grape Intelligence, a reporting service for California winegrape industry statistics. According to the petitioner, Grape Intelligence issues a yearly report for grape varieties in the San Francisco Bay Area. Reports for this region cover San Francisco, San Mateo, Santa Cruz, Alameda and Contra Costa counties.

The petitioner also cited historic evidence. According to the petitioner, the San Francisco Viticultural District, defined by the State Viticultural Commissioners at the end of the last century, comprised the counties of San Francisco, San Mateo, Alameda, Santa Clara, Santa Cruz, San Benito, and Monterey—but no areas north of the Bay.

The petitioner claims that the California Department of Food and Agriculture currently considers the proposed area as a single unit. The petitioner states that the Grape Pricing Districts established by the State of California reflect the joined perception of the six San Francisco Bay counties, by grouping San Francisco, San Mateo, Santa Cruz, Santa Clara, Alameda, and Contra Costa together in District 6.

The petitioner provided a list of ''Largest Bay Area Wineries'' from a chart which appeared in the San Francisco Business Times of November 21, 1988. The list includes 21 wineries in Alameda, Contra Costa, San Francisco, and San Mateo Counties. No wineries from the North Coast counties of Sonoma, Napa, Mendocino, or Lake are included.

**Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish Viticultural Features of the Proposed Area From Surrounding Areas**

*Climate*

According to the petitioner, the unifying and distinguishing feature of the coastal climate of the proposed area is the influence of both the Pacific Ocean and the San Francisco Bay. The petitioner claims that coastal areas north of the proposed area are influenced by the Pacific Ocean and by the San Pablo and Richardson Bays, while areas south of the proposed area are influenced by the Pacific Ocean and by Monterey Bay. In addition, the ocean influence enters each region through different routes—through the Estero Gap in the North Coast, through the Golden Gate in the San Francisco Bay region, and through Monterey Bay in the southerly portion of Central Coast.

According to the petitioner, west to east flowing winds named the westerlies, which bring weather systems in California onshore from the ocean, prevail in the proposed area. Directly affecting the weather in the San Francisco Bay area is the Pacific high pressure system, centered a thousand miles off the Pacific Coast. The petitioner claims that during winter months, its location south of San Francisco allows the passage of

westward moving, rain producing, low pressure storms through the area.

According to the petitioner, during the summer months the high is located closer to the latitude of San Francisco. It then deflects rain producing storms to the north, producing a dry summer climate in San Francisco area. The petitioner claims that the winds from the high (which flow onshore from the northwest to the southeast) produce a cold southward flowing surface water current (called the California Current) off the California coast by a process called upwelling, in which cold deep water is brought to the surface. When moist marine air from the Pacific High flows onshore over this cold water, it cools, producing fog and/or stratus cloud areas which are transported inland by wind.

*Climatic Affect and Proposed Boundaries*

The petitioner states that from a meteorological perspective, the northwesterly windflow through the Estero Gap (near Petaluma in Sonoma County) into the Petaluma Valley, provides the major source of marine influence for areas north of the Golden Gate. Airflow inland from San Pablo Bay also affects the climate of southern Napa and Sonoma Counties. According to the petitioner, San Francisco Bay has little impact on the weather in the region to its north. The onshore prevailing northwesterly flow direction, in combination with the coastal range topographic features of counties north of the Bay and the pressure differential of the Central Valley, minimize a northward influence from the air that enters the Golden Gate. According to the petitioner, the higher humidity, lower temperatures and wind flow that enter the Golden Gate gap do not flow north of the San Francisco Bay.

The petitioner states that, as a result of the different air mass sources, grape growing sites immediately north of the Bay are cooler than corresponding sites in the Bay Area. As an example, the petitioner cites *General Viticulture* which lists Napa with 2,880 degree days, while Martinez (directly south of Napa on the Carquinez Strait) has 3,500 degree days. Calistoga is listed as 3,150 degree days, while Livermore (approximately equidistant from the Carquinez Strait, but to the south) has 3,400. According to the petitioner, the degree day concept was developed by UC Davis Professors Amerine and Winkler as a measure of climate support for vine growth and grape ripening; large degree day values indicate warmer climates.

According to the petitioner, the proposed San Francisco Bay viticultural area is also distinguished from the counties north of the San Francisco Bay by annual rainfall amounts. The petitioner states that most winter storms that hit the Central California coast originate in the Gulf of Alaska. Thus, locations in the North Coast viticultural area generally receive more rain than sites in the proposed viticultural area.

According to the petitioner, this effect is illustrated by Hamilton Air Force Base on the northwest shore of the San Pablo Bay in Marin County. The base gets 25% more rain in a season than does San Mateo, which has a corresponding bayshore location 34 miles to the south. The petitioner points out that San Francisco gets an average of 21 inches of rain annually, but nine miles north of the Golden Gate, Kentfield gets 46 inches—more than double the amount of rain. According to the petitioner, average rainfall over the entire south bay wine producing area is only 18 inches, while the City of Napa averages 25 inches, Sonoma County (average of 5 sites) averages 35 inches, and Mendocino County averages 40 inches.

According to the petitioner, it should be noted that the California North Coast Grape Growers supported the petitioner's position. In a letter to the Bureau of Alcohol, Tobacco and Firearms dated September 14, 1979, they asked that the term North Coast Counties be applied only to Napa, Sonoma and Mendocino counties. The petitioner claims that part of their reasoning was the observations of Professor Crowley of the Geography Department at Sonoma State University who said that the counties north of the San Francisco Bay have different climates from the counties south of the bay.

Thus, the petitioner maintains that the main determinants of the northern boundary of the proposed viticultural area include the: (1) Natural geographic/topographic barriers, (2) lack of direct San Francisco Bay influence in areas to its north, and (3) different predominant coastal influences in the northern area. The petitioner feels that these factors lead to significant wind flow, temperature, and precipitation differences between the areas north and south of San Francisco Bay. Thus, the petitioner claims that it is logical to draw the northern boundary of the proposed area at the point where the Golden Gate Bridge and San Francisco Bay separate the northern counties, i.e., Marin, Napa, Solano, and Sonoma of the North Coast viticultural area from the counties of San Francisco and Contra Costa.

According to the petitioner, the eastern boundary of the proposed San Francisco Bay Viticultural Area matches the existing boundary of the Central Coast Viticultural area and is located at the inland boundary of significant coastal influence, *i.e.*, along the hills and mountains of the Diablo Range that form a topographical barrier to the intrusion of marine air.

According to the petitioner, east of the Diablo Range lies the Central Valley, distinguished from the proposed area by its higher temperature, lower humidity, and decreased rainfall. The petitioner states that, the Central Valley has a completely continental climate, i.e., much hotter in summer and cooler in winter. Amerine & Winkler categorize the grape growing areas in the Central Valley (Modesto, Oakdale, Stockton, Fresno) as Region V (over 4,000 degree days), while sites in the proposed area range from Region I to III. This is illustrated on a ''Degree Day Map'' provided by the petitioner.

According to the petitioner, north of Altamont, the proposed boundary continues to follow the inland boundary of coastal influence. (This portion of the boundary matches the concurrently submitted proposed boundary extension for the Central Coast Viticultural area.) Like the existing eastern boundary of the Central Coast, this extension excludes the innermost range of coastal mountains. The eastern boundary includes Martinez and Concord, but excludes Antioch, and the eastern portion of Contra Costa County.

The petitioner claims that the average precipitation in the Central Valley is lower than in the proposed San Francisco Bay viticultural area. The following are thirty year average rainfall statistics in inches for locations in the Central Valley: Modesto 10.75, Fresno 10.32, Los Banos 7.98, Lodi 12.74, Antioch 12.97.

Thus, according to the petitioner, the main determinants of the proposed eastern boundary of the proposed viticultural area include the (1) historic existing eastern boundary of the Central Coast viticultural area, (2) natural geographic/topographic climatic barrier created by the Diablo Range, and (3) the inland boundary of the coastal marine influence. The petitioner feels that these factors lead to significant temperature, humidity and precipitation differences between the areas east and west of the proposed eastern boundary.

According to the petitioner, the southern boundary matches those of the Santa Cruz and Santa Clara viticultural areas. As discussed in the section on

climate, the San Francisco Bay influence is diminished and the Monterey Bay influence is felt south of the proposed area. According to the petitioner, the regional northwestern prevailing wind flow direction generally prevents the Monterey Bay influence from affecting the climate in the proposed area.

According to the petitioner, Monterey Bay has a very broad mouth with high mountain ranges to both the north and south. The petitioner claims that fog and ocean air traveling along the Pajaro River do on rare occasions reach the south end of the Santa Clara Valley to the north, but most of the Monterey Bay influence travels to the east and south (borne by the prevailing northwest wind) into the Salinas Valley and up against the eastern coastal hills.

According to the petitioner, Central Coast climate thus gradually warms with increased distance from the San Francisco Bay, as air traveling over land areas south of the bay accumulates heat and dries out. The petitioner claims that the warming trend reverses, however, at the point where the south end of the Santa Clara Valley meets the Pajaro River. Here wind and fog from the Monterey Bay, flowing westward through the Pajaro River gap, begins to assert a cooling influence.

According to the petitioner, the decrease of San Francisco Bay influence, and the concurrent increase of Monterey Bay influence, is demonstrated by the difference in heat summation between Gilroy and Hollister. The petitioner claims that Central Coast sites warm with increasing distance from the San Francisco Bay, but this pattern reverses at the southern boundary of the Santa Clara Valley viticultural area, between Gilroy and Hollister, as the influence of the Monterey Bay becomes dominant. According to the petitioner, this produces significantly cooler temperatures in Hollister than in Gilroy, even though Hollister is farther from San Francisco Bay.

Petition Table 2 ''Decrease in San Francisco Bay Influence,'' indicates a gradual warming trend as one travels southward from the San Francisco Bay. According to the petitioner, past Gilroy to Hollister, however, a new cooling trend is observed due to the influence of the Monterey Bay.

According to the petitioner, Hollister is significantly cooler than Gilroy even though its location is sheltered by hills from the full influence of Monterey Bay. The weather station near coastal Monterey shows the strongest cooling from the Monterey Bay. The petitioner claims that continuing south in the Salinas Valley, the climate again grows warmer with increasing distance from Monterey Bay.

In summary, according to the petitioner, the southern boundary of the proposed area has been defined to match the southern boundary of the Santa Clara Valley and Santa Cruz viticultural areas because this is the location of the transition from a climate dominated by flow from the San Francisco Bay to one dominated by flow from Monterey Bay.

According to the petitioner, the west boundary of the proposed San Francisco Bay Viticultural Area follows the Pacific coastline from San Francisco south to just north of the City of Santa Cruz. This area is greatly influenced by Pacific Ocean breezes and fog. According to the petitioner, the western hills of the Santa Cruz Mountains are exposed to the strong prevailing northwest winds. The climate of the eastern portion of these hills is affected by the moderating influences of the San Francisco Bay.

According to the petitioner, just north of the City of Santa Cruz, the western boundary turns east excluding a small portion of Santa Cruz County from the proposed area, as it was from the Santa Cruz Mountains viticultural area. The petitioner claims that the area around Santa Cruz and Watsonville is close to sea level, and is sheltered from the prevailing northwesterly Pacific Ocean winds by the Santa Cruz mountains. Therefore, fog and bay breezes from Monterey Bay impact the area, while the San Francisco Bay does not influence the area.

Thus, according to the petitioner, the main determinant of the western boundary of the proposed viticultural area include the (1) natural geography of the coastline, (2) Pacific Ocean and San Francisco Bay influence, and (3) historical identity as part of the San Francisco Bay Area.

*Topography*

According to the petitioner, the weather in the bay region is a product of the modification of the onshore marine air masses described above by the topography of the coast ranges, a double chain of mountains running north-northwest to south-southeast. Each chain divides into two or more smaller chains, creating a patchwork of valleys.

According to the petitioner, as the elevation of the western chain of the coastal ridge is generally higher than the altitude of the inversion base, the inversion acts as a lid to prevent the cool onshore flowing marine air and fog from rising over the mountains and flowing inland. Because of this, successive inland valleys generally have less of a damp, seacoast climate and more of a dry, continental climate.

According to the petitioner, this pattern is modified by a few gaps and passes in the mountain ranges that allow marine influences to spread farther inland without obstruction. The petitioner claims that these inland areas are, however, somewhat protected from the Pacific fogs, which are evaporated as the flow is warmed by passage over the warmer land surfaces.

The three largest sea level gaps in the central California coastal range mountainous barrier are (north to south): Estero Lowland in Sonoma, Golden Gate into San Francisco Bay, and Monterey Bay. According to the petitioner, several smaller mountain pass gaps (San Bruno and Crystal Springs) sometimes also allow for the inland spread of coastal climate in the Bay Area when the elevated inversion base is high enough.

According to the petitioner, the Bay Area climate is greatly modified by San Francisco Bay, whose influence is similar to that of the ocean, *i.e.*, it cools summer high temperatures and warms winter low temperatures. The petitioner states that the narrowness of the Golden Gate limits the exchange of bay and ocean waters, and thus bay waters are not quite as cold as the coastal ocean currents during the summer.

According to the petitioner, marine air exits the San Francisco Bay (without having experienced the normal drying and heating effects associated with over-land travel) in several directions. The predominant outflow is carried by the onshore northwesterly winds toward the south through the Santa Clara Valley to Morgan Hill and to the east via the Hayward Pass and Niles Canyon.

According to the petitioner, temperatures at given locations in the Bay Area are thus dependent on streamline distance (actual distance traveled) from the ocean, rather than its ''as the crow flies'' distance from the ocean. The petitioner claims that Livermore Valley temperatures show this phenomenon. Ocean air flows across San Francisco Bay, through the Hayward Pass and Niles Canyon, and into the Livermore Valley, causing a cooling effect in summer and a warming effect in winter.

In summary, because of the interaction of topography with the prevailing winds in the Bay Area, the Pacific Ocean and San Francisco Bay are the major climatic influences in the proposed viticultural area. According to the petitioner, this interaction has two principal effects: (1) To allow the coastal influence of the Pacific Ocean to

extend farther east than otherwise possible, and (2) to modify that coastal influence because of the moderating effects of Bay waters on surrounding weather.

**Proposal To Amend the Boundaries of the Central Coast Viticultural Area**

In conjunction with the petition to establish the San Francisco Bay viticultural area, Mr. Philip Wente, Vice President of Wente Bros., proposes to amend the boundaries of the Central Coast viticultural area to encompass the proposed San Francisco Bay viticultural area.

According to the petitioner, an examination of the three large viticultural areas on the California coast reveals a gap between Monterey and Marin, where many acres of existing and potential vineyards are not represented by any viticultural area. In petitioning for the revision of the Central Coast viticultural area, the petitioner claims to be continuing the logical pattern already established in the organization of viticultural areas on the California coast. According to the petitioner, the proposed revised Central Coast viticultural area is a larger area that ties together several smaller sub-appellations (Santa Clara Valley, Santa Cruz Mountains, Ben Lomond Mountain, Livermore Valley, San Ysidro District, Pacheco Pass, San Benito, Cienega Valley, Mount Harlan, Paicines, Lime Kiln Valley, Monterey, Carmel Valley, Chalone, Arroyo Seco, Paso Robles, York Mountain, Edna Valley, Arroyo Grande Valley, Santa Maria Valley, Santa Ynez Valley, and the proposed San Francisco Bay viticultural area), all of which are dominated by the same geographic and general marine influences that create their climate.

According to the petitioner, the evidence presented in the petition establishes that the well-known Central Coast name and the general marine climate extend north and northwest beyond the current Central Coast boundaries.

*The Name, Central Coast as Referring to Santa Cruz and the Counties Surrounding San Francisco Bay*

According to the petitioner, the name Central Coast, as used by wine writers and the state legislature, extends north and west into Santa Cruz County and five counties that surround the San Francisco Bay, beyond the area currently recognized as the Central Coast viticultural area. In support of this claim, the petitioner cited several references.

Patrick W. Fegan's book *Vineyards and Wineries of America,* contains a map of ''Central Coastal Counties'' designating Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, Monterey, San Benito, San Luis Obispo and Santa Barbara.

Another example cited by the petitioner is *Central Coast Wine Tour,* published by Vintage Image in 1977 and 1980, which covers the area from San Francisco to Santa Barbara and specifically describes past and present wineries in San Francisco, Alameda, Contra Costa, Santa Clara, San Mateo and Santa Cruz Counties.

According to the petitioner, The Connoisseurs' Handbook of California Wines defines ''Central Coast'' in the section entitled ''Wine Geography'' as: ''The territory lying south of San Francisco and north of the city of Santa Barbara—San Mateo, Santa Cruz, Santa Clara, San Benito, Monterey, San Luis Obispo, and Santa Barbara counties.''

According to the petitioner, Bob Thompson and Hugh Johnson, in their book *The California Wine Book,* describe the ''Central Coast'' as an indeterminate area between San Francisco and Santa Barbara, including San Francisco, Contra Costa, Alameda, Monterey, Santa Clara and Santa Cruz Counties.

According to the petitioner, in *Wines of California,* by Robert Balzer, the wine producing areas on the California coast are categorized into three groups: North Coast counties, Bay Area and Central Coast counties, and South Central Coast counties. The section on ''Bay Area and Central Coast'' features a map, included with the petition, illustrating the counties surrounding San Francisco Bay and the Santa Cruz Mountains. The petitioner points out that listed among the San Francisco Bay and Central Coast wineries in the book are seven of the vintners who signed the petition to establish the Santa Cruz Mountains Viticultural Area (David Bruce Winery, Felton-Empire Vineyards, Mount Eden Vineyards, Martin Ray Vineyards, Ridge Vineyards, Roudon-Smith Vineyards and Woodside Vineyards). Finally, the petitioner provided a vineyard and winery map published by Sally Taylor and Friends in the 1980's which includes Santa Cruz County on the map entitled ''North Central Coast.''

According to the petitioner, in addition to the numerous viticultural writings, government and scholarly studies on the climate and geography of the California Central Coast also include the counties around the San Francisco Bay in the proposed area.

According to the petitioner, the historic San Francisco Viticultural District in 1880 grouped the counties of San Francisco, San Mateo, Alameda, Santa Clara, Santa Cruz and Contra Costa together. The 1930 University of California monograph ''Summer Sea Fogs of the Central California Coast'' by Horace R. Byers focuses on an area ''from Point Sur to the entrance of Tomales Bay, including San Francisco and Monterey Bays: Santa Clara, San Ramon, Livermore, San Benito, and Salinas valleys * * *'' These valleys are located in Santa Clara, Contra Costa, Alameda, San Benito and Monterey Counties, respectively.

The petitioner cites section 25236 of the 1955 California Alcoholic Beverage Control Act which allows the use of the description ''central coastal counties dry wine'' on wine originating in several counties including Santa Clara, Santa Cruz, Alameda, Contra Costa, Monterey, San Luis Obispo counties. The petitioner recognizes that ''central coastal counties'' is not a legal appellation under the Federal Alcohol Administration Act. The petitioner stated that this law is mentioned solely to support the fact that the counties surrounding San Francisco Bay are well-accepted in California as belonging within the place name ''Central Coast.''

According to the petitioner, the California Division of Forestry's ''Sea Breeze Effects on Forest Fire Behavior in Central Coastal California'' summarizes the results of several fireclimate surveys conducted in the 1960's in several counties surrounding San Francisco Bay. Currently, the petitioner points out that the National Oceanic and Atmospheric Administration/National Climatic Data Center publishes monthly summaries of climatological data grouped into geographical divisions. The ''Central Coast Drainage'' division includes locations in San Francisco, Alameda, Contra Costa, San Mateo, Santa Clara, Santa Cruz, Monterey and San Luis Obispo counties.

The petitioner believes that the sources discussed above demonstrate that the counties included in the proposed revised Central Coast boundaries are commonly and historically known as being within the place-name ''Central Coast.''

**Evidence Relating to the Geographical Features (Climate, Soil, Elevation, Physical Features, etc.) Which Distinguish the Viticultural Features of the Proposed Area From Surrounding Areas**

*Coastal Climate and Marine Influence*

According to the petitioner, the coastal climate of the Central Coast viticultural area is the principal feature which unifies the area and distinguishes it from surrounding areas. As an

indication of the ''coastal climate'' effect on the area, the petitioner cites the difference between July and September temperatures. According to the petitioner, September (fall) is usually warmer than July (summer) in coastal areas, while the reverse is true in continental areas. The petitioner states that this unique coastal characteristic results from two factors: fogs and air flows. Fogs keep summer coastal temperatures low while the interior regions absorb all of the sun's summer energy. These fogs diminish in strength and frequency in the fall allowing more coastal solar gain and the resultant temperature rise, while interior temperatures begin their relative decline. According to the petitioner, this seasonal fluctuation comes about when, (1) the pressure differential between the Pacific high and the Central Valley is reduced which eliminates the inversion cap over the coast ranges and, (2) the temperature of the Pacific Ocean reaches its highest level in the fall which reduces the cooling of onshore air flows. According to the petitioner, these air flows from the Pacific Ocean invade the land mass through gaps in the coast range. Thus, the petitioner claims that a location's climate is dictated primarily by its position relative to the windstream distance from the Pacific—the greater the windstream distance the greater the July/October temperature differential and the greater the degree day accumulation as the windstream will be increasingly warmed by the ground it passes over.

Table 1 in the petition lists California cities in windstream groups from the most coastal (initiation) to the most continental (terminus). This table lists the difference (in degrees) between the average July and September temperatures in each city, which constitutes the measure of ''coastal'' character. Continental cities (Antioch to Madera), which are outside the current and proposed boundaries of the Central Coast, exhibit the highest July temperatures and the greatest difference in temperature from July to September. Also, included are accumulated Degree Days for April through October following Winkler's system. According to the petitioner, this chart demonstrates that within the coastal region—north and south—there is a continuum of coastal influence and the ensuing heat gradient during the growing season (Degree Days).

According to the petitioner, within the proposed extension, the climate acts in an identical manner to the area in the existing Central Coast viticultural area. To support this claim, the petitioner cites petition Table I demonstrating that locations within the proposed revision to the Central Coast viticultural area (San Francisco, Richmond, Oakland, Berkeley, Half Moon Bay, Martinez, San Jose, Ben Lomond, Palo Alto) share the same coastal character (*i.e.,* (1) higher September temperatures and, (2) an airstream continuum of Degree Day temperatures correlated with the airstream distance from the Pacific Ocean) as found at the current Central Coast cities (Monterey, Salinas, Hollister, King City, Livermore, Gilroy). A Coastal Character Map showing this data is attached to the petition. Accordingly, the petitioner believes that the data presented above establishes that the Central Coast boundary should be revised to accurately reflect the extent of the central coast climate.

According to the petitioner, the proposed San Francisco Bay viticultural area and the Central Coast viticultural area lie within the same botanic zone. The petitioner cites the Sunset *Western Garden Book* published for 55 years by the editors of Sunset Magazine. The petitioner states that this comprehensive western plant encyclopedia has become a leading authority regarding gardening in the western United States. The *Western Garden Book* divides the region from the Pacific Coast to the eastern slope of the Rocky Mountains into twenty-four climate zones. The Central Coast viticultural area lies within Zones 7, 14, 15, 16, 17.

The petitioner believes that the climate zones established by Sunset Magazine demonstrate that the main distinguishing feature of Central Coast—the coastal climate—extends west to the Santa Cruz coastline and north to the Golden Gate. The proposed revision to the Central Coast viticultural area also lies within these zones.

According to the petitioner, the characteristic cool Mediterranean climate of the Central Coast viticultural area extends north and west of the current boundaries. This coastal Mediterranean climate is cool in the summer and the marine fog which penetrates inland makes the coast very oceanic, with little difference in temperature between mild winters and cool summers. The Mediterranean climate classification is so called because the lands of the Mediterranean Basin exhibit the archetypical temperature and rainfall regimes that define the class. In support of the Mediterranean climate claim, the petitioner cited The Climatic Regions Map from *Atlas of California.* This map is based on the Koeppen classification, which divides the world into climate regions based on temperature, the seasonal variation of drought, and the relationship of rainfall to potential evaporation. The Koeppen system uses letters based on German words having no direct English equivalents. The Climatic Regions Map depicts the extent of cool Mediterranean climate both north and west of the current Central Coast boundary and within it.

The map shows that Alameda, Contra Costa, Santa Clara, San Mateo and Santa Cruz counties in the proposed revision to the Central Coast viticultural area, like Monterey, San Benito, San Luis Obispo and Santa Barbara counties in the current Central Coast viticultural area, are mostly classified as Csb Mediterranean climates (average of warmest month is less than 22 °C), with partial Csbn climate (more than thirty days of fog) along the coast.

The petitioner states that it is due to this coastal climate (mainly fog and wind), that the degree of marine influence in the proposed revision to the Central Coast viticultural area is similar to the degree of marine influence found at other places inside the current Central Coast viticultural area. A map of central California, submitted with the petition, shows the extent of marine fog in the area. This map shows that the fog pattern in the proposed area is similar to other areas included in Central Coast. The fog extends inland to approximately the same extent throughout the proposed revised viticultural area. According to the petitioner, the ''Retreat of Fog'' map submitted with the petition also shows the similarity in the duration of fog in the current and proposed Central Coast viticultural area. The petitioner points out that the similar fog pattern is most evident along the coastal areas of Big Sur, Monterey Bay and San Francisco.

*Topography*

According to the petitioner, Santa Cruz and the other San Francisco Bay counties share the Central Coast's terrain. The petitioner pointed out that one of the major California coast range gaps which produces the climate within the current Central Coast boundaries lies within the proposed revision to the Central Coast. The petitioner claims that the three largest sea level gaps in the central California coastal range mountainous barrier are (north to south): Estero Lowland in Sonoma County, Golden Gate into San Francisco Bay, and Monterey Bay. According to the petitioner, the Golden Gate and Monterey Bay allow the ocean influence to enter into the current Central Coast viticultural area creating its coastal climate which is the unifying and distinguishing feature of the area. The main gap in the current Central Coast

viticultural area, the Monterey Bay allows marine air and fog from the Pacific Ocean to travel south and inland, into the Salinas Valley. The petitioner believes that this feature creates the ideal grape-growing climate that exists in the Salinas Valley, but from a meteorological perspective, it has comparatively little influence on the portion of Central Coast viticultural area lying north of it. The on-shore prevailing northwesterly flow direction, combined with the coastal range topographical features north of the Bay's mouth, minimize northward influence from the air that enters the Monterey Bay. According to the petitioner, the Golden Gate gap introduces a cooling marine influence and the San Francisco Bay allows marine air and fog to travel much further inland and south through the Santa Clara and Livermore Valleys and provides most of the coastal influence affecting the northern portion of the Central Coast viticultural area.

The petitioner states that although the Golden Gate and San Francisco Bay are primary influences on the current Central Coast climate, neither shoreline is included in the current Central Coast boundary. The petitioner believes that the proposed revision to the Central Coast viticultural area logically extends the current Central Coast boundaries to include the shores of the Golden Gate and San Francisco Bay.

*Boundaries*

The proposed extension of the Central Coast viticultural area would include the currently excluded portions of five counties which border the San Francisco Bay. These counties are San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and all of Santa Cruz County. The proposed San Francisco Bay appellation would add approximately 1,278 square miles to Central Coast. This area contains 3,027 acres planted to grapes and 21 wineries.

The proposed revision to the Central Coast boundary follows the Pacific coastlines of Santa Cruz, San Mateo and San Francisco Counties, crosses San Francisco Bay, follows the northern boundary of Contra Costa County to Concord, and then follows the inland boundary of coastal influence, according to the petitioner, along straight lines between landmarks in the Diablo Mountain Range to the current Central Coast boundary.

The southern boundary of the Central Coast viticultural area remains unchanged. The proposed changes to the western boundary, the California coastline, consists of extending the boundary north to the Golden Gate. The proposed eastern boundary is extended to include the area northwest of Livermore up to the San Pablo Bay. From Altamont (just east of Livermore) south, the proposed eastern boundary follows the current boundary of the Central Coast viticultural area. North of Altamont, the proposed boundary extension excludes the easternmost range of coastal mountains. The proposed eastern boundary includes Martinez and Concord, but excludes Antioch, and the eastern portion of Contra Costa County.

**Public Participation—Written Comments**

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

ATF will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) Are legible; (2) are 8½″ x 11″ in size, (3) contain a written signature, and (4) are three pages or less in length. This limitation is necessary to assure reasonable access to the equipment. Comments sent by FAX in excess of three pages will not be accepted. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Any person who desires an opportunity to comment orally at a public hearing on the proposed regulation should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

After consideration of all comments and suggestions, ATF may issue a Treasury decision. The proposals discussed in this notice may be modified due to comments and suggestions received.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

**Regulatory Flexibility Act**

It is hereby certified that this proposed regulation will not have a significant impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that region.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

**Executive Order 12866**

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

**Drafting Information**

The principal author of this document is David W. Brokaw, Wine, Beer, and Spirits Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 9**

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

**Authority and Issuance**

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph 1.** The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Section 9.75 is amended by revising paragraph (b) to add 23 U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps (19) through (41), by revising paragraph (c) introductory text to add three counties, by removing paragraphs (c)(2) through (c)(12) and replacing them with new paragraphs

(c)(2) through (c)(9) and, renumbering existing paragraphs (c)(13) through (c)(40) as paragraphs (c)(10) through (c)(37).

## Subpart C—Approved American Viticultural Areas

* * * * *

### § 9.75 Central Coast

(a) Name. * * *

(b) Approved maps. * * *

* * * * *

(19) Diablo, California, scale 1:24,000, dated 1953, Photorevised 1980

(20) Clayton, California, scale 1:24,000, dated 1953, Photorevised 1980

(21) Honker Bay, California, scale 1:24,000, dated 1953, Photorevised 1980

(22) Vine Hill, California, scale 1:24,000, dated 1959, Photorevised 1980

(23) Benicia, California, scale 1:24,000, dated 1959, Photorevised 1980

(24) Mare Island, California, scale 1:24,000, dated 1959, Photorevised 1980

(25) Richmond, California, scale 1:24,000, dated 1959, Photorevised 1980

(26) San Quentin, California, scale 1:24,000, dated 1959, Photorevised 1980

(27) Oakland West, California, scale 1:24,000, dated 1959, Photorevised 1980

(28) San Francisco North, California, scale 1:24,000, dated 1956, Photorevised 1968 and 1973

(29) San Francisco South, California, scale 1:24,000, dated 1956, Photorevised 1980

(30) Montara Mountain, California, scale 1:24,000, dated 1956, Photorevised 1980

(31) Half Moon Bay, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968 and 1973

(32) San Gregorio, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968

(33) Pigeon Point, California, scale 1:24,000, dated 1955, Photorevised 1968

(34) Franklin Point, California, scale 1:24,000, dated 1955, Photorevised 1968

(35) Año Nuevo, California, scale 1:24,000, dated 1955, Photorevised 1968

(36) Davenport, California, scale 1:24,000, dated 1955, Photorevised 1968

(37) Santa Cruz, California, scale 1:24,000, dated 1954, Photorevised 1981

(38) Felton, California, scale 1:24,000, dated 1955, Photorevised 1980

(39) Laurel, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968

(40) Soquel, California, scale 1:24,000, dated 1954, Photorevised 1980

(41) Watsonville West, California, scale 1:24,000, dated 1954, Photorevised 1980.

(c) Boundary. The Central Coast viticultural area is located in the following California counties: Monterey, Santa Cruz, Santa Clara, Alameda, San Benito, San Luis Obispo, Santa Barbara, San Francisco, San Mateo, and Contra Costa. * * *

* * * * *

(2) The boundary follows north along the shoreline of the Pacific Ocean (across the Watsonville West, Soquel, Santa Cruz, Davenport, Año Nuevo, Franklin Point, Pigeon Point, San Gregorio, Half Moon Bay, Montara Mountain and San Francisco South maps) to the San Francisco/Oakland Bay Bridge. (San Francisco North map)

(3) From this point, the boundary proceeds east on the San Francisco/Oakland Bay Bridge to the Alameda County shoreline. (Oakland West map)

(4) From this point, the boundary proceeds east along the shoreline of Alameda County and Contra Costa County across the Richmond, San Quentin, Mare Island, and Benicia maps to a point marked BM 15 on the shoreline of Contra Costa County. (Vine Hill map)

(5) From this point, the boundary proceeds in a southeasterly direction in a straight line across the Honker Bay map to Mulligan Hill elevation 1,438. (Clayton map)

(6) The boundary proceeds in southeasterly direction in a straight line to Mt. Diablo elevation 3,849. (Clayton map)

(7) The boundary proceeds in a southeasterly direction in a straight line across the Diablo and Tassajara maps to Brushy Peak elevation 1,702. (Byron Hot Springs map)

(8) The boundary proceeds due south, approximately 400 feet, to the northern boundaries of Section 13, Township 2 South, Range 2 East. (Byron Hot Springs map)

(9) The boundary proceeds due east along the northern boundaries of Section 13 and Section 18, Township 2 South, Range 3 East, to the northeast corner of Section 18. (Byron Hot Springs map)

**Par. 3.** The table of sections in subpart C is proposed to be amended by adding § 9.157 to read as follows:

* * * * *

9.157 San Francisco Bay

**Par. 4.** Subpart C is proposed to be amended by adding § 9.157 to read as follows:

## Subpart C—Approved American Viticultural Areas

* * * * *

### § 9.157 San Francisco Bay

(a) Name. The name of the viticultural area described in this section is ''San Francisco Bay.''

(b) Approved maps. The appropriate maps for determining the boundary of the San Francisco Bay viticultural area are forty-two U.S.G.S. Quadrangle 7.5 Minute Series (Topographic) maps and one U.S.G.S. Quadrangle 5 × 11 Minute (Topographic) map. They are titled:

(1) Pacheco Peak, California, scale 1:24,000, dated 1955, Photorevised 1971

(2) Gilroy Hot Springs, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1971

(3) Mt. Sizer, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1971

(4) Morgan Hill, California, scale 1:24,000, dated 1955, Photorevised 1980

(5) Lick Observatory, California, scale 1:24,000, dated 1955, Photoinspected 1973, Photorevised 1968

(6) San Jose East, California, scale 1:24,000, dated 1961, Photorevised 1980

(7) Calaveras Reservoir, California, scale 1:24,000, dated 1961, Photorevised 1980

(8) La Costa Valley, California, scale 1:24,000, dated 1960, Photorevised 1968

(9) Mendenhall Springs, California, scale 1:24,000, dated 1956, Photoinspected 1978, Photorevised 1971

(10) Altamont, California, scale 1:24,000, dated 1953, Photorevised 1981

(11) Byron Hot Springs, California, scale 1:24,000, dated 1953, Photorevised 1968

(12) Tassajara, California, scale 1:24,000, dated 1953, Photoinspected 1974, Photorevised 1968

(13) Diablo, California, scale 1:24,000, dated 1953, Photorevised 1980

(14) Clayton, California, scale 1:24,000, dated 1953, Photorevised 1980

(15) Honker Bay, California, scale 1:24,000, dated 1953, Photorevised 1980

(16) Vine Hill, California, scale 1:24,000, dated 1959, Photorevised 1980

(17) Benicia, California, scale 1:24,000, dated 1959, Photorevised 1980

(18) Mare Island, California, scale 1:24,000, dated 1959, Photorevised 1980

(19) Richmond, California, scale 1:24,000, dated 1959, Photorevised 1980

(20) San Quentin, California, scale 1:24,000, dated 1959, Photorevised 1980

(21) Oakland West, California, scale 1:24,000, dated 1959, Photorevised 1980

(22) San Francisco North, California, scale 1:24,000, dated 1956, Photorevised 1968 and 1973

(23) San Francisco South, California, scale 1:24,000, dated 1956, Photorevised 1980

(24) Montara Mountain, California, scale 1:24,000, dated 1956, Photorevised 1980

(25) Half Moon Bay, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968 and 1973

(26) San Gregorio, California, scale 1:24,000, dated 1961, Photoinspected 1978, Photorevised 1968

(27) Pigeon Point, California, scale 1:24,000, dated 1955, Photorevised 1968

(28) Franklin Point, California, scale 1:24,000, dated 1955, Photorevised 1968

(29) Año Nuevo, California, scale 1:24,000, dated 1955, Photorevised 1968

(30) Davenport, California, scale 1:24,000, dated 1955, Photorevised 1968

(31) Santa Cruz, California, scale 1:24,000, dated 1954, Photorevised 1981

(32) Felton, California, scale 1:24,000, dated 1955, Photorevised 1980

(33) Laurel, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968

(34) Soquel, California, scale 1:24,000, dated 1954, Photorevised 1980

(35) Watsonville West, California, scale 1:24,000, dated 1954, Photorevised 1980

(36) Loma Prieta, California, scale 1:24,000, dated 1955, Photoinspected 1978, Photorevised 1968

(37) Watsonville East, California, scale 1:24,000, dated 1955, Photorevised 1980

(38) Mt. Madonna, California, scale 1:24,000, dated 1955, Photorevised 1980

(39) Gilroy, California, scale 1:24,000, dated 1955, Photorevised 1981

(40) Chittenden, California, scale 1:24,000, dated 1955, Photorevised 1980

(41) San Felipe, California, scale 1:24,000, dated 1955, Photorevised 1971

(42) Three Sisters, California, scale 1:24,000, dated 1954, Photoinspected 1978, Photorevised 1971

(c) Boundary. The San Francisco Bay viticultural area is located mainly within the five counties which border the San Francisco Bay and partly within two other counties in the State of California. These counties are: San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa and partly in Santa Cruz and San Benito Counties. The boundaries of the San Francisco Bay viticultural area, using landmarks and points of reference found on appropriate U.S.G.S. maps, are as follows:

(1) Beginning at the intersection of the 37 degree 00′ North latitude parallel with State Route 152 on the Pacheco Peak Quadrangle.

(2) Then proceed in a northwesterly direction in a straight line to the intersection of Coyote Creek with the township line dividing Township 9 South from Township 10 South on the Gilroy Hot Springs Quadrangle.

(3) Then proceed in a northwesterly direction in a straight line to the intersection of the township line dividing Township 8 South from Township 9 South with the range line dividing Range 3 East from Range 4 East on the Mt. Sizer Quadrangle.

(4) Then proceed in a northwesterly direction in a straight line (across the Morgan Hill Quadrangle) to the intersection of the township line dividing Township 7 South from Township 8 South with the range line dividing Range 2 East from Range 3 East on the Lick Observatory Quadrangle.

(5) Then proceed in a northwesterly direction in a straight line to the intersection of State Route 130 with the township line dividing Township 6 South from Township 7 South on the San Jose East Quadrangle.

(6) Then proceed in a northeasterly direction following State Route 130 to its intersection with the range line dividing Range 1 East from Range 2 East on the Calaveras Reservoir Quadrangle.

(7) Then proceed north following this range line to its intersection with the Hetch Hetchy Aqueduct on the La Costa Valley Quadrangle.

(8) Then proceed in a northeasterly direction in a straight line following the Hetch Hetchy Aqueduct to the western boundary of Section 14 in Township 4 South, Range 2 East on the Mendenhall Springs Quadrangle.

(9) Then proceed south along the western boundary of Section 14 in Township 4 South, Range 2 East to the southwest corner of Section 14 on the Mendenhall Springs Quadrangle.

(10) Then proceed east along the southern boundary of Section 14 in Township 4 South, Range 2 East to the southeast corner of Section 14 on the Mendenhall Springs Quadrangle.

(11) Then proceed south along the western boundary of Section 24 in Township 4 South, Range 2 East to the southwest corner of Section 24 on the Mendenhall Springs Quadrangle.

(12) Then proceed east along the southern boundary of Section 24 in Township 4 South, Range 2 East and Section 19 in Township 4 South, Range 3 East to the southeast corner of Section 19 on the Mendenhall Springs Quadrangle.

(13) Then proceed north along the western boundaries of Sections 20, 17, 8, and 5 on the Mendenhall Springs Quadrangle in Township 4 South, Range 3 East, north (across the Altamont Quadrangle) along the western boundaries of Sections 32, 29, 20, 17, 8, and 5 in Township 3 South, Range 3 East, and north along the eastern boundaries of Sections 31, 30, 19, and 18 in Township 2 South, Range 3 East to the northeast corner of Section 18 on the Byron Hot Springs Quadrangle.

(14) Then proceed due west along the northern boundaries of Section 18 and Section 13 (Township 2 South, Range 2 East) to a point approximately 400 feet due south of Brushy Peak on the Byron Hot Springs Quadrangle.

(15) Then proceed due north to Brushy Peak (elevation 1,702) on the Byron Hot Springs Quadrangle.

(16) Then proceed in a northwesterly direction in a straight line (across the Tassajara and Diablo Quadrangles) to Mt. Diablo (elevation 3,849) on the Clayton Quadrangle.

(17) Then proceed in a northwesterly direction in a straight line to Mulligan Hill (elevation 1,438) on the Clayton Quadrangle.

(18) Then proceed in a northwesterly direction in a straight line (across the Honker Bay Quadrangle) to a point marked BM 15 on the shoreline of Contra Costa County on the Vine Hill Quadrangle.

(19) Then proceed west along the shoreline of Contra Costa County and Alameda County (across the Quadrangles of Benicia, Mare Island, Richmond, and San Quentin) to the San Francisco/Oakland Bay Bridge on the Oakland West Quadrangle.

(20) Then proceed west on the San Francisco/Oakland Bay Bridge to the San Francisco County shoreline on the San Francisco North Quadrangle.

(21) Then proceed along the San Francisco, San Mateo, and Santa Cruz County shoreline (across the Quadrangles of San Francisco South, Montara Mountain, Half Moon Bay, San Gregorio, Pigeon Point, Franklin Point, Año Nuevo and Davenport) to the place where Majors Creek flows into the Pacific Ocean on the Santa Cruz Quadrangle.

(22) Then proceed northeasterly along Majors Creek to its intersection with the 400 foot contour line on the Felton Quadrangle.

(23) Then proceed along the 400 foot contour line in a generally easterly/northeasterly direction to its intersection with Bull Creek on the Felton Quadrangle.

(24) Then proceed along Bull Creek to its intersection with Highway 9 on the Felton Quadrangle.

(25) Then proceed along Highway 9 in a northerly direction to its intersection with Felton Empire Road.

(26) Then proceed along Felton Empire Road in a westerly direction to its intersection with the 400 foot contour line on the Felton Quadrangle.

(27) Then proceed along the 400 foot contour line (across the Laurel, Soquel, Watsonville West and Loma Prieta Quadrangles) to its intersection with

Highway 152 on the Watsonville East Quadrangle.

(28) Then proceed along Highway 152 in a northeasterly direction to its intersection with the 600 foot contour line just west of Bodfish Creek on the Watsonville East Quadrangle.

(29) Then proceed in a generally east/southeasterly direction along the 600 foot contour line (across the Mt. Madonna and Gilroy Quadrangles), approximately 7.3 miles, to the first intersection of the western section line of Section 30, Township 11 South, Range 4 East on the Chittenden Quadrangle.

(30) Then proceed south along the section line approximately 1.9 miles to the south township line at Section 31, Township 11 South, Range 4 East on the Chittenden Quadrangle.

(31) Then proceed in an easterly direction along the township line (across the San Felipe Quadrangle), approximately 12.4, miles to the intersection of Township 11 South and Township 12 South and Range 5 East and Range 6 East on the Three Sisters Quadrangle.

(32) Then proceed north along the Range 5 East and Range 6 East range line approximately 5.5 miles to Pacheco Creek on the Pacheco Creek Quadrangle.

(33) Then proceed northeast along Pacheco Creek approximately .5 mile to the beginning point.

Signed: October 1, 1997.

**John W. Magaw,**

*Director.*

[FR Doc. 97–27692 Filed 10–17–97; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 13

### Glacier Bay National Park, Alaska; Commercial Fishing Regulations

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

**ACTION:** Proposed Rule; extension of the public comment period.

**SUMMARY:** The National Park Service (NPS) announces that the public comment period for the proposed Glacier Bay National Park Commercial Fishing Regulations, published in the **Federal Register** on April 16, 1997 (62 FR 18547), has been extended to May 15, 1998. The original comment period was through October 15, 1997. This extension will allow the NPS, in a forthcoming environmental assessment on commercial fishing within Glacier Bay National Park, to fully describe and analyze the potential effects of a range of alternative actions under consideration.

The public review and comment period for the environmental assessment and the proposed rule coincide. The NPS will hold public meetings on the proposal and alternatives and publish a schedule of times, dates and locations in the **Federal Register**. No final decisions will be reached until all applicable legal requirements have been met, including environmental review requirements.

**DATES:** Comments on the proposed rule and environmental assessment will be accepted through May 15, 1998.

**ADDRESSES:** Comments should be addressed to: Superintendent, Proposed Regulations Comment, Glacier Bay National Park and Preserve, PO Box 140, Gustavus, Alaska 99826.

**FOR FURTHER INFORMATION CONTACT:** J. M. Brady, Superintendent, Glacier Bay National Park and Preserve, PO Box 140, Gustavus, Alaska 99826, Telephone: (907) 697–2230.

Dated: October 8, 1997.

**Robert D. Barbee,**

*Regional Director, Alaska Region.*

[FR Doc. 97–27731 Filed 10–17–97; 8:45 am]

BILLING CODE 4310–70–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL–5910–3]**

### Acid Rain Program: Public Workshop on an Emissions Trading Program for Oxides of Nitrogen ($NO_X$)

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

**ACTION:** Public workshops on a $NO_X$ emissions trading program.

**SUMMARY:** This fall, EPA will be issuing a Notice of Proposed Rulemaking to reduce regional transport of ozone. As part of this rulemaking, EPA is planning to develop a $NO_X$ emissions trading program for large combustion sources. States will be encouraged to participate in the trading program as a simple and cost-effective strategy for meeting the requirements of the upcoming regional transport rule.

EPA supported the Ozone Transport Assessment Group (OTAG), which fostered a collaborative process among States and stakeholders in developing analyses and proposing strategies to address the problem of ozone transport. The central conclusion from the OTAG process was that regional reductions of $NO_X$ are needed to reduce the transport of ozone and its precursors. EPA considered OTAG's recommendations when crafting the transport rule, which will limit $NO_X$ emissions through implementation of state-wide $NO_X$ emissions budgets. OTAG also concluded that cost effective emission reductions from large stationary sources could be greatly facilitated through an emissions trading program.

As a way to increase flexibility, maximize cost savings, and promote workable solutions, EPA is offering to administer a multi-state cap and trade program for large stationary sources. States are encouraged to participate in the trading program as a simple and cost-effective strategy for meeting their state-wide emission budget requirements. In developing the framework for a cap and trade program, EPA will build upon the work produced by OTAG's Trading/Incentives Workgroup. The $NO_X$ Trading Rule Workshops will provide an opportunity for interested participants to contribute to the development of the model trading rule. It is anticipated that the model trading rule will be included in a supplemental notice of proposed rulemaking for the transport rule in early 1998 and will be finalized along with the transport rule in September 1998.

EPA would like to continue the cooperative, open process established by OTAG as we develop the trading program. Two workshops will be held, in early November and early December. The purpose of these workshops is to provide a forum for input on the framework of an emissions trading program that can be used to cost-effectively reduce emissions of $NO_X$.

**DATES:** The first workshop will be held on November 5, from 9:00 a.m. to 5:00 p.m. A second workshop will be scheduled for early December and will be announced in a future document.

**ADDRESSES:** The November workshop will be held at the Washington Marriott located at 1221 22d Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Benkovic in EPA's Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 at (202) 233–9142.

Dated: October 10, 1997.

**Brian J. McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 97–27621 Filed 10–17–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

**[FRL–5910–7]**

**RIN: 2060–AE–81**

### National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production; Correction

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

**ACTION:** Proposed rule; correction.

**SUMMARY:** This document corrects errors in the preamble and regulatory text for the ''National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production'' which was published in the **Federal Register** on September 4, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Svendsgaard; Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2380.

**SUPPLEMENTARY INFORMATION:**

#### Corrections to the Preamble

In proposed rule FR Doc. 97–22364, beginning on page 46804 in the issue of September 4, 1997, make the following correction in the Supplementary Information section. On page 46805 in the first column, replace the first and second paragraphs of the column with the following:

''The Basis and Purpose Document, which contains the rationale for the various components of the standard, is available in the docket and on the TTN. This document is entitled Hazardous Air Pollutant Emissions from the Production of Polyether Polyols—Basis and Purpose Document for Proposed Standards, May 1997, and has been assigned document number EPA–453/R–97–010a.

Other materials related to this rulemaking are also available for review in the docket. Some of the technical memoranda have been compiled into a single document, the Supplementary Information Document (SID), to allow interested parties more convenient access to the information. The SID is entitled Hazardous Air Pollutant Emissions from the Production of Polyether Polyols— Supplementary Information Document for Proposed Standards, May 1997, and has been assigned document number EPA–453/R–97–010c.''

In the same proposed rule document, under Discussion of Major Issues, on page 46815 in the second column, replace the second sentence of the second paragraph with the following:

''The approach used for determining these emission factors is explained in Docket No. A–96–38, Item No. II–B–6.''

#### Corrections to the Regulatory Text

In the same proposed rule document, in section 63.1423(b), on page 46824 in the second column, replace the definition for *Group 1 wastewater stream* with the following:

''*Group 1 wastewater stream* means a process wastewater stream at an existing or new affected source that meets the criteria for Group 1 status in § 63.132(c) of subpart G, with the exceptions listed in § 63.1433(a)(10) for the purposes of this subpart (i.e., for organic HAP listed on Table 4 of this subpart only).''

In the same proposed rule document, in section 63.1423(b), on page 46826 in the first column, replace the definition for *Wastewater* with the following:

''*Wastewater* means water that: (1) Contains either (a) an annual average concentration of organic HAP listed in Table 4 of this subpart of at least 5 parts per million by weight and has an annual average flow rate of 0.02 liter per minute or greater or (b) an annual average concentration of organic HAP listed on Table 4 of this subpart of at least 10,000 parts per million by weight at any flow rate, and that (2) is discarded from a PMPU that is part of an affected source. Wastewater is process wastewater or maintenance wastewater.''

In the same proposed rule document, under Process Vent Control Requirements, on page 46827 in the second column, replace section 63.1425(d) with the following:

''*Requirements for Nonepoxide Organic HAP Emissions From Catalyst Extraction.* The owner or operator of an existing affected source where polyether polyol products are produced using epoxide compounds shall reduce emissions of nonepoxide organic HAP from the sum total of all process vents associated with catalyst extraction by an aggregated 90 percent for each PMPU. The owner or operator of a new affected source where polyether polyol products are produced using epoxide compounds shall reduce emissions of nonepoxide organic HAP from the sum total of all process vents associated with catalyst extraction by an aggregated 98 percent for each PMPU. A PMPU that does not use any nonepoxide organic HAP in catalyst extraction is exempt from the requirements of this paragraph.''

In the same proposed rule document, under Wastewater Provisions, on page 46843 in the first and second columns, replace section 63.1433(a)(2) with the following:

''When §§ 63.132 through 63.149 of subpart G refer to table 9 or table 36 of subpart G, the owner or operator shall only consider organic HAP listed in table 9 or table 36 of subpart G that are also listed on table 4 of this subpart, for the purposes of this subpart. Owners and operators are exempt from all requirements in §§ 63.132 through 63.149 of subpart G that pertain solely and exclusively to organic HAP listed on table 8 of subpart G. In addition, when §§ 63.132 through 63.149 of subpart G refer to List 1, List 2, and/or List 3, as listed in table 36 of subpart G, the owner or operator shall only consider organic HAP contained in those lists that are also listed on table 4 of this subpart, for the purposes of this subpart.''

Dated: October 14, 1997.

**Richard D. Wilson,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 97–27730 Filed 10–17–97; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

**[Docket No. FEMA–7231]**

### Proposed Flood Elevation Determinations

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

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

### National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

### Regulatory Classification

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

### Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

### Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

### § 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Delaware | Newark (City), New Castle County. | Christina River | Approximately 100 feet downstream of State Route 273. | *131 | *130 |
| | | | At Wedgewood Road | *161 | *158 |
| | | West Branch Christina River. | Approximately 580 feet upstream of confluence with Christina River. | *88 | *87 |
| | | | At state boundary | *108 | *107 |
| | | Persimmon Run | At the confluence with West Branch Christina River. | *97 | *96 |
| | | | Approximately 380 feet upstream of confluence with West Branch Christina River. | *99 | *98 |
| | | Tributary to West Branch Christina River. | At confluence with West Branch Christina River. | *108 | *106 |
| | | | Approximately 300 feet upstream of confluence with West Branch Christina River. | *108 | *107 |
| Maps available for inspection at the Newark Planning Department, 220 Elkton Road, Newark, Delaware. | | | | | |
| Send comments to Mr. Carl F. Luft, Newark City Manager, 220 Elkton Road, Newark, Delaware 19711. | | | | | |
| Delaware | New Castle County (Unincorporated Areas). | Christina River | Approximately 50 feet upstream of State Route 273 (Nottingham Road). | *134 | *133 |
| | | | At State boundary | *162 | *160 |
| | | West Branch Christina River. | Approximately 1,500 feet upstream of confluence with Christina River. | *91 | *90 |
| | | | Approximately 900 feet upstream of State Route 2. | *108 | *106 |
| | | East Branch Christina River. | At confluence with Christina River | *158 | *156 |
| | | | Approximately 100 feet upstream of the confluence with Christina River. | *158 | *157 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the New Castle County Department of Planning, 2701 Capitol Trail, Newark, Delaware. Send comments to Mr. Thomas P. Gordon, New Castle County Executive, 800 North French Street, Wilmington, Delaware 19801. | | | | | |
| Florida | Auburndale (City) Polk County. | Lake Arianna | Shoreline within community | None | *138 |
| | | Lake Lena | Shoreline within community | None | *138 |
| Maps available for inspection at the City of Auburndale Building and Zoning Division, 207 Orange Street, Auburndale, Florida. Send comments to The Honorable W. B. Whatlay, Mayor of the City of Auburndale, 110 Tampa Street, P.O. Box 186, Auburndale, Florida 33823. | | | | | |
| Florida | Dundee (Town) Polk County. | Peace Creek Drainage Canal. | At downstream Town of Dundee corporate limit. | *122 | *124 |
| | | | At upstream Town of Dundee corporate limit. | *122 | *124 |
| | | Lake Dell Outlet Ditch | At downstream Town of Dundee corporate limit. | *123 | *125 |
| | | | Upstream side of U.S. Highway 27 | *125 | *126 |
| | | Peace Creek Drainage Canal Tributary 3. | At confluence with Peace Creek Drainage Canal. | *122 | *124 |
| | | | At upstream corporate limit | None | *124 |
| Maps available for inspection at the Dundee Town Hall, 105 Center Street, Dundee, Florida. Send comments to Mr. Ben Saag, Dundee Town Manager, 105 Center Street, Dundee, Florida 33838. | | | | | |
| Florida | Eagle Lake (City), Polk County. | Lake McLeod | Entire shoreline within community | None | *135 |
| | | Eagle Lake | Entire shoreline within community | None | *132 |
| Maps available for inspection at the Eagle Lake City Hall, 75 North Seventh Street, Eagle Lake, Florida. Send comments to Ms. Linda Weldon, Eagle Lake City Manager, P.O. Box 129, Eagle Lake, Florida 33839. | | | | | |
| Florida | Haines City (City), Polk County. | Hammock Lake | Entire shoreline within community | *134 | *135 |
| | | Lake Brooks | Entire shoreline within community | None | *135 |
| | | Little Lake Hamilton | Entire shoreline within community | *123 | *124 |
| | | Lake Alice | Entire shoreline within community | *130 | *131 |
| | | Shallow Flooding Area | Between Melbourne Avenue and Johnson Avenue. | None | *110 |
| | | | Between Baker Dairy Road and Johnson Avenue. | None | *115 |
| Maps available for inspection at the Haines City City Hall, 502 East Hinson Avenue, Haines City, Florida. Send comments to The Honorable Kenneth Thompson, Mayor of the City of Haines City, P.O. Box 1507, 502 East Hinson Avenue, Haines City, Florida 33845. | | | | | |
| Florida | Hillcrest Heights (Town), Polk County. | Crooked Lake | Entire shoreline within community | None | *126 |
| Maps available for inspection at the Lake Wales City Hall, 152 East Central Avenue, Lake Wales, Florida. Send comments to The Honorable Andrew E. Bryan, Mayor of the Town of Hillcrest Heights, P.O. Box 129, Badson Park, Florida 33827. | | | | | |
| Florida | Keystone Heights (City). | Lake Geneva | Entire shoreline within community | None | *108 |
| | Clay County | Brooklyn Lake | Entire shoreline within community | None | *118 |
| Maps available for inspection at the Keystone Heights City Hall, 555 South Lawrence Boulevard, Keystone Heights, Florida. Send comments to The Honorable Archie Green, Mayor of the City of Keystone Heights, P.O. Box 420, Keystone Heights, Florida 32656. Florida | | | | | |
| Florida | Lake Alfred (City), Polk County. | Lake Alfred | Entire shoreline within community | *134 | *135 |
| | | Lake Swoope | Entire shoreline within community | None | *134 |
| Maps available for inspection at the Lake Alfred City Hall, 120 East Pomelo Street, Lake Alfred, Florida. Send comments to The Honorable Larry Clark, Mayor of the City of Lake Alfred, 155 East Pomelo Street, Lake Alfred, Florida 33850. | | | | | |
| Florida | Lakeland (City), Polk County. | Lake Parker #1 | Shoreline within community | *132 | *134 |
| | | Lake Gibson | Shoreline within community | None | *146 |
| | | Lake Parker Tributary | At Lake Parker Drive | *132 | *134 |
| | | | Approximately 1,000 feet downstream of State Road 33. | *133 | *134 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the City of Lakeland Building Inspection Division, 228 South Massachusetts Avenue, Lakeland, Florida. Send comments to Mr. E.S. Strickland, Lakeland City Manager, 228 South Massachusetts Avenue, Lakeland, Florida 33801–5086. | | | | | |
| Florida | Lake Hamilton (Town), Polk County. | Lake Hamilton | Entire shoreline within community | *123 | *124 |
| | | Flooding effects from Little Lake Hamilton. | Approximately 200 feet north of Hughes Road/U.S. Route 27 intersection southeast to Cunningham Street/Kokomo Road intersection. | *123 | *124 |
| Maps available for inspection at the Lake Hamilton Town Hall, 100 Smith Avenue, Lake Hamilton, Florida. Send comments to The Honorable Roger Knaus, Mayor of the Town of Lake Hamilton, P.O. Box 126, Lake Hamilton, Florida 33851. | | | | | |
| Florida | Lake Wales (City), Polk County. | Peace Creek Drainage Canal. | Approximately 0.95 mile upstream of State Road 653. | None | *119 |
| | | | Approximately 0.60 mile upstream of Olson Road. | None | *123 |
| | | Peace Creek Drainage Canal Tributary 2A. | Approximately 900 feet downstream of CSX Transportation. | None | *118 |
| | | | Approximately 1.20 miles downstream of CSX Transportation. | None | *118 |
| | | Peace Creek Drainage Canal Tributary 2B. | Confluence with Peace Creek Drainage Canal. | None | *122 |
| | | | Downstream side of Mountain Lake Cut-off Road. | None | *122 |
| | | Lake Myrtle #2 | Entire shoreline within community | None | *120 |
| Maps available for inspection at the Lake Wales City Hall, 152 East Central Avenue, Lake Wales, Florida. Send comments to Mr. David L. Greene, Lake Wales City Manager, 152 East Central Avenue, Lake Wales, Florida 33853. | | | | | |
| Florida | Lee County (Unincorporated Areas). | Imperial River | Approximately 2,225 feet upstream of Matheson Avenue. | *11 | *12 |
| | | | Just upstream of Bonita Grande Road | None | *17 |
| Maps available for inspection at the Fort Myers/Lee County Library, 2050 Lee Street, Fort Myers, Florida. Send comments to Mr. Donald D. Stilwell, Lee County Manager, P.O. Box 398, Fort Myers, Florida 33902–0398. | | | | | |
| Florida | Polk City (Town), Polk County. | Lake Agnes | Entire shoreline within community | None | *136 |
| | | Mud Lake | Entire shoreline within community | None | *143 |
| | | Mud Lake Drain | Approximately 550 feet upstream of Sand Lane. | None | *133 |
| | | | At confluence of Mud Lake/ approximately 450 feet upstream of State Road 33. | None | *143 |
| Maps available for inspection at the Surface Water Management Department, 330 West Church Street, Bartow, Florida. Send comments to Mr. John Swanson, Polk City Town Manager, P.O. Box 1139, Polk City, Florida 33868. | | | | | |
| Florida | Polk County (Unincorporated Areas). | Fox Branch Tributary | At confluence with Fox Branch | None | *144 |
| | | | Approximately 400 feet upstream of Duff Road. | None | *152 |
| | | Blackwater Creek | At downstream county boundary | None | *112 |
| | | | At North Galloway Road | None | *137 |
| | | Blackwater Creek Tributary 2. | At downstream county boundary | None | *108 |
| | | | Approximately 900 feet upstream of Ross Creek Road. | *130 | *132 |
| | | Wahneta Farms Canal | Approximately 0.6 mile upstream of confluence with Peace Creek Drainage Canal. | *107 | *111 |
| | | | Downstream side of Hoover Road | None | *133 |
| | | Wahneta Farms Canal Tributary. | At confluence with Wahneta Farms Canal | None | *121 |
| | | | Approximately 1.1 miles upstream of Eagle Lake Loop Road. | None | *132 |
| | | Peace Creek Drainage Canal. | Approximately 0.7 mile downstream of 91 Mine Road. | *100 | *101 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 1.6 miles upstream of 91 Mine Road. | *106 | *107 |
| | | Peace Creek Drainage Canal Tributary 2A. | Confluence with Peace Creek Drainage Canal. | None | *115 |
| | | | Approximately 4.6 miles upstream of Crews Road. | None | *118 |
| | | Peace Creek Drainage Canal Tributary 2B. | Confluence with Peace Creek Drainage Canal. | None | *122 |
| | | | Approximately 1.6 miles upstream of Mountain Lake Cutoff Road. | None | *122 |
| | | Peace Creek Drainage Canal Tributary 3. | At confluence with Peace Creek Drainage Canal. | None | *124 |
| | | | Approximately 1.3 miles upstream of Lake Daisy Road. | None | *129 |
| | | Peace Creek Drainage Canal Tributary 4. | At confluence with Peace Creek Drainage Canal. | None | *125 |
| | | | Approximately 0.5 mile upstream of Dundee Road. | None | *126 |
| | | Blackwater Creek Tributary 1. | At downstream county boundary ..... | None | *111 |
| | | | Approximately 0.1 mile upstream of Lewellyn Road. | *132 | *135 |
| | | Itchepackesassa Creek .... | At downstream county boundary ..... | None | *114 |
| | | | At confluence of Itchepackesassa Tributaries 1 and 2. | None | *120 |
| | | Itchepackesassa Creek Tributary 1. | At the confluence with Itchepackesassa Creek. | None | *120 |
| | | | Approximately 2,400 feet downstream of North Wabash Avenue. | *137 | *136 |
| | | Itchepackesassa Creek Tributary 2. | At the confluence with Itchepackesassa Creek. | None | *120 |
| | | | Approximately 450 feet upstream of Airport Road. | None | *139 |
| | | Fox Branch ..... | At Polk County boundary ..... | None | *86 |
| | | | Approximately 1,000 feet upstream of U.S. Route 98. | None | *150 |
| | | Lake Lowery ..... | Entire shoreline within community ..... | *134 | *135 |
| | | Mountain Lake ..... | Entire shoreline within community ..... | None | *121 |
| | | Lake Effie ..... | Entire shoreline within community ..... | None | *122 |
| | | Lake Lee #2 ..... | Entire shoreline within community ..... | None | *124 |
| | | Venus Lake ..... | Entire shoreline within community ..... | None | *127 |
| | | Lake Parker #2 ..... | Entire shoreline within community ..... | None | *123 |
| | | Hammock Lake ..... | Entire shoreline within community ..... | *134 | *135 |
| | | Tower Lake ..... | Entire shoreline within community ..... | *134 | *135 |
| | | Bonnet Lake ..... | Entire shoreline within community ..... | *134 | *135 |
| | | Lake Brooks ..... | Shoreline within county ..... | *134 | *135 |
| | | Scott Lake ..... | Entire shoreline within community ..... | None | *172 |
| | | Banana Lake ..... | Entire shoreline within community ..... | None | *107 |
| | | Lake Myrtle #1 ..... | Entire shoreline within community ..... | None | *142 |
| | | Little Van Lake ..... | Entire shoreline within community ..... | None | *142 |
| | | Lake Griffin ..... | Entire shoreline within community ..... | *134 | *135 |
| | | Lake Alfred ..... | Entire shoreline within community ..... | *134 | *135 |
| | | Lake Medora ..... | Entire shoreline within community ..... | None | *141 |
| | | Lake Mariana ..... | Entire shoreline within community ..... | *139 | *140 |
| | | Lake Blue ..... | Entire shoreline within community ..... | None | *151 |
| | | Sears Lake ..... | Entire shoreline within community ..... | None | *144 |
| | | Lake Grass ..... | Entire shoreline within community ..... | None | *140 |
| | | Lake Gibson ..... | Entire shoreline within community ..... | *145 | *146 |
| | | Lake McLeod ..... | Entire shoreline within community ..... | None | *135 |
| | | Spirit Lake ..... | Entire shoreline within community ..... | None | *135 |
| | | Grassy Lake #2 ..... | Entire shoreline within community ..... | None | *136 |
| | | Eagle Lake ..... | Entire shoreline within community ..... | None | *132 |
| | | Millsite Lake ..... | Entire shoreline within community ..... | None | *126 |
| | | Lake Parker #1 ..... | Entire shoreline within community ..... | *132 | *134 |
| | | Lake Bonnet Drain ..... | Just downstream of North Chestnut Road | None | *140 |
| | | | Approximately 300 feet downstream of Brunnell Parkway. | None | *144 |
| | | Lake Garfield ..... | Entire shoreline within community ..... | *107 | *108 |
| | | Lake Myrtle #2 ..... | Entire shoreline within community ..... | None | *120 |
| | | Round Lake ..... | Entire shoreline within community ..... | None | *131 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | Reeves Lake | Entire shoreline within community | None | *126 |
| | | Lake Hart | Entire shoreline within community | None | *126 |
| | | Lake Ruby | Entire shoreline within community | None | *126 |
| | | Lake Daisy | Entire shoreline within community | *131 | *132 |
| | | Lake Fox | Entire shoreline within community | None | *136 |
| | | River Lake | Entire shoreline within community | None | *143 |
| | | Lake Florence | Entire shoreline within community | *129 | *130 |
| | | Crystal Lake #3 | Entire shoreline within community | None | *131 |
| | | Lake Reed | Entire shoreline within community | None | *140 |
| | | Lake Annie | Entire shoreline within community | None | *124 |
| | | Lake Arbuckle | Entire shoreline within community | None | *59 |
| | | Lake Bess | Entire shoreline within community | None | *126 |
| | | Dinner Lake #1 | Entire shoreline within community | None | *130 |
| | | Dinner Lake #2 | Entire shoreline within community | None | *124 |
| | | Grassy Lake #3 | Entire shoreline within community | None | *129 |
| | | Thomas Lake #1 | Entire shoreline within county | None | *137 |
| | | Camp Lake | Entire shoreline within county | *133 | *134 |
| | | Lake Eva #1 | Entire shoreline within county | *134 | *135 |
| | | Lake Swoope | Entire shoreline within county | None | *134 |
| | | Lake Joe | Entire shoreline within county | None | *126 |
| | | Lake Marion | Entire shoreline within community | *68 | *72 |
| | | Little Lake Hamilton | Entire shoreline within county | *123 | *124 |
| | | Lake Hamilton | Entire shoreline within county | *123 | *124 |
| | | Middle Lake Hamilton | Entire shoreline within county | *123 | *124 |
| | | Lake Streety | Entire shoreline within community | None | *110 |
| | | Hickory Lake | Entire shoreline within community | None | *99 |
| | | Silver Lake | Entire shoreline within community | None | *106 |
| | | Lake Wedhyakapka | Entire shoreline within community | *64 | *65 |
| | | Lake Leonore | Entire shoreline within community | None | *88 |
| | | Blue Lake | Entire shoreline within community | None | *125 |
| | | Lake Moody | Entire shoreline within community | None | *94 |
| | | Mud Lake | Entire shoreline within community | *141 | *143 |
| | | Surveyors Lake | Entire shoreline within community | None | *135 |
| | | Gator Lake | Entire shoreline within community | None | *135 |
| | | Grassy Lake #4 | Entire shoreline within community | None | *140 |
| | | Polecat Lake | Entire shoreline within community | None | *144 |
| | | Tiger Lake | Entire shoreline within community | None | *57 |
| | | Lake Aurora | Entire shoreline within community | None | *107 |
| | | Big Gum Lake | Entire shoreline within community | *95 | *96 |
| | | Cypress Lake | Entire shoreline within community | None | *102 |
| | | Little Gum Lake | Entire shoreline within community | None | *98 |
| | | Parks Lake | Entire shoreline within community | None | *105 |
| | | Thomas Lake #2 | Entire shoreline within community | None | *106 |
| | | Lake Mabel | Entire shoreline within community | None | *117 |
| | | Lake Tennessee | Entire shoreline within community | None | *136 |
| | | Lake Juliana | Entire shoreline within community | *135 | *136 |
| | | Lake Starr | Entire shoreline within community | None | *117 |
| | | Lake Otis | Entire shoreline within county | *130 | *134 |
| | | Lake Ring | Entire shoreline within county | None | *138 |
| | | Lake Elizabeth | Entire shoreline within county | None | *135 |
| | | Lake Ida #1 | Entire shoreline within community | *135 | *138 |
| | | Lester Lake | Entire shoreline within community | *130 | *132 |
| | | Polk Lake | Entire shoreline within community | None | *110 |
| | | Mud Lake Drain | Approximately 700 feet downstream of State Road 33. | *137 | *138 |
| | | | At confluence of Mud Lake | *141 | *143 |
| | | Crystal Lake #1 | Entire shoreline within county | None | *140 |
| | | Lake Davenport | Entire shoreline within county | None | *121 |
| | | Horse Creek | Approximately 1,450 feet above State Route 547. | None | *115 |
| | | | Approximately 2,300 feet above State Route 547. | None | *115 |
| | | Lake Hatchineha | Entire shoreline within community | None | *57 |
| | | Lake Boomerang | Entire shoreline within community | None | *123 |
| | | Grassy Lake No. 1 | Entire shoreline within community | None | *134 |
| | | Lake Holloway | Entire shoreline within community | None | *141 |
| | | Crews Lake | Entire shoreline within community | None | *149 |
| | | Lake Henry No. 2 | Entire shoreline within community | None | *160 |
| | | Old Lake Davneport | Entire shoreline within community | None | *112 |
| | | South Prong Alafia River | At downstream county boundary | None | *97 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 1.1 miles upstream of Bethlehem Road. | None | *117 |
| Maps available for inspection at the Polk County Engineering Department, 330 West Church Street, Bartow, Florida. | | | | | |
| Send comments to Mr. Neil Combee, Chairman of the Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, Florida 33831. | | | | | |
| Florida | Stuart (City) Martin County. | St. Lucie River | Approximately 200 feet east of the intersection of U.S. 1 and Fern Avenue. | *6 | *10 |
| | | | Approximately 1500 feet east of the intersection of East Ocean Boulevard and Flamingo Drive. | *6 | *7 |
| | | North Fork St. Lucie River | Approximately 300 feet east of the intersection of East Ocean Boulevard and Flamingo Drive. | None | *7 |
| | | | Entire reach within community | *6 | *9 |
| | | South Fork St. Lucie River | Approximately 300 feet west of the intersection of West 1st Street and Atlanta Avenue. | *6 | *9 |
| | | | Approximately 1000 feet southwest of the intersection of South Carolina Drive and Palm City Avenue. | *6 | *7 |
| | | Krueger Creek | Approximately 250 feet east of the intersection of East Ocean Boulevard and Krueger Parkway. | *6 | *7 |
| | | Fraizer Creek | Approximately 50 feet south of the intersection of 7th Street and Colorado Avenue. | *6 | *7 |
| | | Poppolton Creek | Approximately 300 feet south of the intersection of Federal Highway and Riverview Avenue. | *6 | *7 |
| | | | Approximately 0.4 mile east along Central Parkway from intersection with State Route 76. | None | *7 |
| Maps available for inspection at the Stuart City Hall, City Development Department, 121 S.W. Flagler Avenue, Stuart, Florida. | | | | | |
| Send comments to Mr. David Collier, Stuart City Manager, 121 S.W. Flagler Avenue, Stuart, Florida 34994. | | | | | |
| Florida | Winter Haven (City), Polk County. | Lake Hamilton | Entire shoreline within community | *123 | *124 |
| | | Middle Lake Hamilton | Entire shoreline within community | *123 | *124 |
| | | Lake Otis | Entire shoreline within community | *130 | *134 |
| | | Lake Elbert | Entire shoreline within community | *137 | *139 |
| | | Lake IDA #1 | Entire shoreline within community | *135 | *138 |
| | | Lake Silver | Entire shoreline within community | *147 | *148 |
| | | Lake Idyl | Entire shoreline within community | *134 | *137 |
| Maps available for inspection at the Winter Haven City Hall, Building Department, 451 Third Street, N.W., Winter Haven, Florida. | | | | | |
| Send comments to Mr. Carl Cheatham, Winter Haven City Manager, P.O. Box 2277, Winter Haven, Florida 33883. | | | | | |
| Georgia | Alpharetta (City), Fulton County. | Lake Windward | Upstream of Lake Windward at city limit | *1,033 | *1,028 |
| | | | Approximately 100 feet upstream of Lake Windward Drive. | *992 | *1,028 |
| Maps available for inspection at the City Engineer's Office, 11875 Haynes Bridge Road, Alpharetta, Georgia. | | | | | |
| Send comments to Mr. Michael Wilkes, Alpharetta City Administrator, City Hall, 2 South Main Street, Alpharetta, Georgia 30201. | | | | | |
| Illinois | Glenview (Village), Cook County. | South Navy Ditch | At confluence with Chicago River, North Branch, West Fork. | *630 | *628 |
| | | | Approximately 100 feet downstream of Soo Line Railroad. | *630 | *628 |
| | | Des Plaines River | Upstream side of Central Road | None | *637 |
| | | | Approximately 0.7 mile upstream of Central Road. | None | *637 |
| | | Chicago River, North Branch, West Fork. | At the downstream corporate limits | *624 | *621 |
| | | | At the upstream corporate limits | *632 | *631 |
| | | Chicago River, North Branch. | Approximately 300 feet upstream of corporate limits. | None | *624 |
| | | | At Central Road | None | *621 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Glenview Village Hall, 1225 Waukegan Road, Glenview, Illinois. Send comments to Ms. Nancy Firfer, Glenview Village President, 1225 Waukegan Road, Glenview, Illinois 60025. | | | | | |
| Illinois | Northbrook (Village), Cook County. | Chicago River, North Branch, West Fork. | Approximately 80 feet downstream of Old Willow Road. | None | *631 |
| | | | Approximately 300 feet downstream of Interstate Route 94. | *652 | *651 |
| | | Chicago River, North Branch, Middle Fork. | Approximately 200 feet downstream of Meadow Brook Drive. | *635 | *636 |
| | | | Approximately 300 feet upstream of Red Oak Drive. | None | *651 |
| | | Underwriters Tributary | Approximately 300 feet upstream of confluence with Chicago River, North Branch, West Fork. | *651 | *649 |
| | | | Approximately 200 feet downstream of Helen Drive. | *664 | *665 |
| | | Techny Drain | Approximately 300 feet upstream of confluence with Chicago River, North Branch, West Fork. | None | *636 |
| | | | Downstream face of culvert approximately 70 feet downstream of Pfingston Road. | *668 | 667 |
| | | Techny Drain, South Fork | At confluence with Techny Drain | *653 | *652 |
| | | | Approximately 200 feet upstream of Wood Drive. | *666 | *663 |
| Maps available for inspection at the Northbrook Village Hall, Engineering Department, 1225 Cedar Lane, Northbrook, Illinois. Send comments to Mr. Mark Damisch, President of the Village of Northbrook, 1225 Cedar Lane, Northbrook, Illinois 60062. | | | | | |
| Maine | Sanford (Town), York County. | Mousam River (Lower Reach). | At the downstream corporate limits | None | *154 |
| | | | At downstream side of Estes Lake Dam | None | 184 |
| Maps available for inspection at the Town of Sanford Code Enforcement Office, 267 Main Street, Sanford, Maine. Send comments to Mr. John Webb, Sanford Town Administrator, 267 Main Street, Sanford, Maine 04073. | | | | | |
| Minnesota | Olmsted County (Unincorporated Areas). | North Run of the North Fork of Cascade Creek. | At U.S. Highway 14 | *1,007 | *1,006 |
| | | | Approximately 550 feet downstream of KR–6 Dam. | *1,043 | *1,037 |
| | | South Run of the North Fork of Cascade Creek. | Approximately 100 feet upstream of the confluence with Cascade Creek. | *1,007 | *1,006 |
| | | | Approximately 1.31 miles upstream of Chicago and Northwestern Railroad. | *1,041 | *1,040 |
| | | South Fork Zumbro River | Approximately 600 feet downstream of 55th Street NW. | None | *968 |
| | | | Approximately 700 feet downstream of Mayowood Road. | *1,028 | *1,027 |
| | | Bear Creek | Approximately 520 feet upstream of the confluence of Willow Creek. | *1,013 | *1,012 |
| | | | Approximately 220 feet upstream of the confluence of Badger Creek. | *1,017 | *1,016 |
| | | Cascade Creek | Approximately 0.4 mile upstream of the confluence of North Run of the North Fork of Cascade Creek. | *1,006 | *1,005 |
| | | | Approximately 250 feet downstream of County Road 34. | *1,014 | *1,015 |
| | | Shallow Flooding Area | Between the Chicago and Northwestern Railroad and North Run of the North Fork of Cascade Creek. | #1 | #2 |
| Maps available for inspection at the City of Rochester-Olmsted Planning Department, 2122 Campus Drive, S.E., Rochester, Minnesota. Send comments to Mr. Richard Devlin, Olmsted County Administrator, 151 4th Street, S.E., Rochester, Minnesota 55904. | | | | | |
| Minnesota | Rochester (City) Olmsted County. | North Run of the North Fork of Cascade Creek. | At confluence with Cascade Creek | *1,006 | *1,004 |
| | | | Approximately 1,000 feet upstream of 19th Street NW. | *1,028 | *1,027 |
| | | South Run of the North Fork of Cascade Creek. | At confluence with Cascade Creek | *1,007 | *1,006 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 0.5 mile upstream of Chicago and North Western. | *1,027 | *1,026 |
| | | Bear Creek | Approximately 300 feet downstream of 4th Street SE. | *987 | *986 |
| | | | Approximately 50 feet downstream of confluence of Willow Creek. | *1,012 | *1,011 |
| | | South Fork Zumbro River | At 55th Street NW | None | *986 |
| | | | Approximately 1,500 feet downstream of Mayowood Road. | *1,027 | *1,026 |
| | | Cascade Creek | At confluence with South Fork Zumbro River. | *979 | *978 |
| | | | Approximately 250 feet downstream of County Road 34. | *1,014 | *1,015 |
| | | Willow Creek | Approximately 660 feet upstream of the confluence with Bear Creek. | *1,012 | *1,013 |
| | | | Approximately 265 feet downstream of 11th Avenue SE. | *1,014 | *1,015 |
| | | Shallow Flooding Area | Between U.S. Highway 14 and the Chicago and Northwestern Railroad, approximately 850 feet northwest of the intersection of 7th Street NW and U.S. Highway 14. | #1 | #2 |
| | | | Between the Chicago and Northwestern Railroad and the North Run of the North Fork of Cascade Creek. | #2 | #1 |
| | | | Between U.S. Highway 14 and the Chicago and Northwestern Railroad, approximately 400 feet northwest of the intersection of 7th Street NW and U.S. Highway 14. | #1 | #3 |
| Maps available for inspection at the City of Rochester-Olmsted Planning Department, 2122 Campus Drive, S.E., Rochester, Minnesota. | | | | | |
| Send comments to Mr. Gary Neumann, Assistant City Administrator, City Administrator's Office, 201 4th Street, S.E., Room 266, Rochester, Minnesota 55904–3781. | | | | | |
| New Hampshire | Alexandria (Town), Grafton County. | Newfound Lake | Entire shoreline within the community | None | *591 |
| Maps available for inspection at the Alexandria Town Hall, Plummer Hill, Alexandria, New Hampshire. | | | | | |
| Send comments to Mr. Ernest Parmenter, Chairman of the Town of Alexandria Board of Selectmen, Alexandria Town Office, Plummer Hill, Alexandria, New Hampshire 03222. | | | | | |
| New Jersey | Brick (Township), Ocean County. | Atlantic Ocean | Approximately 250 feet east of the intersection of Ocean Avenue and Bay Avenue South. | *10 | *15 |
| | | | Entire shoreline within community | *13 | *15 |
| | | Shallow Flooding | Approximately 50 feet west of the intersection of Ocean Avenue and Grandview Avenue. | *8 | #1 |
| | | | At intersection of southbound lane of State Route 35 and 9th Avenue. | *7 | #2 |
| | | Barnegat Bay | Approximately 1,200 feet west of the intersection of southbound lane of State Route 35 and Brigantine Lane. | *6 | *7 |
| | | | At intersection of Curtis Point Drive and southbound lane of State Route 35. | *9 | *7 |
| Maps available for inspection at the Township of Brick Engineering Department, Brick Town Hall, 401 Chambers Bridge Road, Brick, New Jersey. | | | | | |
| Send comments to The Honorable Joseph Scarpilley, Mayor of the Township of Brick, 401 Chambers Bridge Road, Brick, New Jersey 08723. | | | | | |
| New York | Canton (Town), St. Lawrence County. | Grass River | Approximately 1.02 miles downstream of State Route 68. | None | *323 |
| | | | Approximately 150 feet downstream of upstream Town of Canton corporate limit. | None | *497 |
| Maps available for inspection at the Town of Canton Code Enforcement Office, Canton Municipal Building, 60 Main Street, Canton, New York. | | | | | |
| Send comments to Mr. James T. Smith, Canton Town Supervisor, Canton Municipal Building, 60 Main Street, Canton, New York 13617. | | | | | |
| North Carolina | Alexander County (Unincorporated Areas). | Catawba River (Lake Hickory). | At upstream side of Oxford Dam | None | *935 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | At downstream side of State Highway 127. | None | *936 |
| | | Catawba River (Lookout Shoals Lake). | At downstream county boundary ..... | None | *847 |
| | | | Approximately 1.9 miles upstream of downstream county boundary. | None | *849 |

Maps available for inspection at the Alexander County Planning and Inspection Emergency Management Office, 322 1st Avenue, S.W., Taylorsville, North Carolina.

Send comments to Mr. Craig Mayberry, Chairman of the Alexander County Commission, 255 Liledoun Road, Taylorsville, North Carolina 28681.

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|---|---|---|---|---|---|
| North Carolina ..... | Atlantic Beach (Town), Carteret County. | Bogue Sound ..... | At the intersection of Salter Path Road and Henderson Boulevard. | None | *7 |
| | | | Approximately 800 feet northwest of the intersection of Salter Path Road and Henderson Boulevard. | *7 | *8 |
| | | Atlantic Ocean ..... | Approximately 150 feet south from the intersection of Henderson Boulevard and Asbury Avenue. | None | *12 |
| | | | Approximately 330 feet south from the intersection of Henderson Boulevard and Ess Pier along Ess Pier. | *15 | *18 |

Maps available for inspection at the Atlantic Beach Town Hall, 125 West Fort Macon Road, Atlantic Beach, North Carolina.

Send comments to Mr. Kim A. Cox, Atlantic Beach Town Manager, 125 West Fort Macon Road, P.O. Box 10, Atlantic Beach, North Carolina 28512.

| | | | | | |
|---|---|---|---|---|---|
| North Carolina ..... | Burke County (Unincorporated Areas). | Rhodhiss Lake ..... | At Lake Rhodhiss Dam ..... | None | *1,003 |
| | | | At State Route 1001 ..... | None | *1,005 |

Maps available for inspection at the Avery Avenue Government Building, 200 Avery Avenue, Morganton, North Carolina.

Send comments to Mr. Jimmy Jacumin, Chairman of the Burke County Board of Commissioners, Resource Center, P.O. Box 219, Morganton, North Carolina 28680–0219.

| | | | | | |
|---|---|---|---|---|---|
| North Carolina ..... | Caldwell County (Unincorporated Areas). | Catawba River ..... | At Lake Rhodhiss Dam ..... | None | *1,003 |
| | | | At State Route 1001 ..... | None | *1,005 |

Maps available for inspection at the Caldwell County Planning Department, Caldwell County Offices, 905 West Avenue, Lenoir, North Carolina.

Send comments to Dr. John Thuss, Chairman of the Caldwell County Board of Commissioners, P.O. Box 2200, Lenoir, North Carolina 28645–2200.

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|---|---|---|---|---|---|
| North Carolina ..... | Catawba County (Unincorporated Areas). | Catawba River (Lake Hickory). | At Oxford Dam ..... | None | *935 |
| | | | At confluence of Snow Creek ..... | None | *935 |
| | | Catawba River (Lookout Shoals Lake). | At Lookout Shoals Lake ..... | None | *849 |
| | | | Approximately 4.3 miles upstream of Lookout Shoals Dam. | | |
| | | Catawba River (Lake Norman). | At downstream county boundary ..... | None | *761 |
| | | | Approximately 0.6 mile downstream of NC 1004. | None | *762 |
| | | Elk Shoal Creek ..... | Approximately 875 feet upstream of confluence with Catawba River. | *840 | *849 |
| | | | Approximately 750 feet upstream of State Route 1700. | *848 | *849 |
| | | Dellinger Creek ..... | At confluence with Elk Shoal Creek ..... | *849 | *850 |
| | | | Approximately 680 feet upstream of confluence with Elk Shoal Creek. | *851 | *852 |

Maps available for inspection at the Catawba County Zoning Office, 100A Southwest Boulevard, Newton, North Carolina.

Send comments to Mr. Tom Lundy, Catawba County Manager, P.O. Box 389, Newton, North Carolina 28658.

| | | | | | |
|---|---|---|---|---|---|
| North Carolina ..... | Emerald Isle (Town), Carteret County. | Atlantic Ocean ..... | At intersection of Bogue Court and Inlet Drive. | None | *15 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | 500 feet south of intersection of Ocean Drive and Sea Dunes Drive. | *16 | *19 |
| | | Bogue Sound | 200 feet north of intersection of Burlington Street and Emerald Drive. | None | *8 |
| | | | 1,000 feet north of the intersection of Bugue Court and Inlet Drive. | *12 | *15 |
| Maps available for inspection at the Emerald Isle Town Hall, 7500 Emerald Drive, Emerald Isle, North Carolina. | | | | | |
| Send comments to Mr. Peter S. Allen, Emerald Isle Town Manager, 7500 Emerald Drive, Emerald Isle, North Carolina 28594–9320. | | | | | |
| North Carolina | Goldsboro (City), Wayne County. | Mills Creek | Approximately 600 feet upstream of confluence with West Bear Creek. | None | *95 |
| | | | Approximately 1,075 feet upstream of State Route 13. | None | *116 |
| Maps available for inspection at the Goldsboro City Hall Annex, 222 North Center Street, Goldsboro, North Carolina. | | | | | |
| Send comments to The Honorable Howell K. Plonk, Mayor of the City of Goldsboro, P.O. Drawer A, Goldsboro, North Carolina 27530. | | | | | |
| North Carolina | Haywood County (Unincorporated Areas). | West Fork Pigeon River | Approximately 200 feet upstream of confluence with East Fork Pigeon River. | *2,653 | *2,654 |
| | | | At confluence with Lake Logan | None | *2,865 |
| Maps available for inspection at the Haywood County Planning Director's Office, 2143 Asheville Road, Waynesville, North Carolina. | | | | | |
| Send comments to Mr. Jack Horton, Haywood County Manager, 215 North Main Street, Courthouse Annex One, Waynesville, North Carolina 28786. | | | | | |
| North Carolina | Hickory (City), Burke and Catawba Counties. | Lake Hickory | At downstream corporate limits | None | *935 |
| | | | At NC 127 | None | *936 |
| Maps available for inspection at the City of Hickory Planning Office, 76 North Center Street, Hickory, North Carolina. | | | | | |
| Send comments to The Honorable William R. McDonald, Mayor of the City of Hickory, P.O. Box 398, Hickory, North Carolina 28603–0398. | | | | | |
| North Carolina | High Point (City) Davidson, Guilford, and Randolph Counties. | Boulding Branch | Approximately 300 feet upstream of Deep River Road. | *777 | *776 |
| | | | Approximately 100 feet downstream of Boundary Avenue. | *850 | *849 |
| | | Payne Creek Tributary | At confluence with Payne Creek | None | *744 |
| | | | Approximately 1.1 miles upstream of Canterbury Road. | None | *782 |
| | | Payne Creek (formerly Stream 95 In High Point). | Just upstream of corporate limits | *741 | *743 |
| | | | Approximately 1,470 feet upstream of Rockford Road. | *825 | *826 |
| | | Stream 97 | Approximately 1.1 miles downstream of Chestnut Glen Way. | None | *750 |
| | | | Approximately 115 feet upstream of Westchester Drive. | None | *823 |
| | | Sandy Ridge Tributary | Approximately 1,550 feet downstream of State Route 68. | None | *797 |
| | | | Approximately 150 feet downstream of Gallimore Dairy Road. | None | *832 |
| | | Tributary to West Fork Deep River. | At confluence with West Fork Deep River | None | *817 |
| | | | Approximately 1,700 feet upstream of confluence with West Fork Deep River. | None | *817 |
| | | Davis Lake Tributary No. 1. | At the confluence with East Fork Deep River. | None | *787 |
| | | | Just downstream of State Route 68 | None | *805 |
| | | Davis Lake Tributary No. 2. | At confluence with Davis Lake Tributary No. 1. | None | *797 |
| | | | Approximately 1,775 feet upstream of Highway 68. | None | *819 |
| | | Long Branch | Approximately 1,800 feet downstream of Jamesford Road. | *771 | *770 |
| | | | Approximately 0.51 mile upstream of Jamesford Drive. | *776 | *777 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | Stream No. 18 | Approximately 0.46 mile upstream of confluence with West Fork Deep River. | *776 | *777 |
| | | | Approximately 1,350 feet upstream of Hickswood Road. | None | *820 |
| | | Stream No. 92 | Approximately 300 feet downstream of corporate limits. | *778 | *770 |
| | | | Approximately 60 feet downstream of confluence of Stream No. 93. | *792 | *779 |
| | | Stream No. 93 | Approximately 25 feet upstream of confluence with Stream No. 92. | *793 | *792 |
| | | | Approximately 50 feet downstream of Westchester Drive (State Route 68). | *823 | *827 |
| | | Stream 99 | Approximately 1.4 miles downstream of Westchester Drive. | None | *748 |
| | | | Approximately 20 feet downstream of Westchester Drive. | *825 | *826 |
| | | Richland Creek | Approximately 1,550 feet upstream of Kersey Valley Road. | *706 | *705 |
| | | | Approximately 900 feet upstream of Brentwood Street. | *783 | *784 |
| | | Rich Fork | Approximately 1,450 feet downstream of Rock Bridge Road. | *745 | *748 |
| | | | Approximately 250 feet upstream of upstream corporate limits. | *753 | *754 |
| | | Mile Branch | At confluence with Richland Creek | *707 | *705 |
| | | | Approximately 950 feet upstream of confluence with Richland Creek. | *707 | *706 |
| Maps available for inspection at the City of High Point Municipal Office Building, 211 South Hamilton Street, High Point, North Carolina. | | | | | |
| Send comments to The Honorable Rebecca Smothers, Mayor of the City of High Point, P.O. Box 230, High Point, North Carolina 27261. | | | | | |
| North Carolina | Iredell County (Unincorporated Areas). | Catawba River (Lake Norman). | At downstream county boundary | None | *761 |
| | | | Approximately 1 mile downstream of State Route 1004. | None | *763 |
| | | Catawba River (Lookout Shoals Lake). | At Lookout Shoals Dam | None | *847 |
| | | | At upstream county boundary | None | *847 |
| Maps available for inspection at the Iredell County Planning Department, 227 South Center Street, Statesville, North Carolina. | | | | | |
| Send comments to Mr. Joel Mashburn, Iredell County Manager, P.O. Box 788, Statesville, North Carolina 28687. | | | | | |
| North Carolina | Lincoln County (Unincorporated Areas). | Lake Norman | Entire shoreline within community | None | *761 |
| Maps available for inspection at the Lincoln County Building and Land Development Department, 302 North Academy Street, Lincolnton, North Carolina. | | | | | |
| Send comments to Mr. Richard French, Lincoln County Manager, 115 West Main Street, Lincolnton, North Carolina 28092. | | | | | |
| North Carolina | Mecklenburg County (Unincorporated Areas). | Lake Norman | Entire shoreline within county | None | *761 |
| | | Mountain Island Lake | At mountain Island Dam | None | *655 |
| | | | Approximately 4.8 miles upstream of State Route 16. | None | *657 |
| | | Lake Wylie | At downstream county boundary | None | *571 |
| | | | Approximately 2.4 miles downstream of State Route 49. | None | *572 |
| Maps available for inspection at the Mecklenburg County Engineering and Building Standards, 700 North Tryon Street, Charlotte, North Carolina. | | | | | |
| Send comments to Mr. H. Parks Helms, Chairman of the Mecklenburg Board of County Commissioners, 600 East Fourth Street, Charlotte, North Carolina 28202–2835. | | | | | |
| North Carolina | Transylvania County (Unincorporated Areas). | Lake Toxaway | Entire shoreline within community | None | *3,012 |
| | | Cardinal Lake | Entire shoreline within community | None | *3,044 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Transylvania County Community Services Building, 203 East Morgan Street, Brevard, North Carolina. | | | | | |
| Send comments to Mr. Robert Masengill, Chairman of the Transylvania County Board of Commissioners, 28 East Main Street, Brevard, North Carolina 28712. | | | | | |
| North Carolina ..... | Whiteville (City) Columbus County. | Soules Swamp ..... | Approximately 0.6 mile south of intersection of Canal Street and Mill Street. | None | *53 |
| | | | Approximately 0.3 mile south of the intersection of State Roads 1437 and 1439. | None | *53 |
| Maps available for inspection at the Whiteville City Hall, 317 South Madison, Whiteville, North Carolina. | | | | | |
| Send comments to The Honorable Horace Whitley, Mayor of the City of Whiteville, P.O. Box 607, Whiteville, North Carolina 28472. | | | | | |
| Ohio ..... | Champaign County (Unincorporated Areas). | Anderson Creek ..... | At confluence with Mad River ..... | None | *978 |
| | | | Approximately 3,050 feet upstream of Stickley Road. | None | *1,013 |
| | | Mad River ..... | At upstream side of County Line Road .... | None | *954 |
| | | | Approximately 1.7 miles upstream of U.S. Route 36. | None | *1,009 |
| | | Moore Run ..... | At upstream side of County Line Road .... | None | *963 |
| | | | Approximately 5,000 feet upstream of Woodburn Road. | None | *1,000 |
| Maps available for inspection at the Champaign County Engineer's Office, 428 Beech Street, Urbana, Ohio. | | | | | |
| Send comments to Mr. Carmen L. Scott, Director of Logan, Union, and Champaign County Regional Planning Commission, P.O. Box 141, East Liberty, Ohio 43319. | | | | | |
| Puerto Rico ..... | Bayamón (Municipality) Bayamón County. | Municipio de Toa Baja ..... | Entire shoreline ..... | ◆1.6 | ◆2.5 |
| | | | | None | ◆1.6 |
| Maps available for inspection at the Bayamón Planning Office, Street 4L20, Santa Monica, Bayamón, Puerto Rico. | | | | | |
| Send comments to Ms. Matilde Lopez, Director of the Municipality of Bayamón Planning Office, Street 4L20, Santa Monica, Bayamón, Puerto Rico 00957. | | | | | |
| Puerto Rico ..... | Lajas Valley ..... | Atlantic Ocean Municipio de Cabo Rojo. | Entire shoreline ..... | ◆1.6 | ◆2.8 |
| | | | | ◆1.6 | ◆1.5 |
| | | Municipio de Guanica ..... | Entire shoreline ..... | ◆2.2 | ◆3.2 |
| | | | | ◆2.0 | ◆2.4 |
| | | Municipio de Lajas ..... | Entire shoreline ..... | ◆2.5 | ◆3.8 |
| | | | | ◆2.5 | ◆2.0 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Lower Rio Grande de Arecibo Basin. | Municipio de Hatillo ..... | Entire shoreline ..... | ◆1.6 | ◆2.4 |
| | | | | None | ◆1.8 |
| | | Municipio de Arecibo ..... | Entire shoreline ..... | ◆1.6 | ◆2.4 |
| | | | | ◆None | ◆2.1 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Quebrada del Agua | ..... | Approximately 0.75 kilometers upstream of confluence with Caribbean Sea. | None | ◆2.4 |
| | | | Approximately 3.45 kilometers upstream of confluence with Caribbean Sea. | None | ◆19.6 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Anton Ruíz ..... | Atlantic Ocean: Municipio de Humacao. | Entire shoreline ..... | ◆2.9 | ◆3.3 |
| | | | | ◆2.9 | ◆2.7 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Blanco Basin ... | Atlantic Ocean: Municipio de Humacao. | Entire shoreline ..... | ◆2.9<br>◆2.5 | ◆3.3<br>◆2.3 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Camuy Basin ... | Municipio de Quebradillas | Entire shoreline ..... | ◆1.6<br>None | ◆2.4<br>◆2.0 |
| | | Municipio de Camuy ..... | Entire shoreline ..... | ◆1.6<br>◆1.6 | ◆2.4<br>◆1.5 |
| | | Municipio de Hatillo ..... | Entire shoreline ..... | ◆1.6<br>◆1.6 | ◆2.4<br>◆1.8 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Canos ..... | ..... | At confluence with Río Matilde ..... | None | ◆11.7 |
| | | | Approximately 0.4 kilometers upstream of Las Delicias bridge. | None | ◆38.3 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Canos ..... | Caribbean Sea: Municipio de Juana Diaz. | Entire shoreline ..... | ◆2.0<br>1.8 | ◆3.3<br>◆2.3 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Cibulo Basin .... | Municipio de Vega Baja ... | Entire shoreline ..... | ◆1.6<br>None | ◆2.4<br>◆2.2 |
| | | | Laguna Turtuguero ..... | None | ◆1.5 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Coamo ..... | Caribbean Sea: Municipio de Santa Isabel. | Entire shoreline ..... | ◆2.3<br>◆2.0 | ◆3.9<br>◆2.3 |
| | | Municipio de Juana Diaz .. | Entire shoreline ..... | ◆2.0<br>◆1.8 | ◆3.3<br>◆2.3 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Culebrinos Basin. | Atlantic Ocean: Municipio de Rincon. | Entire shoreline ..... | ◆1.6<br>◆1.6 | ◆2.5<br>◆2.0 |
| | | Municipio de Aguada ..... | Entire shoreline ..... | ◆1.6<br>◆1.6 | ◆2.3<br>◆1.8 |
| | | Municipio de Aguadilla ..... | Entire shoreline ..... | ◆1.6<br>◆1.6 | ◆2.3<br>◆1.5 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
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| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Daguao Basin | Atlantic Ocean: Municipio de Ceiba. | Entire shoreline ..... | ◆2.9<br>◆2.9 | ◆3.6<br>◆2.2 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Espiritu Santo Basin. | Atlantic Ocean: Municipio de Loiza.<br>Municipio de Rio Grande | Entire shoreline .....<br>Entire shoreline ..... | ◆1.6<br>◆1.6<br>◆2.3<br>◆2.3 | ◆2.6<br>◆2.1<br>◆2.6<br>◆2.1 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Fajardo Basin .. | Atlantic Ocean: Isla de Culebra.<br>Municipio de Luquillo .....<br>Muncipio Fajardo ..... | Entire shoreline .....<br>Entire shoreline ..... | None<br>None<br>None<br>◆3.1<br>◆2.8<br>◆3.1<br>◆2.9 | ◆4.3<br>◆2.1<br>◆2.1<br>◆2.7<br>◆1.8<br>◆3.4<br>◆1.8 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Grande de Anasco Basin. | Atlantic Ocean: Municipio de Anasco. | Entire shoreline ..... | ◆1.6<br>◆1.6 | ◆2.6<br>◆2.0 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Grande de Guayanes. | Caribbean Sea: Municipio de Yabucoa. | Entire shoreline ..... | ◆2.3<br>◆2.5 | ◆1.0<br>◆3.0 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Grande de Loiza Basin. | Atlantic Ocean: Municipio de Carolina.<br>Municipio de Loiza ..... | Entire shoreline .....<br>Entire shoreline ..... | ◆1.6<br>◆1.6 | ◆2.4<br>◆2.7 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Grande de Manati Basin. | Atlantic Ocean: Municipio de Barceloneta.<br>Municipio de Manati ..... | Entire shoreline .....<br>Entire shoreline ..... | ◆1.6<br>◆1.6<br>◆1.6 | ◆2.4<br>◆2.4<br>◆1.5 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rios Grande de Patillas and Guamani. | Caribbean Sea: Municipo de Patillas. | Entire shoreline ..... | ◆1.8<br>◆1.8 | ◆3.4<br>◆2.4 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | Municipio de Arroyo ..... | Entire shoreline ..... | ◆1.9 | ◆3.4 |
| | | | | ◆1.8 | ◆2.2 |
| | | Municipio de Guayama .... | Entire shoreline ..... | ◆2.2 | ◆3.5 |
| | | | | ◆1.9 | ◆2.4 |
| | | Municipio de Salinas ..... | Entire shoreline ..... | ◆2.3 | ◆2.2 |
| | | | | ◆2.2 | ◆2.7 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Grande de Plata Basin. | Atlantic Ocean: Municipio de Dorado. | Entire shoreline ..... | ◆1.6 | ◆2.4 |
| | | | | ◆1.6 | ◆1.8 |
| | | Municipio de Vega Alta .... | Entire shoreline ..... | ◆1.6 | ◆2.4 |
| | | | | None | ◆2.2 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Guajataca Basin. | Municipio de Isabel ..... | Entire shoreline ..... | None | ◆2.3 |
| | | | | None | ◆1.5 |
| | | Municipio de Quebradillas | Entire shoreline ..... | None | ◆2.3 |
| | | | | None | ◆1.5 |
| | | Municipio de Aguadilla ..... | Entire shoreline ..... | ◆1.6 | ◆2.3 |
| | | | | ◆1.6 | ◆1.5 |
| | | | | None | ◆2.3 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Guanajibo ..... | Atlantic Ocean: Municipio de Cabo Rojo. | Entire shoreline ..... | ◆1.6 | ◆3.0 |
| | | | | ◆1.6 | ◆1.8 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rios Guayarilla and Tallaboa. | Caribbean Sea: Municipio de Peñuelas. | Entire shoreline ..... | ◆1.8 | ◆3.4 |
| | | | | ◆1.8 | ◆2.4 |
| | | Municipio de Guayarilla .... | Entire shoreline ..... | ◆1.8 | ◆3.5 |
| | | | | ◆1.8 | ◆2.2 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Humacao ..... | Atlantic Ocean: Isla de Vieques. | Entire shoreline ..... | None | ◆3.7 |
| | | | | None | ◆2.4 |
| | | Municipio de Humacao ..... | Entire shoreline ..... | ◆2.7 | ◆3.3 |
| | | | | ◆2.5 | ◆2.3 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Majada ..... | Caribbean Sea: Municipio de Santa Isabel. | Entire shoreline ..... | ◆2.3 | ◆3.9 |
| | | | | ◆2.0 | ◆2.3 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico ..... | Rio Mameyes Basin | Atlantic Ocean: Municipio de Rio Grande. | Entire shoreline ..... | ◆4.3 | ◆2.7 |
| | | | | ◆3.1 | ◆2.0 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico | Río Manaubo | Caribbean Sea: Municipio de Maunabo. | Entire shoreline | ◆2.3 | ◆3.2 |
| | | Municipio de Patillas | Entire shoreline | ◆2.3 | ◆3.3 |
| | | | | None | ◆2.2 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico | Río Matilde | | Approximately 0.18 kilometers upstream of confluence with Caribbean Sea. | None | ◆2.4 |
| | | | At confluence of Río Pastillo and Río Canas. | None | ◆11.7 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico | Ríos Matilde, Pastillo, Portugues, Canos, Bucana. | Caribbean Sea: De La Ciudad de Ponce. | Entire shoreline west of Río Portugues | None | ◆3.4 |
| | | | | None | ◆2.2 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico | Río Pastillo | | At confluence with Río Matilde | None | ◆11.7 |
| | | | Approximately 0.13 kilometers upstream of Puerto Rico Route 132 bridge. | None | ◆42.7 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico | Río Piedras Basin | Atlantic Ocean and Bahia de San Juan: Municipio de San Juan. | Entire shoreline | ◆1.6 | ◆2.7 |
| | | | | None | ◆2.1 |
| | | Atlantic Ocean: Municipio de Carolina. | Entire shoreline | ◆1.6 | ◆2.4 |
| | | Municipio de Guaynabo | Entire shoreline | ◆1.6 | ◆2.7 |
| | | | | ◆1.6 | ◆1.8 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico | Río Yaquez Basin | Atlantic Ocean: Municipio de Mayagüez. | Entire shoreline | ◆1.6 | ◆3.0 |
| | | | | ◆1.6 | ◆1.8 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| Puerto Rico | Yauca | Caribbean Sea: Municipio de Yauca. | Entire shoreline | ◆2.0 | ◆3.2 |
| | | | | ◆2.0 | ◆2.4 |
| Maps available for inspection at the Puerto Rico Planning Board, Minillas Governmental Center, 12th Floor, North Building, De Diego Avenue, San Juan, Puerto Rico. | | | | | |
| Send comments to Mr. José R. Caballero Mercado, Vice President of the Puerto Rico Planning Board, P.O. Box 41119, Santurce, Puerto Rico 00940. | | | | | |
| South Carolina | Mullins (City), Marion County. | Unnamed Tributary to White Oak Creek. | At confluence of White Oak Creek | None | *85 |
| | | | At downstream side of Yarboro Street | None | *94 |

| State | City/town/county | Source of flooding | Location | # Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Mullins City Hall, 151 Northeast Front Street, Mullins, South Carolina. Send comments to Mr. J. C. Richardson, Mullins City Administrator, P.O. Box 408, Mullins, South Carolina 29574. | | | | | |
| Virginia | Rappahannock County (Unincorporated Areas). | Thornton River | At State Route 620 | None | *593 |
| | | | Approximately 1.7 miles upstream of State Route 667. | None | *960 |
| | | North Fork Thornton River | At confluence with Thornton River | None | *635 |
| | | | Approximately 1,500 feet upstream of State Route 600. | None | *755 |
| Maps available for inspection at the Rappahannock County Administration and Zoning Office, 290 Gay Street, Washington, Virginia. Send comments to Mr. John McCarthy, Rappahannock County Administrator, P.O. Box 519, Washington, Virginia 22747. | | | | | |
| Wisconsin | Oconto County (Unincorporated Areas). | Pensaukee River | At U.S. Route 41 | None | *596 |
| | | | Approximately 0.96 mile downstream of confluence of Spring Creek. | None | *635 |
| | | Brookside Creek | At the confluence with Pensaukee River | *606 | *607 |
| | | | Approximately 750 feet downstream of Moody Road. | *606 | *607 |
| Maps available for inspection at the Oconto County Land and Water Resources-Zoning Division, 301 Washington Street, Oconto, Wisconsin. Send comments to Mr. Kevin Hamann, Oconto County Administrative Coordinator, Oconto County Courthouse, 301 Washington Street, Oconto, Wisconsin 54153. | | | | | |
| Wisconsin | Westfield (Village), Marquette County. | Westfield Creek | Approximately 400 feet downstream of U.S. Route 51. | *839 | *840 |
| | | | Approximately 75 feet downstream of Spring Street Branch/Dam. | *841 | *843 |
| Maps available for inspection at the Westfield Village Hall, 124 East Third Street, Westfield, Wisconsin. Send comments to Ms. Frances L. Demke, President of the Village of Westfield, 124 East Third Street, Westfield, Wisconsin 53964. | | | | | |

◆ Elevation in meters, Mean Sea Level.

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

Dated: October 9, 1997.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 97–27708 Filed 10–17–97; 8:45 am]

**BILLING CODE 6718–04–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 971015246–7246–01; I.D. 100897D]**

**RIN 0648–AK44**

## Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries

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

**ACTION:** Proposed specifications for the 1998 summer flounder, scup, and black sea bass fisheries; request for comments.

**SUMMARY:** NMFS proposes specifications for 1998 for summer flounder, scup, and black sea bass. The implementing regulations for these fisheries require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for public comment. The intent of these measures is to reduce fishing effort on summer flounder, scup, and black sea bass and to continue rebuilding stock abundance of these species.

**DATES:** Public comments must be received on or before November 17, 1997.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment (EA), Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (IRFA) are available from: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

Comments on the proposed specifications should be sent to: Andrew A. Rosenberg, Ph.D., Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments—1998 Summer Flounder, Scup, and Black Sea Bass Specifications.''

**FOR FURTHER INFORMATION CONTACT:** Regina L. Spallone, Fishery Policy Analyst, (978) 281–9221.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations implementing the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) outline the process for specifying annually the allowed catch limits for both commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes) for these fisheries. These measures are specified to attain annual targets (either a fishing mortality rate or an exploitation rate) specified for each species in the FMP.

A Monitoring Committee for each species, with members from NMFS, the Atlantic States Marine Fisheries Commission (Commission), and both the Mid-Atlantic Fishery Management Council (Council) and New England Fishery Management Council, are required to conduct a review of available information and to recommend catch specifications and other management measures necessary

to achieve the target fishing mortality (F) or exploitation rate for each fishery, as specified in the FMP. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committee recommendations and any public comment in making their recommendations. The Council and Board made their annual recommendations at a joint meeting held September 23–25, 1997.

**Summer Flounder**

The target F specified in the FMP for 1998 is 0.24, the level of fishing that produces maximum yield per recruit, $F_{max}$. Summer flounder was most recently assessed at SAW–25 (August 1997). SAW–25 indicates that the FMP measures have not yet reduced F below 1.0 and recommended that, in light of the FMP target, total allowable landings (TAL) should be no more than 13.889 million lb (6.30 million kg) (a commercial quota of 8.333 million lb (3.80 million kg), and a recreational harvest limit of 5.556 million lb (2.52 million kg)). In addition, SAW–25 recommended that additional measures should be considered to minimize commercial and recreational discard mortality. The Council's staff and Monitoring Committee both recommended adopting the SAW recommendation (13.889 million lb; 6.30 million kg) for 1998. This level represents a 25-percent reduction from the initial 1997 TAL of 18.518 million lb (8.40 million kg), but a 12-percent reduction from the actual 1997 allowed harvest of 15.8 million lb (7.17 million kg) after deduction of commercial overages in 1996.

The Council and Board reviewed the Committee's recommendation and voted instead to recommend a 1998 TAL equal to the 1997 level (18.518 million lb (8.40 million kg): 11.11 million lb (5.04 million kg) commercial quota; 7.4 million lb (3.36 million kg) recreational harvest limit). SAW–25 estimated that this proposed TAL has a 50-percent probability of resulting in F = 0.34.

The Council and Board also took action to address the SAW–25 concerns about discards by specifying that 15 percent of the commercial quota will be set aside by the states for a bycatch fishery. Since the FMP does not specifically include a provision for such an allocation, the measure must be enacted by the states. Therefore, the Board adopted motions to make it mandatory for the states to implement the bycatch set aside, and to implement trip limits with the objective of keeping the fishery open all year; these measures will be Commission compliance criteria. The Council and Board also voted to retain the existing commercial minimum fish size (14 inches (35.6 cm)) and to continue the Small Mesh Exemption program.

NMFS believes that the bycatch allocation is a serious attempt to address discards, and is, in effect, a 15-percent reduction in the commercial quota allocated to the directed fishery. The bycatch quota allocation will extend the season and will reduce waste in the fishery.

The Council submission notes several factors that it believes will increase the probability that a 1998 TAL equal to the 1997 level has a reasonable likelihood of attaining $F_{max}$: (1) A new retrospective pattern in the assessment that shows for terminal year 1994, the stock size was underestimated, and for 1994 and 1995 the fishing mortality was overestimated; (2) the quota overages in 1997 will result in reductions to the allowed commercial landings in 1998; (3) the reductions in mortality anticipated from measures to reduce discard in the commercial fishery (and planned future hook specifications to reduce discard in the recreational fishery); and (4) the fact that the SAW–25 projections are very dependent upon the recruitment estimate for 1996, which may be underestimated.

NMFS agrees that the first three of these factors are valid points to support the Council recommendation. SAW–25 notes that the retrospective pattern for 1994–95 alters the pattern noted in the last assessment. SAW–25 concluded that the reversal in terminal year F estimates may be due to improved accuracy of catch estimates in 1995 and 1996, more accurate indices of stock size due to revised aging, and improved monitoring and estimation of discards. There is no reason to expect that these factors will change and, in fact, NMFS agrees that there have been substantive improvements in quota monitoring and prevention of quota overages over the past year. Therefore, this pattern is likely to hold for 1996 estimates. A greater stock size in 1996 would increase the projected stock size in 1998, which means more fish being available for harvest at a given F. This, in turn, increases the probability that the proposed TAL of 18.518 million lb (8.4 million kg) would achieve $F_{max}$ in 1998.

Based on landings to date, the Council estimates that there will be a quota overage in 1997 of 166,935 lb (75,720 kg), or 1.05 percent, if there is no further late reporting during 1997 and all states are closed with no additional overages. The Council believes that the reduction in the final 1998 TAL due to overages, will also contribute to increasing the probability in achieving $F_{max}$.

The Council believes that the 15 percent quota set-aside for bycatch fisheries will reduce discards of sublegal fish as well as reduce regulatory discards as the result of landing limits in the states. A decrease in the amount of discards would increase the likelihood that the target F would be achieved in 1998, i.e, summer flounder that had been discarded dead would now be landed and apply to the quota reducing the amount of fish killed by commercial fishers. Projected discard levels for 1998 are 1.76 million lb (0.80 million kg) in the commercial and recreational fisheries. In addition, states would be required to implement programs to collect additional data on discards in the commercial fishery. The Commission voted to make these two requirements mandatory compliance measures for the states. As such, the states are required to submit plans to meet these requirements so that the plans are approved before the beginning of the 1998 commercial fishery.

In addition, the Council anticipates that Amendment 10 will be approved, the measure requiring the minimum mesh size throughout the net will be implemented mid-year and reductions in F on sublegal fish will result. The Council also intends to advocate for a recreational hook specification that will reduce recreational discard and discard mortality. Among other comments concerning discards, SAW–25 recommended that there should be additional measures to reduce discard mortality. The measures noted above are efforts to address these comments. These measures also will improve the probability of attaining $F_{max}$.

NMFS does not rely strongly on the Council's feeling that recruitment for 1996 is underestimated. Raising this as a factor in supporting the TAL does not comply with NMFS policy, which is to be cautious in the face of uncertainty. The Council explains its rationale in its EA. However, there is little information at this time to confirm that recruitment for 1996 is underestimated. At the September 1997 Council meeting, some state representatives indicated preliminary results from young-of-the-year surveys might indicate better than average recruitment. The surveys, for the most part, were still underway. Consequently, the results are inconclusive. The commercial quotas by state for 1998 are presented in Table 1.

TABLE 1.—1998 STATE COMMERCIAL QUOTAS (PROPOSED)

| State | Share (percent) | 1998 quota (percent) | 1998 quota (kg)* |
|---|---|---|---|
| ME | 0.04756 | 5,284 | 2,397 |
| NH | 0.00046 | 51 | 23 |
| MA | 6.82046 | 757,841 | 343,751 |
| RI | 15.68298 | 1,742,583 | 790,422 |
| CT | 2.25708 | 250,791 | 113,757 |
| NY | 7.64699 | 849,680 | 385,408 |
| NJ | 16.72499 | 1,858,363 | 842,939 |
| DE | 0.01779 | 1,977 | 897 |
| MD | 2.03910 | 226,570 | 102,770 |
| VA | 21.31676 | 2,368,569 | 1,074,365 |
| NC | 27.44584 | 3,049,589 | 1,383,270 |
| Total | ..... | 11,111,298 | 5,039,999 |

*Any differences expressed in the conversion of pounds to kilograms are due to rounding.

**Scup**

The target exploitation rate for scup in 1998 is 47 percent, the rate associated with F = 0.72. The FMP establishes a total allowable catch (TAC) that is allocated to commercial (78 percent) and recreational (22 percent) sectors. Discard estimates are deducted from both TACs to establish TAL for both sectors.

Scup was most recently assessed in SAW–25 (1997). The assessment indicates that F has been above 1.0 for the period 1984–96. SAW–25 examined 1996 total catch and estimated that a 34-percent reduction from that exploitation level would result in a TAC of 7.275 million lb (3.30 million kg), which would likely reduce F below 1.0. The staff recommended establishing the TAC at that level. The Monitoring Committee recommended that the Council should set the TAC no higher than that level and should also consider a further reduction.

The Council and Board adopted the recommendation for a TAC of 7.275 million lb (3.30 million kg). The resulting commercial TAC is 5.675 million lb (2.57 million kg). Both groups debated two ways to calculate the commercial discard estimate: Employing the same discard estimate used in the 1997 specifications (1.103 million lb; 0.50 million kg), or using an amount based on the ratio of 1996 estimated landings to discards (2.048 million lb; 0.93 million kg). In making its recommendations last year, the Council and Board reviewed discard estimates based on fishery data and reduced those estimates to reflect anticipated reductions in discards associated with the implementation of the minimum mesh and minimum fish restrictions under emergency regulation in March 27, 1996 (61 FR 13452).

The Council and Board decided to also use the 1997 discard estimate for the 1998 specifications. They chose not to use the estimate based on 1996 data because it reflects discards that occurred in the first quarter of the year, prior to the emergency measures. The deduction of the resulting discard allowance of 1.103 million lb (0.50 million kg) from the commercial TAC of 5.675 million lb (2.57 million kg) results in a 1998 proposed commercial quota of 4.572 million lb (2.07 million kg). This quota represents a 24-percent reduction from the 1997 commercial quota of 6.0 million lb (2.72 million kg).

The Council and Board adopted a 20,000-lb (9,072-kg) trip limit in the Winter I period, which is to decrease to 1,000 lb (454 kg) when 85 percent of the Winter I quota is harvested, and an 8,000-lb (3,629-kg) trip limit throughout the Winter II period. They retained the 4.5-inch (2.0-cm) codend, the threshold limits to trigger the minimum mesh size, and the minimum fish size. They also maintained for 1998 the same ratio of recreational landings to discards as in 1997. The resulting recreational harvest limit is 1.553 million lb (0.70 million kg) —a TAC of 1.6 million lb (0.73 million kg) minus a discard estimate of 0.048 million lb (0.02 million kg). The quota allocated to the periods is shown in Table 2.

TABLE 2.—PERIOD ALLOCATIONS OF COMMERCIAL SCUP QUOTA

| Period | Percent | TAC [1] | 2Discards [2] | Quota Allocation | |
|---|---|---|---|---|---|
| | | | | (LB) | (KG) [3] |
| Winter I | 45.11 | 2,559,992 | 497,563 | 2,062,429 | 935,502 |
| Summer | 38.95 | 2,210,413 | 429,619 | 1,780,794 | 807,755 |
| Winter II | 15.94 | 904,595 | 175,818 | 728,777 | 330,568 |
| Total | 100.00 | 5,675,000 | 1,103,000 | 4,572,000 | 2,073,824 |

[1] Total Allowable Catch, in pounds.
[2] Discard estimates, in pounds.
[3] Kilograms are as converted from pounds.

The 1998 commercial quota for the summer period (1,780,794 lb; 807,755 kg) apportioned among the states according to the percentage shares specified in § 648.120(d)(3) is presented in Table 3.

TABLE 3.—SUMMER PERIOD (MAY-OCTOBER) COMMERCIAL SCUP QUOTA SHARES

| State | Share (percent) | 1998 Allocation | |
|---|---|---|---|
| | | (LB) | (KG) [1] |
| Maine | 0.13042 | 2,322 | 1,053 |
| New Hampshire | 0.00004 | 1 | 0 |
| Massachusetts | 15.49117 | 275,866 | 125,131 |
| Rhode Island | 60.56588 | 1,078,554 | 489,224 |
| Connecticut | 3.39884 | 60,526 | 27,454 |
| New York | 17.05295 | 303,678 | 137,746 |
| New Jersey | 3.14307 | 55,972 | 25,388 |
| Delaware | 0.00000 | 0 | 0 |
| Maryland | 0.01288 | 229 | 104 |
| Virginia | 0.17787 | 3,167 | 1,437 |
| North Carolina | 0.02688 | 479 | 217 |
| Total | 100.00000 | 1,780,794 | 807,755 |

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

**Black Sea Bass**

The FMP specifies a target exploitation rate of 48 percent for 1998, equivalent to F = 0.73. This target is to be attained through specification of a TAL level that is allocated to the commercial (49 percent) and recreational (51 percent) sectors; 1998 is the first year that a TAL has been specified. The commercial quota is specified on a coastwide basis by quarter.

Black sea bass was also assessed at SAW–25, which estimated that F has generally exceeded 1.0 for the period 1984–96. SAW–25 examined 1996 total catch and estimated that a 33-percent reduction in landings from the 1996 level (9 million lb; 4.08 million kg) would be necessary to reduce F below 1.0. The staff recommended adopting the TAL associated with the 33-percent reduction, 6.173 million lb (2.80 million kg), for 1998. The Monitoring Committee recommended that the TAL should be no higher than the staff recommendation, but that the Council should consider a lower TAL because it would be more likely to achieve the target exploitation rate.

The Council and Commission adopted the recommendation for a TAL of 6.173 million lb (2.80 million kg) for 1998. This TAL results in a commercial quota of 3.025 million lb (1.37 million kg) and a recreational harvest limit of 3.148 million lb (1.43 million kg). The following trip limits were recommended for all commercial gear types: 11,000 lb (4,990 kg) in Quarter 1 (Q1), 7,000 lb (3,175 kg) in Q2, 3,000 lb (1,361 kg) in Q3, and 4,000 lb (1,814 kg) in Q4. The Council and Board also recommended an increase in the minimum fish size to 10 inches (25.4 cm), consistent with measures being implemented by the Commission and proposed by the South Atlantic Fishery Management Council. Additionally, the Council proposes to increase the possession limit threshold that would trigger minimum mesh size requirements from 100 lb (45.4 kg) to 1,000 lb (453.6 kg).

The Council submission demonstrates that these proposed measures are likely to attain the FMP target. Although the stock size is uncertain and a 1998 stock size was not projected, exploratory results indicate that stock size is stable or has increased in recent years. If that is the case, a 33-percent reduction in landings from the 1996 level should achieve the target exploitation rate. The TAL will control mortality on fully recruited, older fish. The minimum size and gear regulations will reduce discard and escape mortality of undersized black sea bass.

TABLE 4.—1998 BLACK SEA BASS PROPOSED QUARTERLY COASTWIDE QUOTAS AND QUARTERLY TRIP LIMITS

| Quarter | Percent (%) | Pounds | (kg)[1] | Trip limits | |
|---|---|---|---|---|---|
| | | | | (lbs) | (kg) |
| 1 (Jan–Mar) | 38.64 | 2,385,247 | 1,081,930 | 11,000 | 4,990 |
| 2 (Apr–May) | 29.26 | 1,806,220 | 819,288 | 7,000 | 3,175 |
| 3 (Jul–Sep) | 12.33 | 761,131 | 345,243 | 3,000 | 1,361 |
| 4 (Oct–Dec) | 19.77 | 1,220,402 | 553,565 | 4,000 | 1,814 |

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

NMFS requests public comments on all of the proposed specification measures. NMFS also requests, in particular, comments concerning the utility of the proposed black sea bass trip limits. The Council and Board examined data that demonstrated that the recommended trip limits impact only 5 percent of the trips in this fishery. NMFS questions whether the effectiveness of these trip limits justifies the expenses of enforcement.

**Classification**

This action is authorized by 50 CFR part 648 and complies with the National Environmental Policy Act.

These proposed specifications have 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 this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As explained below, this certification is based on an assessment of this action under NMFS' long-standing Regulatory Flexibility Act guidelines. However, while not required to do so, given that understanding the economic impact of this rule is important, NMFS prepared an IRFA that describes the impact this

proposed rule, if adopted, would have on small entities.

According to unpublished NMFS weighout data (Maine to Virginia, CT not included) 715 commercial vessels landed summer flounder, 548 landed scup, and 665 landed black sea bass in 1996. In Connecticut, in 1996, 65 commercial vessels landed summer flounder, 81 landed scup, and 52 landed black sea bass (Mark Alexander pers. comm.). NMFS permit files indicate that, as of October 01, 1997, there were 519, 380, and 243 party/charter firms holding current summer flounder, scup, and black sea bass recreational permits, respectively. Most firms are likely to hold permits for more than one of these species, and a more accurate estimate of the total number of commercial vessels impacted is 1,022, the number of vessels that landed one or more of these species in 1996. All these vessels readily fall within the definition of small business, so according to guidelines on regulatory analysis of fishery management actions, a substantial number of small entities are affected to some extent by this action. Of these 1,022 vessels, 140 (13%) would be estimated to have a greater than a 5 percent revenue loss.

NMFS Regulatory Flexibility Act guidelines establish 20 percent of small entities being impacted in a significant manner by a particular regulatory action as constituting a substantial number of small entities. This action does not meet that threshold.

These three fisheries have been under management for several years, and while existing requirements are modified by this action, there are no new compliance requirements. Therefore, the action does not result in an increase in compliance costs of > 10 percent for 20 percent or more of the participants. Since the most severe cumulative impact projected for this action is a 30–35 percent reduction in revenue for 7 vessels (<1 percent of participants), the action would not result in 2 percent of the entities ceasing operations.

The IRFA indicates that, while small entities may be impacted by this action in a significant manner, the proposed regulatory action will not result in significant economic impacts upon a substantial number of such entities. However, we recognize that the number of small entities that would be significantly impacted is a large, though not substantial, number. This fact led the agency to prepare an IRFA though none was required.

These measures are proposed in order to attain the rebuilding objectives specified in the FMP for summer flounder, scup and black sea bass. The negative economic impacts upon small entities in the immediate future will be offset by the future increases in harvest and associated revenues anticipated from eliminating overfishing and rebuilding a healthy stock.

The Council considered several alternatives to each of these proposed measures. These alternatives to the proposed rule were ultimately rejected by the Council since those measures which significantly miminized economic impact on small entities did not accomplish the rebuilding objectives of the FMP for each species, and those that did accomplish those objectives did not minimize impacts on small entities. The Council adopted the measures proposed here as those measures which achieved a balance for both. A copy of this analysis is available from NMFS (see **ADDRESSES**).

### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 16, 1997.

**David L. Evans,**

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraph (u)(1) is revised to read as follows:

**§ 648.14 Prohibitions.**

* * * * *

(u) * * *

(1) Possess 1,000 lb (453.6 kg) or more of black sea bass, unless the vessel meets the minimum mesh requirement specified in § 648.144(a).

* * * * *

3. In § 648.143, the first sentence of paragraph (a) is revised to read as follows:

**§ 648.143 Minimum sizes.**

(a) The minimum size for black sea bass is 10 inches (25.4 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) which fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3′ N. lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border.

* * *

* * * * *

4. In § 648.144, paragraph (a)(1)(i) is revised to read as follows:

**§ 648.144 Gear restrictions.**

(a) * * *

(1) * * * (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 1,000 lb or more (453.6 kg or more) of black sea bass per trip, must fish with nets that have a minimum mesh size of 4.0-inches (10.2-cm) diamond or 3.5-inches (8.9-cm) square (inside measure) mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the center of the head rope, excluding any turtle excluder device extension.

* * * * *

[FR Doc. 97–27821 Filed 10–16–97; 1:12 pm]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 62, No. 202
Monday, October 20, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Commonality of the Chemistries Involved in Moisture, Biological, Ultraviolet, and Thermal Degradations of Wood; Notice of Intent To Enter Into Cooperative Research and Development Agreements

#### Program Description—Purpose

The USDA, Forest Service, Forest Products Laboratory (FPL) is seeking industrial partners to enter into Cooperative Research and Development Agreements (CRADAs) dedicated to understanding the commonality of the chemistries involved in moisture, biological, ultraviolet, and thermal degradations of wood, and developing basic approaches to protecting wood from degradation without loss of other basic properties, under the authority of the Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a).

An industrial partner may be a Federal Agency, university, private business, nonprofit organization, research or engineering entity, or combination of the above.

A summary of the current status of preventing wood degradation is as follows:

(a) Wood is a three-dimensional, polymeric composite made up primarily of cellulose, hemicelluloses, and lignin. These polymers, along with extractives and inorganics, and the matrix they are in, make up the cell wall and are responsible for the characteristics, properties and performance of wood.

When considering wood as a long term engineering material it must be remembered that wood is a hygroscopic resource that was designed to perform, in nature, in a wet environment and that nature is programmed to recycle wood in a timely way through biological, thermal, aqueous, photochemical, chemical, and mechanical degradations.

There are four basic chemical reactions involved in all the degradation reactions of wood: oxidation, hydrolysis, reduction, and dehydration. Because of the similarities in degradation chemistry, all these degradation reactions will be studied together.

Cell wall polymers and responsible for the properties of wood. Wood changes dimension with changing moisture content because the cell wall polymers contain hydroxyl and other oxygen-containing groups that attract moisture through hydrogen bonding. The hemicelluloses are mainly responsible for moisture sorption, but the accessible cellulose, noncrystalline cellulose, lignin, and surface of crystalline cellulose also play minor parts to major roles. Moisture swells the cell wall and the wood expands until the cell wall is saturated with water (fiber saturation point (FSP)). Beyond this saturation point, moisture exists as free water in the void structure and does not contribute to further expansion. The process is reversible and the wood shrinks as it loses moisture below the FSP.

Wood exposed to moisture frequently is not at equilibrium and has wet areas and drier areas. This exacerbates the moisture problem resulting in differential swelling followed by cracking and/or compression set. Over the long term, wood undergoes cyclic swelling and shrinking as moisture levels change resulting in more severe moisture effects than those encountered under steady moisture conditions.

Wood is degraded biologically because organisms recognize the carbohydrate polymers (mainly the hemicelluloses) in the cell wall and have both specific and non-specific chemical and specific enzyme systems capable of hydrolyzing these polymers into digestible units. Biodegradation of both the matrix and the high molecular weight cellulose weakens the fiber cell wall. Strength is lost as the matrix and cellulose polymer undergo degradation through oxidation, hydrolysis, and dehydration reactions. As degradation continues, removal of cell wall content results in weight loss.

Wood exposed outdoors undergoes photochemical degradation caused by ultraviolet radiation. This degradation takes place primarily in the lignin component, which is responsible for the characteristic color changes. The surface becomes richer in cellulose content as the lignin degrades. In comparison to lignin, cellulose is much less susceptible to ultraviolet radiation degradation. After the lignin has been degraded, the poorly bonded carbohydrate-rich fibers erode easily from the surface, which exposes new lignin to further degradative reactions. In time, the ''weathering'' process causes the surface of the composite to become rough and can account for a significant loss in surface fibers.

Wood burns because the cell wall polymers undergo pyrolysis reactions with increasing temperature to give off volatile, flammable gasses. The hemicelluloses and cellulose polymers are degraded by heat much before the lignin. The lignin and carbohydrate components contribute to char formation, and the charred layer helps insulate the composite from further thermal degradation.

The idea of protecting wood in adverse environments dates back to early human history. Perhaps the earliest reference is in the Old Testament (Genesis 6:14) when God instructed Noah to build an ark of gopher wood (a naturally durable and hard wood) and cover it inside and outside with pitch (for both water repellency and decay protection).

Ancient civilization in Burma, China, Greece, and Italy used various animal, vegetable and mineral oils, tars, pitches or charring to preserve wood. Sometime during the second half of the eighteenth century, the science of wood preservation started with a search for toxic chemicals that could be used to treat wood to stop decay. The time line might include: Mercuric chloride first used in 1705, patented in 1832; copper sulfate first introduced in 1767, patented in 1839; zinc chloride first used in 1815; creosote first used in 1836; copper, chromium and arsenic salts introduced in the early 1900's; and pentachlorophenol first introduced in the 1930's. All of these treatments were based on broad spectra toxicity with little concern for environmental implications.

The earliest references to treating wood for fire retardancy dates back to the first century AD when the Romans used alum and vinegar to protect boats against fire. The science of fire retardancy started in the first half of the

nineteenth century. In 1820 Gay-Lussac used ammonium phosphates and borax as fire retardants. Most of the inorganic fire retardants used today were developed between 1800 and 1870.

Protecting wood from moisture damage also dates back into antiquity. Waxes, oils, resins, paints, and coatings have been used to help exclude moisture since shortly after wood was first used by humans.

Protecting wood from damage caused by weathering also dates from the early use of wood. Stains and coatings have been used to cover wood from the degradation caused both by water and ultraviolet radiation.

The process of protecting wood from one type of degradation can cause another type of degradation to take place. For example, in fire retardant formulations involving free phosphoric acid, treated wood has been shown to lose strength. While the wood is very effectively treated for fire retardancy, service life is shortened by the loss in strength. Similarly, wood decking treated with chromated-copper-arsenate (CCA), while having excellent anti-fungal properties, is being replaced after a few years due to cracking and splitting caused by moisture damage.

Since there are only four basic chemistries involved in the degradation mechanisms of wood (hydrolysis, oxidation, dehydration, and reduction), there are many similarities in the degradation pathways regardless of the source of the degradation. Through a better understanding of these common degradation chemistries, it should be possible to protect wood in a more holistic way. That is, controlling one degradation chemistry can lead to the protection of another degradation mechanism. This leads to the idea of combined treatments to control several degradation pathways.

The Forest Products Laboratory is requesting support for this project. The support is in the form of funding in the amount of $15,000.00 per year for the two-year proposed duration of the study.

An informational and organizational meeting of the Consortium will be held beginning November 18, 1997, 1:00 P.M. and ending November 19, 1997, at 12:00 Noon, at the USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

Technical questions may be directed to Roger M. Rowell at the above address, by fax at (608) 231–9262, or by phone at (608) 231–9416.

Questions of a business or legal nature may be directed to John G. Bachhuber at the above address, by fax at (608) 231–9585, or by phone at (608) 231–9282.

A copy of the proposed Cooperative Research and Development Agreement to be executed by consortium members may be obtained by writing Joanne M. Bosch at the above address, by faxing her at (608) 231–9585, or by phoning her at (608) 231–9205.

Done at Madison, WI, on October 10, 1997.

**Thomas E. Hamilton,**

*Director.*

[FR Doc. 97–27649 Filed 10–17–97; 8:45 am]

BILLING CODE 3410–11–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT:** 62 FR 52325.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 10 a.m., Thursday, October 23, 1997.

**CHANGES IN THE DATE:** The Commodity Futures Trading Commission has cancelled the meeting to discuss program objectives.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–27802 Filed 10–16–97; 1:43 pm]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, November 28, 1997.

**PLACE:** 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–27803 Filed 10–16–97; 1:13 pm]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, November 21, 1997.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–27804 Filed 10–16–97; 1:31 pm]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, November 14, 1997.

**PLACE:** 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–27805 Filed 10–16–97; 1:45 pm]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, November 7, 1997.

**PLACE:** 1155 21st St. N.W., Washington, D.C. 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–27806 Filed 10–16–97; 1:36 pm]

BILLING CODE 6351––M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2 p.m., Monday, November 24, 1997.

**PLACE:** 1155 21st St., NW., Washington, DC 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–27807 Filed 10–16–97; 1:18 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Monday, November 17, 1997.

**PLACE:** 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–27808 Filed 10–16–97; 1:22 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Monday, November 3, 1997.

**PLACE:** 1155 21st St. N.W., Washington, D.C. 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–27809 Filed 10–16–97; 1:37 pm]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Monday, November 10, 1997.

**PLACE:** 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 97–27810 Filed 10–16–97; 12:32 pm]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Defense Advanced Research Projects Agency.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Advanced Research Projects Agency (DARPA) announces the proposed review of the Technology Reinvestment Project (TRP) and seeks public comment on the information collection and provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by December 19, 1997.

**ADDRESSES:** Written comment and recommendations on the proposed information collection should be sent to: Mr. John D. Jennings, DARPA/JDUPO, 3803 N. Fairfax Dr., Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Mr. John D. Jennings (DARPA/JDUPO) at 703–526–1930.

*Title; Associated Forms; and OMB Number:* TRP Review Project, No form number.

*Needs and Uses:* The TRP is no longer receiving Federal funding, but new initiatives have begun to broaden and normalize the application of dual-use technologies and products. As part of its support of these initiatives, DARPA is sponsoring this review project to quantitatively express the status and performance of the TRP projects and to document lessons learned. This review will also provide an opportunity to present TRP products and technologies to the Services for adoption. The information collected will be used by DARPA's Joint Dual Use Program Office (JDUPO) and the Office of the Secretary of Defense (OSD) to define and document the status of each TRP project and to derive performance metrics suitable for the Government Performance Results Act (GPRA).

TRP project successes and failures and lessons learned from the TRP will be compiled from the information gathered as well as materials for education and training. Because the TRP projects are nearing completion, this data must be collected now or it will become nearly impossible to track down. If that happens, the opportunity will be lost to assess the benefits of the TRP and to learn lessons that will help to expand dual-use and embed it into the Military Services. It is also a last chance to develop quantitative assessment data for GPRA.

*Affected Public:* Business or other for profit; not-for-profit.

*Annual Burden Hours:* 280.

*Number of Respondents:* 140.

*Responses per Respondent:* 1.

*Average Burden per Response:* 2 hours.

*Frequency:* On occasion, generally only one time.

**SUPPLEMENTARY INFORMATION:** Several steps are being taken to minimize the burden of this data collection on participating businesses. Duplication will be avoided by carefully formulating the questions which must be asked, and by designating a Review Team which will conduct the review consistently, while sharing resulting insights as they emerge. In addition, whenever possible, data collection will be combined with regularly scheduled project review

meetings. While industry will receive the questions early, the data will generally be developed with a Review Team member. Government program managers and agents will be consulted for data prior to interviewing industrial participants in order to further reduce the latter's time expenditure. For example, DARPA personnel in the JDUPO have been consulted as to the availability of material. Their files have been used to minimize further collection. In addition, Service, Department of Transportation (DOT), Department of Energy (DOE), National Science Foundation (NSF), and other agencies involved have been contacted and consulted. Further, this review will be conducted only once (as opposed to yearly) although a follow-up will be made on each unfinished project in order to update the data.

There is no need for respondents to make any capital expenditures to support this effort. The average time required of the respondents is estimated at two hours. (Since most of the questions have already been addressed as part of normal business practices, little preparation is usually needed).

Dated: October 14, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 97–27642 Filed 10–17–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Associated Form, and OMB Number:* Defense Federal Acquisition Regulations Supplement Part 243, Contract Modifications, and Associated Clauses at 252.243; No Forms; OMB Number 0704–0397.

*Type of Request:* Extension.

*Number of Respondents:* 575.

*Responses Per Respondent:* 1.

*Annual Responses:* 575.

*Average Burden Per Response:* 6.7 hours.

*Annual Burden Hours:* 3,850.

*Needs and Uses:* The information collection required by the clause at 252.243–7002, Certification of Requests for Equitable Adjustment, is required by 10 U.S.C. 2410(a). The information is used by DoD contracting officers and auditors to evaluate requests for equitable adjustment. The clause at DFARS 252.243–7002 requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete, and to provide full disclosure of all relevant facts in support of the requested adjustment.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Peter Weiss.

Written comments and recommendations on the proposed information should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DOIR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: October 14, 1997.

**Patricia L. Toppings,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 97–27640 Filed 10–17–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 98–10]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Assistance Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–10, with attached transmittal, policy justification, and sensitivity of technology pages.

Dated: October 14, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

2 OCT 1997

In reply refer to:
I-50006/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-10, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $105 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Japan

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 68 million |
| Other | $ 37 million |
| TOTAL | $ 105 million |

(iii) Description of Articles or Services Offered:
Two MK-41 Vertical Launch Systems (VLS), two MK-48 Guided Missile Vertical Launch Systems (GMVLS), two MK-36 Decoy Launching Systems, systems engineering and testing services, U.S. Government and contractor engineering and logistics services, spare and repair parts, personnel training and training equipment, support equipment, publications and technical documentation, system software support and other related elements of logistics support.

(iv) Military Department: Navy (LQV)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 2 OCT 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan - Vertical Launch System

The Government of Japan has requested a possible sale of two MK-41 Vertical Launch Systems (VLS), two MK-48 Guided Missile Vertical Launch Systems (GMVLS), two MK-36 Decoy Launching Systems, systems engineering and testing services, U.S. Government and contractor engineering and logistics services, spare and repair parts, personnel training and training equipment, support equipment, publications and technical documentation, system software support and other related elements of logistics support. The estimated cost is $105 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an allied country which has been and continues to be an important force for political stability and economic progress in Asia.

Japan will use these weapon systems and equipment to outfit naval vessels under construction, to augment its current missile weapon system inventories and to provide an air defense capability for operational naval vessels. Japan currently operates these naval weapon systems and equipment and therefore will have no difficulty absorbing this additional equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be Lockheed Martin Aerospace and Naval Systems, Baltimore, Maryland and Raytheon Company, Wayland, Massachusetts. There are no offset agreements proposed in connection with this proposed sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government personnel or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Classified Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The Vertical Launch System equipment, technical data, training, services, and documentation are not sensitive and are Unclassified. Computer Operational tapes/programs are Confidential.

2. The Guided Missile Vertical Launch System equipment, technical data, training, services and documentation are not sensitive and are Unclassified. Computer operational tapes/program are Confidential.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements of the aforementioned systems, the information could be used to develop countermeasures or equivalent systems capable of reducing weapon system effectiveness. This information could also be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 97–27646 Filed 10–17–97; 8:45 am]
BILLING CODE 5000–04–C

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Medical and Dental Services Fiscal Year 1998**

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Deputy Chief Financial Officer in a memorandum dated September 26, 1997 established the following reimbursement rates for inpatient and outpatient medical care to be provided in FY 1998. These rates are effective October 1, 1997.

*Inpatient, Outpatient and Other Rates and Charges*

I. Inpatient rates [1 2]

| Per inpatient day | International Military Education & Training (IMET) | Interagency and other Federal agency sponsored patients | Other (Full/ Third party) |
|---|---|---|---|
| A. Burn Center | $2,618.00 | $4,754.00 | $5,079.00 |
| B. Surgical Care Services (Cosmetic Surgery) | 955.00 | 1,733.00 | 1,852.00 |
| C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG) [3]) | | | |

1. FY98 Direct Care Inpatient Reimbursement Rates

| Adjusted standard amount | IMET | Interagency | Other (Full/ Third party) |
|---|---|---|---|
| Large Urban | $2,199.00 | $4,131.00 | $4,372.00 |
| Other Urban/Rural | 2,194.00 | 4,215.00 | 4,499.00 |
| Overseas | 2,450.00 | 5,614.00 | 5,960.00 |

2. Overview

The FY98 inpatient rates are based on the cost per DRG, which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.C.1., above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. The published ASAs will be adjusted for area wage differences and indirect medical education (IME) for the discharging hospital. An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital in a Large Urban Area.

a. The cost to be recovered is DoD's cost for medical services provided in the nonteaching hospital located in a large urban area. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.9769. (DRG statistics shown are from FY 1996).

c. The DoD adjusted standardized amount to be charged is $4,372 (i.e., the third party rate as shown in the table).

d. DoD cost to be recovered at a nonteaching hospital with area wage index of 1.0 is the RWP factor (2.9769 ) in 3.b., above, multiplied by the amount ($4,372) in 3.c., above.

e. Cost to be recovered is $13,015.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

| DRG No. | DRG description | DRG weight | Arithmetic mean LOS | Geometric mean LOS | Short stay threshold | Long stay threshold |
|---|---|---|---|---|---|---|
| 020 ... | Nervous System Infection Except Viral Meningitis | 2.9769 | 11.2 | 7.8 | 1 | 30 |

| Hospital | Location | Area wage rate index | IME adjustment | Group ASA | Applied ASA |
|---|---|---|---|---|---|
| Nonteaching Hospital | Large Urban | 1.0 | 1.0 | $4,372.00 | $4,372.00 |

| Patient | Length of stay | Days above threshold | Relative weighted product | | | TPC amount*** |
|---|---|---|---|---|---|---|
| | | | Inlier* | Outlier** | Total | |
| #1 | 7 days | 0 | 2.9769 | 0.0000 | 2.9769 | $13,015 |

| Patient | Length of stay | Days above threshold | Relative weighted product | | | TPC amount*** |
|---|---|---|---|---|---|---|
| | | | Inlier* | Outlier** | Total | |
| #2 | 21 days | 0 | 2.9769 | 0.0000 | 2.9769 | 13,015 |
| #3 | 35 days | 5 | 2.9769 | 0.6297 | 3.6066 | 15,768 |

*DRG Weight
** Outlier calculation = 33 percent of per diem weight × number of outlier days
= .33 (DRG Weight/Geometric Mean LOS) × (Patient LOS—Long Stay Threshold)
= .33 (2.9769/7.8) × (35–30)
= .33 (.38165) × 5 (take out to five decimal places)
= .12594 × 5 (take out to five decimal places)
= .6297 (take out to four decimal places)
*** Applied ASA × Total RWP

II. Outpatient Rates [1] [2] Per Visit

| MEPRS code [4] | Clinical service | International Military Education & Training (IMET) | Interagency and other Federal agency sponsored patients | Other (Full/ Third party) |
|---|---|---|---|---|
| | **A. Medical Care** | | | |
| BAA | Internal Medicine | $105.00 | $195.00 | $208.00 |
| BAB | Allergy | 39.00 | 73.00 | 78.00 |
| BAC | Cardiology | 81.00 | 150.00 | 160.00 |
| BAE | Diabetic | 44.00 | 82.00 | 87.00 |
| BAF | Endocrinology (Metabolism) | 85.00 | 158.00 | 168.00 |
| BAG | Gastroenterology | 110.00 | 203.00 | 216.00 |
| BAH | Hematology | 145.00 | 269.00 | 287.00 |
| BAI | Hypertension | 81.00 | 149.00 | 159.00 |
| BAJ | Nephrology | 171.00 | 317.00 | 338.00 |
| BAK | Neurology | 109.00 | 202.00 | 215.00 |
| BAL | Outpatient Nutrition | 34.00 | 63.00 | 67.00 |
| BAM | Oncology | 114.00 | 211.00 | 225.00 |
| BAN | Pulmonary Disease | 141.00 | 260.00 | 278.00 |
| BAO | Rheumatology | 84.00 | 156.00 | 166.00 |
| BAP | Dermatology | 63.00 | 117.00 | 124.00 |
| BAQ | Infectious Disease | 141.00 | 260.00 | 278.00 |
| BAR | Physical Medicine | 78.00 | 145.00 | 155.00 |
| BAS | Radiation Therapy | 72.00 | 132.00 | 141.00 |
| BAZ | Medical Care Not Elsewhere Classified (NEC) | 84.00 | 156.00 | 166.00 |
| | **B. Surgical Care** | | | |
| BBA | General Surgery | 119.00 | 220.00 | 235.00 |
| BBB | Cardiovascular and Thoracic Surgery | 110.00 | 203.00 | 216.00 |
| BBC | Neurosurgery | 137.00 | 253.00 | 270.00 |
| BBD | Ophthalmology | 84.00 | 155.00 | 166.00 |
| BBE | Organ Transplant | 191.00 | 353.00 | 376.00 |
| BBF | Otolaryngology | 88.00 | 162.00 | 173.00 |
| BBG | Plastic Surgery | 100.00 | 184.00 | 196.00 |
| BBH | Proctology | 67.00 | 124.00 | 132.00 |
| BBI | Urology | 101.00 | 187.00 | 199.00 |
| BBJ | Pediatric Surgery | 89.00 | 164.00 | 175.00 |
| BBZ | Surgical Care NEC | 65.00 | 120.00 | 127.00 |
| | **C. Obstetrical and Gynecological (OB-GYN) Care** | | | |
| BCA | Family Planning | 45.00 | 83.00 | 89.00 |
| BCB | Gynecology | 74.00 | 136.00 | 146.00 |
| BCC | Obstetrics | 68.00 | 126.00 | 135.00 |
| BCZ | OB-GYN Care NEC | 112.00 | 207.00 | 221.00 |
| | **D. Pediatric Care** | | | |
| BDA | Pediatric | 54.00 | 100.00 | 106.00 |
| BDB | Adolescent | 55.00 | 101.00 | 108.00 |
| BDC | Well Baby | 36.00 | 66.00 | 70.00 |
| BDZ | Pediatric Care NEC | 64.00 | 119.00 | 126.00 |
| | **E. Orthopaedic Care** | | | |
| BEA | Orthopaedic | 83.00 | 153.00 | 164.00 |
| BEB | Cast | 45.00 | 82.00 | 88.00 |
| BEC | Hand Surgery | 38.00 | 70.00 | 75.00 |

| MEPRS code [4] | Clinical service | International Military Education & Training (IMET) | Interagency and other Federal agency sponsored patients | Other (Full/ Third party) |
|---|---|---|---|---|
| BEE | Orthotic Laboratory | 59.00 | 110.00 | 117.00 |
| BEF | Podiatry | 49.00 | 91.00 | 97.00 |
| BEZ | Chiropractic | 21.00 | 38.00 | 40.00 |
| | **F. Psychiatric and/or Mental Health Care** | | | |
| BFA | Psychiatry | 97.00 | 179.00 | 191.00 |
| BFB | Psychology | 71.00 | 132.00 | 141.00 |
| BFC | Child Guidance | 59.00 | 109.00 | 117.00 |
| BFD | Mental Health | 80.00 | 147.00 | 157.00 |
| BFE | Social Work | 80.00 | 149.00 | 159.00 |
| BFF | Substance Abuse | 62.00 | 115.00 | 123.00 |
| | **G. Family Practice/Primary Medical Care** | | | |
| BGA | Family Practice | 67.00 | 124.00 | 132.00 |
| BHA | Primary Care | 64.00 | 118.00 | 126.00 |
| BHB | Medical Examination | 59.00 | 109.00 | 117.00 |
| BHC | Optometry | 42.00 | 77.00 | 82.00 |
| BHD | Audiology | 30.00 | 55.00 | 58.00 |
| BHE | Speech Pathology | 81.00 | 149.00 | 159.00 |
| BHF | Community Health | 41.00 | 75.00 | 80.00 |
| BHG | Occupational Health | 59.00 | 108.00 | 115.00 |
| BHH | TRICARE Outpatient | 42.00 | 78.00 | 83.00 |
| BHI | Immediate Care | 82.00 | 152.00 | 162.00 |
| BHZ | Primary Care NEC | 43.00 | 79.00 | 84.00 |
| | **H. Emergency Medical Care** | | | |
| BIA | Emergency Medical | 107.00 | 198.00 | 211.00 |
| | **I. Flight Medical Care** | | | |
| BJA | Flight Medicine | 85.00 | 157.00 | 167.00 |
| | **J. Underseas Medical Care** | | | |
| BKA | Underseas Medicine | 32.00 | 58.00 | 62.00 |
| | **K. Rehabilitative Services** | | | |
| BLA | Physical Therapy | 29.00 | 54.00 | 57.00 |
| BLB | Occupational Therapy | 53.00 | 98.00 | 104.00 |

III. Other Rates and Charges [1] [2] Per Visit

| MEPRS code [4] | Clinical service | International Military Education & Training (IMET) | Interagency and other Federal agency sponsored patients | Other (Full/ Third party) |
|---|---|---|---|---|
| FBI | A. Immunization | $10.00 | $19.00 | $20.00 |
| DGC | B. Hyperbaric Chamber [5] | 180.00 | 333.00 | 355.00 |
| | C. Ambulatory Procedure Visit (APV).[6] | 376.00 | 691.00 | 737.00 |
| | D. Family Member Rate (formerly Military Dependents Rate) | 10.20 | ..... | ..... |

E. Reimbursement Rates For Drugs Requested By Outside Providers [7]

The FY 1998 drug reimbursement rates for drugs are for prescriptions requested by outside providers and obtained at a Military Treatment Facility. The rates are established based on the cost of the particular drugs provided. Final rule of 32 CFR Part 220, estimated to be published October 1, 1997, will eliminate the high cost ancillary services' dollar threshold and the associated term ''high cost ancillary service.'' In anticipation of that change, the phrase ''high cost ancillary service'' has been replaced with the phrase ''ancillary services requested by an outside provider.'' The list of drug reimbursement rates is too large to include here. These rates are available on request from OASD (Health Affairs), LTC Michael Montgomery, 703–681–8910.

F. Reimbursement Rates for Ancillary Services Requested By Outside Providers [8]

Final rule of 32 CFR Part 220, estimated to be published October 1, 1997, will eliminate the high cost ancillary services' dollar threshold and the associated term ''high cost ancillary service.'' In anticipation of that change, the

phrase ''high cost ancillary service'' has been replaced with the phrase ''ancillary services requested by an outside provider.'' The list of FY 1998 rates for ancillary services requested by outside providers and obtained at a Military Treatment Facility is too large to include here. These rates are available on request from OASD (Health Affairs) LTC Michael Montgomery, 703–681–8910.

G. Elective Cosmetic Surgery Procedures and Rates

| Cosmetic surgery procedure | International Classification Diseases (ICD–9) | Current Procedural Terminology (CPT) [9] | FY 1998 charge [10] | Amount of charge |
|---|---|---|---|---|
| Mammaplasty | 85.50, 85.32, 85.31 | 19325, 19324, 19318 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Mastopexy | 85.60 | 19316 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Facial Rhytidectomy | 86.82, 86.22 | 15824 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Blepharoplasty | 08.70, 08.44 | 15820, 15821, 15822, 15823. | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Mentoplasty (Augmentation/Reduction). | 76.68, 76.67 | 21208, 21209 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Abdominoplasty | 86.83 | 15831 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Lipectomy suction per region.[11] | 86.83 | 15876, 15877, 15878, 15879. | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Rhinoplasty | 21.87, 21.86 | 30400, 30410 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Scar Revisions beyond CHAMPUS. | 86.84 | 1578__ | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Mandibular or Maxillary Repositioning. | 76.41 | 21194 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Minor Skin Lesions.[12] | 86.30 | 1578__ | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Dermabrasion | 86.25 | 15780 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Hair Restoration | 86.64 | 15775 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Removing Tattoos | 86.25 | 15780 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Chemical Peel | 86.24 | 15790 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Arm/Thigh Dermolipectomy. | 86.83 | 1583__ | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |
| Brow Lift | 86.3 | 15839 | Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate. | a b c |

H. Dental Rate [13] Per Procedure

| MEPRS code [4] | Clinical service | International Military Education & Training (IMET) | Interagency and other Federal agency sponsored patients | Other (Full/Third party) |
|---|---|---|---|---|
| | Dental Services ADA code and DoD established weight. | $35.00 | $101.00 | $106.00 |

I. Ambulance Rate [14] Per Visit

| MEPRS code [4] | Clinical service | International Military Education & Training (IMET) | Interagency and other Federal agency sponsored patients | Other (Full/Third party) |
|---|---|---|---|---|
| FEA | Ambulance | $32.00 | $60.00 | $64.00 |

J. Laboratory and Radiology Services Requested by an Outside Provider [8] Per Procedure

| MEPRS code [4] | Clinical service | International Military Education & Training (IMET) | Interagency and other Federal agency sponsored patients | Other (Full/Third party) |
|---|---|---|---|---|
| | Laboratory procedures requested by an outside provider CPT–4 Weight Multiplier. | $9.00 | $13.00 | $14.00 |

| MEPRS code [4] | Clinical service | International Military Education & Training (IMET) | Interagency and other Federal agency sponsored patients | Other (Full/ Third party) |
|---|---|---|---|---|
| | Radiology procedures requested by an outside provider CPT–4 Weight Multiplier. | 23.00 | 35.00 | 37.00 |

K. AirEvac Rate [15] Per Visit

| MEPRS code [4] | Clinical service | International Military Education & Training (IMET) | Interagency and other Federal agency sponsored patients | Other (Full/ Third party) |
|---|---|---|---|---|
| | AirEvac Services—Ambulatory | $113.00 | $209.00 | $223.00 |
| | AirEvac Services—Litter | 323.00 | 598.00 | 638.00 |

**Notes on Cosmetic Surgery Charges:**

[a] Per diem charges for inpatient surgical care services are listed in Section I.B. (See notes 9 through 11, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in Section III.C. (See notes 9 through 11, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c] Charges for outpatient clinic visits are listed in Sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

**Notes on Reimbursable Rates:**

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 96 percent hospital and 4 percent professional charges. The outpatient per visit percentages are 88 percent outpatient services and 12 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed. Payment is due 60 days from the date of the bill.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

| | MEPRS code |
|---|---|
| Outpatient Care (Functional Category) | B |
| Medical Care (Summary Account) | BA |
| Internal Medicine (Subaccount) | BAA |

[5] Hyperbaric services charges shall be based on hours of service in 15 minute increments. The rates listed in Section III.B. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) of service. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[6] Ambulatory procedure visit is defined in DOD Instruction 6025.8, ''Ambulatory Procedure Visit (APV),'' dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). Care is required in the facility for less than 24 hours. This rate is also used for elective cosmetic surgery performed in an APU.

[7] Prescription services requested by outside providers (e.g., physicians or dentists) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from a Military Treatment Facility (MTF) that are prescribed by providers external to the MTF. Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider includes the cost of the drugs plus a dispensing fee per prescription. The prescription cost is calculated by multiplying the number of units (e.g., tablets or capsules) by the unit cost and adding a $5.00 dispensing fee per prescription. The final rule at 32 CFR Part 220, estimated to be published October 1, 1997, will eliminate the dollar threshold for high cost ancillary services (by changing the threshold from $25 to $0) and the associated term ''high cost ancillary service.'' In anticipation of that change, the phrase ''high cost ancillary service'' has been replaced with the phrase ''ancillary services requested by an outside provider.'' The elimination of the threshold also eliminates the bundling of costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeded $25.00.

[8] Charges for ancillary services requested by an outside provider (physicians, dentists, etc.) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who have medical

insurance obtain services from the MTF that are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated using the Physicians' Current Procedural Terminology (CPT)–4 Report weight multiplied by either the laboratory or radiology multiplier (Section III.J). Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for services. The final rule at 32 CFR Part 220, estimated to be published October 1, 1997, will eliminate the dollar threshold for high cost ancillary services (by changing the threshold from $25 to $0) and the associated term ''high cost ancillary service.'' In anticipation of that change, the phrase ''high cost ancillary service'' has been replaced with the phrase ''ancillary services requested by an outside provider.'' The elimination of the threshold also eliminates the bundling of costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeded $25.00.

[9] The attending physician is to complete the CPT–4 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: Ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[10] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedure information is contained in Section III.G. The patient shall be charged the rate as specified in the FY 1998 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the ''Other'' rate) for inpatient per diem surgical care services in Section I.B., ambulatory procedure visits as contained in Section III.C, or the appropriate outpatient clinic rate in Sections II.A–K. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (**NOTE:** The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[11] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[12] These procedures are inclusive in the minor skin lesions. However, CHAMPUS separates them as noted here. All charges shall be for the entire treatment, regardless of the number of visits required.

[13] Dental service rates are based on a dental rate multiplier times the American Dental Association (ADA) code and the DoD established weight for that code.

[14] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in Section III.I are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (e.g., 31 minutes shall be charged as 45 minutes).

[15] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient. The charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC).

Dated: October 14, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR No. 97–27647 Filed 10–17–97; 8:45 am]

**BILLING CODE 5000–04–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Task Force on Defense Reform

**AGENCY:** Department of Defense, Task Force on Defense Reform.

**ACTION:** Notice.

**SUMMARY:** The Task Force on Defense Reform will meet in closed sessions on November 4, 6, 13, 18, 20, and 25, 1997.

The Task Force on Defense Reform was established to make recommendations to the Secretary of Defense and Deputy Secretary of Defense on alternatives for organizational reforms, reductions in management overhead, and streamlined business practices in the Department of Defense (DoD), with emphasis on the Office of the Secretary of Defense, the Defense Agencies, the DoD field activities, and the Military Departments.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended, 5 U.S.C., Appendix II, it has been determined that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meetings, and that, accordingly, these meetings will be closed to the public.

Dated: October 14, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–27645 Filed 10–17–97; 8:45 am]

**BILLING CODE 5000–04–M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### HQ USAF Scientific Advisory Board Meeting

The Aerial Targets, UAVs, and Ranges Symposium in support of the HQ USAF Scientific Advisory Board will meet in Las Vegas, NV on November 12–13, 1997, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings on Aerial Targets, UAVs, and Ranges.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

**Barbara A. Carmichael,**

*Alternate Air Force Federal Register Liaison Officer.*

[FR Doc. 97–27681 Filed 10–17–97; 8:45 am]

**BILLING CODE 3910–01–U**

## DEPARTMENT OF ENERGY

### Office of Fossil Energy

### National Coal Council; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

*Name:* National Coal Council.

*Date And Time:* Friday, November 14, 1997, 8:30 am.

*Place:* Hyatt Regency, Westshore, 6200 Courtney Campbell Causeway, Tampa, FL.

*Contact:* Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, D.C. 20585, Telephone: 202/586–3867.

*Purpose of the Council:* To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

**Tentative Agenda**

—Call to order and opening remarks by Clifford Miercort, Chairman of the National Coal Council.
—Approve agenda.
—Remarks by Department of Energy representative.
—Report of the Coal Policy Committee.
—Administrative reports.
—Coal's Future—Technological Challenges and Opportunities, Kurt Yeager, President & CEO Electric Power Research Institute.
—Global Climate Change Forum.
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

*Public Participation:* The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

*Transcript:* Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on October 15, 1997.

**Rachel M. Samuel,**

*Deputy Committee Advisory, Management Advisory Officer.*

[FR Doc. 97–27719 Filed 10–17–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## [Docket No. ETEC–T030]

## Certification of the Radiological Condition of Building T030 at the Energy Technology Engineering Center Near Chatsworth, CA

**AGENCY:** U.S. Department of Energy, Office of Environmental Restoration.

**ACTION:** Notice of certification.

**SUMMARY:** The Department of Energy (DOE) has completed radiological surveys and taken remedial action to decontaminate Building T030, Particle Accelerator Facility, located at the Energy Technology Engineering Center (ETEC) near Chatsworth, California. This property was found to contain radioactive materials from activities carried out for the Atomic Energy Commission and the Energy Research and Development Administration (AEC/ERDA), predecessor agencies to DOE. Although DOE owns the majority of the buildings and equipment, a subsidiary of Boeing North American Incorporated, Rocketdyne Division, owned the land.

**FOR FURTHER INFORMATION CONTACT:** Mike Lopez, Program Manager, Environmental Restoration Division, Oakland Operations Office, U.S. Department of Energy, Oakland, CA 94612–5208.

**SUPPLEMENTARY INFORMATION:** DOE has implemented environmental restoration projects at ETEC (Ventura County, Map Book 3, Page 7, Miscellaneous Records) as part of DOE's Environmental Restoration Program. One objective of the program is to identify and clean up or otherwise control facilities where residual radioactive contamination remains from activities carried out under contract to AEC/ERDA during the early years of the Nation's atomic energy program.

ETEC is comprised of a number of facilities and structures located within Administrative Area IV of the Santa Susana Field Laboratory. The work performed for DOE at ETEC consisted primarily of testing of equipment, materials, and components for nuclear and energy related programs. These nuclear energy research and development programs, conducted by Atomics International under contract to AEC/ERDA, began in 1946. Several buildings and land areas became radiologically contaminated as a result of facility operations and site activities. Building T030 is one ETEC area that has been designated for cleanup under the DOE Environmental Restoration Program. Other areas undergoing decontamination will be released as they are completed and are verified to meet established cleanup criteria and standards for release without radiological restrictions as established in DOE Order 5400.5.

Building T030 is located in the north-eastern section of ETEC on 10th Street, off the west side of G Street, among several adjacent buildings on paved ground. Building T030 was constructed in 1958 as a Particle Accelerator Facility. The building has a total enclosed area of 2,311 sq. ft. The facility consists of two connecting sections, both with steel framing, siding, and roofs. The rear open (west) section was constructed perpendicular to the front office (east) section. The rear section was configured to accommodate a low-voltage particle accelerator used as a proton on tritium (P-T) neutron source. An outside concrete wall, north of the west section, provided shielding for the accelerator beam. Men's and women's restrooms were built into the facility so that the facility provided a complete self-contained accelerator test installation. A fenced-in area between Buildings T030 and the adjacent building T641 was previously used as a palletized material holding area. To the north of T030, south of T641, and west of both buildings are outcroppings of Chatsworth sandstone formation. This formation is only about 50 ft. from the north and west sides of T030.

After facility construction in 1958, a Van de Graaf accelerator was moved into the facility in 1960. The accelerator could provide a proton beam of up to tens of microamperes in current, with continuously adjustable energies from a few hundred KeV up to a maximum of about 1 MeV. The particle beam was well focused, with a diameter of a few millimeters. Neutrons were generated using a tritium target via the $^{3}H(p,n)^{3}He$ reaction. Five-gallon cans of borated water were used for neutron shielding around the machine.

The accelerator was operated from 1960 through 1964, at which time the facility was decommissioned. Even though it was not in use, the accelerator remained in the facility after 1964. In 1966, a smear survey of the accelerator showed tritium contamination. It was believed that the tritium contamination had not spread to surrounding areas. Following removal of the accelerator in 1966, the building was surveyed and no residual contamination was found. The building was released for other uses, and had subsequently been used as an office building for purchasing and on-site traffic administrative work until 1995.

In 1988, a general radiological survey was conducted to clarify and identify areas at ETEC requiring further radiological inspection or remediation; Building T030 was included in this survey. The scope of the Building T030 survey included ambient gamma exposure rate measurements, ''indication'' beta surveys of the accelerator room and the outside paved area used for storing palletized containers, and exterior soil samples for tritium content. The result of that survey showed no detectable contamination in the facility. Tritium analyses on ten soil samples and the beta survey showed no detectable activity. Background-corrected gamma measurements were all less than the acceptance limit of 5 μR/hr.

In September 1995, the Oak Ridge Institute for Science and Education (ORISE) conducted a confirmatory survey of several facilities at ETEC, including Building T030. With the

exception of a single finding for removable tritium contamination of 6,600 dpm/100 $cm^2$ (below the acceptance limit of 10,000 dpm/100 cm2) found on the north wall of the accelerator room, no unusual findings were noted. However, ORISE did question the completeness of the 1988 survey. Specifically, ORISE recommended complete measurements of total or removable surface activity and additional sampling for tritium activity in the accelerator area. Consistent with ORISE's advice, a comprehensive final survey of Building T030 was conducted by ETEC in 1996.

In 1996 approximately 2,311 sq. ft. of asbestos floor tile was removed and disposed of. The cost associated with the removal of the asbestos floor tile was approximately $9,200. The radiological survey cost associated with Building T030 could not be isolated from total radiological facility surveys but is estimated to have cost approximately $20,000.

No appreciable personnel radiation exposure was anticipated or encountered during decontamination and decommissioning and surveying of Building T030.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays), in the U.S. DOE Public Reading Room located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC Copies of the certification docket will also be available at the following locations: DOE Public Document Room, U.S. Department of Energy, Oakland Operations Office, the Federal Building, 1301 Clay Street, Oakland, California; California State University, Northridge, Urban Archives Center, Oviatt Library, Room 4, 18111 Nordhoff, Northridge, California; Simi Valley Library, 2629 Tapo Canyon Road, Simi Valley, California; and the Platt Branch, Los Angeles Public Library, 23600 Victory Boulevard, Woodland Hills, California.

DOE has issued the following statement of certification.

**Statement of Certification: Energy Technology Engineering Center, Building T030**

The U.S. Department of Energy (DOE), Oakland Operations Office, Environmental Restoration Division, has reviewed and analyzed the radiological data obtained following decontamination of Building T030 at the Energy Technology Engineering Center. Based on analysis of all data collected and the results of the independent verification, DOE certifies that the following property is in compliance with DOE radiological decontamination criteria and standards as established in DOE Order 5400.5. This certification of compliance provides assurance that future use of the property will result in no radiological exposure above applicable guidelines established to protect members of the general public or site occupants. Accordingly, the property specified below is released from DOE's Environmental Restoration Program.

*Property Owned by Boeing North American Incorporated*

Building T030 at the Energy Technology Engineering Center (situated within Area IV of the Santa Susana Field Laboratory), located in a portion of Tract ''A'' of Rancho Simi, in the County of Ventura, State of California, as per map recorded in Book 3, Page 7 of Miscellaneous Records of Ventura County.

Issued in Washington, D.C., on October 10, 1997.

**James J. Fiore,**

*Acting Deputy Assistant Secretary for Environmental Restoration.*

[FR Doc. 97–27720 Filed 10–17–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Agency information collection activities: Proposed collection; comment request.

**SUMMARY:** The Energy Information Administration (EIA) is soliciting comments concerning the proposed extension to the Form EIA–1605, ''Voluntary Reporting of Greenhouse Gases,'' (long version) and the Form EIA–1605EZ, ''Voluntary Reporting of Greenhouse Gases,'' (short version).

**DATES:** Written comments must be submitted on or before December 19, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

**ADDRESSES:** Send comments to Stephen E. Calopedis, Energy Information Administration, Office of Integrated Analysis and Forecasting, EI–81, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, (202) 586–1156, e-mail: stephen.calopedis@eia.doe.gov, and FAX: (202) 586–3045.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Stephen E. Calopedis at the address listed above.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Current Actions
III. Request for Comments

## I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93–275) and the Department of Energy Organization Act (Pub. L. 95–91), the Energy Information Administration (EIA) is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

The EIA, as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13)), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to prepare data requests in the desired format, minimize reporting burden, develop clearly understandable reporting forms, and assess the impact of collection requirements on respondents. Also, EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, Title 44, U.S.C. Chapter 35).

The EIA developed these greenhouse gas forms pursuant to section 1605(b) of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13385) to reflect the guidelines set forth in Voluntary Reporting of Greenhouse Gases under section 1605(b) of the Energy Policy Act of 1992: General Guidelines (DOE/PO–0028). These forms are designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and increased carbon fixation. Further, the forms support the Climate Change Action Plan by collecting information on commitments to reduce greenhouse gas emissions and to sequester carbon in

future years, including the progress made toward meeting those commitments. The Office of Management and Budget approved these forms on May 26, 1995 (OMB No. 1905–0194).

You may wish to participate in the program to: (1) Establish a public record of your emissions and reductions for any years from 1987 onwards; (2) demonstrate progress toward meeting commitments made under voluntary programs to reduce emissions of greenhouse gases; (3) inform the public about greenhouse gas emissions and reduction strategies; and (4) contribute to educational exchanges on the most effective ways to reduce emissions of greenhouse gases. The EIA publishes an annual report/review of the 1605(b) voluntary reporting of greenhouse gases program. In addition, EIA has established a publicly available database of the information reported each year, which serves as a clearinghouse of information and case studies.

**II. Current Actions**

This action represents a request for the extension of the expiration date with no other changes, of existing collections (Form EIA–1605 and Form EIA–1605EZ). The request will include an extension from the currently approved OMB expiration dates (May 31, 1998) to May 31, 2001, i.e., 3-year extension of the Forms EIA–1605 and EIA–1605EZ.

**III. Request for Comments**

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

**General Issues**

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can EIA make to the quality, utility, and clarity of the information to be collected?

*As a Potential Respondent*

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can data be submitted by the due date?

C. Public reporting burden for this collection is estimated to average:
Form EIA–1605: 40 hours per response
Form EIA–1605EZ: 4 hours per response
Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information.

Please comment on (1) the accuracy of our estimate and (2) how the agency could minimize the burden of the collection of information, including the use of information technology.

D. EIA estimates that respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the methods of collection.

*As a Potential User*

A. Can you use data at the levels of detail indicated on the form?

B. For what purpose would you use the data? Be specific.

C. Are there alternate sources of data and do you use them? If so, what are their deficiencies and/or strengths?

D. For the most part, information is published by EIA in U.S. customary units, e.g., cubic feet of natural gas, short tons of coal, and barrels of oil. Would you prefer to see EIA publish more information in metric units, e.g., cubic meters, metric tons, and kilograms? If yes, please specify what information (e.g., coal production, natural gas consumption, and crude oil imports), the metric unit(s) of measurement preferred, and in which EIA publication(s) you would like to see such information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the request for a 3-year extension of the forms. They also will become a matter of public record.

**Statutory Authority:** Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Issued in Washington, DC, October 17, 1997.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 97–27718 Filed 10–17–97; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–521–001]**

## Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 14, 1997.

Take notice that on October 9, 1997, Garden Banks Gas Pipeline, LLC (GBBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 106, to become effective October 11, 1997.

GBGP states that the purpose of this filing is to comply with the letter order issued September 29, 1997 in Docket No. RP97–521–000, whereby GBGP was directed to refile tariff sheet No. 106 within 15 days of the date of the letter order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27667 Filed 10–17–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP98–12–000]**

## Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

October 14, 1997.

Take notice that on October 9, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–12–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by sale certain facilities to Peoples Gas

System (PGS), under FGT's blanket certificate issued in Docket No. CP82–553–000 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.

FGT proposes to abandon by sale to PGS the following facilities: (1) 1.7 miles of the 6-inch Miami Lateral from the outlet of M&R Station-POI No. 16119 to the terminus, (2) 6.1 miles of 4-inch Green Covet Springs Lateral and meter station site starting from the connection on the Jacksonville Lateral to the terminus of the Lateral, (3) the Sarasota PGS Lateral that consists of 5.7 miles of the 8-inch Sarasota lateral downstream or South of FGT's Lateral Line Valve 25–6 through and including LLV25–7 at the terminus of the 8-inch lateral, and the 633 feet of 3-inch lateral line from the 8-inch Sarasota Lateral at MP 90.3 to the Sarasota M&R Station, and (4) the Sarasota M&R Station, (with the exception of the EFM equipment that will be removed and placed in FGT's inventory for future use).

FGT states that the abandonment will not result in any disruption or disadvantage any of FGT's customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27662 Filed 10–17–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–290–003]**

## Colorado Interstate Gas Company; Notice of Tariff Compliance Filing

October 14, 1997.

Take notice that on October 8, 1997, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Second Revised Sheet No. 132A.07, Original Sheet No. 132A.07a and Sub Second Revised Sheet No. 132A.08 to be effective April 14, 1997.

CIG states the tariff sheets are filed in compliance with the order issued September 25, 1997 in Docket No. RP97–290–002 to correct pagination errors and a footnote reference. CIG states that it has made no change to the text of the tariff sheets.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27665 Filed 10–17–97; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project Nos. 2375, ME and 8277, ME]**

## International Paper Company, Otis Hydroelectric Company; Notice of Applications Tendered for Filing; Notice of Applications and Applicant Prepared EA Accepted for Filing; Notice Requesting Interventions and Protests; Notice Establishing Procedural Schedule and Final Amendment Deadline; and Notice Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions

October 14, 1997.

International Paper Company and Otis Hydroelectric Company have filed with the Federal Energy Regulatory Commission (Commission) an Applicant Prepared Environmental Assessment (APEA) and License Applications for the Riley-Jay-Livermore Project No. 2375 and the Otis Project No. 8277 located on the Androscoggin River, Maine.

The proposed Riley-Jay-Livermore Project consists of three separate developments. The existing facilities at the Riley Project include: (1) A 19.2 ft-high by 757 ft-long L-shaped dam constructed of rock-filled timber cribbing; (2) two contiguous spillway sections topped with 48 inch-high flash boards; (3) a 7.3 mile-long impoundment with a surface area of 578 acres; (4) a triangular shaped forebay; (5) a powerhouse intake containing six timber gates; (6) a powerhouse containing six identical 1.3 megawatt (MW) generating units with a total rated hydraulic capacity of 5,556 cfs; and (7) a substation connected to a one-mile long, 13.8 kilovolt (kV) transmission line.

The existing facilities at the Jay Project include; (1) An 893 foot-long dam comprised of three non-contiguous sections, two with 32-inch high flashboards; (2) a 150-foot-long by 37 foot wide powerhouse intake containing six timber gates; (3) six identical horizontal shaft turbines with maximum and minimum hydraulic capacities of 550 cubic feet per second (cfs) and 200 cfs, respectively, for a total rated hydraulic capacity of 3,300 cfs; (4) a 1.5 mile-long impoundment with a surface area of 206 acres; (5) a 320 foot-long forebay; (6) a powerhouse containing six generators with a total installed capacity of 3,125 kilowatts (kW); and (7) a substation connected to a 6,000 foot-long, 13.8 kV transmission line.

The existing facilities at the Livermore Project include; (1) An 849 foot-long concrete gravity dam; (2) a 25-foot-long forebay intake structure with 10 steel gates; (3) a 0.75 mile-long impoundment with 46 acres surface area; (4) a powerhouse intake structure containing eight timber gates; (5) a powerhouse containing eight identical turbines with maximum and minimum hydraulic capacities of 432 cfs and 100 cfs, respectively, for a total rated hydraulic capacity of 3,456 cfs; (6) eight generators with an installed capacity of 8,165 kW; and (7) a sub station connected to a 3.2 mile-long, 13.8 kV transmission line.

International Paper proposes the following new facilities at the Livermore Project: (1) Refurbishing three existing generating units; (2) removing two existing generating units from operation; (3) installing two new 4.12 MW horizontal Kaplan units which would discharge into the existing tailrace; (4) installing a 1.32 MW vertical Kaplan unit discharging into the lower portion of the bypass reach; and (5) upgrading 0.8 mile of transmission line between Livermore and Otis Projects to a 13.8 kV overhead line. The proposed Livermore project would have a total of 6 generating units. Total hydraulic capacity would increase from 3,456 cfs to 5,400 cfs. Installed capacity at

Livermore would increase from 7.8 MW to 12.26 MW.

The Otis Project consists of one development. The existing facilities at the Otis Project include: (1) A 577 foot-long concrete gravity dam in two sections, one with 2 foot-high flash boards, and the second with 2.21 foot-high flashboards; (2) an 80-foot-long forebay intake structures with 2 headgates; (3) a 2.5 mile-long impoundment with 115 acres surface area; (4) a powerhouse containing two identical 5,175 kW generating units with a total hydraulic capacities of 6,000 cfs; and (5) a substation connected to a 3.0 mile-long 13.8 kV transmission line.

**Purpose of Notice**

The purpose of this notice is to: (1) Inform all interested parties that an APEA and final license applications for the Riley-Jay-Livermore Project and Otis Project have been filed with the Commission on September 25, 1997, and are available for the public inspection; (2) inform all parties that the applications and APEA are hereby accepted; (3) invite interventions and protests; (4) solicit comments, final recommendations, terms and conditions, or prescriptions on the final license applications and APEA; and (5) identify an approximate schedule and procedures that will be followed in processing the applications and APEA.

International Paper Company and Otis Hydroelectric Company have used a Collaborative Team approach to prepare the APEA for the Riley-Jay Livermore and Otis Hydroelectric Projects. The Collaborative Team consists of federal, state, and local agencies, non-governmental organizations, and the public. The Collaborative Team has been meeting since September 1994 to guide the study process and prepare the APEA. The Collaborative Team has reached agreement as to the preferred alternative for relicensing these projects. This agreement is reflected in the APEA as the preferred alternative.

**Applicant Prepared EA Process and Processing Schedule**

The Energy Policy Act of 1992 (EP Act) gives the Commission the authority to allow the filing of an APEA with a license application. The EP Act also directs the Commission to institute procedures, including pre-application consultations, to advise applicants of studies or other information foreseeable required by the Commission.

On April 27, 1995, the Director, Office of Huydropower Licensing, waived or amended certain of the Commission's regulations to allow for coordinated processing of the license applications and the APEA. Since then, the Commission has been working cooperatively in advising the Collaborative Team of studies or other information foreseeable required by the Commission.

National Environmental Policy Act (NEPA) scoping was conducted on the projects through scoping documents issued December 8, 1994, and May 12, 1995, and in public scoping meetings on January 10, 1995. Draft license applications and preliminary DEA (PDEA) were issued by the Collaborative Team for comment on March 28, 1997. The final license applications and APEA were filed with the Commission on October 25, 1997. The APEA includes responses to all comments received on the PDEA.

Commission staff have reviewed the APEA and license applications and have determined that the applications are acceptable and no additional information or studies are needed to prepare the Commission's draft EA. The deadline for applicants filing any final amendments to the application is 45 days from the date of this notice. Comments, as indicated below, are now being requested from interested parties. Any comments received will be addressed in the draft EA issued by Commission by late December 1997, or early 1998. There will be a 30-day comment period on the draft EA. A final EA is scheduled for March 30, 1998, or earlier.

**Interventions and Protests**

All such filings must: (1) Bear in all capital letters the title ''MOTION TO INTERVENE'', (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protecting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All motions to intervene must be received 60 days from the date of this notice. A copy of any motion to intervene or protest must be served on each applicant.

**Comments, Final Terms and Conditions, Recommendations and Prescriptions**

Interested parties have 60 days from the date of this notice to file with the Commission, any final comments, final recommendations, terms and conditions and prescriptions for the Riley-Jay-Livermore and Otis Hydroelectric Projects. The applicants will have 45 days to respond. In view of the high level of early involvement of the Collaborative Team, we expect the majority of comments to reflect the agreement and preferred alternative in the DEA.

**Copies of the Applications and APEA**

A copy of the DEA and final license applications are available for review by contacting Steve W. Groves, International Paper Company, Androscoggin Mill, Riley Road, Jay, Maine 04239, or phone 207–897–1389. Copies of these documents are also available for review in the Commission's Public Reference Room.

**Filing Requirements**

The above documents *must* be filed by providing an original and 8 copies as required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

In addition to the above copies, comments or interventions may also be submitted on a 3½-inch diskette formatted for MS–DOS based computers to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Washington, DC 20426. For Macintosh users, it would be helpful to save the documents in Macintosh word processor format and then write them to files on a diskette formatted for MS–DOS machines.

Questions regarding this notice may be directed to Commission staff Monte J. TerHaar at 202–219–2768.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 97–27699 Filed 10–17–97; 8:45 am]

**BILLING CODE 6717–01–M**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–446–001]**

## Nautilus Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 14, 1997.

Take notice that on October 9, 1997, Nautilus Pipeline Company, LLC (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the Tariff sheets set forth on Appendix B to the filing in compliance with the Commission's Order Nos. 587, 587–B and 587–C to become effective November 1, 1997.

On July 17, 1996, the Commission issued order No. 587 which revised the Commission's regulations governing interstate natural gas pipelines to follow standardized business practices issued

by the Gas Industry Standards Board (GISB). On January 30, 1997, the Commission issued Order No. 587–B which it adopted some of the EDM standards for conducting business transactions over the Internet using an Internet server model. On March 4, 1997, the Commission issued Order No. 587–C which incorporated by reference 27 GISB business practices that revised and supplemented the standards adopted in Order No. 587 as well as one new communication standard. Nautilus states that the tariff sheets submitted herewith revise its tariff to comply with Order Nos. 587, 587–B and 587–C.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27666 Filed 10–17–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. CP96–311–000 and CP96–311–001]**

## Williams Natural Gas Company; Notice of Meeting

October 14, 1997.

Take notice that there will be a meeting on October 22, 1997, at 10:00 a.m. in Room 71–56, between representatives of Williams Natural Gas Company (Williams) and the Commission staff. The purpose of the meeting is to review the technical details of Williams' reservoir engineering study and new operational plan for Williams' Elk City Storage Field, both of which Williams must file with the Commission by November 30, 1997.

In order that we may assess whether the seating at the designated location will be adequate, those planning to attend should notify Mr. Marc Poole, at (200) 208–0482, of the number of representatives that you expect to send to the meeting.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27660 Filed 10–12–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP97–724–000]**

## NorAm Gas Transmission Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed 1998 Line F Replacement Project and Request for Comments on Environmental Issues

October 14, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of facilities proposed in the 1998 Line F Replacement Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

### Summary of the Proposed Project

NorAm Gas Transmission Company (NGT) wants to replace an existing mainline pipeline, abandon gas storage and supply pipelines, and make mainline enhancements to its pipeline system in Louisiana. NGT states that these actions would improve the safety, reliability, and efficiency of its pipeline system. Specifically, NGT seeks authorization for the following activities in Louisiana:

- Abandon about 60 miles of 20-inch-diameter pipeline on Line F in Caddo, Bossier, Webster, Claiborne, and Lincoln Parishes and replace it with about 61 miles of 20-inch-diameter pipeline in ten segments ranging from 200 feet to 32.8 miles in length. Some portions of the pipeline to be abandoned would be removed, other portions would be left in place.
- Abandon in place Line 1–F (0.8 mile of 20-inch-diameter pipeline) and Line FT–5 (0.9 mile of 10-inch-diameter pipeline) located in Lincoln Parish.
- Reclassify about 8.2 miles of Line F as a low pressure gas supply line and operate it as part of Line F–1–F in Caddo Parish.
- Abandon 63 delivery taps installed on the old Line F to deliver gas to rural customers served by Arkansas Louisiana Gas Company, and relocate 36 other delivery taps to the new Line F.
- Install pipeline maintenance facilities at the Buckley Compressor Station in Caddo Parish, the Red Chute Compressor Station in Bossier Parish, and the Ruston Storage Compressor Station in Lincoln Parish.

NGT proposes to begin construction of its facilities in June 1998. The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, or procedural information, please write to the Secretary of the Commission.

### Land Requirements for Construction

Construction of the proposed facilities would require about 855 acres of land. Following construction, about 249 acres would be maintained as new permanent right-of-way. The remaining acreage would be restored and allowed to revert to its former use.

NGT intends to use a up to a 85-foot-wide construction right-of-way for the installation of the replacement pipeline. Where the replacement pipeline would be parallel to the existing line, 15 to 30 feet of the construction right-of-way would be within NGT's existing right-of-way. Consequently, about 45 feet of new clearing would be required in most areas. All but the eastermost 1.8 miles of the replacement pipeline would be built adjacent to NGT's existing pipeline. In this area, 75 feet of new right-of-way would be cleared for construction.

After the replacement pipeline is in service, NGT would remove the majority of the old pipeline. Abandonment activities would take place entirely within NGT's existing 40-foot-wide right-of-way. Following construction, NGT would maintain a 40-foot-wide permanent right-of-way.

Additional temporary work space would be required adjacent to the planned construction right-of-way at road and stream crossings. These areas would vary in size between 4,000 and 168,000 square feet.

### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental

[1] NorAm Gas Transmission Company's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- land use
- cultural resources
- air quality and noise
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

**Currently Identified Environmental Issues**

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by NGT.

This preliminary list of issues may be changed based on your comments and our analysis.

- The proposed replacement pipeline would cross 68 waterbodies, 13 of which are greater than 100 feet wide.
- The project would disturb about 17 acres of wetland during construction, including 8 acres of forested wetland.
- Eleven residences would be within 50 feet of the edge of the construction right-of-way.
- The pipeline would cross Bayou Dorcheat, a Louisiana Natural and Scenic Waterway, using a directional drilling technique.

**Public Participation**

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1A, Washington, D.C. 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket No. CP97–724–000; and
- Mail your comments so that they will be received in Washington, D.C. on or before November 17, 1997.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27661 Filed 10–17–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Intent To File An Application

October 14, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 309.

c. *Date filed:* October 3, 1997.

d. *Submitted By:* Pennsylvania Electric Company, current licensee.

e. *Name of Project:* Piney Hydroelectric Project.

f. *Location:* On the Clarion River, in the Clarion County, Pennsylvania.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* June 1, 1979.

i. *Expiration date of current license:* October 12, 2002.

j. The project consists of: (1) A 125-foot-high, 700-toot-long concrete gravity arch dam; (2) a 653-acre reservoir; (3) a powerhouse containing three generating units with a total installed capacity of 28,800 kW; (4) a 115-kV and 34.5-kV transmission and distribution facility; and (5) appurtenant facilities.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Pennsylvania Electric Company, 1001 Broad Street, Johnstown, PA 15907, (814) 533–8111.

l. *FERC contact:* Tom Dean (202) 219–2778.

m. Pursuant to 18 CFR 16.9 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 12, 2000.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27663 Filed 10–17–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Tendered for Filing With the Commission

October 14, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–10768–001.

c. *Date Filed:* August 28, 1997.

d. *Applicant:* City of Portland, Michigan.

e. *Name of Project:* Municipal Hydroelectric Facility.

f. *Location:* On the Grand River in Ionia County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Robert Masselink, P.E. or Glen Hendrix, Earth Tech, Inc., 5555 Glenwood Hills Parkway, Grand Rapids, MI 49588, (616) 942–9600.

i. *FERC Contact:* William Diehl, P.E. (202) 219–2813.

j. *Comment Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The constructed project consists of the Portland Municipal Dam, a reservoir of about 625 acre-feet on the Grand River, and a forebay and powerhouse complex located at the south end of the dam. The powerhouse is equipped with two turbine-generator units having a total installed capacity of 375 kW.

1. With this notice, we are initiating consultation with the MICHIGAN STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the issuance date of this notice and serve a copy of the request on the applicant.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–27664 Filed 10–17–97; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5910–6]**

### Agency Announcement of Information Collection Activities: 1997 Iron and Steel Industry Survey (EPA ICR No. 1830.01)

**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 United States Environmental Protection Agency (EPA) is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): 1997 Iron and Steel Industry Survey (EPA ICR No. 1830.01). This industry includes cokemaking, sintering, ironmaking, steelmaking, ladle metallurgy, vacuum degassing, casting, hot forming, salt bath descaling, acid pickling, cold forming, alkaline cleaning, hot coating, and electroplating. Before submitting an Information Collection Request (ICR) to OMB for review and approval, EPA is soliciting comments from the public on specific aspects of the proposed information collection survey instrument as described below.

**DATES:** Comments must be received by EPA no later than December 19, 1997.

**ADDRESSES:** The public may contact Mr. George Jett at the EPA for a paper copy of the draft survey instrument or may download the draft survey instrument from the Internet at: http://www.epa.gov/ost/Events/index.html#ann. Mr. Jett may be reached by mail at the U.S. EPA, Engineering and Analysis Division (Mail Code 4303), 401 M Street SW., Washington, DC 20460; or by telephone at (202) 260–7151 or FAX at 202–260–7185. The draft survey instrument includes all pertinent instructions, information request questions, and definitions.

**SUPPLEMENTARY INFORMATION:**

*Affected Entities:* Entities affected by the proposed survey include facilities that manufacture iron and steel included in the following manufacturing operations: cokemaking, sintering, ironmaking, steelmaking, ladle metallurgy, vacuum degassing, casting, hot forming, salt bath descaling, acid pickling, cold forming, alkaline cleaning, hot coating, and electroplating. The survey is intended to identify and collect data from iron and steel industrial sites that generate and discharge process wastewater from all manufacturing processes associated with potential water-using industrial activities.

*Title:* 1997 Iron and Steel Industry Survey (EPA ICR No. 1830.01).

*Abstract:* The survey is intended to collect technical (Part A) and economic (Part B) information required by EPA in order to develop revised effluent limitations guidelines for the iron and steel manufacturing point source category as described above. EPA is required by section 304 (m) of the Clean Water Act of 1987 (33 U.S.C. 1314 [m]) to review effluent limitations guidelines and standards periodically to determine whether the current regulations remain appropriate in light of changes in the industrial category caused by advances in manufacturing technologies, in-process pollution prevention, or end-of-pipe wastewater treatment. EPA is also required by the terms of a Consent Decree with the Natural Resources Defense Council, Inc. (NRDC), to develop revised effluent limitations guidelines and standards for the Iron & Steel industry (D.D.C. Civ. No. 89–2980, January 31, 1992, as modified). This survey is being conducted pursuant to those legislative and judicial requirements.

This survey instrument will be issued under authority of section 308 of the Clean Water Act of 1987 (Federal Water Pollution Control Act, 5 U.S.C. 1318), and responses from data collection survey instrument recipients are mandatory. The survey instruments will be mailed to respondents after OMB approves the ICR. The ICR that will be submitted by EPA to OMB will include discussion of the comments received in response to today's announcement. The proposed survey instrument is a necessary part of the data collection portion of the effluent limitations guidelines development process. The proposed survey instrument will provide EPA with the technical and economic data required to evaluate effective pollution control technologies and the economic achievability of any final rule that the Agency issues. EPA will consider both technical performance and economic achievability when making final decisions on 40 CFR part 420.

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 EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* 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.

The proposed survey instrument was developed in such a manner as to reduce burden and improve clarity. EPA has conducted several outreach meetings through project status briefings with the major industry trade associations. Additionally, the survey instrument was distributed in advance of this notice to the following industry trade associations: American Iron and Steel Institute, Steel Manufacturers Association, Specialty Steel Industry of North America, the Cold Finished Steel Bar Institute, The Wire Association International, Incorporated, the Steel Tube Institute of North America, and the American Galvanizers Association, Incorporated.

Because of the complexity of the industry and the substantial changes in the iron and steel industry since part 420 was promulgated (47 FR 23284, May 27, 1982), EPA has decided to prepare a detailed survey instrument to characterize accurately current conditions in the iron and steel industry as a basis for establishing equitable regulations. The September 1995 ''Preliminary Study of the Iron and Steel Category, 40 CFR part 420 Effluent Limitations Guidelines and Standards'' (EPA 821–R–95–037), provides the basis for reassessing the existing regulations. This document is available through the National Technical Information Services under document number PB 96–126–156.

EPA typically develops and distributes a screener questionnaire in order to better define the target population for a regulation. The screener allows the agency to eliminate facilities from consideration which are not anticipated to fit under the scope of the regulation. However, for the iron and steel industry, a number of factors make this additional step unnecessary. These factors include the existence of well organized trade associations, facility lists from a variety of data sources, and past agency experience. EPA believes that the target population for this regulation (approximately 577 facilities) is small enough that the survey instrument can be distributed to all facilities. (This number may change before the survey is mailed as we refine our methodology for determining the target population). Therefore there will be no screener questionnaire, and the survey instrument will be considered as a complete census and not merely a partial survey of the industry. This will allow the Agency to characterize more accurately the industry, and thereby develop a regulation more pertinent to the entire industry than if a partial survey were used. The Agency solicits comment on this decision.

The EPA burden estimate on industrial facilities is deemed to be primarily proportional to the types and number of manufacturing processes. The EPA burden estimate is presented in Table 1. The EPA burden estimate is based on an estimated population of 577 facilities with different configurations of manufacturing processes (from large integrated mills to medium sized mills (mini-mills) to small stand alone facilities). EPA estimates that the total burden will be 98,895 hours.

TABLE 1.—BURDEN ESTIMATE FOR 1997 IRON AND STEEL INDUSTRY SURVEY

| | Large | Medium | Small |
|---|---|---|---|
| Number of Facilities | 22 | 130 | 425 |
| Technical Hours/Facility | 515 | 195 | 105 |
| Economic Hours/Facility | 45 | 40 | 30 |

Finally, EPA will maintain a temporary, toll-free telephone number once the survey instrument has been mailed that survey recipients may call to obtain assistance in completing the survey instrument. EPA believes that the toll-free telephone number will greatly reduce burden by helping recipients to answer specific questions within the context of their individual operations.

*Request for Comments:* Since EPA must develop a sound technical and economic basis for equitable national standards, EPA is soliciting comments and suggestions regarding the substance and form of the draft survey instrument. For example, are the directions and questions clear and concise; are the definitions consistent with industry jargon and use of terms; are the right questions in the survey; if not, please suggest more appropriate ones; do the questions adequately cover all pertinent factors relevant to developing equitable guidelines; if not, what needs to be added? EPA is also soliciting comments on means of reducing the data collection burden. EPA requests that all suggestions be supported in order to properly evaluate the suggestion. Any burden reduction suggestions must consider the need to collect information on the pollutants being discharged by the industries, the processes that generate the pollutants, alternative controls, the economic achievability of the proposed regulations, and the benefits derived from reducing pollution in our oceans, lakes, rivers, and streams. Please send any suggestions to Mr. George Jett at the address listed above.

**Tudor T. Davies,**

*Director, Office of Science and Technology.*

[FR Doc. 97–27729 Filed 10–17–97; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5910–8]**

### National Advisory Council for Environmental Policy and Technology: Full Council Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** Under the Federal Advisory Committee Act, Pub. L. 92463, EPA gives notice of a two-day meeting of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. This meeting is being held to formally present reports and recommendations to EPA and to discuss future activities and projects of NACEPT.

Reports and recommendations will be presented by the Reinvention Criteria Committee, the Community-Based Environmental Protection Committee, the Toxic Data Reporting Committee, and the Effluent Guidelines Committee. Future activities for these committees will also be discussed, as well as plans for the topics to be addressed by the Environmental Information and Public Access Committee, and the Environmental Capital Markets Committee, which are two new NACEPT Committees.

**DATES:** The two-day public meeting will be held on Wednesday, November 5, 1997, from 9:00 a.m. to 4:30 p.m., and Thursday, November 6, 1997 from 8:30 a.m. to 12:00 Noon. On both days, the meeting will be held at the Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia.

**ADDRESSES:** Material may be transmitted to the Committee through Gordon Schisler, Deputy Director, Office of Cooperative Environmental Management (1601–F), 401 M Street, SW., Washington, DC 20460; telephone (202) 260–9741.

**FOR FURTHER INFORMATION CONTACT:** Clarence Hardy, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency, (1601–F), Washington, D.C. 20460; telephone (202) 260–9741.

Dated: October 9, 1997.

**Gordon Schisler,**

*Acting Designated Federal Official.*

[FR Doc. 97–27728 Filed 10–17–97; 8:45 am]

**BILLING CODE 6560–50–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5752–3; CWA–97–H–001]**

### GTE Corporation; Proposed Clean Water Act Class II Administrative Complaint Assessment

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

**ACTION:** Notice.

**SUMMARY:** EPA has filed a civil administrative complaint against GTE Corporation (GTE) for failure to prepare Spill Prevention Countermeasure and Control (SPCC) plans for 89 facilities where it stored diesel oil, 88 with above ground and one with below ground tanks, in violation of the Clean Water Act (CWA) and its implementing regulations. EPA under CWA section 311 has assessed a civil penalty and provided GTE notice of the proposed issuance of an order assessing a penalty and an opportunity for a hearing. The Administrator, as required by CWA section 311, is providing public notice and reasonable opportunity to interested persons to comment on the proposed issuance of the order.

**DATES:** Comments on this proposed order are due on or before November 19, 1997.

**ADDRESSES:** Mail written comments to Ms. Angela DeVore, Multimedia Enforcement Division (2248–A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Ms. Angela DeVore, Multimedia Enforcement Division, Environmental Protection Agency, Rm. 3117, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC.

Comments may also be submitted electronically to: devore.angela@epamail.epa.gov. Follow the instructions under Unit II. of this document.

The public record for the proceeding is located in the Office of the EPA Headquarters Hearing Clerk, Ms. Bessie Hammiel, Rm. C–400, 401 M St., SW., Washington, DC, Monday through Friday, excluding legal holidays from 8 a.m. to 4:30 p.m.; telephone (202) 260–4865.

**FOR FURTHER INFORMATION CONTACT:** Persons wishing to receive a copy of 40 CFR Part 22—Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, to review the complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact Ms. Angela DeVore, Multimedia Enforcement Division (2248–A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 564–2235; fax (202) 564–9001; e-mail: devore.angela@epamail.epa.gov.

For technical information contact: Gerard C. Kraus, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance, at (202) 564–6047.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability:** Electronic copies of this document are available from the EPA Home Page at the **Federal Register**—Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

#### I. Background

GTE, One Stamford Forum, Stamford, CT 06904, self-disclosed to EPA that it had failed to prepare SPCC plans for 89 facilities where it stored diesel oil, 88 with above ground and one with below ground tanks, in violation of the CWA and 40 CFR part 112. The disclosures were made pursuant to the EPA ''Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations'' (''the Audit Policy'') (60 FR 66706, December 22, 1995). EPA filed an administrative civil complaint against GTE on September 29, 1997 (in re: GTE Corporation, CWA–97–H–001). The administrative penalty proposed in the complaint is the statutory maximum, $125,000. EPA intends to settle this action under the Audit Policy. Using the criteria set forth in the policy, EPA intends to waive any gravity based penalty and collect economic benefit enjoyed by the Respondent because of delayed compliance with the SPCC regulations. The proposed settlement figure for this matter is $16,708. This settlement is subject to public notice and comment under CWA section 311 (33 U.S.C. 1321).

Under CWA section 311(b)(6) (33 U.S.C. 1321(b)(6)), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA section 311(b)(3) (33 U.S.C. 1321(b)(3)), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j) (33 U.S.C. 1321(j)) may be administratively assessed a civil penalty of up to $125,000 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR part 22 rules.

The procedures by which the public may submit written comments on a

proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in 40 CFR part 22. The deadline for submitting public comment on a proposed Class II order is November 19, 1997. All comments will be transferred to the Environmental Appeals Board of EPA for consideration and/or incorporation into the final order.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to the close of the public comment period.

### II. Public Record and Electronic Submissions

The public record for this proceeding (including comments submitted electronically as described below) has been established. A public version of this record, including printed, paper versions of electronic comments is located in the Office of the EPA Headquarters Hearing Clerk, Ms. Bessie Hammiel, Rm. C–400, 401 M St., SW., Washington, DC, Monday through Friday, excluding legal holidays from 8 a.m. to 4:30 p.m.; telephone (202) 260–4865.

Comments may be submitted on disk in WordPerfect 5.1/6.1. Electronic comments on this proposed order may be filed online at many Federal Depository Libraries.

### List of Subjects

Environmental protection.

Dated: October 15, 1997.

**Melissa P. Marshall,**

*Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.*

[FR Doc. 97–27726 Filed 10–17–97; 8:45 am]

**BILLING CODE 6560–50–F**

## FARM CREDIT ADMINISTRATION

### Sunshine Act Meeting; Farm Credit Administration Board

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the October 22, 1997 special meeting of the Farm Credit Administration Board (Board) will not be held. *See* 62 FR 49227, September 19, 1997. The FCA Board will hold a meeting at 9:00 a.m. on Thursday, November 13, 1997. An agenda for this meeting will be published at a later date.

**FOR FURTHER INFORMATION CONTACT:** Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: October 15, 1997.

**Floyd Fithian,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 97–27811 Filed 10–16–97; 1:27 pm]

**BILLING CODE 6705–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[FCC 97–330]**

### Revised Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission has released a public notice (notice) which revises various procedural requirements and policies relating to the Commission's processing of Bell Operating Company applications to provide in-region, interLATA services pursuant to new section 271 of the Communications Act of 1934, as amended, 47 U.S.C. 271 (Act). These procedures originally were set out on a public notice released December 6, 1996 (62 FR 68040 (December 26, 1996)). The notice revises those procedures and policies and supersedes the December 6, 1996 public notice.

**FOR FURTHER INFORMATION CONTACT:** Florence Grasso, Common Carrier Bureau, Policy and Program Planning Division, (202) 418–1580.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

*OMB Control Number:* 3060–0756.

*Expiration Date:* 03/31/98.

*Title:* Revised Procedures for Bell Operating Company Applications under New Section 271 of the Communications Act.

*Respondents:* Business or other for-profit; federal government; and state, local or tribal government.

Public reporting burden for the collection of information is estimated as follows:

| Information collection | Number of respondents (approximately) | Annual hour burden per response | Total annual burden (hours) |
|---|---|---|---|
| Submission of applications by the BOCs | 7 | 125 hours per application 7 (companies) × 7 (estimated filings each) × 120 (hours). | 6,125 |
| Submission of written consultations by the State Regulatory Commissions | 49 | 120 hours | 5,880 |
| Submission of written consultations by the Department of Justice | 1 | 4,900 49 (states) × 100 (hours per state). | 4,900 |
| Submission of written comments by interested third parties | 75 | 25 hours | 1,875 |

*Total Annual Burden:* 18,780.

*Frequency of Response:* One-time, unless an application must be resubmitted.

*Estimated Costs Per Respondent:* $0.

*Needs and Uses:* The Commission issued a public notice (FCC 97–330) on September 19, 1997 which revised various procedural requirements and policies relating to the Commission's processing of Bell Operating Company applications to provide in-region, interLATA services pursuant to new section 271 of the Communications Act of 1934, as amended, 47 U.S.C. 271 (Act).

### Synopsis of Public Notice

*A. Application Filing Requirements*

Under section 271, the Bell Operating Companies must file applications to provide in-region interLATA services on a state-by-state basis. By ''application,'' we mean: (1) A stand-alone document

entitled Brief in Support of Application by [Bell company name] for Provision of In-Region, InterLATA Services in [state name]; and (2) any supporting documentation. The content of both parts of the application is addressed later in this public notice.

Under the revised procedures established in this Public Notice, applicants must file at least twelve copies of each section 271 application with the Commission to be distributed as follows:

(1) Applicants must file an original and six copies of each section 271 application with the Office of the Secretary at the Federal Communications Commission. If the applicant wants each Commissioner to receive a copy of the section 271 application, the applicant should file an original plus eleven copies with the Office of the Secretary. The applicant must also submit the application on a computer diskette as described below. The original, the six (or, if applicable, eleven) copies, and the 3.5 inch computer diskette described below should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street N.W., Washington, D.C. 20554.

(2) In addition, applicants must submit five copies of the section 271 application to Janice Myles, Policy and Program Planning Division, Common Carrier Bureau, Federal Communications Commission, Room 544, 1919 M Street, N.W., Washington, D.C. 20554.

Applications will be available for public inspection during regular business hours in the Reference Center of the Federal Communications Commission, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. The applicant must also submit a copy of the application simultaneously to: (i) The Department of Justice c/o Donald J. Russell, Telecommunications Task Force, Antitrust Division, Room 8205, 555 Fourth Street, N.W., Washington, D.C. 20001; (ii) the relevant state regulatory commission; and (iii) the Commission's copy contractor, ITS, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, tel. (202) 857–3800.

The 3.5 inch computer diskette submitted to the Commission should be formatted in WordPerfect 5.1. It should contain the Applicant's Brief in Support. If electronically available, the supporting documentation must be included on the computer diskette as well. With respect to supporting materials that are not provided on diskette, the applicant should include a note at the end of the electronic version of the Brief in Support specifying which materials are not contained on the disk and indicating that such materials are on file with the Commission. All filings submitted on diskette will be posted on the Internet for public inspection at http://www.fcc.gov. We also urge the applicant to post its electronic filings on its own Internet home page and to inform us of such posting in the Brief in Support.

*B. Preliminary Matters*

Section 271(d)(3) states that ''[t]he Commission shall not approve the authorization requested in an application * * * unless it finds'' three specified conditions to be met. As stated in our *December 6th public notice*, we expect that a section 271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings thereon. An applicant may not, at any time during the pendency of its application, supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties commenting on its application. Thus, an applicant may not submit factual evidence gathered after the applicant's initial filing. The applicant, however, may submit new factual evidence if the sole purpose of that evidence is to rebut arguments made, or facts submitted. But in no event shall such evidence post-date the filing of the relevant comments. In the event that the applicant submits new or post-dated evidence in replies or *ex parte* filings, we reserve the right to start the 90-day review process anew or to accord such evidence no weight in making our determination. All factual assertions made by any applicant (or any commenter) must be supported by credible evidence, or they may not be entitled to any weight. Such factual assertions, as well as expert testimony, submitted by any party must also be supported by an affidavit or verified statement of a person or persons with personal knowledge thereof. Applicants and participants in section 271 proceedings also have an obligation to present their position in a clear and concise manner. In the section 271 proceedings conducted so far, each application—as well as some of the subsequent responsive filings—totalled several thousand pages. In addition, certain parties have included substantive arguments in affidavits or other supporting materials, rather than in their legal briefs. As a result, in some cases, we have found it burdensome and time-consuming to determine the positions of parties. Because of the shortness of the 90-day review period, we believe that it is necessary to make the section 271 review process as efficient as possible, consistent with the requirements of the statute. We therefore require applicants and commenting parties to make all substantive legal and policy arguments in a legal brief (*i.e.*, Applicant's Brief in Support, comments in opposition or support, reply comments, *ex parte* filings). The Commission retains the authority to strike, or to decline to consider, substantive arguments that appear only in affidavits or other supporting documentation. We note that the United States Court of Appeals for the District of Columbia Circuit has found that the Commission ''need not sift pleadings and documents to identify'' arguments that are not ''stated with clarity.'' It is the petitioner who has the ''burden of clarifying its position'' before the agency. This duty is even more crucial in the context of section 271 proceedings, because of the limited period in which the agency has to review section 271 applications. We recognize, however, that the question of whether an applicant has satisfied the requirements of section 271 raises numerous complex and fact-intensive issues, which may necessitate lengthy filings in support of or in opposition to an application. In order to ensure that applicants and other participants in section 271 proceedings have the ability to present their positions fully, we have increased the page limits for the Applicant's Brief in Support and third party comments and replies, and we have eliminated the page limits for applicants' replies, as noted below. In addition, we expect that applicants and other participants in section 271 proceedings will continue to use affidavits and other supporting documentation to support factual and legal assertions made in their legal briefs, to provide expert testimony in support of the positions articulated in their briefs, and to clarify detailed factual issues. Because the statute affords us only 90 days to review the application, we encourage the applicant to meet with likely objectors in order to attempt to narrow the issues in dispute. As noted in section C of this Public Notice, we require that an applicant submit, either in the application itself or in a supplemental statement within five days after the application is filed, a signed statement that describes efforts that the applicant has made to narrow the issues in dispute and the results of those efforts.

*C. Content of Applications*

Applications shall conform to the Commission's general rules relating to

applications. As noted above, applications shall have two parts: (1) A Brief in Support of Application by [Bell company name] for Provision of In-Region, InterLATA Services in [state name]; and (2) any supporting documentation, such as records of state proceedings, interconnection agreements, affidavits, etc. The Applicant's Brief in Support may not exceed 125 pages. The table of contents, summary of argument, and list of appendices (items (a), (b), and (i) below) shall not be counted in determining the length of the Brief in Support. There is no page limit on supporting documentation, but, as discussed above, the applicant may not make substantive legal or policy arguments in its supporting documentation.

The Brief in Support should contain the following items:

(a) A table of contents;

(b) A concise summary of the substantive arguments presented in the Brief;

(c) A statement identifying all of the agreements that the applicant has entered into pursuant to negotiations and/or arbitrations under section 252, including the dates on which the agreements were approved under section 252 and the status of any federal court challenges to the agreements pursuant to section 252(e)(6);

(d) A statement identifying how the applicant meets the requirements of section 271(c)(1), including a list of the specific agreements on which the applicant bases its application if it intends to rely on a subset of the list set forth in item (c) above;

(e) A statement summarizing the status and findings of the relevant state proceedings (if any) examining the applicant's compliance with section 271 or portions thereof;

(f) A statement describing the efforts the applicant has made to meet with likely objectors to narrow the issues in dispute and the results of those efforts (as indicated above, this statement may be filed separately from the application; but not later than five days after the filing of the application);

(g) All legal and factual arguments that the three requirements of section 271(d)(3) have been met, supported as necessary with selected excerpts from the supporting documentation (with appropriate citations) (Item (g) is obviously the core portion of the Brief in Support, and may be quite lengthy. It may help to divide it, therefore, into three subsections, one corresponding to each of the three requirements set forth in section 271(d)(3).);

(i) A list of all appendices (including affidavits) and the location of and subjects covered by each of those appendices;

(h) The name, address, and phone number of the person who will address inquiries relating to access (subject to the terms of any applicable protective order) to any confidential information submitted by the applicant;

(i) An Anti-Drug Abuse Act certification as required by 47 CFR § 1.2002; and

(j) An affidavit signed by an officer or duly authorized employee certifying that all information supplied in the application is true and accurate to the best of his or her information and belief.

The name of the applicant, the date the application is filed, and the state to which it relates should appear in the upper right-hand corner of each page of the Brief in Support.

As for the supporting documentation, we require that it contain, at a minimum, the complete public record, as it exists on the date of filing, of the relevant state proceedings (if any) examining the applicant's compliance with section 271 or portions thereof. In addition, supporting documentation, including any records of interconnection agreements, affidavits, etc., shall be provided in appendices, separated by tabs and divided into volumes as appropriate. Each volume shall contain a table of contents that lists the subject of each tabbed section of that volume.

*D. Comments By Interested Third Parties*

After an application has been filed, the Common Carrier Bureau will issue a public notice (initial public notice) establishing the specific due dates for the various filings set forth below. The initial public notice will also establish procedures for the treatment of confidential information submitted by participants (including the applicant, the Department of Justice, and the relevant state commission). Simultaneously with the issuance of the initial public notice, the Bureau will notify the Department of Justice and the affected state of our receipt of the application. Interested third parties will have approximately 20 days from the issuance of the initial public notice to file comments in opposition or support, which may not exceed 100 pages. We are increasing the page limit for initial comments from 50 pages to 100 pages in the expectation that parties will include all substantive arguments in their legal brief. We reiterate that the Commission may strike or decline to consider substantive arguments made only in affidavits or other supporting documentation. The specific due date for comments will be set forth in the initial public notice. We retain discretion to adjust the due date for comments and replies on a case-by-case basis to ensure that interested third parties have sufficient time to review and comment on each application. We strongly discourage, and will take appropriate steps to prevent, an applicant from attempting to limit the time for interested third parties to review an application (*e.g.*, by filing on a Friday or the day before a national holiday). The name of the commenter, the name of the applicant, and the state to which the application relates should appear in the upper right-hand corner of each page. Comments in support or opposition shall also include a table of contents, a concise summary of the arguments presented in the comments, and a list of all appendices and the location of and subjects covered by each of those appendices. None of these portions of the comments shall be counted in determining the length of the comments. To file comments or replies (or any other filing set forth below) in a section 271 proceeding, commenters must follow the applicable procedures outlined in section A of this public notice.

Commenters shall not incorporate by reference, in their comments or replies, entire documents or significant portions of documents that were filed in other proceedings, such as comments filed or arguments made in a previous section 271 proceeding. Although commenters are permitted to note arguments that were presented in earlier filings, they must provide a complete recitation in their current filing of any argument that they wish the Commission to consider.

There is no page limit on supporting documentation. As discussed in section B of this public notice, however, commenters must make all substantive legal and policy arguments in their comments, rather than in supporting documentation. In addition, supporting documentation, including any records of interconnection agreements, affidavits, etc., shall be provided in appendices, separated by tabs and divided into volumes as appropriate. Each volume shall contain a table of contents that lists the subject of each tabbed section of that volume.

If a commenter submits confidential information to the Commission, it shall include in a cover letter to the Commission the name, address, and phone number of the person who will address inquiries regarding access to the confidential information by other participants in the proceeding (subject to the terms of any applicable protective order).

*E. State Commission and Department of Justice Written Consultations*

Many state commissions have already commenced proceedings to examine Bell Operating Company compliance with section 271 or portions thereof. In light of this fact and in light of the shortness of the 90-day period for deciding a section 271 application, we require that the relevant state commission file any written consultation not later than approximately 20 days after the issuance of the intial public notice. The specific due date for the state's written consultation will be set forth in the intial public notice. The relevant state commission shall also follow the applicable procedures outlined in section A of this public notice.

Any written consultation by the Department of Justice (which, by the Act's express terms, must become part of the record) must be filed not later than approximately 35 days after the issuance of the intial public notice. The specific due date for the Department's written consultation will be set forth in the intial public notice. The Department of Justice shall also follow the applicable procedures outlined in section A of this public notice.

The state commission and the Department of Justice are also welcome to file a reply pursuant to section F of this public notice, as well as written *ex parte* submissions in accordance with section H of this public notice.

*F. Replies*

All participants in the proceeding—the applicant, interested third parties, the relevant state commission, and the Department of Justice—may file a reply to any comment made by any other participant. Such replies will be due approximately 45 days after the intial public notice is issued. The specific due date for replies will be set forth in the intial public notice. All replies except that of the applicant are limited to 50 pages. There is no page limit for the applicant's reply.

The name of the submitter, the name of the applicant (if different), and the state to which the application relates should appear in the upper right-hand corner of each page. Replies shall also include a table of contents, a concise summary of the arguments presented in the comments, and a list of all appendices and the location of and subjects covered by each of those appendices. None of these portions of a reply shall be counted in determining the length of the reply.

The applicant's and third parties' reply comments may not raise new arguments or include new data that are not directly responsive to arguments other participants have raised, nor may the replies merely repeat arguments made by that party in the application or initial comments. An applicant may submit new factual evidence in its reply if the sole purpose of that evidence is to rebut arguments made, or facts submitted, by commenters, provided the evidence covers only the period placed in dispute by commenters and in no event post-dates the filing of the relevant comments. In addition, as discussed in section D of this public notice, participants are not permitted, in their replies, to incorporate by reference entire documents or significant portions of documents that were filed in other proceedings.

There is no page limit on supporting documentation. As discussed in section B of this public notice, however, participants submitting replies must make all substantive legal and policy arguments in their replies, rather than in affidavits or other supporting documentation. In addition, supporting documentation, including any records of interconnection agreements, affidavits, etc., shall be provided in appendices, separated by tabs and divided into volumes as appropriate. Each volume shall contain a table of contents that lists the subject of each tabbed section of that volume.

*G. Motions*

Because of the shortness of the 90-day period to review section 271 applications, a dispositive motion filed with the Commission in a section 271 proceeding (*e.g.*, motion to dismiss) will be treated as an early-filed pleading and will not be subject to a separate pleading cycle, unless the Commission or Bureau determines otherwise in a public notice issued after the motion is filed. We generally expect, however, that such a separate pleading cycle will not be necessary. Thus, in general, dispositive motions filed before the due date for third party comments will be treated as early-filed comments; dispositive motions filed after the due date for third party comments but before the due date for replies will be treated as early-filed replies; and dispositive motions filed after the due date for replies will be treated as *ex parte* submissions. Such motions will be counted toward the applicable page limit for the submitting party, as established in this public notice.

Non-dispositive motions (*e.g.*, motions to strike) will be subject to the default pleading cycle in section 1.45 of our rules, unless the Commission or Bureau determines otherwise in a public notice. Because of the expedited nature of section 271 proceedings, section 1.4(h) of our rules will not apply to motions filed in section 271 proceedings. Thus, parties will not be allowed an extra three days (beyond the time permitted in section 1.45) to respond to non-dispositive motions and oppositions thereto, regardless of whether the filing was served on the party by mail. In lieu of that rule, however, a party submitting a non-dispositive motion must, on the day of filing, serve that motion either by hand or by facsimile on any party whose filing is the subject of the motion. In addition, parties must submit non-dispositive motions and oppositions to such motions to the Commission on a 3.5 inch computer diskette formatted in WordPerfect 5.1 (as well as in hard copy form). All filings submitted on diskette will be posted on the internet for public inspection at http://www.fcc.gov. Such motions, oppositions, and replies will not be counted toward the submitting party's page limit.

*H. Ex Parte Rules—Permit-But-Disclose Proceeding*

Because of the broad policy issues involved, section 271 application proceedings initially will be considered permit-but-disclose proceedings. Accordingly, *ex parte* presentations will be permitted, provided they are disclosed in conformance with Commission *ex parte* rules. Because of the statutory timeframe, however, we strongly encourage parties to set forth their views comprehensively in the formal filings specified above (*e.g.*, the Brief in Support, oppositions, supporting comments, etc.) and not to rely on subsequent *ex parte* presentations. In any event, parties may not file more than a total of 20 pages of written *ex parte* submissions. This 20-page limit does not include: (1) Written *ex parte* submissions made solely to disclose an oral *ex parte* contact; (2) written material submitted at the time of an oral presentation to Commission staff that provides a brief outline of the presentation; (3) written material filed in response to direct requests from Commission staff; or (4) written factual exhibits. The Commission retains the right not to consider as part of the record *ex parte* submissions in excess of the 20-page limit.

For purposes of these proceedings, and in light of the explicit role the Act gives to the Department of Justice and the state commissions under section 271, any oral *ex parte* presentations from the Department of Justice and the relevant state commission will be deemed to be exempt *ex parte*

presentations. To the extent that we obtain through such oral *ex parte* presentations new factual information on which we subsequently rely in our decision-making process, we will either request the Department of Justice or the relevant state commission to disclose or disclose ourselves such new factual information in the record no later than the time we release our decision. There are no page limits on written *ex parte* submissions by the Department of Justice or the relevant state commission.

Notwithstanding the above, the Commission may, by subsequent public notice, prohibit all communication with Commission personnel regarding the application during a seven-day period preceding the anticipated release date of the Commission's order regarding the application.

*I. FCC Notice to Individuals Required by the Privacy Act and the Paperwork Reduction Act*

Pursuant to Section 271 of the Communications Act of 1934, as amended, the Bell Operating Companies must file applications to provide in-region interLATA services on a state-by-state basis. State regulatory commissions must file written consultations relating to the applications not later than approximately 20 days after the issuance of an Initial Public Notice establishing specific due dates for various filings. Interested third parties may file comments on the applications not later than approximately 20 days after the issuance of the Initial Public Notice. The Department of Justice must file written consultations relating to the applications not later than approximately 35 days after the issuance of the Initial Public Notice. All of the information would be used to ensure that the Bell Operating Companies have complied with their obligations under the Communications Act of 1934, as amended, before being authorized to provide in-region, interLATA services pursuant to section 271. Obligation to respond is not mandatory.

We have estimated that each response to this collection of information will take, on average, 250 hours. Our estimate includes the time to read the instructions, look through existing records, gather and maintain required data, and actually complete and review the form or response. If you have any comments on this estimate, or on how we can improve the collection and reduce the burden it causes you, please write the Federal Communications Commission, AMD–PERM, Washington, DC 20554, Paperwork Reduction Project (3060–0756). We will also accept your comments via the Internet if you send them to jboley@fcc.gov. Please do not send completed application forms to this address.

Remember—You are not required to respond to a collection of information sponsored by the Federal government, and the government may not conduct or sponsor this collection, unless it displays a currently valid OMB control number or if we fail to provide you with this notice. This collection has been assigned an OMB control number of 3060–0756.

This notice is required by the Privacy Act of 1974, Public Law 93–579, December 31, 1974, 5 U.S.C. Section 552a(e)(3) and the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 97–27698 Filed 10–17–97; 8:45 am]

BILLING CODE 6712–01–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. The notices also will 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 November 3, 1997.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

*1. Broun Family Partnership LLP and Conway C. Broun, Managing Partner*, Athens, Georgia; to retain voting shares of Georgia National Bancorp, Inc., Athens, Georgia, and thereby indirectly retain shares of The Georgia National Bank, Athens, Georgia.

Board of Governors of the Federal Reserve System, October 14, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–27637 Filed 10–17–97; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL RESERVE SYSTEM

### 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. The application also will 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. 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 November 13, 1997.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. NationsBank Corporation, and NB Holdings Corporation*, both of Charlotte, North Carolina; to merge with Barnett Banks, Inc., Jacksonville, Florida, and thereby indirectly acquire Barnett Bank, National Association, Jacksonville, Florida, and Community Bank of the Islands, Sanibel, Florida.

In connection with this application, Applicants also have applied to acquire First of America Bank - Florida, FSB, Tampa, Florida, and thereby engage in traditional thrift activities, pursuant to § 225.28(b)(4) of the Board's Regulation Y;

Barnett Community Development Corporation, Jacksonville, Florida, and thereby engage in investing in corporations or projects designed primarily to promote community welfare, pursuant to § 225.28(b)(12) of the Board's Regulation Y; EquiCredit Corporation, Jacksonville, Florida, and its direct and indirect subsidiaries, and thereby engage in the activities of originating home equity and purchase money loans, acquiring such loans originated from third parties, and securitizing such loans in the secondary market, pursuant to § 225.28(b)(1) of the Board's Regulation Y, and in acting as principal, agent, or broker for credit related insurance, pursuant to § 225.28(b)(11) of the Board's Regulation Y; Equity/Protect Reinsurance Company, Jacksonville, Florida, and thereby engage in the activities of reinsuring credit related insurance policies sold to EquiCredit Corporation customers, pursuant to § 225.28(b)(11) of the Board's Regulation Y; and Honor Technologies, Inc., Maitland, Florida, and thereby engage in operating an electronic funds transfer network and in data processing and management consulting activities, pursuant to §§ 225.28(b)(9) and (b)(14), respectively of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 14, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–27636 Filed 10–17–97; 8:45 am]

BILLING CODE 6210–01–F

## GENERAL SERVICES ADMINISTRATION

**[GSA Bulletin FPMR D–245]**

### Public Buildings and Space

**TO:** Heads of Federal Agencies.

**SUBJECT:** Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace.

1. *PURPOSE.* This bulletin announces the policy concerning the protection of Federal employees and the public from exposure to tobacco smoke in the Federal workplace.

2. *EXPIRATION DATE.* This bulletin contains information of a continuing nature and will remain in effect until canceled.

### Background

a. On August 9, 1997, President Clinton signed Executive Order 13058, entitled ''Protecting Federal Employees and the Public From Exposure to Tobacco Smoke in the Federal Workplace,'' (62 FR 43451, August 13, 1997), to establish a smoke-free environment for Federal employees and members of the public visiting or using Federal facilities. The General Services Administration (GSA) is providing governmentwide policy guidance concerning the requirements of this Executive Order so that federal agencies may benefit from GSA's real property management expertise.

b. The policy previous to Executive Order 13058, enunciated in FPMR § 101–20.105–3, declared all GSA-controlled space non-smoking except where designated smoking areas are identified by agency heads. This Executive Order prohibits, with some exceptions, the smoking of tobacco products in all interior space owned, rented or leased by the executive branch of the Federal Government. GSA will amend FPMR § 101–20.105–3 in the near future to reflect the new policy in this Executive Order.

c. Unlike the previous policy, this Executive Order requires that designated smoking areas be enclosed and exhausted directly to the outside and away from air intake ducts, and maintained under negative pressure sufficient to contain tobacco smoke within the designated area. Agency officials must not require workers to enter such areas during business hours while smoking is ongoing.

### Action

a. In accordance with Executive Order 13058, Federal agencies must prohibit the smoking of tobacco products in all interior space owned, rented, or leased by the executive branch of the Federal Government, and in any outdoor areas under executive branch control in front of air intake ducts.

b. The only exceptions are designated smoking areas; residential accommodations for persons voluntarily or involuntarily residing, on a temporary or long-term basis, in a building owned, leased, or rented by the Federal Government; portions of federally-owned buildings leased, rented, or otherwise provided (in their entirety) to nonfederal parties; and places of employment in the private sector or in other nonfederal governmental units that serve as the permanent or intermittent duty station of one or more federal employees.

c. The heads of Federal agencies may establish limited and narrow exceptions that are necessary to accomplish agency missions. Such exception must be in writing, approved by the agency head, and to the fullest extent possible provide protection of nonsmokers from exposure to environmental tobacco smoke. Authority to establish such exceptions may not be delegated.

d. The heads of Federal agencies must evaluate the need to restrict smoking at doorways and in courtyards under executive branch control in order to protect workers and visitors from environmental tobacco smoke, and may restrict smoking in these areas in light of this evaluation.

e. The heads of Federal agencies are encouraged to use existing authority to establish programs designed to help employees stop smoking.

f. The heads of Federal agencies must implement and ensure compliance with the policy set forth in this Executive Order no later than August 9, 1998. Prior to this date, the heads of Federal agencies must inform all employees and visitors to executive branch facilities about the requirements of this order, inform their employees of the health risks of exposure to environmental tobacco smoke, and undertake related activities as necessary.

Dated: October 9, 1997.

**G. Martin Wagner,**

*Associate Administrator, Office of Governmentwide Policy.*

[FR Doc. 97–27703 Filed 10–17–97; 8:45 am]

BILLING CODE 6820–23–P

## GENERAL SERVICES ADMINISTRATION

### Office of Transportation Audits; Stocking Change of a Standard Form

**AGENCY:** General Services Administration.

**ACTION:** Notice.

**SUMMARY:** The General Services Administration/Office of Transportation is changing the stocking of the following Standard form because of low use demand:

SF 362, U.S. Government Freight Loss/ Damage Claim

Since this form is not authorized for local reproduction, you can obtain the updated camera copy in three ways:

From the ''U.S. Government Management Policy CD–ROM'';

On the internet. Address: http://www.gsa.gov/forms; or

From CARM, Attn.: Barbara Williams, (202) 501–0581.

**FOR FURTHER INFORMATION CONTACT:** Transportation Audit Division, (202) 219–1494. This contact is for information on completing the form and interpreting the FPMR only.

**DATES:** Effective October 20, 1997.

Dated: October 1, 1997.

**Barbara M. Williams,**

*Deputy Standard and Optional Forms Management Officer.*

[FR Doc. 97–27648 Filed 10–17–97; 8:45 am]

**BILLING CODE 6820–34–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 94N–0227]**

### Nandlal G. Rana; Debarment Order

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. Nandlal G. Rana, 184 Parsonage Rd., Edison, NJ 08817, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Rana was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Rana failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

**EFFECTIVE DATE:** October 20, 1997.

**ADDRESSES:** Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On October 5, 1993, the United States District Court for the District of Maryland entered judgment against Mr. Nandlal G. Rana for one count of obstructing an agency proceeding, a Federal felony under 18 U.S.C. 1505.

As a result of this conviction, FDA served Mr. Rana by certified mail on February 17, 1995, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application, and offered him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act (21 U.S.C. 335a(a)(2)(B)), that Mr. Rana was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Mr. Rana was provided 30 days to file objections and request a hearing. Mr. Rana did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

#### II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.99), finds that Mr. Nandlal G. Rana has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing finding, Mr. Nandlal G. Rana is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective October 20, 1997 (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Rana, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Rana, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Rana during his period of debarment.

Any application by Mr. Rana for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 94N–0227 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 1, 1997.

**Janet Woodcock,**

*Director, Center for Drug Evaluation and Research.*

[FR Doc. 97–27693 Filed 10–17–97; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Advisory Committee Meeting; Amendment of Notice

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Cardiovascular and Renal Drugs Advisory Committee. This meeting was announced in the **Federal Register** of September 18, 1997. The amendment is being made to: Remove the second agenda item scheduled on October 23, 1997; add a closed session to the agenda scheduled on October 23, 1997; and provide a new location site for this closed session. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), 419–259–6211, or Danyiel D'Antonio (HFD–21), 301–443–5455, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of September 18, 1997 (62 FR 49015), FDA announced that a meeting of the Cardiovascular and Renal Drugs Advisory Committee would be held on October 23 and 24, 1997. This amendment is to provide an update to the information provided earlier pertaining to the October 23, 1997, meeting day. There are no changes for the October 24, 1997, meeting day. On page 49015, beginning in column 3, portions of the notice pertaining to the October 23, 1997, meeting day are amended to read as follows:

*Location:* October 23, 1997, 8:30 a.m. to 2 p.m., National Institutes of Health, Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

October 23, 1997, 2 p.m. to 5:30 p.m., Hyatt Regency Bethesda, Susquehanna/Severn Room, One Bethesda Metro Center, Bethesda, MD.

*Agenda*: On October 23, 1997, the committee will discuss basic statistical considerations for the evaluation of active control clinical trials.

*Procedure*: On October 23, 1997, from 8:30 a.m. to 2 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 16, 1997. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on October 23, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 16, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations*: On October 23, 1997, from 2 p.m. to 5:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The committee will discuss pending investigational new drug applications.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 10, 1997.

**Michael A. Friedman,**

*Deputy Commissioner for Operations.*

[FR Doc. 97–27695 Filed 10–15–97; 11:17 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; 1997/98 World Health Organization Study of Health Behavior in School Children

**SUMMARY:** Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on Thursday, March 27, 1997, 14687–14688 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number (5 CFR 1320.5).

**Proposed collection Title**

*Title:* 1997/98 World Health Organization Health Behavior in School Children. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The purpose of this study is to analyze differences in risk factors and determinants of injuries and other health related behavior for the early- to mid-adolescent age group across the majority of developed countries. A representative U.S. school-based sample of adolescents is needed to participate in the international study. Data will be used to improve the quality of health promotion programs for youth. *Frequency of Response:* This is a one time study. *Affected Public:* Individuals or households. *Type of Respondents:* U.S. youth in grades 6 through 10. The annual reporting burden is as follows: *Estimated Number of Respondents:* 19,315; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.71; and *Estimated Total Annual Burden Hours Requested:* 13,759. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mary D. Overpeck, DrPH, Epidemiology Branch, Division of Epidemiology, Statistics and Prevention Research, Building 6100, Room 7B03, 9000 Rockville Pike MSC 7510, Bethesda, MD 20892–7510, or call non-toll-free number (301) 496–1711.

**Comments Due Date**

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 19, 1997.

**Benjamin E. Fulton,**

*Executive Officer, NICHD.*

[FR Doc. 97–27671 Filed 10–17–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### National Institutes of Health; Notice of Meeting of the NIH Director's Advisory Panel on Clinical Research

Notice is hereby given that the NIH Director's Advisory Panel on Clinical Research, a group reporting to the Advisory Committee to the Director (ACD), National Institutes of Health (NIH), will meet in public session at the William H. Natcher Building (Building 45) Conference Center, Conference Room D, National Institutes of Health, Bethesda, Maryland 20892, on November 7, 1997 from 9:00 a.m. until approximately 3:00 p.m.

The goal of the Panel is to review the status of clinical research in the United States, and to make recommendations to the ACD about how to ensure its effective continuance. At this meeting items of special concern to the Panel will be discussed preparatory to submission of the Panel's final recommendations by the Panel Chair to the ACD in December, 1997.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other special accommodations, should contact the person named below in advance of the meeting.

Attendance may be limited to seat availability. If you plan to attend the meeting as an observer or make a statement or if you wish additional information, please contact Mrs. Janet Smith, National Institutes of Health, Building 10, Room 1C–116, 10 Center Drive, MSC 1154, Bethesda, Maryland 20892–1154, telephone (301) 402–3444, fax (301) 402–3443, by October 31, 1997.

Dated: October 7, 1997.

**Ruth L. Kirschstein,**

*Deputy Director, NIH.*

[FR Doc. 97–27670 Filed 10–17–97; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4263–N–43]**

### 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: November 19, 1997.

**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 and 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, 551 7th Street, Southwest, Washington, DC 24010, telephone (202) 708–2374. 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: October 10, 1997.

**David S. Cristy,**

*Director, Information Resources Management Policy and Management Division.*

### Notice of Submission of Proposed Information Collection to OMB

*Title of Proposal:* Current Population Survey: Effects of Disclosure on Public Awareness of Lead Pain Hazard.

*Office:* Lead Hazard Control.

*OMB Approval Number:* 2539–0006.

*Description of the Need for the Information and its Proposed Use:* Section 1061 of the Housing and Community Development Act of 1992 requires HUD and the Census Bureau to conduct a survey on the effects of disclosure of lead paint hazards to buyers and prospective tenants. This information collection is needed to assess public awareness on lead paint hazards. HUD will use this information to report to Congress on lead paint hazard reduction activity.

*Form Number:* None.

*Respondents:* Individuals or households.

*Frequency of Submission:* On occasion.

*Reporting Burden:*

| | Number of respondents | × | Frequency of response | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|---|
| Survey ..... | 48,000 | | 1 | | .138 | | 6,640 |

*Total Estimated Burden Hours:* 6,640.

*Status:* Extension, with changes.

*Contact:* Barbara A. Haley, HUD, (202) 708–1785 x126; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: October 10, 1997.

[FR Doc. 97–27680 Filed 10–17–97; 8:45 am]

**BILLING CODE 4120–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4294–D–01]**

### Redelegation of Authority

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

**ACTION:** Redelegation of authority.

**SUMMARY:** In this notice, all power and authority over Single Family Housing program functions presently redelegated to field Housing Directors; to field Single Family Housing Division Directors; and to the Single Family Housing Specialist in Dallas, TX is additionally redelegated from the Assistant Secretary for Housing—Federal Housing Commissioner, through the Deputy Assistant Secretary for Single Family Housing, to the Single Family Homeownership Center Directors in the Philadelphia, PA; Atlanta, GA; Denver, CO; and Santa Ana, CA offices, as specified herein.

**EFFECTIVE DATE:** October 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Patterson, Chief, Program Analysis Branch, Management Services Division, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 9116, Washington, D.C. 20410–0400, Telephone No. (202) 708–0826. Persons with hearing or speech impairments may also utilize HUD's TTY No. (202) 708–1455, or the Federal Information Relay Service's TTY No. at (800) 877–8339. With the exception of the ''800'' number, the telephone and TTY numbers listed are not toll-free.

**SUPPLEMENTARY INFORMATION:** In order to assist in meeting the Department's goal of increasing single family homeownership, as part of the HUD 2020 Management Reform Plan, the

Secretary has authorized the establishment of four Single Family Homeownership Centers, located in Philadelphia, PA; Atlanta, GA; Denver, CO; and Santa Ana, CA. The Single Family Homeownership Centers will enable the Department to more expeditiously provide increasingly efficient services with respect to Single Family Housing programs to HUD clients, lenders and borrowers. This redelegation of authority will provide the Single Family Homeownership Center Directors with the authority required to implement their charge.

In this notice, all power and authority over Single Family Housing program functions presently redelegated to field Housing Directors; to field Single Family Housing Division Directors; and to the Single Family Housing Specialist in Dallas, TX is hereby additionally redelegated from the Assistant Secretary for Housing—Federal Housing Commissioner, through the Deputy Assistant Secretary for Single Family Housing, to the Single Family Homeownership Center Directors in the Philadelphia, PA; Atlanta, GA; Denver, CO; and Santa Ana, CA offices. The authority being redelegated has been published in the **Federal Register** at 60 FR 16034, published on March 28, 1995; and in the field reorganization Revocation and Redelegation of Authority for the Office of Housing, at 50 FR 62739, published on December 6, 1994, as amended by the following: 60 FR 29862, published on June 6, 1995; 61 FR 33130, published on June 26, 1996; 62 FR 23477, published on April 30, 1997; and 62 FR 44132, published on August 19, 1997.

Accordingly, the Assistant Secretary for Housing—Federal Housing Commissioner redelegates authority as follows:

### Section A. Authority Redelegated

All power and authority over Single Family Housing program functions presently redelegated to field Housing Directors; to field Single Family Housing Division Directors; and to the Single Family Housing Specialist in Dallas, TX is hereby additionally redelegated through the Deputy Assistant Secretary for Single Family Housing, to the Single Family Homeownership Center Directors in the Philadelphia, PA; Atlanta, GA; Denver, CO; and Santa Ana, CA offices. The authority being redelegated has been published in the **Federal Register** at 60 FR 16034, published on March 28, 1995; and in the field reorganization Revocation and Redelegation of Authority for the Office of Housing, at 59 FR 62739, published on December 6, 1994, as amended by the following: 60 FR 29862, published on June 6, 1995; 61 FR 33130, published on June 26, 1996; 62 FR 23477, published on April 30, 1997; and 62 FR 44132, published on August 19, 1997.

### Section B. Authority to Further Redelegate

The authority redelegated may be further redelegated in writing to appropriate Single Family Homeownership Center staff.

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 10, 1997.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 97–27676 Filed 10–17–97; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–962–1410–00–P]**

### Notice for Publication; AA–6986–C; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Cape Fox Corporation for approximately 565 acres. The lands involved are in the vicinity of Saxman, Alaska.

**Copper River Meridian, Alaska**

T. 74 S., R. 89 E., T. 74 S., R. 91 E., T. 73 S., R. 92 E.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Ketchikan Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until *November 19, 1997* to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Chris Sitbon,**

*Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.*

[FR Doc. 97–27685 Filed 10–17–97; 8:45 am]

BILLING CODE 4310–JA–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–1430–01; GP8–0012 ; OR–53642]**

### Notice of Public Meeting; Proposed Protective Withdrawal for Leslie Gulch Area of Critical Environmental Concern; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the schedule and agenda for a forthcoming public meeting that will provide an opportunity for public involvement regarding the Department of Interior, Bureau of Land Management's application for protective withdrawal for the Leslie Gulch Area of Critical Environmental Concern in eastern Malheur County.

**EFFECTIVE DATE:** November 18, 1997.

**FOR FURTHER INFORMATION CONTACT:** Bill Holsheimer, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, 541–473–3144.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that a public meeting will be held to provide an opportunity for public comment regarding the application by the Department of Interior, Bureau of Land Management for a 20-year protective withdrawal as to 12,426.43 acres of public lands in eastern Malheur County, Oregon.

The meeting will begin at 7 p.m., Tuesday, November 18, 1997, at the Bureau of Land Management, Vale District Office, 100 E. Oregon Street, Vale, Oregon. The agenda will include: (1) An information briefing by the Bureau of Land Management; (2) oral statements by interested parties addressing the proposed withdrawal; and (3) a question and answer period. Written comments will be accepted or can be mailed to the Bureau of Land Management, Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208. Only comments concerning the proposed protective withdrawal of 12,426.43 acres in Malheur County, Oregon, will be accepted.

The meeting is open to the public. Interested parties may make oral

statements at the meeting and may file written statements with the Bureau of Land Management, Oregon/Washington State Office no later than December 19, 1997. At this informational meeting, oral statements should be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management before any recommendation concerning the proposed mineral withdrawal is submitted to the Secretary of Interior for final action under the authority of Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

Dated: October 7, 1997.

**Robert D. DeViney, Jr.,**

*Chief, Branch of Realty and Records Services.*

[FR Doc. 97–27714 Filed 10–17–97; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[OR–030–08–1220–00: GP8–0014]**

## Notice of Meeting of Advisory Board for the National Historic Oregon Trail Interpretive Center

**AGENCY:** National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given that a meeting of the Advisory Board for the National Historic Oregon Trail Interpretive Center will be held on Thursday, November 6, 1997, from 8 a.m. to 4:00 p.m. at the Best Western Sunridge Inn, 1 Sunridge Lane, Baker City, Oregon 97814.

At an appropriate time, the Board will recess for approximately one hour for lunch. Public comments will be received from 2:00 p.m. to 2:30 p.m., November 6, 1997. Topics to be discussed are administrative activities of the Board, organizational processes, funding for the National Historic Oregon Trail Interpretive Center and the building of partnerships, and the progress of construction projects.

**DATES:** The meetings will begin at 8:00 a.m. and run to 4:00 p.m. November 6, 1997.

**ADDRESSES:** The meeting will take place at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon.

**FOR FURTHER INFORMATION CONTACT:** David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, PO Box 987, Baker City OR 97814 (Telephone 541–523–1845).

**Edwin J. Singleton,**

*Vale District Manager.*

[FR Doc. 97–27682 Filed 10–17–97; 8:45 am]

**BILLING CODE 4310–33–M**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NV–030–5410–77–F002]**

## Notice of Segregation

**SUMMARY:** An application for the conveyance of federally-owned minerals has been filed for the following described land, under the provisions of 43 U.S.C. 1719:

### Parcel 1

A tract of land being situate in the North half of the Southwest Quarter, and a portions of the Northwest Quarter, the Northwest Quarter of the Northeast Quarter, and the South half of the Southwest of Section 34, Township 19 North, Range 19 East, M.D.M., Washoe County Nevada, being more particularly described as follows:

Commencing at the Southeast corner of said Section 33, also being the Southeast corner of said Parcel 1 of Land Map 57, thence along the West line of the Southwest quarter of said Section 34, also being along the East line of said Land Map 57 North 00° 02′ 21″ East a distance of 1312.91 feet to the Southwest corner of the South half of the Southwest Quarter of said Section 34, said point being the true point of beginning, thence continuing along said line, North 02° 02′ 21″ East a distance of 1312.91 feet to the West quarter corner of said Section 34; thence along the West line of the Northwest quarter of said Section 34 and the East line of Land Map 57, North 00° 34′ 33″ West a distance of 2303.09 feet; thence leaving said West line, North 88° 05′ 47″ East a distance of 552.37 feet; thence North 01° 54′ 13″ West a distance of 264.00 feet to a point on the southerly right of way line of McCarran Boulevard as described in Document 937490, recorded in the Office of the County Recorder of Washoe County, Nevada on July 19, 1984 and depicted on Record of Survey 1678 for Reno Properties, recorded in the Office of the County Recorder of Washoe County, Nevada on June 28, 1984 as File No. 933716; thence along said southerly right of way line the following courses and distances:

Along a non tangent curve to the left, having a tangent bearing of South 51° 26′ 28″ East, a radius of 1820.00 feet, a central angle of 09° 56′ 26″, a distance of 315.76 feet;
South 61° 22′ 54″ East a distance of 1180.93 feet;
Along a tangent curve to the left, having a radius of 1045.00 feet, a central angle of 82° 07′ 35″, a distance of 1497.88 feet;
North 36° 29′ 31″ East a distance of 254.63 feet;
Along a tangent curve to the right, having a radius of 955.00 feet, a central angle of 18° 32′ 15″, a distance of 308.98 feet;
North 55° 01′ 46″ East a distance of 227.89 feet to a point on the North line of the Northeast quarter of said Section 34;

Thence leaving the Southerly right of way line of said McCarran Boulevard and along the North line of the Northeast quarter of said Section 34, South 89° 09′ 48″ East a distance of 187.93 feet; thence South 00° 19′ 50″ West a distance of 668.33 feet to the Northeast corner of Parcel 1 of Parcel Map 2060 for Thelma and Sam Jaksick, recorded in the Office of the County Recorder of Washoe County, Nevada on November 24, 1986 as File No. 1119089; thence along the northerly and westerly lines of said Parcel 1 the following courses and distances:

North 89° 25′ 25″ West a distance of 663.85 feet;
South 00° 07′ 09″ West a distance of 671.37 feet;
North 89° 41′ 12″ West a distance of 252.48 feet;
South 00° 00′ 17″ West a distance of 1345.05 feet;

thence South 89° 46′ 59″ West a distance of 406.63 feet to the Center of said Section 34, thence along the North-South center Section line of said Section 34, South 00° 05′ 25″ East a distance of 1321.87 feet to the Southeast corner of the North half of the Southwest Quarter of said Section, thence along the South line of the North half of the Southwest Quarter, South 89° 58′ 56″ West a distance of 2581.06 feet to the Southwest corner of the North half of the Southwest Quarter of said Section, said point being the true point of beginning, containing 231.43 acres more or less.

The basis of bearing of the above legal description is the West line of the Northwest quarter of Section 11, Township 18 North, Range 19 East, M.D.M., as shown on the Official Plat of the Forest Hills Subdivision, recorded in the Office of the County Recorder of Washoe County, Nevada on July 27, 1979, as File No. 619595.

### Parcel 2

A tract of land being situate in Lot 4, a portion of the South half of the Northwest Quarter and a portion of the North half of the Southwest Quarter of Section 2, Township 18 North, Range 19

East, M.D.M, Washoe County, State of Nevada being more particularly described as follows:

Beginning at the Northwest corner of said Section 2; thence North 89° 37′ East along the northerly line of said Section 2 a distance of 879.2 feet; thence South 1° 26′ West a distance of 2726.4 feet to a point on the East-West center line of said Section 2; thence South 0° 07′ East 1320.7 feet to the southerly line of the North half of the Southwest quarter of said Section 2; thence South 89° 08′ West along said southerly line a distance of 879.2 feet to the westerly line of said Section 2; thence North 0° 07′ West along said westerly line a distance of 1317.9 feet to the West one quarter corner of said Section 2; thence North 1° 26′ East 2736.6 feet to the point of beginning.

Containing 81.75 acres more or less.

**DATES:** Upon publication in the **Federal Register**, the mineral interests owned by the United States in the land described above, will be segregated from appropriation under the public land laws, including the mining laws. The segregation will terminate upon: issuance of a patent for the mineral interests, rejection of the the application, or 2 years from the date of this publication, whichever comes first.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Ron Moore at (702) 885–6155.

Dated: October 7, 1997.

**Daniel L. Jacquet,**

*Acting Assistant District Manager, Nonrenewable Resources, Carson City, Nevada.*

[FR Doc. 97–27658 Filed 10–17–97; 8:45 am]

**BILLING CODE 4410–HC–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–930–1430–00; N–57698]**

### Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

**AGENCY:** Bureau of Land Management.

**ACTION:** Recreation and Public Purpose Lease/conveyance.

**SUMMARY:** The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Our Lady of Victory Catholic Church proposes to use the land for a church facility.

**Mount Diablo Meridian, Nevada**

T. 22 S., R. 61 E.,
Sec. 14: W½SW¼NW¼NE¼NW¼.
Containing 1.25 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. And will be subject to:

1. An easement 30.00 feet in width along the West boundary in favor of Clark County for roads, public utilities and flood control purposes. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89126.

**Classification Comments**

Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments**

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: October 8, 1997.

**Mark R. Chatterton,**

*Assistant District Manager, Non-Renewable Resources, Las Vegas, NV.*

[FR Doc. 97–27669 Filed 10–17–97; 8:45 am]

**BILLING CODE 4310–HC–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Final Environmental Impact Statement for General Management Plan/ Development Concept Plans, Organ Pipe Cactus National Monument, Arizona; Notice of Availability

**SUMMARY:** The National Park Service (NPS), Department of the Interior, has prepared a Final Environmental Impact Statement (FEIS) for the General Management Plan and Development Concept Plans (GMP/DCP) for Organ Pipe Cactus National Monument, Arizona. This document is an abbreviated FEIS. The contents of this abbreviated document must be integrated with the Draft EIS (1995) and the Supplemental EIS (1996) in order to reflect completely the proposed action, its alternatives, and full analysis of environmental factors. As an aid to readers, the FEIS contains a guide to finding the most relevant portions of each document, along with a summary of anticipated activities to clarify the proposed action to all concerned.

**SUPPLEMENTARY INFORMATION:** Four alternatives were considered. The proposed action, detailed in the SEIS, is entitled the New Proposed Action Alternative. In response to public comments on the SEIS, the proposed action is further clarified in the FEIS. Except for factual corrections (detailed in the Errata section), there are no substantive changes in activities proposed initially in the SEIS. However,

reasonable and prudent mitigation measures are added, resulting from formal consultation with the U.S. Fish and Wildlife Service on the endangered Sonoran pronghorn, the lesser long-nosed bat, and the recently listed cactus ferruginous pygmy-owl. The concept of the proposed action is two-fold: within the region, enact principles of the Man and the Biosphere (MAB) program by adopting a regional perspective to improve visitor services and conserve resources; and within the monument, improve management capabilities to enhance visitor opportunities and protect resources and wilderness values. The effect desired from implementing these actions is to enhance protection, understanding, and recognition of Sonoran desert ecosystems and further strengthen relations with the Tohono O'odham Nation, Mexico, and other neighbors of the monument. Under the proposed plan, the NPS would seek redesignation of the monument as Sonoran Desert National Park. No tolls, traffic re-routes, or speed limit reductions are proposed for State Route 85.

In addition to the proposed action, three other alternatives are presented (which are detailed in the SEIS). The Existing Conditions/No Action Alternative would basically continue the existing management situation. The Former Preferred Future Alternative proposed adding 2,130 acres to the National Wilderness Preservation System, and called for significant cultural resource preservation efforts and new facilities in several locations within the monument. The New Ideas Alternative proposed 3,650 acres for wilderness, and existing or new park facilities would be relocated at or outside the monument boundary.

**REVIEW COPIES:** Copies of the FEIS will be available for on-site review as follows: (1) Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW, Washington, DC 20240, (202) 208–6843; (2) Planning Team Leader, Denver Service Center, National Park Service, 12795 W. Alameda Parkway, Denver, CO 80225–0287, (303) 969–2273; and (3) Superintendent, Organ Pipe Cactus National Monument, Route 1, Box 100, Ajo, AZ 85321, (520) 387–7661. A limited number of copies for distribution are available on request from either the Superintendent or Planning Team Leader.

**DECISION:** A Record of Decision will be approved no sooner than 30 days after the Environmental Protection Agency's filing of their receipt of this FEIS in the **Federal Register**. The National Park Service officials jointly responsible for the decision will be the Regional Directors of the Intermountain and the Pacific West Regions. Subsequently, the officials responsible for implementing the plan will be the Regional Director, Intermountain Region and the Superintendent, Organ Pipe Cactus National Monument.

Dated: October 1, 1997.

**John J. Reynolds,**

*Pacific West Region.*

[FR Doc. 97–27732 Filed 10–17–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 97–21**

### Robert M. Binenfeld, M.D. Revocation of Registration

On June 23, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert M. Binenfeld, M.D., (Respondent), of Monroe, New York. The Order to Show Cause notified him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AB4921210, pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of New York.

On July 11, 1997, Respondent filed a request for a hearing, and the matter was docketed before Administrative Law Judge Gail A. Randall. On July 21, 1997, Judge Randall issued an Order for Prehearing Statements. Thereafter, on August 8, 1997, the Government filed a Motion for Summary Disposition and Motion to Stay Proceedings, alleging that effective December 19, 1994, the State of New York, Department of Health, State Board for Professional Medical Conduct (Board) revoked Respondent's license to practice medicine and therefore, Respondent is not authorized to handle controlled substances in that state.

On August 11, 1997, Judge Randall issued an Order providing Respondent with an opportunity to respond to the Government's motion. In addition, Judge Randall stayed the proceedings pending her ruling on the Government's motion.

On August 21, 1997, Respondent filed a response to the Government's motion, arguing that, ''[m]any statements made by the [Board] are untrue.'' Respondent however, did not deny that he is not currently authorized to handle controlled substances in the State of New York.

On August 26, 1997, Judge Randall issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to handle controlled substances in the State of New York; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on October 1, 1997, Judge Randall transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 C.F.R. 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in its entirety, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that the Hearing Committee of the Board issued a Decision and Order dated August 26, 1994, finding among other things, that Respondent committed gross negligence, gross incompetence, negligence and incompetence in his practice of medicine. As a result, the Hearing Committee ordered the revocation of Respondent's license to practice medicine in the State of New York. Effective December 19, 1994, the Board's Administrative Review Board affirmed the Hearing Committee's decision to revoke Respondent's medical license. Subsequently, on February 21, 1995, the State of New York, supreme Court-Appellate Division, Third Judicial Department denied Respondent's request for a stay of the Board's order.

Therefore, the Acting Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the State of New York. As a result, the Acting Deputy Administrator concludes that it is reasonable to infer that Respondent is not authorized to handle controlled substances in that state.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D. 62 FR

16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993). Since Respondent lacks authority in the State of New York to handle controlled substances, he is not entitled to a DEA registration in that state.

While, Respondent argues that many untrue statements were made by the Board in revoking his license to practice medicine, he does not dispute that he is currently not authorized to handle controlled substances in the State of New York. Under the circumstances, Judge Randall properly granted the Government's Motion for Summary Disposition. It is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Phillip E. Kirk, M.D., 48 FR 32,887 (1983) *aff'd sub nom Kirk V. Mullen,* 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.,* 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.R.F. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AB4921210, previously issued to Robert M. Binenfeld, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration be, and they hereby are denied. This order is effective November 19, 1997.

Dated: October 10, 1997.

**James S. Milford,**

*Acting Deputy Administrator.*

[FR Doc. 97–27638 Filed 10–17–97; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Benjamin R. Borja, D.M.D.; Revocation of Registration

On June 23, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Benjamin R. Borja, D.M.D., of North Hills, California, notifying him of an opportunity to show case as to why DEA should not revoke his DEA Certificate of Registration AB8143024, under 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of California. The order also notified Dr. Borja that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The DEA received a signed receipt indicating that the order was received by Dr. Borja on June 30, 1997. No request for a hearing or any other reply was received by the DEA from Dr. Borja or anyone purporting to represent him in his matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Borja is deemed to have waived his hearing right. After considering relevant material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46.

The Acting Deputy Administrator finds that on March 22, 1996, the Board of Dental Examiners, Department of Consumer Affairs, State of California issued a Default Decision and Order revoking Dr. Borja's dental license effective May 1, 1996, based upon a finding that Dr. Borja engaged in unprofessional conduct, incompetence, gross negligence, and/or repeated acts of negligence in his treatment of a patient. The Acting Deputy Administrator finds that in light of the fact that Dr. Borja is not currently licensed to practice medicine in the State of California, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

Here it is clear that Dr. Borja is not currently authorized to handle controlled substances in the State of California. Therefore, Dr. Borja is not entitled to a DEA registration in that state.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 1 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AB8143024, previously issued to Benjamin R. Borja, D.M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective November 19, 1997.

**James S. Milford,**

*Acting Deputy Administrator.*

Dated: October 9, 1997.

[FR Doc. 97–27639 Filed 10–17–97; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

October 14, 1997.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Theresa M. O'Malley ((202) 219–5096 ext. 143) or by E-Mail to OMalley-Theresa@dol.gov. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 219–4720 between 1:00 p.m. and 4:00 p.m. Eastern time, Monday–Friday.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is nececesary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Employment and Training Administration.

*Title:* Unemployment Compensation for Former Federal Employees, Handbook No. 391.

*OMB Number:* 1205–0179 (extension).

*Frequency:* One-time.

*Affected Public:* Individuals or households; Federal Government; State, Local or Tribal Government.

| Form | Respondents | Average time per response |
|---|---|---|
| ES 931 | 144,000 | 3 minutes. |
| ES 391A | 33,120 | 3 minutes. |
| ES 935 | 144,000 | 5 minutes. |
| ES 933 | 2,360 | 3 minutes. |
| ES 934 | 15,025 | 3 minutes. |
| ES 936 | 7,200 | 3 minutes. |
| ES 939 | 75 | 1 hour 45 minutes. |
| ETA 8–32 | 53 | 5 minutes. |

*Total Burden Hours:* 28,434.

*Total Annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services:* $66,000.

*Description:* Federal Law (5 U.S.C. 8501–8509) provides unemployment insurance protection to former (or partially unemployed) Federal civilian employees. It is referred to, in abbreviated form, as ''UCFE.'' The forms contained throughout the UCFE Handbook are used in connection with the provision of this benefit assistance.

*Agency:* Employment and Training Administration.

*Title:* ETA Data Validation Handbook No. 361.

*OMB Number:* 1205–0055 (revision).

*Frequency:* Annually.

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 53.

*Estimated Time Per Respondent:* 152 hours.

*Total Burden Hours:* 8,056.

*Total Annualized capital/startup costs:* $21,200,000.

*Total annual costs (operating/maintaining systems or purchasing services:* $189,977,000.

*Description:* Data provided to the Unemployment Insurance Service must be credible for use in the distribution of administrative funds as well as triggering the Extended Benefits Program and as economic indicators as well as general information for operating the program. Validation attempts to ensure the accuracy and compatibility of reported data.

*Agency:* Employment and Training Administration.

*Title:* Work Application/Job Order Recordkeeping.

*OMB Number:* 1205–0001 (extension).

*Frequency:* On occasion (recordkeeping).

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 52.

*Estimated Time Per Respondent:* 8 hours.

*Total Burden Hours:* 416.

*Total Annualized capital/startup costs:* - 0 -.

*Total annual costs (operating/maintaining systems or purchasing services:* - 0 -.

*Description:* Request is for retention of information on work applications and job orders.

*Agency:* Employment and Training Administration.

*Title:* Worker Adjustment Formula Financial Report.

*OMB Number:* 1205–0326 (extension).

*Affected Public:* State, Local or Tribal Government.

| Activity | Number of respondents | Frequency | Average time per response (hours) |
|---|---|---|---|
| Data Collection | 52 | 3 quarters | 6 |
| | 52 | 1 quarter | 7 |
| Recordkeeping | 52 | one-time | 10 |

*Total Burden Hours:* 1,820.

*Total Annualized capital/startup costs:* - 0 -.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The information will be used to assess formula programs under Title III of JTPA, as amended. Participant and financial data will be used to monitor program performance, and to prepare reports and budget requests.

*Agency:* Employment and Training Administration.

*Title:* Preliminary Estimates of Average Employer Tax Rates.

*OMB Number:* 1205–0228 (reinstatement).

*Agency Form Number:* ETA 205.

*Frequency:* Annually.

*Affected Public:* State, Local or Tribal Government.

*Number of Respondents:* 53.

*Estimated Time Per Respondent:* 16 minutes.

*Total Burden Hours:* 14 hours.

*Total Annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The average tax rate collected from States is used to compute average tax rate for the United States and, along with the current tax rate schedule, are used to certify that States are complying with the law.

*Agency:* Occupational Safety and Health Administration.

*Title:* Respiratory Protection (29 CFR part 1910.134).

*OMB Number:* 1218–0099 (extension).

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 130,000.

*Estimated Time Per Respondent:* Time per response ranges from 5 minutes to mark emergency-use respirator storage compartments to 8 hours to develop a written respiratory protection program.

*Total Burden Hours:* 1,166,092.

*Total Annualized capital/startup costs:* 0.

*Total annual costs (operating/maintaining systems or purchasing services):* 0.

*Description:* The purpose of this standard and its information collection is designed to provide protection for employees from workplace atmospheric contamination. The standard requires employers to develop a written respiratory protection program, to inspect and certify emergency-use respirators, and mark emergency-use respirator storage compartments.

**Theresa M. O'Malley,**

*Departmental Clearance Officer.*

[FR Doc. 97–27735 Filed 10–17–97; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### New Mexico State Standards; Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act), by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.

2. Public hearing conducted by the Environmental Improvement Board.

3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act.

By letter dated August 12, 1997, from Sam A. Rogers, Bureau Chief, to Emzell Blanton, Jr., Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to Federal standards as follow: Amendment to 1910, Subpart B, Adoption and Extension of Established Federal Standards (61 FR 56831–56855, dated 11/4/96), and Amendment to 1926.55, Appendix A, Gases, Vapors, Fumes, Dust, and Mist (61 FR 56856, dated 11/4/96).

These standards, contained in New Mexico Occupational Health and Safety Regulations 11 NMAC 5.1 and 11 NMAC 5.2, were promulgated on August 8, 1997, in accordance with applicable State law.

The subject standards became effective September 15, 1997, pursuant to New Mexico State Law, Sections 50–9–1 through 50–9–25.

2. *Decision.* OSHA has determined that the State standards at 11 NMAC 5.1, and 11 NMAC 5.2 are identical to the comparable Federal standards, and therefore approves the standards.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor-OSHA, 525 Griffin Street, Room 602, Dallas, Texas 75202; Office of the Secretary, Environment Department, 1190 St. Francis Drive, Room 2200-North, Santa Fe, New Mexico 87503; and the Office of State Programs, 200 Constitution Avenue, N.W., Room N3700, Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposed changes, and making the Regional Administrator's approval effective upon publication for the following reason.

The standards were adopted in accordance with the procedural requirements of State law, which included public comment, and further public participation would be repetitious.

The decision is effective September 8, 1997.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Dallas, Texas, this eighth day of September 1997.

**Emzell Blanton, Jr.,**

*Regional Administrator.*

[FR Doc. 97–27653 Filed 10–17–97; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–10412, et al.]**

### Proposed Exemptions; Metropolitan Life Insurance Company

**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 restrictions 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 requests 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.

**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.

**Metropolitan Life Insurance Company (MetLife) Located in New York, NY**

[Application No. D–10412]

*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), 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, effective April 1, 1997, to (1) the purchase or retention by an employee benefit plan (the Plan) and (2) the sale or continuation by MetLife or an affiliate (collectively, MetLife) of a synthetic guaranteed investment contract (the MetLife Trust GIC) entered into between the Plan and MetLife under which MetLife guarantees (the Guarantee) certain amounts (the Guaranteed Value).

This proposed exemption is conditioned upon the following requirements:

(a) The decision to enter into a MetLife Trust GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of MetLife.

(b) A Plan investing in a MetLife Trust GIC has assets that are in excess of $25 million.

(c) Prior to the execution of the MetLife Trust GIC, the Plan fiduciary receives a full and detailed written disclosure of all material features concerning the MetLife Trust GIC, including—

(1) A Letter of Agreement between MetLife and the Plan fiduciary which stipulates the relevant provisions of the GIC, the applicable fees and the rights and obligations of the parties;

(2) Investment Guidelines defining the manner in which an investment manager will manage a MetLife Trust GIC;

(3) A copy of the Investment Management Agreement between MetLife and the Plan fiduciary;

(4) Information explaining in a manner calculated to be understood by a Plan fiduciary that, if a MetLife affiliated manager underperforms or if adverse market conditions occur, the interest rate that is credited (the Credited Rate) to a MetLife Trust GIC account (the Account) may be as low as 0 percent;

(5) The pertinent features of a MetLife conventional GIC (the MetLife Conventional GIC) that a Plan fiduciary may obtain upon the discontinuance of a MetLife Trust GIC, including an explanation that, although a MetLife Conventional GIC will offer a guarantee of principal, it may have a credited rate as low as 0 percent for the duration of the contract; and

(6) If granted, copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Upon the selection by a Plan fiduciary of a MetLife Trust GIC, a participant in a Plan that provides for participant investment selection (the Section 404(c) Plan) is given—

(1) A summary of the pertinent features of the documents listed above in paragraph (c) which are deemed appropriate for distribution to such participant;

(2) A copy of the operative language of the proposed exemption if the Section 404(c) Plan has entered into a MetLife Trust GIC arrangement before the final exemption is issued; and

(3) A copy of the operative language of the final exemption (i) to the extent that there have been modifications to the operative language of proposed exemption, or (ii) the Section 404(c) Plan acquires a MetLife Trust GIC after the final exemption is granted.

(e) Subsequent to a Plan's investment in a MetLife Trust GIC, the Plan fiduciary and, if applicable, the Plan participant, upon such participant's request, receive the following ongoing disclosures regarding such investment:

(1) A monthly report consisting of a Guaranteed Value Statement, which specifies the affected Plan's MetLife Trust GIC balance for the prior month, contributions, withdrawals, transfers, interest earned, the current month's ending balance for the MetLife Trust GIC, the current interest rate and a summary of transactions;

(2) A quarterly report consisting of a Market Value Statement, which specifies the prior quarter's ending market value for a Plan's MetLife Trust GIC, contributions, withdrawals, the fees paid to MetLife, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current quarter's ending market value and rate of return, and a summary of transactions; and

(3) An annual portfolio listing or letter describing key events, depending upon its arrangements with a Plan fiduciary.

(f) As to each Plan, the combined total of all fees and charges imposed under a MetLife Trust GIC is not in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(g) Each MetLife Trust GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(h) Each MetLife Trust GIC has a predefined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife.

(i) Prior to the affirmation of a maturity date, MetLife informs the Plan fiduciary of the new reset rate for the Credited Rate.

(j) MetLife maintains books and records of each MetLife Trust GIC transaction for a period of six years. Such books and records are subject to

annual audit by independent, certified public accountants.

**EFFECTIVE DATE:** If granted, this proposed exemption will be effective as of April 1, 1996.

*Summary of Facts and Representations*

1. The parties to the transactions are described as follows:

(a) *MetLife* is a mutual life insurance company organized under New York law and subject to supervision and examination by the Insurance Commissioner of the State of New York. It is the second largest life insurance company in the United States. As of December 31, 1996, MetLife and its subsidiaries had $279 billion in assets under management. MetLife provides funding, asset management and other services for Plans covered by the Act. MetLife also maintains pooled and single separate accounts pursuant to New York Insurance Law. These accounts are used in connection with group annuity and group life insurance contracts issued to Plans as well as other entities. The assets in these accounts are insulated from MetLife's general account. The returns generated from such accounts are used to support contractual obligations. Accounts are created to invest in one or more asset classes and are managed by MetLife, an affiliate of MetLife or a nonaffiliated company.

As of June 11, 1996, MetLife's ratings were as follows:

| Rating firm | Rating | Rationale |
|---|---|---|
| A.M. Best | A+ (Superior) | Financial position and operating performance. |
| Duff & Phelps | AA+ | Claims-paying ability. |
| Moody's | Aa2 (Excellent) | Financial strength. |
| Standard & Poor's | AA (Excellent) | Claims-paying ability. |

(b) *State Street Research & Management Company (State Street Research),* a wholly owned subsidiary of MetLife, is an investment management company registered as an investment adviser under the Advisers Act. State Street Research, which is Boston-based, was founded in 1927 and acquired by MetLife in 1983. As of December 31, 1996, State Street Research managed $41 billion in equity, fixed income and balanced accounts for retirement plans, foundations and endowments and mutual funds.

(c) *The Plans* involved herein will consist primarily of defined contribution plans that are subject to the provisions of Act as well as Plans that are subject to sections 401(a) and 403(b) of the Code.

2. MetLife has offered a variety of guaranteed investment contracts or ''GICs'' to Plans for many years. A GIC is a group annuity contract from an insurance company which provides contractholders with a fixed rate of return for a specified period, while paying benefits to Plan participants at guaranteed value. The GICs issued by MetLife, which are described herein, will have predefined maturity dates.

Plan fiduciaries frequently use GICs as funding vehicles for the ''fixed income'' or ''stable value'' investment options of defined contribution plans. According to Plan provisions, participants may have the right to transfer funds among a Plan's various investment options, or to take funds out of the Plan in withdrawals or loans. Such payments from a given option are called ''participant-initiated withdrawals'' or ''benefits.''

Recently, many Plan sponsors have begun to request the direct ownership of the assets that back the GIC since nominal ownership of the assets affords such sponsors full insulation in case of the insurance company's insolvency. For this reason, insurers have begun to develop ''synthetic GICs'' which offer all or nearly all of the same features as traditional GIC products except that the assets are placed in a segregated trust or custodial bank account owned by the Plan rather than being owned by the insurer.

3. Since April 1, 1997, MetLife has been offering an investment product (referred to herein as a ''MetLife Trust GIC'') to Plans having assets that are in excess of $25 million. MetLife believes that the transaction would violate section 406(a)(1) (A) and (B) of the Act because MetLife would be guaranteeing a certain asset value (i.e., the Guaranteed Value) to a Plan and thereby extending credit to such Plan as the result of a Plan's purchase of a MetLife Trust GIC. In addition, MetLife believes that the transaction would violate section 406 (b)(1) and (b)(2) of the Act because MetLife or an affiliate, in honoring a withdrawal initiated by either a Plan participant or a Plan sponsor (see Representations 15 and 16 of this proposed exemption), would be using their discretion in selecting securities that will be subject to the Guarantee and in reducing the Guaranteed Value to reflect the withdrawal.

Further, MetLife asserts that the proposed Guarantee could be perceived as giving rise to a conflict of interest between MetLife or an affiliate and the Plans in violation of section 406 (b)(1) and (b)(2) of the Act because the amount of the cumulative total return of each MetLife Trust GIC will be affected in part by MetLife or its affiliate's exercise of fiduciary authority or control, including the valuation of assets. In this regard, MetLife notes that both it and its affiliates have an interest in maximizing the cumulative total return of a MetLife Trust GIC, thereby reducing the amount of, or entirely eliminating, MetLife's obligation to make a payment on the Guarantee. Accordingly, MetLife requests exemptive relief from the Department.

4. Each MetLife Trust GIC will consist of a group annuity contract and an Investment Management Agreement between the Plan sponsor and MetLife, which will typically be the investment manager. A MetLife Trust GIC will be offered to a Plan having total assets that are in excess of $25 million. The principal amount of such Trust GIC will be negotiated between MetLife and the Plan fiduciary.

5. The decision to enter into a MetLife Trust GIC will be made on behalf of the Plan by a Plan fiduciary who is independent of MetLife and its affiliates. MetLife represents that due to the large size of the Plans involved, the independent fiduciaries authorizing Plans to enter into the MetLife Trust GICs can be expected to be (or retain) sophisticated, professional asset managers with specialized expertise in the area of GICs and similar investments. However, prior to the Plan's investment, MetLife will furnish the Plan's independent fiduciary with a full and detailed disclosure of all features concerning the MetLife Trust GIC. In addition to the MetLife Trust GIC document, such disclosures will include (a) a Letter of Agreement between MetLife and the Plan fiduciary which stipulates the relevant provisions of the GIC, the applicable fees and the rights and obligations of the parties; (b) Investment Guidelines defining the manner in which an investment manager will manage a MetLife Trust GIC; (c) a copy of the Investment

Management Agreement between MetLife and the Plan fiduciary; (d) an explanation that if a MetLife affiliated manager underperforms or if adverse market conditions occur, the Credited Rate applied to a MetLife Trust GIC Account may be as low as 0 percent; (e) the pertinent features of a MetLife Conventional GIC including an explanation that, although a MetLife Conventional GIC will offer a guarantee of principal, it may have a credited rate as low as 0 percent for the duration of the contract, assuming the Plan fiduciary decides to discontinue a MetLife Trust GIC by converting it into a MetLife Conventional GIC; and (f) if granted, copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

Upon the selection by a Plan fiduciary of a MetLife Trust GIC, a participant in a Section 404(c) Plan will be provided with a summary of the pertinent features of the documents listed above which are deemed appropriate for distribution to such participant. In addition, the participant will be given a copy of the operative language of the proposed exemption if the Section 404(c) Plan has entered into a MetLife Trust GIC arrangement before the final exemption is issued. Further, the participant will receive a copy of the operative language of the final exemption (a) to the extent there have been modifications to the operative language of the proposed exemption, or (b) the Section 404(c) Plan acquires a MetLife Trust GIC after the final exemption is granted. In the event the participant wishes to review the underlying documents, including the proposed and final exemptions, such information will be made available to the participant upon request.

6. Plan assets that are invested in a MetLife Trust GIC will be placed in a segregated custodian account or trust account. The Plan sponsor will select an independent custodian and/or trustee, with the approval of MetLife. MetLife will not be a party to the custodial agreement or the master trust document. Thus, each MetLife Trust GIC will have its own Account. At all times, the Plan, through the trustee, will own all of the assets in the Account.

7. As stated above, MetLife, acting in a fiduciary capacity, will generally be the Account's investment manager. However, by mutual agreement with the Plan sponsor, MetLife may designate State Street Research as sub-manager with respect to some or all of the assets in an Account. At its discretion and by agreement with the Plan sponsor, MetLife may also designate an unaffiliated investment manager as sub-manager to manage some or all of the Account assets, assuming MetLife obtains appropriate regulatory approvals. Under all circumstances, each investment manager or sub-manager servicing an Account will acknowledge in writing to the Plan fiduciary that it will be a fiduciary of the Plan with respect to a MetLife Trust GIC and as such, will be subject to the fiduciary provisions of the Act.

8. Before an Account is established, MetLife and the Plan sponsor will agree to a set of investment guidelines which will define how the investment manager will manage the Account's assets, identify the assets that are approved for investment by the Plan and allow performance to be measured against one or more published indices based upon recognized industry sources. It is anticipated that these guidelines will vary from one Plan to another. Once the investment guidelines are established, they can be changed only by mutual agreement between MetLife and the Plan sponsor. The investment guidelines will be subject to review by the New York Department of Insurance and possibly, by the insurance departments of other states.

Objective performance benchmarks for an Account will allow the Plan sponsor to evaluate the performance of the investment manager or sub-manager. The benchmarks selected for the Account will be appropriate to the assets and specific investment objectives of the Account. The benchmarks will be based on objectively-published indices such as the Lehman Brothers Intermediate Government/Corporate Index, the Merrill Lynch Intermediate Government/Corporate Index, or a combination of one or more indices, as appropriate to the composition of the Account.[1]

9. Contributions placed into an Account will be invested immediately by the investment manager or, if applicable, sub-manager, primarily in publicly-traded, fixed income securities. The specific classes of investments allowed in any particular Account will be set forth in the Account's investment guidelines. These investments may include U.S. Treasury securities, U.S. agency debt, corporate bonds, mortgage-backed securities, asset-backed securities, equities, foreign government and agency debt, supranational agency debt or other asset classes and employer debt securities within the meaning of section 407(d) of the Act.[2] The investment guidelines may also allow the use of options (other than naked put and call options), futures, warrants, forwards or similar instruments on a limited basis for hedging and risk management purposes.[3]

MetLife does not expect any single Account to utilize every one of these types of assets or asset quality specifications. Therefore, the aforementioned investments are intended to represent the universe of investment alternatives among which the Plan sponsor can choose to meet its investment and benefit needs.

As part of the investment guidelines, the appropriateness of the broad asset classes and asset quality levels will be subject to the review and approval of the New York State Insurance Department (and possibly the insurance departments of other states).

10. The value of the Account will be its fair market value (the Market Value). In the case of an asset consisting of a security for which market quotations are readily available, the quoted Market Value of such security, as determined by the investment manager or the sub-manager, will be the fair market value. Because MetLife expects the investments will be composed primarily of publicly-traded, fixed income securities, it expects that in virtually all cases, asset investment values can be determined readily from any of a number of widely-available, independent published sources.

In the case of any other asset, quotations will be obtained from broker-dealers or pricing services that are independent of MetLife, the investment manager and/or the sub-manager. The asset will be valued based on the average of at least three bid and three ask prices obtained from such independent sources. To the extent that

[1] It is represented that data from indices such as the Lehman Brothers Intermediate Government/Corporate Index is available on a daily basis from Bloomberg or by subscription from Lehman Brothers.

[2] The Department is not proposing, nor it the applicant requesting, exemptive relief herein with respect to the acquisition and holding of employer debt securities beyond that provided under sections 407 and 408 of the Act.

[3] In this regard, it is represented that the use of options and futures contracts will be governed by the investment guidelines that are negotiated between MetLife and Plan fiduciaries. Any guidelines permitting investment in derivatives must be approved by both the Plan fiduciaries and MetLife. The use of derivatives will be for hedging purposes only. Futures contracts will not be permitted to be used to leverage a MetLife Trust GIC and only unaffiliated brokers will be used to purchase such contracts.

MetLife represents that the yield-to-maturity calculated on equities and hedge securities will be calculated, depending on the nature of the Account, on a proxy that will provide an equivalent to the historical yield. MetLife also states that the Credited Rate reset formula will ensure that all market performance is passed through in future Credited Rates.

quotations cannot be obtained, the Market Value of the asset will be based upon an appraisal made by an independent appraiser selected by either the custodian or a Plan sponsor or fiduciary which is not affiliated with MetLife, the investment manager, and/or the sub-manager.[4]

11. Each MetLife Trust GIC will provide a Guaranteed Value that will be available exclusively for participant-initiated benefit withdrawals. The Guaranteed Value is defined as the amount of any contributions, plus interest at a credited rate (i.e., the Credited Rate), minus withdrawals. It is expected that the Guaranteed Value and the Market Value of the Account may differ at any given time. However, MetLife will seek to maintain the Guaranteed Value as reasonably close to the Market Value by reflecting any difference between them in the Credited Rate.[5]

12. MetLife will determine the initial Credited Rate by using an objective methodology that is fully disclosed and agreed to by Plan sponsors. The initial Credited Rate will reflect three factors: (a) The expected yield-to-maturity of assets in an Account; (b) payments expected into or out of an Account; and (c) the anticipated expenses to be charged under the MetLife Trust GIC.[6] The Credited Rate will not be affected by the length of time that MetLife has managed a MetLife Trust GIC Account.

The period for which the Credited Rate is in effect will be agreed to in advance by MetLife and the Plan sponsor and it will not exceed one year.[7] At the end of this period, on an agreed-upon date, MetLife will reset the Credited Rate by declaring a new interest rate (which can never be less than 0 percent) to be credited to the Guaranteed Value. The new Credited Rate will be based upon the criteria noted above and also reflect the amortization of any difference between the Guaranteed Value and Market Value. (The amortization period will be no longer than the period specified in the MetLife Trust GIC which is typically the approximate average duration of the assets in the Account.)

In resetting the Credited Rate, MetLife will utilize the following formula:

$(MV+CF)*(1+YTM)^n=(GV+CF)*(1+i)^n$

Where—

- MV = Market Value (includes fees and expenses)
- CF = Expected Cash Flow
- GV = Guaranteed Value (includes fees and expenses)
- YTM = Anticipated Yield-To-Maturity (net of fees and expenses)
- n = Duration
- i = Credited Rate.[8]

To solve the equation for the Credited Rate, (i), the formula can be mathematically restated as—

$((MV+CF/GV+CF)*(1+YTM)^n)^{1/n}—1=i$

The formula then shows that the Credited Rate, (i), equals the Anticipated Yield-To-Maturity of the assets in the Account (YTM), adjusted by the difference between the Market and Guaranteed Values (MV/GV) spread over the portfolio's Duration (1/n) of the Account's investment portfolio. In other words, the starting point for the Credited Rate will always be the current net Anticipated Yield-To-Maturity or the expected return on assets in the portfolio. The Credited Rate will then be adjusted to account for the differences between the prior expected returns and the portfolio's actual returns. To provide a smooth pattern of returns for Plan participants, MetLife will factor these differences in over time. For example, if a portfolio has a duration of three years, one-third of the difference will be recognized in the current reset.

The Credited Rate may also be reset by MetLife as a result of certain actions by a contractholder or in the event of a contract discontinuance. Specifically, the events that will trigger a reset of the Credited Rate before the end of the stated period are (a) notice of the discontinuance of a MetLife Trust GIC, (b) Plan contributions beyond those anticipated under the Plan's formula, (c) withdrawals that are not initiated by Plan participants, and (d) a Plan fiduciary's request for an earlier reset. Any reset of the Credited Rate will be

[4] MetLife anticipates that in many cases, the custodian bank will perform the asset valuation function in reliance on published sources. If the assets are not listed in published sources, the custodian may ask the investment manager to supply the price. To the extent that MetLife or an affiliated manager or sub-manager has the authority to establish the value of the assets of a MetLife Trust GIC, MetLife proposes a three-part method in order of preference: (a) From independent published sources, (b) the average of at least three bid and ask prices from independent sources; or (c) based on an appraisal by an independent appraiser which is not selected by or affiliated with MetLife, the investment manager and/or the sub-manager.

[5] For example, assume that the Guaranteed Value of a MetLife Trust GIC is $10,000,000 while its Market Value is $10,250,000. Assume also that the Anticipated Yield-To-Maturity of such investment is 7.25 percent based upon an objective, external index and the approximate duration of the MetLife Trust GIC is 5.23 years, again based upon an external, objective index. Assume further that no deposits or withdrawals are ever made to or from the MetLife Trust GIC.

The 2.5 percent difference between the Market Value and the Guaranteed Value will be amortized by MetLife over the 5.23 year Duration of the MetLife Trust GIC by increasing the Credited Rate. Therefore, the first year's addition to the Credited Rate will be approximately 48 basis points (2.5 percent/5.23 years).

Instead of crediting the 7.25 percent anticipated yield of the MetLife Trust GIC, MetLife represents that participants will be credited with an effective annual rate of 7.73 percent for the first year (7.25 percent + 0.48 percent).

In the foregoing example, if the Guaranteed Value of the MetLife Trust GIC is $10,000,000 and the Market Value is $9,750,000, MetLife states that there will be a reduction in the Credited Rate of approximately 48 basis points. Rather than crediting participants with the 7.25 percent yield, participants will be credited with an effective annual rate of 6.77 percent for the first year (7.25 percent—0.48 percent).

For subsequent years, the Credited Rate will be determined in the same manner.

[6] The applicant notes that factors (a) and (c), cited above, are components of the net Anticipated Yield-to-Maturity or YTM and that factor (b) comprises the Cash Flow or CF variable in the Credited Rate reset formula which is discussed later in this Representation.

[7] Typical Credited Rate reset dates may occur monthly, quarterly, semiannually or annually at the choice of the Plan sponsor. For example, during the period from 24 to 12 months prior to the final maturity date of a MetLife Trust GIC (see Representation 13), the Credited Rate may be reset as frequently as quarterly. During the period from 12 months prior to the final maturity date to the final maturity date, the Credited Rate may be reset as frequently as monthly.

[8] In this proposed exemption, MetLife has described such components of the Credited Rate reset formula as the Market Value and the Guaranteed Value. MetLife has further defined the terms ''Expected Cash Flow,'' ''Duration,'' and ''Yield-to-Maturity,'' and represents that such variables, with the exception of Expected Cash Flow, are based upon objective, external criteria which would be communicated by MetLife to the Plan fiduciary. MetLife also explains that a Plan fiduciary would then be able to verify the accuracy of the index data directly from the index provider or from a third party news or information source.

MetLife represents that the Expected Cash Flow is the net amount of participant-initiated contributions and withdrawals expected to flow into or out of a MetLife Trust GIC Account during the period for which the Credited Rate will be effective (i.e., the Credited Rate Period). MetLife notes that the Expected Cash Flow is not related to any external index but reflects the cumulative effect of individual participants' asset allocation decisions. According to MetLife, the level of Expected Cash Flow is determined in consultation with the Plan and is based upon the Plan's historical cash flow pattern as well as expected Plan events.

MetLife explains that the Duration is the period from the effective date of the Credited Rate reset until the maturity date or average maturity date. MetLife notes that the Credited Rate reset formula for a MetLife Trust GIC will use the duration of the index unless specifically requested by the Plan with MetLife's consent. MetLife represents that it will not calculate the duration of the index. Rather, such calculation will be made by the index provider.

According to MetLife, the Yield-to-Maturity is the yield of a Treasury security with a comparable duration once a Plan has selected a defined maturity date. Prior to the selection of a maturity date, MetLife states that the Yield-to-Maturity component will be the Yield-to-Maturity of an external index unless specifically requested by the Plan with MetLife's consent. MetLife further represents that the yield-to-maturity of the index will be calculated by the index provider.

MetLife further points out that should a Plan choose another source for the aforementioned variables, the source may only be used with MetLife's consent. MetLife notes that the consent must be renewed by the Plan at least annually.

determined by the Credited Rate reset formula described above and will reflect any change in the parameters (such as Market Value and Guaranteed Value) since the prior reset. Such reset of the Credited Rate will be disclosed to the sponsor of a Plan. Depending upon the events causing the rate change, up to 30 days' advance written notice of such change will be given by MetLife to the Plan fiduciary. Assuming the Plan fiduciary does not agree to the reset under circumstances (b) and (d), such fiduciary will be afforded the opportunity to discontinue the MetLife Trust GIC.

13. Each MetLife Trust GIC will have a defined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife. One month before the anniversary date of the MetLife Trust GIC, MetLife will notify the Plan fiduciary, in writing, of the impending anniversary of such MetLife Trust GIC, as well as the new reset rate for the Credited Rate, and afford the fiduciary the opportunity to notify MetLife that it will affirm the maturity date. If the Plan fiduciary does not inform MetLife, in writing, prior to the anniversary date of the intention to affirm the maturity date, the date will be extended by one year and the notification procedure will be repeated prior to the next impending anniversary date of the MetLife Trust GIC.[9] Upon the maturity of a MetLife Trust GIC, MetLife represents that if the Market Value of the assets invested in the MetLife Trust GIC is less than the amount initially placed in the Account plus guaranteed interest at the Credited Rate, it will make up the difference. Such amount will be adjusted for interim contributions and withdrawals. As an additional benefit, MetLife states that if at maturity the Market Value of a MetLife Trust GIC exceeds the Guaranteed Value, the Plan will retain the full Market Value appreciation of the underlying assets.

14. The Plan sponsor will pay MetLife a single contract charge that is based upon a specified percentage of the Guaranteed Value. The contract charge will include management fees, risk charges and administrative expense charges, all of which will not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act.[10] The contract charge, which will be negotiated by MetLife with each Plan fiduciary, will be influenced by the composition of the MetLife Trust GIC, the investment guidelines and the nature of the Plan. In general, the higher the dollar investment in a MetLife Trust GIC, the lower the contract charge.

The contract charge will be calculated monthly by multiplying the specified percentage of the MetLife Trust GIC's average Guaranteed Value for the month by an applicable fee schedule percentage.[11] MetLife will withdraw the contract charge from the Account each month. Afterwards, MetLife will compensate the affiliated and unaffiliated investment managers and sub-managers from the contract charge unless the Plan fiduciary elects to compensate the investment manager or sub-manager directly.

15. In the event of a participant-initiated benefit withdrawal, which will trigger the Guarantee mechanism in a MetLife Trust GIC, MetLife typically requests written notice of such a benefit withdrawal at least 48 hours in advance. Sometimes, such a benefit withdrawal request may be made by a Plan orally and then followed by a confirming fax. Under such circumstances, the investment manager or the sub-manager will make sufficient liquidity available to meet the withdrawal and the custodian/trustee will transfer this amount. Such liquidity for participant-initiated benefit withdrawals will be made by MetLife at the Guaranteed Value of the Account. No additional fees will be charged. If the investment manager or sub-manager has liquidated more assets than are needed to meet the benefit withdrawal, the excess will be immediately reinvested.

16. In addition to participant-initiated benefit withdrawals, the Plan sponsor can choose to withdraw funds from a MetLife Trust GIC at any time. In a non-benefit withdrawal, the Plan fiduciary will remove assets from the MetLife Trust GIC Account. A non-benefit withdrawal will be made at Market Value. Under these circumstances, MetLife will reduce the Guaranteed Value by a proportionate amount that bears the same ratio to the entire Guaranteed Value as the amount withdrawn has to the entire Market Value.

17. MetLife represents that it is precluded from selling depreciating assets and retaining appreciating assets held in a MetLife Trust GIC Account to honor non-benefit withdrawals because all assets are reported at their current market values. Under such circumstances, all gains and losses will flow through to the Plan and the Plan will retain ownership of the assets at all times. Therefore, MetLife states that the selection of assets to be liquidated to satisfy a withdrawal request will have no bearing on the type of withdrawal transaction.

18. MetLife will provide monthly and quarterly written reports to Plan fiduciaries following their preparation.[12] The monthly report will consist of a Guaranteed Value Statement showing the affected Plan's MetLife Trust GIC balance for the prior month, contributions, withdrawals, transfers, interest earned, the current month's ending balance for the MetLife Trust GIC, the current credited interest rate and a summary of transactions. MetLife represents that the monthly report will not reflect the Market Value because the assets that comprise the Market Value are owned by the Plan and are held in the Plan's MetLife Trust GIC Account. Because these are Plan assets, MetLife explains that the Plan fiduciary can check the Market Value of the Account whenever he or she may so choose. MetLife further notes that it expects the trustee or custodian of the Account will generate this type of information to the Plan fiduciary.

The quarterly report will consist of a Market Value Statement which will reflect the prior quarter's ending market value for a Plan's MetLife Trust GIC (based upon data provided to MetLife by the trustee or the custodian), contributions, withdrawals, the fees paid to MetLife from which MetLife will make payments to an investment manager or sub-manager, if applicable, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current quarter's ending market value and rate of return, and a summary of

[9] MetLife notes that the procedures governing the maturity date of a MetLife Trust GIC will not affect the ability of a Plan fiduciary to discontinue such investment as described in Representation 19.

[10] The Department expresses no opinion herein on whether such compensation will satisfy the terms and conditions of section 408(b)(2) of the Act.

[11] MetLife has constructed the following fee schedule to illustrate its contract charges under a hypothetical arrangement:

- First $100 million—50 basis points;
- Next $100 million—45 basis points;
- Excess over $200 million—35 basis points.

MetLife notes that due to the bundled nature of the fees and the fee variations among the investment managers and sub-managers, it would be impossible to forecast precisely how MetLife would allocate the investment management component of such fees among the managers. However, MetLife explains that a recent survey of institutional investment managers indicated that fees for managing this type of assets could range from 12 to 44 basis points. Therefore, MetLife expects that at least initially, the investment management component of the contract charge that is paid by MetLife to State Street Research or any other affiliated or unaffiliated investment manager or sub-manager for managing a MetLife Trust GIC should be close or within this range. MetLife further explains that in no event will such fees exceed reasonable compensation.

[12] The reports described above may also be provided by Plans to Plan participants upon such participants' request.

transactions.[13] In addition to the Market Value Statement, MetLife will provide a Guaranteed Value Statement to the Plan fiduciary on a quarterly basis.

Although there is no specific requirement that MetLife issue an annual report, the Plan fiduciary will be provided with either an annual portfolio listing or a letter describing key events. Any further information provided to the Plan fiduciary will depend upon particular arrangements with such fiduciary.

In addition to the aforementioned reports, MetLife will maintain books and records of each MetLife Trust GIC transaction for a period of six years. Such books and records will be subject to annual audit by independent, certified public accountants.

19. A Plan sponsor may discontinue a MetLife Trust GIC at any time and for any reason. However, MetLife may discontinue the MetLife Trust GIC for cause only (e.g., a Plan's disqualification), a material breach of the MetLife Trust GIC (e.g., a Plan sponsor's encouraging participants to withdraw or transfer funds invested in a MetLife Trust GIC) or a material alteration of a Plan's practices and procedures as specified in the MetLife Trust GIC. Assets that are held in a MetLife Trust GIC will be valued in accordance with the valuation methodology described above in Representation 10. If the discontinuance occurs prior to the maturity date, the assets of the MetLife Trust GIC will be liquidated at the Market Value. However, if the discontinuance occurs at the maturity date of the MetLife Trust GIC, the underlying assets will be liquidated at the greater of the Guaranteed Value or the Market Value.

Neither MetLife nor any investment manager or sub-manager will have the right to purchase or otherwise acquire these assets. In addition, no surrender or withdrawal fees will be paid to MetLife or to any investment manager or sub-manager upon the discontinuance of a MetLife Trust GIC.

20. If a MetLife Trust GIC is discontinued prior to maturity, three options will generally be available. The assets of a MetLife Trust GIC Account may (a) revert to the Plan sponsor, (b) be converted into a MetLife ''benefit responsive, nonparticipating, general account conventional GIC (i.e., the MetLife Conventional GIC) or (c) be fully liquidated and distributed to the Plan in cash.[14]

(a) *Reversion Option.* With respect to this option, management of the Account may revert to the Plan sponsor. Under such circumstances, the Plan sponsor will receive the MetLife Trust GIC portfolio intact with whatever appreciation or depreciation has occurred. In the event of a loss, MetLife will not be required to make restitution to the Plan sponsor because the sponsor will receive the actual results of investment performance. In the event of a gain, MetLife will not be permitted to retain the gain and the Plan will benefit from the full amount of the gain.

(b) *The MetLife Conventional GIC Option.* If a MetLife Trust GIC is discontinued at a time when there are losses and other than for cause, the Plan sponsor may select the second option by liquidating the Account in order to purchase a MetLife Conventional GIC. The MetLife Conventional GIC will be identical to a traditional GIC which could be purchased by a Plan fiduciary with ''new money'' except that the maturity structure and credited rate will reflect the experience of the MetLife Trust GIC. The maturity date (or average maturity date, as appropriate) of the MetLife Conventional GIC may not exceed the duration of the index that has been used to set the MetLife Trust GIC's Credited Rate, unless agreed to by the Plan fiduciary. The credited rate of the MetLife Conventional GIC will reflect the rate MetLife is then offering for GICs with similar average maturity dates, adjusted so that any market value loss or gain present in the MetLife Trust GIC will be amortized over the period ending with the final maturity date of the MetLife Conventional GIC. The credited rate for the MetLife Conventional GIC will also be fixed for the entire contractual period and it cannot be lower than 0 percent.

MetLife represents that under this option, Plan participants will continue to have full access to their accounts on the basis of the guaranteed amount of the MetLife Conventional GIC which they may withdraw or transfer, as permitted under the terms of the Plan, at any time (including the day following the conversion), and without interruption. In practice, this means that even if the Market Value of a MetLife Trust GIC Account is less than its Guaranteed Value, the Plan fiduciary will have the option to discontinue the MetLife Trust GIC without recognizing a loss in value to participant accounts.[15]

Assuming this investment option is selected, MetLife will disclose in advance to a Plan fiduciary, and if applicable, to a Plan participant, pertinent features regarding the MetLife Conventional GIC including a representation to the effect that although a MetLife Conventional GIC may guarantee principal, it may have a credited rate of 0 percent.[16]

(c) *Cash Distribution Option.* Under this option, the Plan sponsor may agree to a cash distribution whereby the Plan will receive the full Market Value of the Account including any appreciation or losses that have occurred.

21. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The decision to enter into a MetLife Trust GIC has been made and will be made on behalf of a participating Plan in writing by a fiduciary of such Plan who is independent of MetLife.

(b) Each Plan investing in a MetLife Trust GIC has and will have assets that are in excess of $25 million.

(c) Prior to and subsequent to the execution of the MetLife Trust GIC, the Plan fiduciary, and if applicable, Plan participants, have received and will receive written disclosures of all material features concerning the MetLife Trust GIC, including a description of all applicable fees and charges, as well as ongoing disclosures with respect to such investment.

(d) As to each Plan, the combined total of all fees and charges imposed under a MetLife Trust GIC has not and will not be in excess of ''reasonable compensation'' within the meaning of section 408(b)(2) of the Act.

(e) Each MetLife Trust GIC has provided and will specifically provide an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(f) MetLife has maintained and will maintain for a period of six years from the date of each MetLife Trust GIC

[13] It is represented that the Guaranteed Value Statement does not include a separate entry for fees because fees are reflected in the Credited Rate and are not deducted separately from the Guaranteed Value. It is also represented that a custodian or trustee of a MetLife Trust GIC may provide periodic statements to a Plan fiduciary.

[14] MetLife represents that it will not be precluded from presenting a Plan sponsor with other options that are deemed to be better-suited to the needs of the Plan.

[15] Assuming a Plan sponsor directs participants to withdraw their account balances from a MetLife Conventional GIC, MetLife reserves the right not to honor withdrawals based upon the guaranteed value of the GIC.

[16] The Department notes that the decision by a Plan fiduciary to convert a MetLife Trust GIC into a MetLife Conventional GIC, which guarantees principal but provides a below market rate of return (e.g., 0 percent), is subject to the provisions of section 404 of the Act. Accordingly, the Department emphasizes that it expects the Plan fiduciary to evaluate fully the terms of this investment option before electing a MetLife Conventional GIC.

transaction, books and records of such transactions that will be audited annually by independent, certified public accountants.

*Notice to Interested Persons*

Notice of the proposed exemption will be given to interested persons within 60 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will be mailed by MetLife to Plan fiduciaries that have already entered into MetLife Trust GIC arrangements. The notice will include (a) a copy of the proposed exemption, as published in the **Federal Register**, which will be given to the Plan fiduciaries, (b) the text of the operative portion of the proposed exemption, which will be distributed by Plan fiduciaries to Plan participants in Section 404(c) Plans, and (c) a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2). The supplemental statement will inform interested persons of their right to comment on and/or to request a hearing with respect to the pending exemption. Comments and hearing requests regarding the proposed exemption will be due 90 days from the publication of the notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Valley Forge Consulting Corporation, Profit Sharing Trust (the Plan), Located in King of Prussia, PA**

[Application No. D–10466]

*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), 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 of a first mortgage note (the Note) by the individually-directed account (the Account) in the Plan of Steven R. Eyer to Mr. Eyer, provided—

(a) The terms of the transaction are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

(b) The Account is not required to pay any fees, commissions or other expenses in connection with the sale.

(c) The sale of the Note represents a one-time transaction for cash.

(d) The fair market value of the Note is determined by a qualified, independent appraiser.

(e) As consideration for the Note, the Account receives an amount that is no less than the fair market value of the Note as of the date of the sale.

*Summary of Facts and Representations*

1. The Plan is a defined contribution plan sponsored by Valley Forge Consulting Corporation, a pension design and administration firm maintaining its principal place of business in King of Prussia, Pennsylvania. The Plan provides for participant-directed investments. As of May 16, 1997, the Plan had 19 participants, one of whom included Mr. Eyer who serves as a Plan trustee. The other trustees of the Plan are Jack C. Holland, W. Gerald Murphy and Leonard A. Mayo. As of February 28, 1996, the Plan had net income of $743,918. Also on that date, Mr. Eyer had $514,027 in his individual Account in the Plan.

2. Mr. Eyer requests an administrative exemption from the Department in order to purchase a defaulted mortgage note (the Note) from his Account in the Plan. The Note, dated August 3, 1990, is a first mortgage note that was executed between the Account, as lender, and Willie Torres, an unrelated party, as the borrower. The Note is secured by a parcel of improved real property located at 629–631–633 W. Girard Avenue and 1213 N. Seventh Street, Philadelphia, Pennsylvania (the Property). The Note was in the original principal amount of $22,000 and carried interest at the rate of 14½ percent per annum. The Note required 60 monthly payments of principal and interest in the amount of $269. It was amortized on the basis of a 30 year amortization schedule and matured on August 2, 1995. The Note required a balloon payment at maturity.

3. From August 1990 until July 1995, Mr. Eyer's Account received 59 monthly payments under the Note totalling $15,895 and it paid $211 in connection with the Note's administration. Because Mr. Torres made no further payments after July 1995, the Note was considered to be in default. At the time of the default, the Note had an outstanding principal balance of $21,695. Moreover, at the time of the default, there was a second mortgage on the Property in the principal amount of $38,150 which had been provided by Milton and Sandra Klein, the original owners of the Property as well as unrelated parties, to Mr. Torres. The second mortgage note had been executed contemporaneously with the Note.

4. Currently, the Property consists of an abandoned shell having multiple apartments. There is no glass in the windows and water damage has been extensive. In addition, Mr. Torres has filed for bankruptcy and is unable to make payments under the Note. Although foreclosure on the Property has been considered as a way of recouping the Account's investment in the Note, Mr. Eyer does not believe the potential value of the Property will cover over $15,000 in back taxes, $2,000 in back utilities and the second mortgage. Therefore, Mr. Eyer proposes to purchase the Note from his Account in order that the sale proceeds may be invested by his Account in performing assets.

5. The Note has been appraised by Vincent DiPentino, a licensed real estate salesman and broker. Mr. DiPentino is affiliated with the real estate firm of Century 21-DiPentino Associates, which is located in Philadelphia, Pennsylvania.

Mr. DiPentino represents that he has been in the real estate business in the Philadelphia area since 1978 and states that he has bought and sold properties both as principal and agent in the vicinity of the Property. Mr. DiPentino also states that he is independent of the parties involved in the proposed sale.

In an appraisal report dated June 23, 1997, Mr. DiPentino has determined the fair market value of the Note by first examining the fair market value of the underlying Property. In this regard, he notes that the Property is located in a distressed section of Philadelphia and has incurred substantial deterioration. Based on sales of comparable rental properties, he concludes that the fair market value of the Property is approximately $35,000 as of June 23, 1997. However, from this base value, Mr. DiPentino notes that the following costs must be deducted: (a) $3,000 in selling costs, (b) $16,000 in outstanding taxes, and (c) $2,000 in outstanding water and sewer bills. In addition, because the Note is in default, Mr. DiPentino states that it will be necessary to foreclose on the Property, an action that will result in additional costs of approximately $3,000. Thus, considering the foregoing factors as well as conversations with other parties potentially interested in purchasing the Note, Mr. DiPentino has placed the maximum fair market value of the Note at $10,000 as of June 23, 1997.

6. Mr. Eyer proposes to purchase the Note from his Account for $10,000, which represents the fair market value of the Note as determined by Mr.

DiPentino.[17] Mr. Eyer will not pay his Account accrued interest with respect to the Note inasmuch as all such interest had been paid through the date of default. The Account will not incur any sales commissions, fees or other expenses in connection with the proposed sale. All transactional costs will be borne entirely by Mr. Eyer.

7. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The terms of the transaction will be at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party.

(b) The Account will not be required to pay any fees, commissions or other expenses in connection with the sale.

(c) The sale of the Note will represent a one-time transaction for cash.

(d) The fair market value of the Note has been determined by a qualified, independent appraiser.

(e) As consideration for the Note, the Account will receive an amount that is no less than the fair market value of the Note as of the date of the sale.

*Notice to Interested Persons*

Because Mr. Eyer is the only participant in the Plan whose Account in the Plan will be affected by the proposed transaction, the Department has determined that there is no need to distribute the notice of proposed exemption to interested persons. However, comments and requests for a hearing must be received by the Department within 30 days of the publication of this notice of proposed exemption in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Robert A. Doneff Custodial IRA (the IRA) Located in Manitowoc, WI**

[Application No. D–10480]

*Proposed Exemption*

The Department is considering granting an exemption under the authority of 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, August 10, 1990). If the exemption is granted, 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 (the Sale) of a certain parcel of real property (the Property) by the IRA [18] to Robert A. Doneff (Mr. Doneff), a disqualified person with respect to the IRA, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party;

(c) the IRA receives the fair market value of the Property, as established at the time of the Sale by a qualified, independent appraiser; and

(d) the IRA is not required to pay any commissions, costs, or other expenses in connection with the Sale.

*Summary of Facts and Representations*

1. The IRA is an individual retirement account, as described under section 408(a) of the Code. The IRA was established by Mr. Doneff, the sole participant and beneficiary. As of June 1997, the IRA held assets valued at approximately $179,500. The trustee of the IRA is the First National Bank of Manitowoc.

2. The Property consists of a single parcel located north of Manitowoc, Wisconsin. It consists of approximately 71.5 acres of level to gently rolling land zoned for agricultural use and surrounded by other properties utilized for agricultural purposes. Although the zoning also permits building of single family residences with a minimum of five (5) acre lots and 330 feet of road frontage, the Property is presently used to grow crops. Mr. Doneff represents that he does not own any land adjacent to the Property and that the Property has not been leased or used by any disqualified persons.

3. According to the applicant, the IRA originally acquired the Property as a real estate investment. The IRA purchased the Property in 1993 from an unrelated third party in a cash transaction for $74,000. Since acquiring the Property, the IRA has rented it for agricultural usage at a rate of $45 per acre per year and has generated a net income of $6,095.43.

4. Lyle J. Hartman (Mr. Hartman), an accredited appraiser with Lyle Hartman, Appraisals, located in Manitowoc, WI, originally appraised the Property on March 22, 1997, and updated his appraisal on September 9, 1997. After inspecting the Property, Mr. Hartman determined that a fee simple interest in the Property is worth $171,600.

In his appraisal, Mr. Hartman relied primarily on the market approach. This method of appraisal involves an analysis of similar recently sold properties in the area in question, so as to derive the most probable sales price of the Property. Mr. Hartman determined the present highest and best use for the Property to be agricultural. However, due to the proximity of the Property to the City of Manitowoc, Mr. Hartman also considered the potential of the Property as a rural building site or, in case of its annexation by the City of Manitowoc, a residential building site.

Mr. Hartman states that he is a full time qualified, independent appraiser, as demonstrated by his status as a Senior Member of the National Association of Real Estate Appraisers. He has over 20 years experience and is familiar with the market changes and current market conditions pertaining to real estate in Manitowoc County, Wisconsin. In addition, Mr. Hartman represents that both he and his firm are independent of Mr. Doneff and that he possesses no present or future interest in the Property.

5. The applicant requests an exemption for the proposed sale of the Property by the IRA to Mr. Doneff. As noted above, the IRA would receive cash for the Property in an amount equal to the fair market value of such Property, as determined by a qualified, independent appraiser at the time of the Sale.

The applicant represents that the proposed transaction would be administratively feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the IRA because it would allow the IRA to dispose of the Property, thus enabling the IRA to diversify the investments and facilitate distributions from the IRA when appropriate. Finally, the applicant asserts that the transaction will be protective of the rights of the participant and beneficiary as indicated by the fact that the IRA will receive the fair market value of the Property, as determined by a qualified, independent appraiser on the date of sale and will incur no commissions, costs, or other expenses as a result of the Sale.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because: (a) The terms and conditions of the Sale would be at least as favorable to the IRA as those obtainable in an arm's length

[17] It should be noted that the $11,695 ''loss'' or differential between the outstanding principal balance of the Note ($21,695) and its independently appraised value ($10,000) will only affect Mr. Eyer's Account in the Plan rather than the accounts of the other Plan participants.

[18] Because Mr. Doneff is the only participant in the IRA, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

transaction with an unrelated third party; (b) the Sale would be a one-time cash transaction allowing the IRA to diversify its investments and facilitate the making of distributions from the IRA when appropriate; (c) the IRA would receive the fair market value of the Property, established by a qualified, independent appraiser as of the date of sale; (d) the IRA would not be required to pay any commissions, costs, or other expenses in connection with the Sale; and (e) Mr. Doneff has determined that the proposed Sale of the Property would be feasible, in the best interests of the IRA, and protective of the participant and beneficiary.

*Notice to Interested Persons*

Because Mr. Doneff is the only participant in the IRA, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. James Scott Frazier, 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 15th day of October, 1997.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 97–27701 Filed 10–17–97; 8:45 am]

**BILLING CODE 4510–29–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (97–153)]**

### NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Airframe Systems Subcommittee; Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting change.

**Federal Register** *Citation of Previous Announcement:* 62 FR 50965, notice number 97–141, September 29, 1997.

*Previously Announced Dates and Addresses of Meeting:* October 21, 1997, 8:00 p.m. to 4:30 p.m., October 22, 1997, 8:00 a.m. to 4:30 p.m., and October 23, 1997, 8:00 a.m. to 12:30 p.m. National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681–0001.

October 21, 1997: Building 1219, Room 225

October 22, 1997: Building 1229, Room 124 (Structures and Materials); Building 1212, Room 200 (Aerodynamics and Aerothermodynamics); Building 1268A, Room 1141 (Airborne Systems)

October 23, 1997: Building 1219, Room 225

*Changes in the Meeting:* Dates changed to December 9, 1997, December 10, 1997, and December 11, 1997. Location changed to Building 1202A.

**FOR FURTHER INFORMATION CONTACT:** Ms. Gloria Hernandez, National Aeronautics and Space Administration, Mail Stop 113, Langley Research Center, Hampton, VA 23681–0001, 757/864–6033.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: October 10, 1997.

**Alan M. Ladwig,**

*Associate Administrator for Policy and Plans.*

[FR Doc. 97–27650 Filed 10–17–97; 8:45 am]

**BILLING CODE 7510–01–M**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (97–155)]**

### NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

**DATES:** November 5, 1997, 8:30 a.m. to 5:00 p.m.; November 6, 1997, 8:30 a.m. to noon and 2:00 p.m. to 3:00 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, Room MIC–7, 300 E Street, SW, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC (202/358–4700).

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- NASA Enterprise Presentations
- Review Status of Office of Chief Technologist

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 14, 1997.

**Alan M. Ladwig,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 97–27723 Filed 10–17–97; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Wednesday, October 22, 1997.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. Requests from Two (2) Federal Credit Unions to Convert to Low-Income Community Charters.
3. Request from a Credit Union to Convert to Private Insurance.
4. Appeal from a Federal Credit Union of the Regional Director's Denial of a Field of Membership Expansion Request.
5. Delegations of Authority.
6. Request from a Federal Credit Union to Merge and Convert Insurance.
7. Request from a Federal Credit Union to Convert and Merge into a Federal Mutual Savings Association.
8. Request from a Corporate Federal Credit Union for a Field of Membership Amendment.
9. Notice of Proposed Rulemaking: Amendments to Part 792, Subpart A, NCUA's Rules and Regulations, Procedures for Processing Freedom of Information Act Requests for NCUA Records.
10. Final Rule: Amendments to Part 792, Subpart C, and Section 792.4, NCUA's Rules and Regulations, Production of Nonpublic Records and Testimony of NCUA Employees in Legal Proceedings.
11. Proposed Amendments to Interpretative Ruling and Policy Statement (IRPS) 94–1, Chartering Manual.
12. Overhead Transfer Rate.
13. National Credit Union Share Insurance Fund (NCUSIF) Dividend for 1997 and NCUSIF Insurance Premium for 1998.

**RECESS:** 12:00 Noon.

**TIME AND DATE:** 1:00 p.m., Wednesday, October 22, 1997.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Two (2) Administrative Actions under Sections 125, 205 and 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).
2. Three (3) Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8) and (10).
3. One (1) Personnel Action. Closed pursuant to exemptions (2) and (6).

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 97–27781 Filed 10–16–97; 1:10 pm]

BILLING CODE 7535–01–M

## NATIONAL EDUCATION GOALS PANEL

### Notice of a Meeting

**AGENCY:** National Education Goals Panel.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

**DATES AND TIMES:** Wednesday, November 5, 1997 from 9:00 a.m. to 11:00 a.m.

**ADDRESSES:** Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, NW, Columbia Ballroom B, Washington, DC 20001.

**FOR FURTHER INFORMATION:** Ken Nelson, Executive Director, 1255 22nd Street, NW, Suite 502, Washington, DC 20037. Telephone: (202) 724–0015.

**SUMMARY:** National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on that progress.

**AGENDA ITEMS:** The meeting of the Panel is open to the public. The first item on the agenda is the release of the 1997 National Education Goals Report. The theme of this year's report is ''Mathematics and Science Achievement for the 21st Century.'' The report highlights student achievement in math and science, with a special emphasis on the Third International Math and Science Study (TIMSS). It provides national data on 26 indicators and state data on 33 indicators for the eight National Education Goals.

The second item on the agenda will have the Panel receive and discuss the policy recommendations of its Goals 3/4/5 Standards Implementation Advisory Group.

Dated: October 15, 1997.

**Ken Nelson,**

*Executive Director, National Education Goals Panel.*

[FR Doc. 97–27717 Filed 10–17–97; 8:45 am]

BILLING CODE 4010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22855; File No. 812–10622]**

### Acacia National Life Insurance Company, Inc., et al.

October 10, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'').

**ACTION:** Notice of Application for an Order under Section 26(b) of the Investment Company Act of 1940 (the ''Act'') approving proposed substitutions of securities.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit the substitution of shares of the Neuberger & Berman Advisors Management Trust Limited Maturity Bond Portfolio (''N&B Bond Portfolio'') for shares of the Strong Advantage Fund II (''Strong Advantage'') and the substitution of shares of Acacia Capital Corporation Calvert Responsibly Invested Balanced Portfolio (''Calvert Balanced Portfolio'') for shares of the Strong Asset Allocation Fund II (''Strong Asset Allocation'' and, collectively with Strong Advantage, the ''Strong Funds'').

**APPLICANTS:** Acacia National Life Insurance Company (''Acacia National''), Acacia National Life Insurance Company Variable Life Separate Account I (''Separate Account I''), Acacia National Life Insurance Company Variable Annuity Separate Account II (''Separate Account II'', together with Separate Account I, the ''Separate Accounts'').

**FILING DATES:** The application was filed on April 17, 1997, and amended on September 25, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving

the Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 pm., on November 4, 1997, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Ellen Jane Abromson, Esq., Acacia National Life Insurance Company, 7315 Wisconsin Avenue, Bethesda, Maryland 20814.

**FOR FURTHER INFORMATION CONTACT:** Joyce Merrick Pickholz, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. (tel. (202) 942–8090).

### Applicants' Representations

1. Acacia National is a stock life insurance company organized under the laws of Virginia. Acacia National is a wholly owned subsidiary of Acacia Mutual Life Insurance Company, a mutual life insurance company chartered by special act of Congress and subject to the laws of the District of Columbia. The Separate Accounts were established by Acacia National under the insurance laws of Virginia to fund, in the case of Separate Account I, variable life insurance policies and, in the case of Separate Account II, variable annuity policies (together, the ''Policies''). The Separate Accounts are registered with the Commission under the 1940 Act as unit investment trusts.

2. Each Separate Account currently consisted of twenty-one sub-accounts. Each sub-account invests its assets in the shares of one of twenty-one designated investment portfolios of seven open-end management investment companies. Strong Advantage, Strong Asset Allocation, N&B Bond Portfolio, and Calvert Balanced Portfolio are four of the twenty-one existing portfolios.

3. Strong Advantage is a series of Strong Variable Insurance Funds, Inc. (''Strong Variable Funds'') for which Strong Capital Management, Inc. (''SCM'') is the investment adviser. Strong Advantage seeks to provide current income with a low degree of share-price fluctuation by investing in ultra short term, investment grade debt obligations; its average effective portfolio maturity is normally less than one year. Strong Advantage is designed for investors who seek higher yields than money market funds and who are willing to accept some modest principal fluctuation in order to achieve that objective. Under normal market conditions, at least 75% of its net assets are invested in investment grade debt obligations. Strong Advantage may also invest up to 25% of its net assets in non-investment grade debt obligations that are rated in the fifth-highest rating category or in unrated securities of comparable quality.

4. Strong Asset Allocation is also a series of Strong Variable Funds for which SCM is the advisor. Strong Asset Allocation seeks high total return consistent with reasonable risk over the long term by allocating its assets among a diversified portfolio of equity securities, bonds and short-term fixed-income securities with benchmark allocations of 60% stock, 35% bonds and 5% cash.

5. N&B Bond Portfolio is a portfolio of the Neuberger & Berman Advisors Management Trust. As a feeder fund in a ''master-feeder'' arrangement, the fund invests its assets in a corresponding series, AMT Limited Maturity Bond Investments (''AMT Series''), of Advisors Management Trust, an open-end management investment company registered under the 1940 Act. The investment objective of the N&B Bond Portfolio and the AMT Series is to provide the highest current income consistent with low risk to principal and liquidity and, secondarily, total return. The AMT Series invests in short-to-intermediate term fixed and variable debt securities and seeks to increase income and preserve or enhance total return by actively managing average portfolio duration. The AMT Series invests primarily in investment grade securities but may invest up to 10% of its pet assets, measured at the time of investment, in debt securities rated below investment grade or in unrated securities determined by its adviser to be of comparable quality.

6. The Calvert Balanced Portfolio, a series of Acacia Capital Corporation, is advised by Calvert Asset Management Company, Inc. It seeks to achieve a total return above the rate of inflation through an actively managed portfolio of common and preferred stocks, bonds, and money market instruments. For its fixed-income investments, the Calvert Balanced Portfolio normally invests in investment grade bonds but may invest up to 20% of its assets in obligations rated lower than B. No more than 10% of assets may be invested in privately placed instruments. Each investment of the Calvert Balanced Portfolio is selected with a concern for its social impact.

7. On November 1, 1996, SCM notified Acacia National that Strong Variable Funds intended to cease offering shares of the Strong Funds for inclusion in variable polices due to the small amount of assets in the two portfolios and the corresponding absence of economies of scale. New allocations to the Strong Funds are no longer permitted.

8. Acacia National proposes to provide policyowners with the option to transfer into any of the other portfolios offered under the Policies. However, because some policyowners will not voluntarily transfer from the affected sub-accounts, Acacia National proposes to substitute shares of the N&B Bond Portfolio for shares of Strong Advantage and Calvert Balanced Portfolio shares for shares of Strong Asset Allocation in the sub-accounts.

9. The Policies give Acacia National the right to eliminate or add sub-accounts, combine two or more sub-accounts, or substitute one or more new underlying mutual funds or portfolios for others in which one or more sub-accounts are invested. These contractual provisions are disclosed in the prospectuses or statements of additional information relating to the Policies.

10. Acacia National will schedule the substitutions to occur as soon as practicable following the issuance of an exemptive order. As of the effective date of the substitutions, Acacia National will redeem shares of the Strong Funds. Simultaneously, Acacia National will use the proceeds of the redemptions to purchase the appropriate number of shares of N&B Bond Portfolio and Calvert Balanced Portfolio. The substitution will take place at the relative net asset values of the portfolios with no change in the amount of any policyowner's account values.

11. Acacia National will pay all expenses and transaction costs of the substitutions. SCM may reimburse Acacia National for some or all of those costs but none will be borne by policyowners. Affected policyowners will not incur any fees or charges as a result of the substitutions, nor will the rights or obligations of Acacia National under the Policies be altered in any way.

12. The substitutions were first described to policyowners in a prospectus supplement dated November 25, 1996, and again in correspondence to policyowners dated May 1, 1997, or May 16, 1997, depending on the state in which the Policy was issued. The prospectus supplement advised policyowners that the Strong Funds would cease offering shares under the Policies effective May 1, 1997, and, consequently, deposits would no longer be accepted into the Strong Funds after that time. Policyowners were also notified that if the substitutions were approved by the SEC, the substitutions would be effected at the net asset value of the relevant portfolios, that policyowners would be given the opportunity to transfer into any other available portfolio, and that no costs for any substitution would be borne by policyowners.

13. Within five days after the substitutions, Acacia National will send to policyowners written notice stating that the substitutions have occurred. Acacia National will include in the mailing a supplement to the prospectus which discloses the completion of the substitutions. Affected policyowners will be advised that for a period of 30 days from the mailing of the notice, they may transfer all assets, as substituted, to any other available sub-account without limitation and without charge, and no such transfer will be counted as a transfer under any contractual provision that may limit the number of transfer in any year. No transfer charge is currently in effect and none will be imposed prior to the expiration of the 30 day period. Following the substitutions, policyowners will be afforded the same rights, including surrender and other transfer rights with regard to amounts invested under the Policies as they currently have. Thus policyowners may choose simply to withdraw amounts credited to them following the substitutions under the conditions that currently exists, subject to any applicable surrender charge.

14. The investment advisory fee for Strong Advantage is, on an annual basis, .60% of the average daily net asset value of the portfolio. As a result of an expense limitation agreement, the expense ratio for Strong Advantage for the year ending December 31, 1996, was 2.00%. in the absence of this agreement, the expense ratio would have been 2.85%.

15. The investment advisory fee for Strong Asset Allocation is, on an annual basis, .85% of the average daily net asset value of the portfolio up to a value of $35 million in assets and .80% of the portfolio's assets in excess of $35 million. As a result of an expense limitation agreement, the expense ratio for Strong Asset Allocation for the year ending December 31, 1996, was 2.00%. In the absence of this agreement, the expense ratio would have been 4.29%.

16. The investment advisory fee for the N&B Bond Portfolio equals a percentage of the average daily net asset value of the portfolio, on an annual basis, as follows: .65% for the first $500 million; .615% for the next $500 million; .60% for the next $500 million; .575 for the next $500 million; and .55% thereafter. The expense ratio for the N&B Bond Portfolio for the year ending December 31, 1996, was .80%.

17. The investment advisory fee for the Calvert Balanced Portfolio is, on an annual basis, .70% of the average daily net asset value of the portfolio. Its expense ratio for the year ending December 31, 1996, was .81%.

**Applicants' Legal Analysis**

1. Section 26(b) of the 1940 Act provides in pertinent part that ''[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution.'' Section 26(b) provides that the Commission will approve a substitution if it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer, and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby incurring either a loss of the sales load deducted from initial proceeds, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords protection to investors by preventing a depositor or trustee of a unit investment trust holding shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants submit that the purposes, terms and conditions of the substitutions are consistent with the principals and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants believe that the N&B Bond and Calvert Balanced portfolios will better serve policyowner interests because the expenses of each portfolio have been significantly lower than, and the performance of each has been essentially equivalent to or better than, the expenses and performance of the funds to be eliminated. Also, Applicants submit that Policyowners may transfer their assets to any of seventeen additional portfolios currently available under the Policies.

3. Applicants believe that Calvert Balanced is an appropriate replacement for Strong Asset Allocation notwithstanding the fact that Calvert Balanced seeks to invest in organizations that: (a) Deliver safe products and services; (b) are managed with participation throughout the organization in defining and achieving objectives; (c) negotiate fairly with their workers and provide a supportive working environment; and (d) foster awareness of a commitment to human goals within the organization and the word. Applicants submit that each portfolio invests a percentage of its assets in stocks, bonds and money market instruments. Also, Calvert Balanced can be expected to outperform Strong Asset Allocation, were the latter to remain in existence, because Calvert Balanced has much lower expenses than Strong Asset Allocation, and, as Strong Asset Allocation's assets continue to decrease and its expenses remain the same, its performance will necessarily decline. Further, Applicant's assert that even though Strong Asset Allocation has slightly outperformed Calvert Balanced since each portfolio's inception, Calvert Balanced has gone through many market cycles during its more than ten years of existence whereas Strong Asset Allocation, which commenced operations in late 1995, has a briefer history characterized by a rising market. For the past year, the two Portfolios' total returns were identical (20.67%).

4. Applicants state that Acacia National has reserved the right to substitute securities held by the Sub-Accounts of the Separate Accounts and this right is disclosed in the prospectuses or statements of additional information for the Separate Accounts.

5. Finally, Applicants represent that the substitutions will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act:

a. The N&B Bond Portfolio and Calvert Balanced Portfolio have objectives, policies and restrictions that are substantially similar to the objectives, policies and restrictions of the funds being replaced.

b. The expense ratio of the N&B Bond and Calvert Balanced Portfolios are

significantly lower than those of the Strong funds.

c. The performance of the N&B Bond and Calvert Balanced Portfolios has been essentially equivalent to or better than the performance of the portfolios that will be eliminated.

d. The substitutions will, in all cases, be at the net asset value of the respective portfolios without the imposition of any transfer or similar charge.

e. The costs of the substitutions will be borne by Acacia National and SCM and will not be borne by policyowners. No charges will be assessed to effect the substitutions.

f. Within 5 days after the substitutions, Acacia National will send to policyowners written notice of the substitutions that identifies the shares that were substituted and discloses the shares which replaced them. Included in the mailing will be a supplement to the prospectus that discloses completion of the substitutions.

g. For 30 days following the mailing of the notice of substitutions, policyowners may transfer substituted assets without any charge. No such transfer will be counted as a transfer under any contractual provision which limits the number of transfers in any year.

h. The substitutions will in no way alter the insurance benefits to policyholders or the contractual obligations of Acacia National.

i. The substitutions will in no way alter the tax benefits to policyowners. Counsel for Acacia National has advised that the substitutions will not give rise to any tax consequences to the policyowners.

### Applicants' Conclusions

Applicants assert that, for the reasons and upon the facts set forth in the application, the requested order approving the proposed substitution meets the standards set forth in Section 26(b) of the 1940 Act and should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27697 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22853; 812–10574]**

## Equus II Incorporated; Notice of Application

October 10, 1997.

**AGENCY:** Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

**ACTION:** Notice of application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

**SUMMARY OF APPLICATION:** Applicant Equus II Incorporated seeks an order approving its 1997 Stock Incentive Plan (the ''Plan'') for certain of its directors, and the grant of certain stock options under the Plan.

**FILING DATES:** The application was filed on March 11, 1997. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 3, 1997, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, 2929 Allen Parkway, Suite 2500, Houston, Texas 77019.

**FOR FURTHER INFORMATION CONTACT:** Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or Christine Y. Greenlees, 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 at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

### Applicant's Representations

1. Applicant is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Applicant requests an order pursuant to section 61(a)(3)(B) of the Act approving the Plan as it applies to each director of the applicant who is neither an officer nor an employee of the applicant (''Non-employee Director'') and to each new Non-employee Director who may be elected in the future to applicant's board of directors. The order also would approve the automatic grant of options, pursuant to the Plan, to purchase shares of applicant's common stock to each current and future Non-employee Director.

2. Applicant's board of directors (the ''Board'') consists of eight members. Five members of the Board are persons who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of the applicant. The Plan was approved by the Board on February 7, 1997, and by the applicant's shareholders on April 9, 1997, at a special meeting of shareholders. Officers, employees, and directors of the applicant are eligible to participate in the Plan. Applicant seeks approval of the Plan as it applies to Non-employee Directors. On May 15, 1997, the Board implemented part of the Plan. The portion of the Plan applicable to Non-employee Directors will not be implemented until an order is received from the Commission approving that portion of the Plan.

3. Each Non-employee Director of the applicant receives an annual director's fee of $20,000, a fee of $2,000 for each meeting of the Board attended in person, a fee of $1,000 for participation in each telephonic meeting and for each committee meeting attended, and reimbursement of all out-of-pocket expenses relating to attendance at meetings.

4. Equus Capital Management Corporation (''ECMC'') is an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and serves as the applicant's management company. ECMC receives no compensation from the applicant under section 205(1) of the Advisers Act. Other than stock options issued to officers of the applicant under the Plan, the applicant does not currently have outstanding any warrants, options or rights to purchase its voting securities.

5. The Plan provides that each Non-employee Director serving on the Board as of the later of the date of approval of

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

the Plan by: (a) The applicant's shareholders, or (b) an order of the Commission, will be granted a nonqualified stock option to purchase 5,000 shares of common stock, $.01 par value (the ''Common Stock''), of applicant that will vest 50% immediately and 16⅔% on the first, second, and third anniversaries of the date of the grant. Each new Non-employee Director will be granted upon his or her election a nonqualified stock option for a similar number of shares. In addition, beginning with the 1998 annual meeting of shareholders of applicant, each Non-employee Director elected will, on the first business day following the annual meeting, be granted a nonqualified stock option to purchase 2,000 shares of Common Stock. The exercise price of the options will be the closing price of the Common Stock on the American Stock Exchange on the date the option is granted or, if no market for the Common Stock exists, the current net asset value of the shares of the Common Stock. Each option will be exercisable during the period beginning six months after the date of the grant and ending ten years after the date of the grant.

6. In the event that a Non-employee Director's services are terminated because of death, permanent disability, or retirement, any invested options will vest, and the Non-employee Director or, if the Non-employee Director is not living, the Non-employee Director's estate, may exercise his or her options during the one-year period following the date of death, permanent disability, or retirement. The termination of a Non-employee Director's services will not otherwise accelerate the termination date of his or her options. Options may not be assigned or transferred other than by will or the laws of descent and distribution.

**Applicant's Legal Analysis**

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its Non-employee Directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the SEC upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in paragraph (1) of section 205 of the Advisers Act, except to the extent permitted by clause (A) or (B) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

3. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

4. Applicant represents that the Plan and the options that would be granted automatically to current and future Non-employee Directors would comply with the requirements of section 61(a)(3)(B) of the Act. In addition, in support of its application, applicant states that its directors devote substantial time and attention to matters relating to applicant's portfolio companies, thus functioning more like the board of an operating company than the board of a traditional investment company. Applicant relies extensively on the judgment and experience of its directors, and believes that these factors are critical to its success. Further, applicant states that the Plan would provide incentives to the Non-employee Directors to remain on the Board and devote their best efforts to the success of applicant's business.

5. Applicant submits that the terms of the Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Under the Plan, the amount of stock options that would be granted to the six current Non-employee Directors would be 30,000 shares in 1997 and 12,000 shares each year commencing in 1998, or approximately 1% of the 4,300,682 shares of Common Stock outstanding. Applicant submits that, given the relatively small number of options that may be granted and exercised by Non-employee Directors under the Plan, the exercise of stock options pursuant to the Plan will not have a substantial dilutive effect on the net asset value of applicant's Common Stock. In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance would not exceed 20% of the outstanding voting securities of the applicant. Further, because the options may not be exercised until six months after the date of grant and 50% of the stock options granted to Non-employee Directors vest on a ratable basis over the three years following the date of grant, the plan provides Non-employee Directors with an incentive to remain with the applicant.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27656 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22851; 812–10356]**

## Investors Bank & Trust Company, et al.; Notice of Application

October 10, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for an order under (i) section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') granting relief from section 12(d)(1) of the Act; (ii) sections 6(c) and 17(b) of the Act granting relief from section 17(a) of the Act; and (iii) section 17(d) of the Act and rule 17d–1 to permit certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants request an order to permit the lending agent for certain investment companies to invest cash collateral derived from securities lending transactions in shares of affiliated registered investment companies organized as a master-feeder fund.

**APPLICANTS:** Investors Bank & Trust Company (the ''Bank''); Merrimac Funds (the ''Feeder Trust''), on behalf of its Merrimac Cash Fund and Merrimac Treasury Fund, each a series of the Feeder Trust, and each other series of the Feeder Trust established in the future in which cash collateral from securities lending transactions may be invested (collectively, the ''Feeder

Funds''); Merrimac Master Portfolio (the ''Master Trust''), on behalf of its Merrimac Cash Portfolio and Merrimac Treasury Portfolio, each a series of the Master Trust, and each other series of the Master Trust established in the future in which a Feeder Fund invests (collectively, the ''Master Funds''); and all registered management investment companies and series that may participate from time to time as lenders (collectively, the ''Lending Funds'') in the securities lending program administered by the Bank (the ''Program'').

**FILING DATES:** The application was filed on November 15, 1996, and amendments to the application were filed on June 10, 1997, and September 29, 1997.

**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 November 5, 1997, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; Merrimac Funds, 200 Clarendon Street, Boston, MA 02116; and Merrimac Master Portfolio, P.O. Box 501, Cardinal Avenue, George Town, Grand Cayman, Cayman Islands, BWI.

**FOR FURTHER INFORMATION CONTACT:** Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Mary Kay Frech, 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, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

## Applicants' Representations

1. The Feeder Trust is a Delaware business trust organized under a Master Trust Agreement and registered as an investment company under the Act. The Feeder Trust has established two series, the Merrimac Cash Fund and the Merrimac Treasury Fund, each of which has three classes (the ''Premium Class,'' the ''Institutional Class,'' and the ''Placement Class'') of shares. Lending Funds will acquire only Premium Class shares.[1] Shares of the Feeder Trust are sold without a distributor exclusively to ''accredited investors'' in accordance with the requirements of Regulation D under the Securities Act of 1933. Each Feeder Fund will be a ''feeder'' in a ''master-feeder'' structure with the Master Trust and invest all of its investable assets in a Master Fund having the same investment objective and policies as the Feeder Fund.

2. The Master Trust is a New York common law trust established under a Declaration of Trust and registered as an investment company under the Act. The Master Trust has established two series, the Merrimac Cash Portfolio and the Merrimac Treasury Portfolio.[2] Interests in each Master Fund are offered exclusively to one or more Feeder Funds and to other ''accredited investors.'' Shares of the Master Trust are sold without a distributor and are not subject to a sales load, redemption fee, asset-based sales charge (as defined in rule 2830(b)(8)(A) of the Conduct Rules of the National Association of Securities Dealers), or shareholder servicing fee.

3. The Bank, a wholly-owned subsidiary of Investors Financial Services Corp., is a Massachusetts chartered trust company. The Bank provides domestic and global custody, multi-currency accounting, institutional transfer agency, performance measurement, foreign exchange, securities lending and mutual fund administration services to a variety of financial asset managers, including mutual fund complexes, investment advisers, banks and insurance companies. The Bank acts as agent for its clients for both international and domestic securities lending services.

4. The Bank and one or more of its affiliates will serve as custodian, transfer agent, and administrator to each Feeder Fund and Master Fund. The Bank also will serve as the investment adviser to each Master Fund. Applicants anticipate that one or more entities will serve as a sub-adviser to each Master Fund. The Bank will be responsible for the payment of all fees for the services of any sub-adviser. The Bank will charge each Feeder Fund and Master Fund, as applicable, fees for services it provides as custodian, transfer agent, administrator and investment adviser.

5. From time to time, the Bank will be appointed to serve as lending agent for various Lending Funds.[3] The Bank will enter into a securities lending authorization agreement (a ''Lending Agreement'') with each Lending Fund.[4] The Lending Agreement will authorize the Bank, as agent for the Lending Fund, to lend portfolio securities of the Lending Fund to each person designated by the Lending Fund as an eligible borrower (each, a ''Borrower''), and to enter into a master borrowing agreement with each Borrower (each, a ''Borrowing Agreement''). The pool of eligible Borrowers may be modified from time to time by each Lending Fund, acting through its authorized officers.

6. The Lending Agreement and the Borrowing Agreement will establish, for each transaction, the initial and ongoing collateralization requirements, the types of collateral that may be accepted, and the manner in which the Borrower's return on the collateral (the ''Borrower's Rebate'') will be established. The Lending Agreement will (i) fix the percentage difference between the Borrower's Rebate and the actual return on the investment of the collateral (the ''Net Income'') to be retained by the Lending Fund and the percentage to be

[1] The Premium Class shares are subject to a $10 million minimum investment requirement.

[2] The Merrimac Cash Portfolio may invest in U.S. Treasury bills, notes and bonds, and other instruments issued or guaranteed by the U.S. Government or its agencies or instrumentalities (''U.S. Government Obligations''); securities of U.S. and non-U.S. banks and thrift organizations; corporate debt obligations; asset-backed securities; variable rate obligations; and repurchase agreements that the collateralized by the securities listed above. The Merrimac Treasury Portfolio invests at least 65% of its assets in U.S. Government Obligations. All investments of each Portfolio will qualify as ''eligible securities'' within the meaning of rule 2a–7 under the Act. Moreover, each Feeder Fund and Master Fund will seek to maintain a stable net asset value by valuing the portfolio using the amortized cost method and will comply with the requirements of rule 2a–7 under the Act.

[3] The Bank will not be an affiliated person of any Lending Fund or an affiliated person of an affiliated person of any Lending Fund within the meaning of section 2(a)(3) of the Act, except that, if any Lending Fund directly or indirectly owns, controls, or holds with the power to vote 5% or more of the shares of a Master Fund, the Bank will be an affiliated person of an affiliated person of the Lending Fund. Moreover, no Lending Fund will be an affiliated person of any Feeder Fund or an affiliated person of an affiliated person of any Feeder Fund, except that a Lending Fund may (i) directly or indirectly own, control, or hold with power to vote more than 5% of the voting securities of a Feeder Fund or a Master Fund, or (ii) be an affiliated person of another Lending Fund that directly or indirectly owns, controls, or holds with the power to vote more than 5% of the voting securities of a Feeder Fund or Master Fund.

[4] Certain Lending Funds participating in the Program may be management investment companies that hold themselves out as ''money market funds'' and comply with the requirements of rule 2a–7 under the Act (''Money Market Lending Funds'').

paid by the Lending Fund to the Bank, and (ii) authorize the Bank, as agent for the Lending Fund, to negotiate the Borrower's Rebate for each transaction and to commit the Lending Fund to pay the Borrower's Rebate. The Lending Fund will be responsible for paying the Borrower's Rebate and returning the principal amount of the collateral to the Borrower. Each loan will be terminable, at any time, by the Borrower or the Lending Fund.

7. During the term of each loan, the Lending Fund will retain the economic rights of an owner of the securities that are the subject of a loan, including the right to receive from the Borrower all dividends and distributions made with respect to those securities. The Bank will monitor corporate actions with respect to securities loaned by each Lending Fund and will reallocate or terminate loans at the direction of the Lending Fund, as necessary, to enable the Lending Funds to vote those securities.[5]

8. Applicants anticipate that the collateral delivered in connection with most loans will consist of cash. In order to maximize investment return on the securities lending activities, each Lending Agreement will authorize the Bank, as agent for the Lending Fund, to invest the cash in shares of one or more Feeder Funds, in accordance with the terms of the Lending Agreement and instructions received from authorized officers of the Lending Fund.[6] The Bank, as agent for a Lending Fund, will not purchase shares of any Feeder Fund with cash collateral unless participation in the Program has been approved by a majority of the directors or trustees of the Lending Fund who are not ''interested persons'' of the Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees will also evaluate the Program no less frequently than annually, and determine that investing cash collateral in the Feeder Fund is in the best interests of the shareholders of the Lending Fund. Each Lending Fund will reserve the right to rescind authorization to invest in a Feeder Fund. Moreover, each Lending Fund that authorizes the Bank to invest cash collateral in a Feeder Fund will be provided a copy of the confidential offering circular for such Feeder Fund, and with such other disclosure documents that the Bank determines may be appropriate to ensure that each Lending Fund is fully informed with respect to the investment considerations and risks associated with investing cash collateral in the Feeder Funds.

9. Applicants request an order to permit (i) the Bank, as agent of the Lending Funds, to invest cash collateral derived from loaned securities in shares of the Feeder Trust; and the Lending Funds to purchase from the Feeder Trust, and (ii) the Feeder Trust to sell to the Lending Funds, shares issued by the Feeder Trust. Applicants also request an order to permit the Lending Funds, the Feeder Trust, the Master Trust, and the Bank to effect certain joint transactions incident to the Program.

**Applicants' Legal Analysis**

*A. Section 12(d)(1)*

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company representing more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or, together with the securities of other investment companies, 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 12(d)(1)(J) provides that the SEC may exempt any person or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) to permit the Bank, as agent of the Lending Funds, to invest cash collateral derived from loaned securities in the Feeder Funds in excess of the limits imposed by section 12(d)(1) of the Act.

3. Applicants believe that the investment of cash collateral by Lending Funds in the Feeder Funds will provide Lending Funds with the opportunity to maximize returns with less investment risk than if the cash collateral received by each Lending Fund were segregated in a separate account from which purchases and sales of securities would be made. In addition, applicants believe that participation in the Program will permit the Lending Funds to minimize credit risk and interest rate risk through diversification. Applicants also believe that the administrative burdens, such as the daily monitoring of total assets and other investments of the Lending Funds associated with compliance with section 12(d)(1) may impair the ability of the Bank to provide securities lending services to Lending Funds in an economical and administratively efficient manner, and, therefore, may create competitive disadvantages for the Lending Funds relative to other institutional investors that seek to engage in securities lending activities.

4. Applicants submit that the investment of cash collateral received in connection with securities loans by Lending Funds in the Feeder Funds does not give rise to the policy concerns of section 12(d)(1), which include unnecessary duplication of costs (such as sales loads, advisory fees, and administrative costs), and undue influence by the fund holding company over its underlying funds arising from the threat of large scale redemptions of the securities of the underlying investment companies. Applicants state that there will be no layering of sales or distribution charges because shares of the Feeder Funds acquired by the Lending Funds will be sold without a sales charge or redemption fee and the assets allocated to the Lending Funds will not be subject to any asset-based sales charge. Applicants also state that each Master Fund will be structured to accommodate the increased needs of liquidity associated with securities lending transactions by maintaining an appropriate average weighted maturity or effective duration and, therefore, will not be susceptible to control through the threat of large scale redemptions. Accordingly, applicants believe that the requested exemption from section 12(d)(1) is consistent with the public interest and the protection of investors.

*B. Section 17(a)*

1. Sections 17(a) (1) and (2) of the Act make it unlawful for any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as a principal, to sell any security to, or purchase any security from, such registered investment company. From time to

[5] The Borrowing Agreement will provide that within three trading days (or such other time period as is the customary settlement period for the loaned securities) of the Lending Fund giving notice of the termination of any loan, the Borrower is required to transfer the loaned securities (or certificates for identical securities) to the Bank, as agent for the Lending Fund, or to the Lending Fund's custodian, and pay to the Bank or to the Lending Fund's custodian the amount of all dividends and distributions that would have been payable to the Lending Fund on or with respect to such securities if they had not been loaned, to the extent not previously paid.

[6] Cash collateral from transactions in which the lender is a Money Market Lending Fund will not be used to acquire shares of any Feeder Fund that does not comply with the requirements of rule 2a–7.

time, it is possible that a Lending Fund may directly or indirectly own, control, or hold with power to vote 5% or more of the shares of a Feeder Fund, which will result in the Lending Fund being an ''affiliated person'' of the Feeder Fund. In these circumstances, the purchase or redemption of shares of a Feeder Fund for the same Lending Fund or an affiliated person of such Lending Fund could violate section 17(a) of the Act.

2. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and with the general purposes of the Act. Because section 17(b) could be interpreted to exempt only a single transaction, applicants are also seeking relief pursuant to section 6(c) of the Act to permit the investment of cash collateral in shares of the Feeder Funds as proposed in the application.[7]

3. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule or regulation thereunder ''if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions'' of the Act. Applicants believe that relief is appropriate under section 6(c) of the Act for the same reasons that it is appropriate under section 17(b), as discussed below.

4. Applicants believe that the proposed transactions will be reasonable and fair, and consistent with the general purposes of the Act as well as the policies of each Lending Fund. The Lending Funds will not be able to purchase or redeem shares of the Feeder Funds at a price lower or higher than the per share net asset value of the Feeder Funds, and no sales load, redemption fee, or asset-based sales charge will be charged with respect to shares of the Feeder Funds sold to Lending Funds. Moreover, applicants note that the low fees charged by the Bank for services provided to the Feeder Trust and Master Trust will be subject to intense scrutiny and, therefore, will remain fair and reasonable to the Feeder Trust and the Master Trust, the Feeder Trust's shareholders and the Lending Funds. Finally, the Bank will not purchase shares of any Feeder Fund, as agent for a Lending Fund, unless the Lending Fund, or an authorized officer of the Lending Fund, has represented to the Bank that (i) its policies generally permit the Lending Fund to engage in securities lending transactions, (ii) such transactions will be conducted in accordance with the securities lending guidelines established in a series of no-action letters issued by the SEC's Division of Investment Management,[8] (iii) its policies permit the Lending Fund to purchase shares of the Feeder Funds with cash collateral, and (iv) its securities lending activities will be conducted in accordance with all representations and conditions in the application applicable to such Lending Fund.

*C. Section 17(d) and Rule 17d–1*

1. Section 17(d) of the Act and rule 17d–1 thereunder prohibit any affiliated person of a registered investment company, acting as principal, from effecting any transaction in connection with any joint enterprise or joint arrangement in which such registered investment company participates. The ownership by a Lending Fund or its affiliates, from time to time, of 5% or more of the shares of a Feeder Fund or Master Fund, could cause such Lending Fund to be an affiliated person of the Feeder Trust or the Master Trust, or an affiliated person of an affiliated person of the Feeder Trust or the Master Trust. In addition, the Bank, as investment adviser for each Master Fund, will be an affiliated person of the Master Trust. As an affiliated person of the Master Trust, the Bank may, from time to time, be an affiliated person of an affiliated person of one or more Lending Funds by virtue of such Lending Fund's interests in the Master Trust. Consequently, the proposed purchase of shares of a Feeder Fund with cash collateral, the redemption of such shares, the sharing of Net Income among the Bank and the Lending Funds, and the payment of fees by the Feeder Trust and the Master Trust to the Bank may constitute a joint transaction for which an exemptive order is required.

2. Rule 17d–1 permits the SEC to issue an order with respect to a joint transaction. In passing on applications for orders under rule 17d–1, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that it is appropriate to grant an exemption under rule 17d–1 from the restrictions of section 17(d) of the Act.

3. Each Lending Fund will invest in a class of shares of the Feeder Trust on the same basis as every other shareholder of the Feeder Trust investing in the same class of shares, and all shares within a class will be priced in the same manner and will be redeemable under the same terms. In addition, no class of shares of a Feeder Fund in which a Lending Fund invests will be subject to any sales load, redemption fee, or asset-based sales charge. The arrangements regarding the sharing of Net Income between the Bank and each Lending Fund are the product of arm's length negotiations between the Lending Fund and the Bank. Finally, applicants state that the proposed investment of cash collateral by Lending Funds in shares of the Feeder Funds is consistent with the provisions and purposes of the Act.

**Applicants' Conditions**

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. No Lending Fund will purchase shares of any Feeder Fund unless participation in the Program has been approved by a majority of the directors or trustees of the Lending Fund that are not ''interested persons'' of the Lending Fund within the meaning of section 2(a)(19) of the Act. Such directors or trustees will also evaluate the Program no less frequently than annually, and determine that investing cash collateral in the Feeder Fund is in the best interests of the shareholders of the Lending Fund.

2. The Bank will lend portfolio securities of each of the Lending Funds only in accordance with the guidelines specified by such Lending Fund.

3. Cash collateral from loans by Lending Funds will be invested in shares of each Feeder Fund subject to such limitations and guidelines as are specified by the Lending Funds.

4. Cash collateral from loans by Money Market Lending Funds will not be used to acquire shares of any Feeder Fund that does not comply with the requirements of rule 2a–7 under the Act.

5. The shares of a Feeder Fund sold to Lending Funds will not be subject to a sales load or redemption fee and assets of the Feeder Fund and the Master Fund allocable to Feeder Funds will not be subject to any asset-based sales charge (as defined in rule 2830(b)(8)(A) of the Rules of Conduct of the National Association of Securities Dealers).

6. The Bank will not acquire shares of any Feeder Fund on behalf of any

[7] See *Keystone Custodian Funds, Inc.*, 21 S.E.C. 295 (1945).

[8] See *e.g. Sife Trust Fund* (pub. avail. Feb. 17, 1982).

Lending Fund if, at the time of such acquisition, (i) the Bank is an affiliated person of the Lending Fund or an affiliated person of an affiliated person of the Lending Fund, or (ii) the Lending Fund is an affiliated person of the Feeder Fund or an affiliated person of an affiliated person of the Feeder Fund, in either case, by means other than by directly or indirectly owning, controlling, or holding with the power of vote 5% or more of the shares of a Feeder Fund or a Master Fund by the Lending Fund or an affiliated person of the Lending Fund.

7. In connection with all matters requiring a vote of shareholders of a Feeder Fund, the Bank will pass through voting rights to those Lending Funds that have a beneficial interest in such Lending Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27657 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. 22852; File No. 812–10534]**

## New England Life Insurance Co et al.; Notice of Application

October 10, 1997.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') granting relief from rule 6e–2(c)(1) and from certain provisions of the Act and rules thereunder specified in paragraph (b) of rule 6e–2; and from sections 2(a)(32) and 27(i)(2)(A) of the Act and rules 6e–2(b)(12) and 22c–1 thereunder.

**SUMMARY OF APPLICATION:** Applicants seek exemptive relief to the extent necessary: (1) To permit them to offer and sell certain ''hybrid'' variable life insurance policies with modified scheduled premiums (''Policies''); and (2) to permit certain other persons which may become the principal underwriter for such Policies (''Future Underwriters'') to offer and sell such Policies.

**APPLICANTS:** New England Life Insurance Company (''NELICO''), New England Variable Life Separate Account (''Variable Account''), and New England Securities Corporation (''New England Securities'').

**FILING DATE:** The application was filed on February 28, 1997 and amended and restated on October 3, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 4, 1997, 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 requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, c/o Marie C. Swift, Esq., New England Life Insurance Company, 501 Boylston Street, Boston, Massachusetts 02116.

**FOR FURTHER INFORMATION CONTACT:** Lorna MacLeod, Attorney, or Kevin Kirchoff, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. (202) 942–8090).

### Applicants' Representations

1. NELICO is a Massachusetts stock life insurance company and is a wholly owned subsidiary of Metropolitan Life Insurance Company (''MetLife'').

2. The Variable Account was established as a separate investment account of NELICO on January 31, 1983, under Delaware law, and became subject to Massachusetts law when NELICO changed its domicile to Massachusetts on August 30, 1996. The Variable Account is registered under the Act as a unit investment trust. The Variable Account currently consists of eighteen investment sub-accounts, each of which invests its assets in a different portfolio of the New England Zenith Fund (the ''Zenith Fund''), the Variable Insurance Products Fund (the ''VIP Fund''), and the Variable Insurance Products Fund II (the ''VIP Fund II'').

3. New England Securities, which will act as the principal underwriter for the Polices, is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc (''NASD'').

4. Scheduled premiums for the Policy are payable until the insured reaches age 100. The scheduled premium amount depends on the face amount of the Policy, the insured's age, sex (if the Policy is sex-based), and underwriting class, the frequency of premium payments and any rider benefit premiums. Scheduled premiums for substandard and automatic issue classes reflect additional premiums that are charged for Policies in those categories. If all scheduled premiums are paid when due, the Policy will not lapse and will retain its minimum death benefit guarantee, even if unfavorable investment experience has reduced the cash value to zero.[1]

5. The Policy also provides considerable flexibility with respect to the timing and amount of premium payments. An owner of a Policy may make unscheduled payments at any time that the Policy is in force on a premium-paying basis (except any period during which scheduled premiums are being waived pursuant to a waiver-of-premium rider), provided that the unscheduled payment is at least $25 (or at least $10 for certain Policies) and, if required by NELICO, the insured has submitted evidence of insurability satisfactory to NELICO. In addition, NELICO's consent is required if, in order to satisfy tax law requirements, the payment would increase the Policy's death benefit by more than it would increase the cash value. NELICO reserves the right to prohibit or limit the amount of unscheduled payments under a Policy covering a substandard risk insured or under an automatic issue Policy.

6. An owner of a Policy may plan to make a certain amount of unscheduled payments, subject to NELICO's administrative procedures. Each net unscheduled payment will be allocated to the same sub-accounts as net scheduled premiums. At the owner's request, NELICO will include the amount of any unscheduled payments, planned to be made on the Policy anniversary, in the premium notice sent to the owner. However, the owner is required to pay only the scheduled

[1] A Policy may terminate when a Policy loan plus accrued interest exceeds the Policy's cash value, less the applicable Surrender Charge, on the next loan interest due date (or, if greater, on the date the calculation is made). NELICO notifies the Policy owner of such pending termination, and the Policy will terminate 31 days thereafter unless NELICO has received sufficient repayment to eliminate the excess Policy loan.

premium in order to keep the Policy in force on a premium paying basis.

7. The amount of net scheduled premiums due is automatically allocated to the Policy's sub-accounts, chosen by the Policy owner, on each scheduled premium due date. A scheduled premium which is unpaid as of its due date is in default, but the Policy provides a 31-day grace period for the payment of each scheduled premium after the first. For 60 days after the due date of a premium in default, NELICO will not impose the normal monthly administrative, minimum death benefit guarantee and cost of insurance charges against a Policy's cash value. If the scheduled premium in default is paid, these deductions will be made retroactively. If the Policy is surrendered while the premium is in default, the monthly deduction and a prorated cost of insurance charge are deducted from surrender proceeds. If the insured dies during the grace period and before the premium is paid, a prorated portion of the unpaid scheduled premium, measured from its due date to the date of death, will be deducted from the amount otherwise payable. As owner of a Policy may choose among several lapse options, which may include extended term insurance, fixed paid-up insurance or variable paid-up insurance, subject to restrictions set forth in the Policy.

8. An owner of a Policy may also elect the Special Premium Option, which permits an owner to skip one or more scheduled premium payments after the first Policy year, subject to the following conditions. NELICO will determine that payment of a scheduled premium that has not been paid by the end of the grace period is not required if: (a) The Policy's cash value on the premium due date (before NELICO advanced the premium due) exceeds the Policy's ''tabular cash value'' on that date by at least the amount of the scheduled premium due, including any rider and substandard risk or automatic issue premiums due; and (b) immediately after the Special Premium Option is exercised, the amount of any Policy loan outstanding plus accrued interest will not exceed the Policy's loan value.[2]

9. If NELICO permits nonpayment of a scheduled premium under the Special Premium Option, NELICO will deduct from the Policy's cash value, as of the premium due date, 91% of the portion of the annual administrative charge and of any rider, substandard risk or automatic issue premiums due on that date.

10. An owner of a Policy may also elect an automatic premium loan option. Under this option, if a scheduled premium has not been paid by the end of the grace period, the Policy's loan value will be used to pay the scheduled premium. If an owner of a Policy has elected both the Special Premium Option and the automatic premium loan provision, NELICO will first determine whether the Special Premium Option can be used in the event of nonpayment of a scheduled premium. If the Special Premium Option conditions are not met, then NELICO will determine whether the premium can be paid by means of an automatic premium loan.

11. The Policy provides for two alternate death benefit options. The Option 1 death benefit is equal to the greater of: (a) The face amount of the Policy; or (b) the Policy's cash value divided by the net single premium per $1 of death benefit at the insured's attained age. The alternative in (b), above, means that the death benefit will not be less than the amount of insurance which could be purchased on that date by a net single premium equal to the Policy's cash value, and is designed to ensure that the Policy will satisfy Federal tax law requirements.

12. The Option 2 death benefit is equal to the greater of: (a) The face amount of the Policy plus any excess of the Policy's cash value over its ''tabular cash value''; or (b) the Policy's cash value divided by the net single premium per $1 of the death benefit at the insured's attained age. The Policy does not provide for changes in death benefit options.

13. Under either death benefit option, the death benefit is guaranteed not to be less than the Policy's face amount, regardless of the investment experience of the Policy's subaccounts, as long as scheduled premiums have been paid in a timely manner or nonpayment has been permitted in accordance with the terms of the Policy. However, if Policy loans plus accrued interest exceed the Policy's cash value less the surrender charge, the Policy may terminate even if all scheduled premiums have been paid.

14. The Option 1 death benefit remains fixed in the amount initially stated in the Policy as long as scheduled premiums are paid (or need not be paid pursuant to the Special Premium Option), until the death benefit is increased for Federal tax law purposes, described below. The Option 2 death benefit varies daily with the net investment experience of the Variable Account, but will never be less than the amount initially stated in the Policy as long as scheduled premiums are paid (or need not be paid pursuant to the Special Premium Option). In order to qualify the Policy as life insurance for Federal tax law purposes, the death benefit will be an amount, if greater than the amount otherwise provided under Option 1 or Option 2, as appropriate, equal to the Policy's cash value divided by the net single premium per $1.00 of death benefit at the insured's attained age. Thus, the death benefit under either Option 1 or Option 2 varies with investment experience when the cash value is sufficiently large that the death benefit is increased in order for the Policy to qualify as life insurance for Federal tax law purposes.

15. NELICO permits (in states where it has been approved by the state insurance department) a Policy owner to effect a reduction in the Policy's face amount (without receiving a distribution of any of the Policy's cash value) but not, without NELICO's consent, below NELICO's minimum face amount requirements at issue. A reduction in face amount will reduce the Policy's cash value by the amount of any applicable Surrender Charge, will also reduce the scheduled premium level and ''tabular cash value,'' and may require a reduction in any related rider benefits. Generally, the Policy's death benefit will also be decreased. However, if the death benefit at the time of a face amount reduction is determined by dividing the cash value by the net single premium per dollar of death benefit, the death benefit will not be decreased unless a Surrender Charge was deducted from the cash value in connection with the face amount reduction.

16. NELICO deducts the following amounts from each scheduled premium paid under a Policy to arrive at a basic scheduled premium: (a) Charges for any supplementary benefits provided by rider; (b) any extra premiums paid for a Policy in a substandard risk or automatic issue class; and (c) an annual Policy administrative charge. NELICO does not deduct any of these charges from unscheduled payments.

17. NELICO also deducts sales load (5.5%), state premium tax (2.5%), and federal tax (1%) charges from each basic

[2] The ''tabular cash value'' is a hypothetical value that is used to determine the Option 2 death benefit, availability of the Special Premium Option, and the amount of cash value available to be withdrawn from the Policy. The ''tabular cash value'' is the value the Policy would have if: (a) All scheduled premiums were paid when due; (b) no unscheduled payments, partial surrenders, partial withdrawals or loans were made; (c) the cash value in the Policy's sub-accounts (and cash value in the fixed account) earned a 4.5% annual net rate of return; and (d) the maximum guaranteed cost of insurance rates and maximum levels of other Policy charges were deducted.

scheduled and unscheduled premium payment made during the life of the Policy.

18. NELICO deducts from a Policy's cash value, on the Policy date and on the first day of each Policy month, a monthly deduction, consisting of an administrative charge and a minimum death benefit guarantee charge, and a charge for the cost of providing insurance protection for the Policy month equal to the amount at risk multiplied by the cost of insurance rate for that month. NELICO also charges the sub-accounts of the Variable Account for mortality and expense risks, at an annual rate of 0.60% (guaranteed not to exceed 0.90%) of the value of each sub-account's assets attributable to the Policies; and charges for investment advisory and other Fund expenses are deducted from Fund assets and are indirectly borne by owners of Policies.

19. During the first eleven Policy years, NELICO deducts a charge from a Policy's cash value upon a full or partial surrender, upon a reduction in face amount, or upon lapse of the Policy (the ''Surrender Charge''). The Surrender Charge is calculated as a percentage of basic scheduled premiums, and will be applied to an amount equal to the total annualized basic scheduled premiums for the Policy payable through the Policy year in which total or partial surrender, lapse, or face amount reduction occurs, up to a maximum of four annualized basic scheduled premiums.

20. The Surrender Charge rate that applies in each Policy year is indicated below:

| Policy year | Percentage | Applied to |
|---|---|---|
| 1 | 55.00 | One annualized basic scheduled premium. |
| 2 | 55.00 | Two annualized basic scheduled premiums. |
| 3 | 36.67 | Three annualized basic scheduled premiums. |
| 4 | 27.50 | Four annualized basic scheduled premiums. |
| 5* | 26.25 | Four annualized basic scheduled premiums. |
| 6* | 25.00 | Four annualized basic scheduled premiums. |
| 7* | 20.00 | Four annualized basic scheduled premiums. |
| 8* | 15.00 | Four annualized basic scheduled premiums. |
| 9* | 10.00 | Four annualized basic scheduled premiums. |
| 10* | 5.00 | Four annualized basic scheduled premiums. |
| 11* | 0.00 | Four annualized basic scheduled premiums. |

*End of policy year.

21. For the first four Policy years the Surrender Charge rate that applies in a particular year remains level throughout that year. Beginning in the fifth Policy year, the Surrender Charge rate declines on a monthly basis to the end of year rates shown in the table above.[3] The maximum dollar amount of the charge applies in Policy years two through four. The dollar amount of the Surrender Charge is also limited to an amount per $1,000 of a Policy's face amount. These limits are:

| | Policy year | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 |
| Maximum surrender charge per $1,000 of face amount ..... | $47 | $44 | $42 | $39 | $37 | $35 | $33 | $31 | $29 | $27 | $25 |

22. In the case of a partial surrender or reduction in face amount, the Surrender Charge is deducted from the Policy's cash value in an amount proportional to the amount of the face amount surrender.

23. The Surrender Charge is deducted from the Policy's available cash value, regardless of whether the cash value comes from scheduled premiums, unscheduled payments or investment experience. If the applicable Surrender Charge amount equals or exceeds the available cash value, there will be no proceeds paid to the Policy owner upon surrender or lapse. The Surrender Charge covers the following expenses: developmental costs associated with the Policies (such as actuarial, legal, systems and other overhead costs), underwriting, and marketing and other distribution expenses.

**Applicant's Legal Analysis**

*Definition of ''Variable Life Insurance Contract''*

1. Rule 6c–3 grants exemptions from those provisions of the Act that are specified in paragraph (b) of Rule 6e–2 (except for Sections 7 and 8(a)) to certain separate accounts of life insurance companies that support variable life insurance policies. Specifically, the exemptions provided by Rule 6c–3 are available only to separate accounts registered under the Act whose assets are derived solely from the sale of ''variable life insurance contracts'' that meet the definition set forth in Rule 6e–2(c)(1), and from certain advances made by the insurer. The term ''variable life insurance contract'' is defined by Rule 6e–2(c)(1) to include only life insurance policies that provide a death benefit and a cash surrender value, both of which vary to reflect the investment experience of the separate account, and that guarantee that the death benefit will not be less than an initial dollar amount stated in the policy. Applicants request relief from the definition of ''variable life insurance contracts'' set forth in Rule 6e–2(c)(1) because Applicants must rely on certain exemptive provisions in Rule 6e–2(b), as described below, in connection with the issuance and sale of the Policies.

2. Applicants must avail themselves of certain relief provided by Rule 6e–2(b), as set forth below, in order to issue, sell, and maintain the Policies.[4] Applicants request relief to the extent necessary to permit reliance on the exemptions provided in each of the provisions of Rule 6e–2 that are set forth below, in connection with the issuance and sale of the Policies.

(a) Paragraph (b)(1)—Sales load is no longer subject to the specific quantitative limits set forth in the Act, and rules thereunder. It is nonetheless possible that the amount of ''sales load'' imposed under the Policies would need

[3] In all cases, the annualized premium amount to which the Surrender Charge applies is calculated based on the premium payment frequency in effect at the time. Therefore, if basic scheduled premiums are being paid in quarterly installments rather than annually at the time of a full or partial surrender, a reduction in face amount or lapse of a Policy, the dollar amount of the Surrender Charge may be higher because the dollar amount of an annual basic scheduled premium is somewhat higher if it is paid in installments rather than once a year.

[4] Certain of the relief requested may not currently be necessary in light of the structure of the Variable Account as a ''unit investment trust,'' but would become necessary if the Variable Account were to be restructured as an open-end management company in the future. The Policies permit such a restructuring.

to be determined (for example, in connection with analyzing an exchange offer involving the Policies; or analyzing variations in sales load pursuant to Section 22(d) of the Act). Accordingly, Applicants seek relief permitting them to rely on paragraph (b)(1) of Rule 6e–2.

(b) Paragraph (b)(3)—Relief is requested to permit the Variable Account to rely on paragraph (b)(3)(ii) of Rule 6e–2 in order to effect compliance with Section 8(b) of the Act (regarding the filing of a registration statement with the Commission).

(c) Paragraph (b)(4)—Relief is requested to permit Applicants to apply the eligibility restrictions of Section 9 of the Act in the fashion contemplated by paragraph (b)(4).

(d) Paragraph (b)(5)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 13(a) of the Act relating to the imposition by an insurance regulatory authority of certain requirements on the investment policies of the Variable Account; and disapproval by NELICO of changes in the investment policy of the Variable Account initiated by contract owners, under circumstances contemplated by and in accordance with the requirements of paragraph (b)(5).

(e) Paragraph (b)(6)—Relief is requested to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(6).

(f) Paragraph (b)(7)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 15 (a), (b), and (c) relating to an insurance regulatory authority disapproving advisory or underwriting contracts; disapproval by NELICO of changes in the principal underwriter for the Variable Account initiated by contract holders; and disapproval by NELICO of changes in the investment adviser to the Variable Account initiated by contract owners, under circumstances contemplated by and in accordance with the requirements of paragraph (b)(7).

(g) Paragraph (b)(8)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 16(a) relating to an insurance regulatory authority disapproving or removing a member of the board of directors of a separate account, under circumstances contemplated by and in accordance with the replacements of paragraph (b)(8).

(h) Paragraph (b)(9)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 17(f) in order to maintain separate account assets in the custody of NELICO or an affiliate thereof, in accordance with the requirements of paragraph (b)(9).

(i) Paragraph (b)(10)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 18(i) in order to provide for variable contract owner voting as contemplated by and in accordance with the requirements of paragraph (b)(10).

(j) Paragraph (b)(12)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 22(d), 22(e) and Rule 22c–1 in connection with the issuance, transfer and redemption procedures for the Policies, including premium processing, premium rate structure, underwriting standards, and the benefit provided by the Policies, as contemplated by and in accordance with the requirements of paragraph (b)(12).

(k) Paragraph (b)(14)—Relief is requested to permit Applicants to rely on the relief provided by paragraph (b)(15) of Rule 6e–2 (see below), which in turn refers to the conditions of paragraph (b)(14).

(l) Paragraph (b)(15)—Relief is requested to permit Applicants to rely on the exemptions provided from Section 9(a), and to facilitate the voting by NELICO of shares of management investment companies held by the Variable Account in disregard of contract owner instructions under the circumstances contemplated by, and in accordance with the requirements of, paragraph (b)(15). Relief is also requested to permit Applicants to rely on the exemptions provided from Section 14(a), 15(a), 16(a), and 32(a)(2) in connection with any registered management investment company established by NELICO in the future in connection with the Policies, in accordance with the requirements of paragraph (b)(15), and paragraphs (b)(5), (b)(7), (b)(8), and (b)(14) of Rule 6e–2.

3. Applicants believe the Option 2 death benefit under the Policies falls within the requirement that it ''vary to reflect the investment experience of the separate account.'' Although the Option 2 death benefit varies only when the Policy's cash value exceeds its ''tabular cash value,'' it is analogous to more conventional scheduled premium variable life insurance policies, which provide for death benefits that increase when investment experience exceeds an assumed investment rate. A policy under the Option 1 death benefit, however, will fail to satisfy this requirement if the death benefit has not been otherwise increased to satisfy Federal tax law requirements.

4. The Policies also contain other provisions, relating primarily to the flexibility of premium payments, that are not specifically addressed in Rule 6e–2. Applicants therefore request relief to the extent necessary to permit reliance on the definition of ''variable life insurance contract'' in Rule 6e–2(c)(1), and on the exemptions provided in each of the provisions of paragraph (b) of Rule 6e–2 that are set forth above, under the same terms and conditions applicable to a separate account that satisfies the conditions set forth in Rule 6e–2.

5. Applicants submit that the considerations that led the commission to adopt Rules 6c–3 and 6e–2 apply equally to the Variable Account and NELICO's Policy, and that the exemptions provided by these rules should be granted to the Variable Account and to the other Applicants on the terms specified in those rules, except to the extent that further exemption from those terms is specifically requested herein.

*Redeemability*

6. Section 27(i)(2)(A) of the Act provides that no registered separate account funding variable insurance contracts or its sponsoring insurance company shall sell such a contract unless it is a ''redeemable security.'' Section 2(a)(32) defines a ''redeemable security'' as one entitling its holder to receive ''approximately his proportionate share'' of the issuer's current net asset value upon presentation to the issuer. Applicants request relief from the requirement in Section 27 that the Policy be a ''redeemable security,'' and from the definition of ''redeemable security'' set forth in Section 2(a)(32), in connection with the issuance and sale of the Policies.

7. Rule 22c–1 requires that a Policy be redeemed at a price based on the current net asset value of the Policy next computed after receipt of the request for surrender. If the conditions of Rule 6e–2(b)(12) are satisfied, paragraph (b)(12) provides certain exemptions from Rule 22c–1. A contingent deferred charge such as the Surrender Charge may, however, not be contemplated by Rule 6e–2(b)(12), and thus may be deemed inconsistent with Rule 6e–2(b)(12), to the extent that the charge can be viewed as causing a Policy to be redeemed at a price based on less than the current net asset value that is next computed after full or partial surrender of the Policy. Accordingly, Applicants request relief from Rule 22c–1 and Rule 6e–2(b)(12),

to the extent necessary to permit the deduction of the Surrender Charge on surrender, partial surrender, face amount reduction or lapse of a Policy.

8. Although Section 2(a)(32) does not specifically contemplate the imposition of a charge at the time of redemption, Applicants assert that such charges are not necessarily inconsistent with the definition of ''redeemable security.''

9. Applicants submit that although the deferred imposition of the Surrender Charge (upon surrender or lapse) may not fall within the historical pattern of all the provisions described in this Application, that does not change the charge's essential nature. Moreover, the proposed amendments to Rule 6e–2 would permit a sales charge to be imposed on a contingent deferred basis. Contingent deferred charges are also authorized by Rule 6e–3(T) for policies able to rely on that rule. Therefore, Applicants submit that the Surrender Charge is consistent with the principles and policies underlying the limitations in Section 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rules 6e–2(b)(12) and 22c–1 thereunder.

*Class Exemption for Future Underwriters*

10. Applicants seek to have the relief they request extend to underwriters that may, in the future, act as principal underwriters of the Policies (''Future Underwriters''). Future Underwriters will be members of the NASD.

11. Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act. Further, Applicants state that, without the requested class relief, exemptive relief for any Future Underwriter would have to be requested and obtained separately. Applicants assert that such additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants submit that their request for class exemptions 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, and that an order of the Commission including such class relief, should, therefore, be granted.

**Conclusion**

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27655 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22854: File No. 812–10288]**

## The Prudential Insurance Company of America, et al.

October 10, 1997.

**AGENCY:** The Securities and Exchange Commission (the ''Commission'').

**ACTION:** Notice of application for an order under section 11(a) of the Investment Company Act of 1940 (the ''1940 Act'') permitting certain exchange offers between certain unit investment trusts and certain open-end management investment companies.

**SUMMARY OF APPLICATION:** Applicants seek an order amending a previous order [1] (the ''Prior Order''), which approved the terms of certain offers of exchange from interests in certain unit investment trusts to certain open-end management investment companies. Applicants seek an amended order: (1) To extend relief to open-end management investment companies that have succeeded to the assets of those open-end management investment companies granted relief in the Prior Order; (2) to permit exchanges both ways between the unit investment trusts and the successor management investment companies; and (3) to permit exchanges between the unit investment trusts and certain other similar current and future funds.

**APPLICANTS:** The Prudential Insurance Company of America (''Prudential''), Prudential Dryden Fund (''Dryden Fund,'' formerly The Prudential Institutional Fund (''PIF'')), The Prudential Variable Contract Account–10 (''VCA–10''), The Prudential Variable Contract Account–11 (''VCA–11''), The Prudential Variable Contract Account–24 (''VCA–24,'' collectively with VCA–10 and VCA–11, the ''Medley separate accounts''), Prudential Investment Management Services LLC (''PIMS''), Prudential Jennison Series Fund, Inc. (''Jennison Fund''), Prudential Allocation Fund (''Allocation Fund''), Prudential World Fund, Inc. (''World Fund''), Prudential Government Income Fund, Inc. (''Government Income Fund''), Prudential MoneyMart Assets, Inc. (''MoneyMart Fund''), and Prudential Securities Incorporated (''PSI'').

**FILING DATES:** The application was filed on June 20, 1996 and was amended and restated on July 8, 1997 and September 17, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 4, 1997, and should be accompanied by proof of service on Applicants in the from of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, SEC. 450 Fifth Street, N.W. Washington, D.C. 20549. Applicants, c/o Christopher E. Palmer, Shea & Gardner, 1800 Massachusetts Ave., N.W., Washington, D.C. 20036.

**FOR FURTHER INFORMATION CONTACT:** Ethan D. Corey, Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

**Applicants' Representations**

1. Prudential is a mutual life insurance company organized under New Jersey Law.

2. The Dryden Fund, formerly PIF, is an open-end, no-load, registered management investment company. Prior to the reorganization described below, PIF was a series mutual fund with the following seven series, each of which is referred to as a ''PIF Fund'': PIF Growth Stock Fund, PIF Balanced Fund, PIF International Stock Fund, PIF Income Fund, PIF Money Market Fund, PIF Active Balanced Fund, and PIF Stock Index Fund. PIF was generally available only as an investment vehicle to certain retirement programs and other institutional investors.

3. The Jennison Fund, the World Fund, the Government Income Fund,

[1] *Prudential Insurance Company of America,* File No. 812–8536, Rel. No. IC–19826 (Nov. 8, 1993) (Notice), Rel. No. IC–19918 (Dec. 2, 1993) (Order).

and the MoneyMart Fund are organized as Maryland corporations and each is registered under the 1940 Act as a diversified open-end management investment company. The Jennison Fund consists of two series: The Jennison Growth Stock Fund and the Jennison Growth and Income Fund. Currently, the World Fund consist of two series: the International Stock Series and the Global Series. The Allocation Fund is organized as a Massachusetts business trust and is registered under the Act as a diversified open-end management investment company. The Allocation Fund consists of two series: the Balanced Portfolio and the Strategy Portfolio. The Jennison Growth Stock Fund of the Jennison Fund, the International Stock Series of the World Fund, the Government Income Fund, the MoneyMart Fund, and the Balanced Portfolio of the Allocation Fund are referred to individually as a ''PMF Fund'' and collectively as the ''PMF Funds.'' Each PMF Fund offers Class Z shares to certain institutional investors and other investors meeting specified criteria without a sales charge or a Rule 12b–1 fee.

4. VCA–10 and VCA–11 are separate accounts of Prudential that are registered as open-end management investment companies under the 1940 Act. Prudential is the investment manager of VCA–10 and VCA–11. VCA–24 is a separate account of Prudential that is registered as a unit investment trust under the 1940 Act. VCA–24 has seven separate subaccounts, each of which invests exclusively in a single corresponding portfolio of The Prudential Series Fund, Inc. (the ''Series Fund''), an open-end management investment company.

5. PIMS is a direct wholly-owned subsidiary of Prudential and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''1934 Act''). It is the principal underwriter of the group variable annuity contracts funded through the Medley separate accounts.

6. The Medley program consists of Prudential group annuity contracts issued to employers (''Contractholders'') who make contributions under them on behalf of their employees (''Participants''). The contracts are offered for use in connection with retirement arrangements that qualify for federal tax benefits under Sections 401, 403(b), 408 or 457 of the Internal Revenue Code of 1986, as amended, and with certain non-qualified annuity arrangements. Under the Medley program, a Contractholder may hold a fixed-dollar group annuity contract (the ''Companion Contract'') and up to three group variable annuity contracts, funded by VCA–10, VCA–11 and VCA–24, respectively. Typically, a Participant may choose to have contributions invested in any one or more of the Companion Contract, VCA–10, VCA–11 and the subaccounts of VCA–24. Subject to certain limitations, Participants may transfer amounts credited to their accumulation accounts during the accumulation period.

7. The Prior Order approved an exchange program referred to as ''Medley Plus'' under which Participants could transfer amounts from any of the Medley separate accounts to PIF. No fee of any kind was imposed at the time of the exchange and PIF shares acquired in an exchange were not subject to any deferred sales load or redemption fee. Although these exchanges were effected at relative net asset value, the Prior Order was obtained because of the involvement of VCA–24, which is a unit investment trust. Section 11(c) of the 1940 Act requires the Commission's approval of exchange offers involving registered unit investment trusts unless the exchange can be effected pursuant to an exemptive rule.

8. The PMF Funds (Jennison Growth Stock Fund, Balanced Portfolio of the Allocation Fund, International Stock Series of World Fund, Government Income Fund and MoneyMart Fund) have acquired all or substantially all of the assets of five of the seven PIF Funds (PIF Growth Stock Fund, PIF Balanced Fund, PIF International Stock Fund, PIF Income Fund and PIF Money Market Fund, respectively) in exchange for Class Z shares of the relevant PMF Fund, and have distributed such Class Z shares to the shareholders of the PIF Funds (the ''Reorganization''). The two remaining PIF Funds did not merge into a different fund, but entered into new investment advisory and distribution contracts with Prudential Mutual Fund Management LLC (''PMF'') and related entities, and thereby became part of the same ''group of investment companies'' as the PMF Funds, as that term is defined in Rule 11a–3 under the 1940 Act. PIF's name was changed to ''Prudential Dryden Fund,'' and its two remaining series (the Prudential Active Balanced Fund and the Prudential Stock Index Fund) now each issue Class Z shares with no sales load or Rule 12b–1 fees. The five PMF Funds and the two Dryden Funds are referred to together as the ''PMF/Dryden Funds.''

9. PSI is an indirect, wholly-owned subsidiary of Prudential and is registered as a broker-dealer under the 1934 Act. PSI distributes the shares of each class of the PMF/Dryden Funds.

10. Applicants request that the Commission amend the Prior Order to allow Participants to exchange any or all of their units of the Medley separate accounts for Class Z shares of any or all of the PMF/Dryden Funds, the successor funds to PIF (the ''Medley-to-PMF/Dryden Exchanges''). Any Medley-to-PMF/Dryden Exchange will be effected at the relative net asset values of the securities exchanged, and will be priced in accordance with Rule 22c–1 under the 1940 Act. No sales load, administrative fee, redemption fee, or other transaction charge will be imposed at the time of a Medley-to-PMF/Dryden Exchange. Moreover, all PMF/Dryden Fund Class Z shares, including those acquired in a Medley-to-PMF/Dryden Exchange, are not subject to any deferred sales load upon their subsequent redemption because Class Z shares are completely no-load.

11. Applicants also request that the Commission amend the Prior Order to permit holders of Class Z shares of any PMF/Dryden Fund to exchange any or all such shares for units of any or all of the Medley separate accounts (the ''PMF/Dryden-to-Medley Exchanges''). Any PMF/Dryden-to-Medley Exchange will be effected at the relative net asset values of the securities to be exchanged, and will be priced in accordance with Rule 22c–1 under the 1940 Act. No sales load, administrative fee, redemption fee, or other transaction charge will be imposed at the time of a PMF/Dryden-to-Medley Exchange. No sales load will be imposed on the subsequent surrender of any interests in the Medley separate accounts acquired in a PMF/Dryden-to-Medley Exchange.

12. With respect to both Medley-to-PMF/Dryden Exchanges and PMF/Dryden-to-Medley Exchanges, Prudential will, in its sole discretion, determine to whom an exchange offer will be made, the time period during which the exchange offer will be in effect, and when an exchange offer is terminated. Prudential may, for example, establish fixed periods of time for exchanges under a particular contract (a ''window'') of at least 60 days in length. No open-ended exchange offer will be terminated or its terms amended materially without prominent notice to any Contractholder subject to that offer of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment; provided, however, that no such notice will be required if, under extraordinary circumstances, either: (a) There is a suspension in redemption of the

exchanged security under Section 22(e) of the 1940 Act or rules thereunder; or (b) the offering company temporarily delays or ceases the sale of the security because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

13. Applicants represent that at the commencement of the exchange offer, and at all times thereafter, the Medley prospectus will: (a) Disclose that no administrative or redemption fee will be imposed in connection with the exchange program; (b) disclose that the exchange offer is subject to termination and that its terms are subject to change; and (c) describe the tax implications of the exchanges including, if appropriate, a description of any adverse tax consequences of an exchange. Applicants anticipate that the exchange offers will be extended only to persons that have been provided a copy of the current Medley prospectus. As long as that is the case and the disclosure about the exchange offer is in the Medley prospectus, no additional disclosure about the exchange offers will be included in the PMF/Dryden prospectuses because those funds are offered to a significant number of persons who will not be given the exchange offer. Applicants represent that if the exchange offer is extended to persons that have not been provided copies of the current Medley prospectus, the PMF/Dryden prospectuses also will: (a) Disclose that no administrative or redemption fee will be imposed in connection with the exchange program; (b) disclose that the exchange offer is subject to termination and its terms are subject to change; and (c) describe the tax implications of the exchanges including, where appropriate, a description of any adverse tax consequences of an exchange.

14. Applicants request that the Commission amend the Prior Order to allow exchanges not only with the PMF/Dryden Funds, but also with all other current and future classes of registered open-end management investment companies for which Prudential or an affiliate serves as investment adviser or principal underwriter for which there is no front-end sales charge, no Rule 12b–1 fee, and no contingent deferred sales charge (each a ''Prudential Class Z Fund''). Specifically, Applicants request that the Commission amend the Prior Order to allow Participants to exchange any or all of their units in the Medley separate accounts for shares of any or all of the Prudential Class Z Funds (the ''Medley-to-Prudential Class Z Exchanges''). In addition, Applicants request that the Commission amend the Prior Order to permit holders of Prudential Class Z Fund shares to exchange any or all such shares for units of any or all of the Medley separate accounts (the ''Prudential Class Z-to-Medley Exchanges''). Applicants represent that all Medley-to-Prudential Class Z Exchanges will be subject to the same conditions as those set forth in the application that is the subject of this notice (the ''Application'') as applicable to the Medley-to-PMF/Dryden Exchanges. Applicants further represent that all Prudential Class Z-to-Medley Exchanges will be subject to the same conditions as those set forth in the Application as applicable to the PMF/Dryden-to-Medley Exchanges.

**Applicants' Legal Analysis**

1. Section 11(a) of the 1940 Act provides, in pertinent part, that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange his or her security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) of the 1940 Act provides that, irrespective of the basis of exchange, Commission approval is required for any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust, or any offer of exchange of any security of a registered unit investment trust for the securities of any other investment company. Accordingly, although Applicants believe that the proposed exchanges will be at net asset value, Commission approval is required for the proposed exchanges because of the involvement of VCA–24, a registered unit investment trust. Applicants state that they cannot rely on existing exemptive rules because neither Rule 11a–2 nor Rule 11a–3 permits exchanges between a unit investment trust separate account and an open-end investment company that is not a separate account.

2. The legislative history of Section 11 of the 1940 Act indicates that its purpose is to provide the Commission with an opportunity to review the terms of certain offers of exchange to ensure that a proposed offer is not being made ''solely for the purpose of exacting additional selling charges.'' H. Rep. No. 2639, 76th Cong., 2d Sess. 8 (1940). One of the practices Congress sought to prevent through Section 11 was the practice of inducing investors to switch securities so that the promoter could charge investors another sales load. Applicants assert that the proposed offers of exchange involve no possibility of such abuse. On a Medley-to-PMF/Dryden Exchange, there is no sales load or transaction fee, and the acquired PMF/Dryden shares are completely no-load. On a PMF/Dryden-to-Medley Exchange, there is not sales load or transaction fee, and so sales load will be imposed on the subsequent surrender of any interests in the Medley separate accounts acquired in such an exchange.

3. Applicants submit that providing class relief is appropriate. Applicants request that the order extend to all Prudential Class Z Funds which, like the PMF/Dryden Funds, offer shares that are subject to no front-end sales charge, no Rule 12b–1 fee, and no contingent deferred sales charge. Those exchanges would be on the same terms as the exchanges with the PMF/Dryden Funds, and therefore there would be no possibility of the abuses Congress sought to prevent through Section 11. Furthermore, without such exemptive relief, before Medley Participants could be given any additional exchange options, Applicants would have to apply for and obtain additional approval orders. Applicants believe that such additional applications would present no new issues under the 1940 Act not already addressed in the Application.

4. Applicants submit that the proposed offers of exchange meet all the requirements of Section 11, and provide a benefit to Contractholders and Participants by providing new investment options and an attractive way to exchange existing securities for interests in those options.

**Conclusion**

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27654 Filed 10–17–97; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39230; File No. SR–CHX–97–24]**

## Self-Regulatory Organizations; Chicago Stock Exchange; Notice of Filing of Proposed Rule Change Regarding A Ban on the Entry of Certain Stop Orders and Stop Limit Orders

October 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 22, 1997, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Article IX, Rule 10B (Stop Order Ban Due to Extraordinary Market Volatility). The new rule would prohibit the entry of certain stop orders and stop limit orders if the New York Stock Exchange (''NYSE'') implements a stop order ban pursuant to NYSE Rule 80A. The new rule would exempt stop orders and stop limit orders of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from the individual investor. The text of the proposed rule change is available at the Office of the Secretary, the CHX, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Pursuant to its Rule 80A, the NYSE currently prohibits the entry of stop orders and stop limit orders if the price of the primary Standard and Poor's 500 Stock Price Index[3] futures contract traded on the Chicago Mercantile Exchange reaches a value 12 points below the contract's closing value on the previous trading day. Likewise, the Boston Stock Exchange (''BSE'') prohibits the entry of stop and stop limit orders on the BSE when the NYSE has a ban in place.[4]

The Exchange has previously adopted circuit breaker rules on a pilot basis[5] which parallel the circuit breaker rules of the NYSE.[6] Such rules are designed to dampen market volatility by providing a ''time-out'' to permit investors and market professionals to evaluate the state of the market. However, unlike the NYSE, the Exchange has not previously prohibited the entry of stop and stop limit orders during times of market stress.

The Exchange believes that the prohibition of stop orders and stop limit orders, except for individual investor orders of up to 2099 shares, during periods of market stress will facilitate the maintenance of an orderly market and reduce market volatility.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[7] which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

[3] Standard and Poor's 500 Stock Index is a service mark of Standard and Poor's Corporation.

[4] See Ch. II, Sec. 35(b) of the BSE's rules.

[5] See Securities Exchange Act Release Nos. 26218 (October 26, 1988), 53 FR 44137 (November 1, 1988) (order approving File No. SR–MSE–88–9); 27370 (October 23, 1989), 54 FR 43881 (October 27, 1989) (order approving File No. SR–MSE–89–9); 28580 (October 25, 1990), 55 FR 45895 (October 31, 1990) (order approving File No. SR–MSE–90–16); 29868 (October 28, 1991), 56 FR 56535 (November 5, 1991) (order approving File No. SR–MSE–91–14); 33120 (October 29, 1993), 58 FR 59503 (November 9, 1993) (order approving File No. SR–CHS–93–22); 36414 (October 25, 1995), 60 FR 55630 (November 1, 1995) (order approving File No. SR–CHX–95–23); 37459 (July 19, 1996), 61 FR 39172 (July 26, 1996) (order approving File No. SR–CHX–96–20); and 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) (order approving File No. SR–CHX–96–33).

[6] See CHX Art. IX, Rule 10A.

[7] 15 U.S.C. 78f(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal 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 neither solicited nor received written comments on the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File Number SR–CHX–97–24 and should be submitted by November 10, 1997.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–27696 Filed 10–17–97; 8:45 am]

**BILLING CODE 8010–01–M**

## DEPARTMENT OF STATE

**[Public Notice PN 2604]**

### Office of Defense Trade Controls; Reinstatement of Eligibility To Apply for Export/Retransfer Authorizations Pursuant to Section 38(g)(4) of the Arms Export Control Act

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of persons who have had their eligibility to apply for export/retransfer authorizations reinstated pursuant to section 38(g)(4) of the Arms Export Control Act, (the AECA), (22 U.S.C. 2778(g)(4)) and section 127.11(b) (formerly section 127.10(b)) of the International Traffic in Arms Regulations, (the ITAR), (22 C.F.R. Parts 120–130).

**EFFECTIVE DATE:** June 17, 1997.

**FOR FURTHER INFORMATION CONTACT:** Philip S. Rhoads, Chief, Compliance Enforcement Branch, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 875–6644.

**SUPPLEMENTARY INFORMATION:** Section 38(g)(A) of the AECA and section 127.11(a) of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to export, who has been convicted of violating certain U.S. criminal statutes enumerated at section 38(g)(1) of the AECA and section 120.27 of the ITAR. The term ''person'' means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term ''party to the export'' means the president, the chief executive officer, and other senior officers of the license applicant; and any consignee or end user of any item to be exported.

The statute permits reinstatement of eligibility to apply for export/retransfer authorizations on a case-by-case basis after consultation with the Secretary of the Treasury and after a thorough review of the circumstances surrounding the conviction or ineligibility to export and finding that appropriate steps have been taken to mitigate any law enforcement concerns.

In accordance with these authorities, effective June 17, 1997, eligibility for Teledyne Wah Chang (TWC) export and retransfer authorizations has been reinstated pursuant to section 38(g)(4) of the AECA and section 127.11 of the ITAR.

The effect of this notice is that TWC may once again participate in the export or transfer of defense articles or defense services subject to section 38 of the AECA and the ITAR.

Dated: October 2, 1997.

**William J. Lowell,**

*Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.*

[FR Doc. 97–27678 Filed 10–17–97; 8:45 am]

**BILLING CODE 4710–25–M**

## DEPARTMENT OF STATE

**[Public Notice PN 2605]**

### Office of Defense Trade Controls; Reinstatement of Eligibility To Apply for Export/Retransfer Authorizations Pursuant to Section 38(g)(4) of the Arms Export Control Act

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of persons who have had their eligibility to apply for export/retransfer authorizations reinstated pursuant to section 38(g)(4) of the Arms Export Control Act, (the AECA), (22 U.S.C. 2778(g)(4)) and section 127.11(b) (formerly section 127.10(b)) of the International Traffic in Arms Regulations (the ITAR), (22 CFR Parts 120–130).

**EFFECTIVE DATE:** August 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Philip S. Rhoads, Chief, Compliance Enforcement Branch, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (703) 875–6644.

**SUPPLEMENTARY INFORMATION:** Section 38(g)(A) of the AECA and section 127.11 (a) of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes enumerated at section 38(g)(1) of the AECA and section 120.27 of the ITAR. The term ''person'' means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term ''party to the export'' means the president, the chief executive officer, and other senior officers of the license applicant; and any consignee or end user of any item to be exported.

The statute permits reinstatement of eligibility to apply for export/retransfer authorization on a case-by-case basis after consultation with the Secretary of the Treasury and after a thorough review of the circumstances surrounding the conviction or ineligibility to export and finding that appropriate steps have been taken to mitigate any law enforcement concerns.

In accordance with these authorities, effective August 28, 1997, eligibility for Delft Instruments N.V., (Delft) to apply for export and retransfer authorizations has been reinstated pursuant to section 38(g)(4) of the AECA and section 127.11 of the ITAR.

The effect of this notice is that Delft may once again participate in the export or transfer or defense articles or defense services subject to section 38 of the AECA and the ITAR.

Dated: October 2, 1997.

**William J. Lowell,**

*Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.*

[FR Doc. 97–27679 Filed 10–17–97; 8:45 am]

**BILLING CODE 4710–25–M**

## DEPARTMENT OF STATE

**[Public Notice No. 2621]**

### Notice of Briefing

The Department of State announces the next briefing on U.S. foreign policy economic sanctions programs to be held on Thursday, October 30, 1997, from 2:00 p.m. until 3:30 p.m., in the State Department Dean Acheson auditorium, 2201 C Street N.W., Washington, D.C.

This briefing is a continuation of the series of briefings conducted last year in March, July and December and held last in April 1997. As in the earlier briefings, Deputy Assistant Secretary for Energy, Sanctions, and Commodities Bill Ramsay will present an overview of the foreign policy economic sanctions regimes overseen by the State Department's Bureau of Economic and Business Affairs. State Department desk officers will be on hand to discuss country-specific sanctions issues following Ambassador Ramsay's briefing.

*Please Note:* Persons intending to attend the October 30 briefing must announce this not later than 48 hours before the briefing, and preferably further in advance, to the Department of State by sending a fax to 202–647–3953 (Office of the Coordinator for Business Affairs). The announcement must include name, affiliation, Social Security or passport number and date of birth. The above includes government and non-government attendees. One of the following valid photo ID's will be required for admittance: U.S. driver's

license with picture, passport, U.S. government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the C Street entrance.

Dated: October 9, 1997.

**Marshall P. Adair,**

*Acting Coordinator for Business Affairs.*

[FR Doc. 97–27677 Filed 10–17–97; 8:45 am]

**BILLING CODE 4710–07–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application #97–03–U–00–STL To Use the Revenue From a Passenger Facility Charge (PFC) at Lambert-St. Louis International Airport, St. Louis, MO

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

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comment must be received on or before November 19, 1997.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Col. Leonard L. Griggs, Jr., Director of Airports, Lambert-St. Louis International Airport, at the following address: St. Louis Airport Authority, P.O. Box 10212, St. Louis, Missouri 63145.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the St. Louis Airport Authority, Lambert-St. Louis International Airport, under § 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Lorna K. Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at the Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 9, 1997, the FAA determined that the application to use the revenue from a PFC submitted by the St. Louis Airport Authority, St. Louis, Missouri, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 7, 1998.

The following is a brief overview of the application.

*Level of the PFC:* $3.00.

*Actual charge effective date:* April, 1996.

*Estimated charge expiration date:* June, 1998.

*Total approved net PFC revenue:* $80,186,867.

*Brief description of proposed project:* Airport Noise Land Acquisition/ Relocation Program (Phase II).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other document germane to the application in person at the Lambert-St. Louis International Airport.

Issued in Kansas City, Missouri, on October 9, 1997.

**George A. Hendon,**

*Manager, Airports Division, Central Region.*

[FR Doc. 97–27683 Filed 10–17–97; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport, Manchester, New Hampshire

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

**ACTION:** Notice of Intent to Rule on Application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before November 19, 1997.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Testa, Jr., Airport Director for Manchester Airport at the following address: Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire, 03103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manchester under section 158.23 of Part 158 of the Federal Aviation Regulations.

**FOR FURTHER INFORMATION CONTACT:** Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 25, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Manchester was substantially complete within the requirements of § 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than December 24, 1997.

The following is a brief overview of the application.

*PFC Project #*: 97–05–C–00–MHT.

*Level of the proposed PFC*: $3.00.

*Charge effective date:* February 1, 1998.

*Estimated charge expiration date:* October 1, 1998.

*Estimated total net PFC revenue:* $2,506,162.

*Brief description of project.*

Construct Two Remote Parking Aprons
Acquire Snow Removal Equipment
Acquire Snow Removal Equipment Storage Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire 03103.

Issued in Burlington, Massachusetts, on October 9, 1997.

**Vincent A. Scarano,**

*Manager, Airports Division, New England Region.*

[FR Doc. 97–27684 Filed 10–17–97; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. 97–056; Notice 1]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Request for public comment on proposed collections of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes four collections of information for which NHTSA intends to seek OMB approval. DATES: Comments must be received on or before December 19, 1997.

**ADDRESSES:** Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh St. S.W., Washington, D.C. 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB Clearance Number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Mr. Ed Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, S.W., Room 6123, Washington, D.C. 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Clearance Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following four proposed collections of information.

**Labeling of Retroreflective Materials for Heavy Trailer Conspicuity, 49 CFR 571.108**

*Type of Request*—Reinstatement of clearance.

*OMB Clearance Number*—2127–0569.

*Form Number*—This collection of information uses no standard forms.

*Requested Expiration Date of Approval*—Three years from date of approval.

*Summary of the Collection of Information*—The permanent marking of the letters ''DOT–C2'', ''DOT–C3'' or ''DOT–C4'' at least 3mm high at regular intervals on retroreflective sheeting material is the information collection.

*Description of the Need for the Information and Proposed Use of the Information*—Federal Motor Vehicle Safety Standard No. 108, ''Lamps, Reflective Devices, and Associated Equipment,'' specifies requirements for vehicle lighting for the purposes of reducing traffic accidents and their tragic results by providing adequate roadway illumination, improved vehicle conspicuity, appropriate information transmission through signal lamps, in both day, night, and other conditions of reduced visibility. For certification and identification purposes, the Standard requires the permanent marking of the letters ''DOT–C2'', ''DOT–C3'' or ''DOT–C4'' at least 3mm high at regular intervals on retroreflective sheeting material having adequate performance to provide effective trailer conspicuity.

The manufacturers of new tractors and trailers are required to certify that their products are equipped with retroreflective material complying with the requirements of the standard. The Federal Highway Administration Office of Motor Carrier Safety enforces this and other standards through roadside inspections of trucks. There is no practical field test for the performance requirements, and labeling is the only objective way of distinguishing trailer conspicuity grade material from lower performance material. Without labeling, FHWA will not be able to enforce the performance requirements of the standard, and the compliance testing of new tractors and trailers will be complicated. Labeling is also important to small trailer manufacturers because it may help them to certify compliance. Because wider stripes of material of lower brightness also can provide the minimum safety performance, the marking system serves the additional role of identifying the minimum stripe width required for the retroreflective brightness of the particular material. Since the differences between the brightness grades of suitable retroreflective conspicuity material is not obvious from inspection, the marking system is necessary for tractor and trailer manufacturers and repair shops to assure compliance and for FHWA to inspect tractors and trailers in use.

Permanent labeling is used to identify retroreflective material having the

minimum properties required for effective conspicuity of trailers at night. The information enables the FHWA to make compliance inspections, and it aids tractor and trailer owners and repair shops in choosing the correct repair materials for damaged tractors and trailers. It also aids small trailer manufacturers in certifying compliance of their products. The FHWA will not be able to determine whether trailers are properly equipped during roadside inspections without labeling. The use of cheaper and more common reflective materials, which are ineffective for the application, would be expected in repairs without the labeling requirement.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information*)—The respondents are likely to be manufacturers of the conspicuity material. The agency is aware of at least three. Based on the estimated number of feet of conspicuity material for a year's installation on new tractors and trailers, the number of imprints of the information is estimated to be 10 million.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information*—The cost to manufacturers of extending the label requirement is the maintenance and amortization of printing rollers and the additional dye or ink consumed. The labels are to be placed at intervals of about 18 inches on rolls of retroreflective conspicuity tape. The labels are printed during the normal course of steady flow manufacturing operations without a direct time penalty.

Two methods of printing the label are in use. One method uses the same roller that applies the dye to the red segments of the material pattern. The roller is resurfaced annually using a computerized etching technique. The ''DOT–C2'' label was incorporated in the software to drive the roller resurfacing in 1993, and there is no additional cost to continue the printing of the label. In fact, costs would be incurred to discontinue the label.

The second method uses a separate roller to apply the label. The manufacturer using this technique reports that these rollers have been in service for 5 years without detectable wear and predicts a service life of at least fifteen years. Four rollers costing about $2,500 each are used. A straight line depreciation of the rollers over 15 years equals $667 per year. With an annual allowance for $333 for additional dye, the annual total industry cost of maintaining the ''DOT–C2'' label is about $1,000.

**Labeling of Warning Devices, 49 CFR 571.125**

*Type of Request*—Reinstatement of clearance.

*OMB Clearance Number*—2127–0506.

*Form Number*—This collection of information uses no standard forms.

*Requested Expiration Date of Approval*—Three years from date of approval.

*Summary of the Collection of Information*—Federal Motor Vehicle Safety Standard No. 125, ''Warning Devices'' applies to triangular highway warning devices, without self contained energy sources, that are designed for large motor vehicles in interstate commerce and be placed on the roadway forward and rearward of vehicles to warn approaching traffic of the presence of a stopped vehicle. The Standard requires that each manufacturer of warning triangles must label each device. Without proper deployment and use, the effectiveness of the devices may be greatly diminished, and may lead to serious injuries due to rear end collisions between moving traffic and disabled vehicles. The warning device shall be permanently and legibly marked and also provide instructions for its erection and display. Each device shall be labeled with: (a) The name of the manufacturer, (b) the month and year of manufacture, (c) the DOT symbol, or the statement that the warning device complies with all applicable FMVSS. The instructions for each device shall include a recommendation that the driver activate the vehicular hazard warning signal lamps before leaving the vehicle to erect the warning device. Also, the instructions shall include an illustration indicating recommended positioning.

*Description of the Need for the Information and Proposed use of the Information*—The purpose of the certification symbol is to assure consumers that the devices are of the level of performance required by federal law. Additionally, each motor vehicle in interstate commerce is required to be equipped with such warning devices that comply with the requirements of the standard. The Federal Highway Administration Office of Motor Carrier Safety enforces this and other standards through roadside inspections of trucks. There is no practical field test for the performance requirements, and labeling is the only objective way of distinguishing complying warning devices from look-alike products that do not comply. Without labeling, FHWA will not be able to enforce their requirement.

The purpose of the requirement for instructions is to provide information so that the motoring public can erect and position the warning device so that the warning device is positioned to alert the oncoming traffic of a disabled vehicle and prevent rear end collisions.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)*—There are three manufacturers labeling approximately 2.85 million warning devices (triangles) per year.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information*—There are three manufacturers labeling approximately 2.85 million warning devices (triangles) per year for the last few years. The tooling would be replaced after about 20 years of service being used to make about 200K devices per year. The machining each mold that would be replaced is about 8 hours at a cost of $37.50 per hour, or a cost of $300. Assuming that this past years production level of 2.85M devices per year were built each year for the last twenty years (an over-estimate that ignores the long steady growth of the market), the total number of devices manufactured would be 57M. The tooling needs to be replaced every 4M uses; the total number of tools used in the last 20 years is 14.25. The machining for the labeling in each tool would be 14.25 times 8 hours divided by 57M, or 0.000002 hour per device. Thus the current annual cost for the 2.85 M devices manufactured is 5.7 hours $\times$ $37.50 = $213.75 .

**Collection of Replaceable Headlamp Light Source Information: 49 CFR Part 564**

*Type of Request*—Renewal of clearance.

*OMB Clearance Number*—2127–0563.

*Form Number*—This collection of information uses no standard forms.

*Requested Expiration Date of Approval*—Three years from date of approval.

*Summary of the Collection of Information*—The information to be collected is in response to 49 CFR Part 564; Replaceable Light Source Dimensional Information. Persons desiring to use newly designed replaceable headlamp light sources are required to submit interchangeability and performance specifications to the agency. After a short agency review to assure completeness, the information is placed in a public docket for use by any

person who would desire to manufacture headlamp light sources for highway motor vehicles. In Federal Motor Vehicle Safety Standard No. 108, ''Lamps, reflective devices and associated equipment,'' Part 564 submissions are referenced as being the source of information regarding the performance and interchangeability information for legal headlamp light sources, whether original equipment or replacement equipment. Thus, the submitted information about headlamp light sources becomes the basis for certification of compliance with safety standards.

*Description of the need for the information and proposed use of the information*—The information is to be placed in a public docket for the use by vehicle, headlamp and headlamp light source manufacturers for determining the interchangeability aspects of headlamp light sources for manufacturing purposes and for the design and manufacture of headlamps. In order for replacement light sources to be designated as acceptable replacements, the replacement light sources also are required to comply with the dimensional and performance information in the docket for its type. The Federal program for reducing highway fatalities, injuries and accidents would likely be adversely affected if the information was not collected, because the bulbs would, in fact, not be standardized for performance and interchangeability. If the interchangeability information were not available to manufacturers who normally provide original equipment and aftermarket parts, replacements could become significantly more costly to replace upon burnout, and ready availability would also likely diminish because the replacements would be available from only the vehicle's manufacturer or its dealer. As a potential adverse safety consequence, more and more vehicles would likely be on the highways at night with headlamps having one or more failed bulbs because of the higher expense and lower availability, and therefore reduce the roadway illumination and increase the risk of accident. In the event that the information collection were not reapproved, it is likely that the agency would have to reinstate headlamp light source information as part of the federal lighting standard and thus any new light source designs could be used only after a lengthy and costly rulemaking instead of this simple review and reference procedure.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information*—For the burdened parties, only those which develop a new or modified headlamp light source or other additional interchange information will have to submit information. Based on the last three years of Part 564 data collection, thirteen submissions have been received from seven manufacturers; three for new light sources, four for modification of existing information, and six for additional information to existing light sources.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information*—The average estimated cost of the information submissions is estimated to be 4.2 hours per submission at $100 per hour for a cost of $420 each, thus at a rate of 13/3 submissions per year, the average annual cost is $1820 and the average annual hour burden is 18.2 hours.

**Labeling of Motor Vehicle Brake Fluid Containers, 49 CFR 571.116**

*Type of Request*—Reinstatement of clearance.

*OMB Clearance Number*—2127–0521.

*Form Number*—This collection of information uses no standard forms.

*Requested Expiration Date of Approval*—Three years from date of approval.

*Summary of the Collection of Information*—Federal Motor Vehicle Safety Standard No. 116, ''Motor Vehicle Brake Fluids,'' specifies performance and design requirements for motor vehicle brake fluids and hydraulic system mineral oils. Section 5.2.2 specifies labeling requirements for manufacturers and packagers of brake fluids as well as packagers of hydraulic system mineral oils. The information on the label of a container of motor vehicle brake fluid or hydraulic system mineral oil is necessary to insure the following: the contents of the container are clearly stated; these fluids are used for their intended purpose only; and, the containers are properly disposed of when empty. Improper use or storage of these fluids could have dire crash safety consequences for the operators of vehicles or equipment in which they are used.

*Description of the Need for the Information and Proposed Use of the Information*—This labeling information is used by motor vehicle owners, operators, and vehicle service facilities to aid in the proper selection of brake fluids and hydraulic system mineral oils for use in motor vehicles and hydraulic equipment, to assure the continued safety of motor vehicle braking and hydraulic systems, respectively. The information required on the label of brake fluid and hydraulic mineral oil containers identifies performance capabilities of the fluid. The safety warnings required on brake fluid and hydraulic system mineral oil containers are provided to prevent improper use, storage, etc. which might result in motor vehicle brake failure and the failure of equipment utilizing hydraulic system mineral oil.

Properties of these fluids and their use necessitate the package labeling information specified in this standard. Brake fluid and hydraulic system mineral oil must be free of contaminants in order to perform as intended; therefore, the labeling instructions warn against storing in unsealed containers or mixing these fluids with other products. Also, avoiding the absorption of moisture is extremely important since moisture in a brake system degrades braking performance and safety by lowering brake fluid's boiling point, increasing the fluid's viscosity at low atmospheric temperatures and increasing the risk of brake system component corrosion. Lower boiling points increase the risk of brake system failure and increase the possibility of vapor lock. The safety warnings also alert users of brake fluids sold in containers with capacities less than five gallons that the containers should not be refilled or reused for other purposes.

If the labeling requirements were not mandatory, improving safety on the nation's highways would be more difficult to accomplish. Proper vehicle brake performance is crucial to the safety of motor vehicle occupants, and the information on fluid containers is necessary to aid in reducing brake system failures resulting from the use of improper or contaminated fluid. The labeling on fluid containers also helps to ensure that only fluid that complies with federal requirements is sold, and this also facilitates agency enforcement efforts by identifying the fluid packager or manufacturer.

*Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)*—There are an estimated 200 respondents, mainly those manufacturers involved with the production of motor vehicle brake and hydraulic fluids. A label is required on each container of fluid sold.

*Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information*—The cost of manufacturing and affixing the labels will vary greatly for various manufacturers. The majority of the labels will be manufactured and affixed in an automated fashion by

major manufacturers involving low material or labor costs. However, for small manufacturers, the costs in terms of labor, and to a lesser extent, material will be somewhat greater. Labels are a standard part of fluid containers, even in the absence of a federal requirement for adding information to the containers. Thus, the added information required by the Standard would be added to the label already existing on the container. Thus the only cost is for adding the required information to an existing label. Typically such labels are silk-screened onto a label material. Thus, the added information to a label would be some small part of the total cost of the silk-screen process used for the production of the label.

The cost estimate for the total annualized costs to the respondent for the incremental aspect of adding this information to the printing cost of an existing label may be derived as follows:

(1) Estimate of the number of respondents—200

(2) Estimate of the number of different types of labels per respondent—24

(3) Technical burden-hours required to design the layout of a label that includes the incrementally added information—8

(4) Number of hours of label design for all respondents—38,400

(5) Average annual label design hours assuming a 5 year label redesign cycle—7,680

(6) Annual label design cost assuming $37.50 hourly wage—$288,000

(7) Annual cost of incrementally added ink for label production (@ $400 per respondent)—$80,000

(8) Total annual cost of added information on label (#6+#7)—$368,000

**Authority:** 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Dated: October 14, 1997.

**Stephen R. Kratzke,**

*Acting Associate Administrator for Safety Performance Standards.*

[FR Doc. 97–27716 Filed 10–17–97; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before November 19, 1997.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs Administration, Room 8421, DHM–30, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION:** Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

NEW EXEMPTIONS

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 11965–N .. | RSPA–97–2989 | J.R. Simplot Company, Edison, CA. | 49 CFR 174.67(i) & (j). | To authorize tank cars to remain connected during unloading of Class 8 material without the physical presence of an unloader. (Mode 2.) |
| 11966–N .. | RSPA–97–2990 | FMC Corporation, Philadelphia, PA. | 49 CFR 173.31(b)(6)(i). | To authorize the transportation in commerce of DOT 111A–60A1W2 aluminum tank cars equipped with half head shields instead of full for use in transporting Hydrogen peroxide aqueous solutions, Division 5.1. (Mode 2.) |
| 11967–N .. | RSPA–97–2991 | Savage Industries Inc., Norristown, PA. | 49 CFR 174.67(i) & (j). | To authorize tank cars to remain connected during unloading of various hazardous materials to remain connected during unloading without the physical presence of an unloader. (Mode 2.) |
| 11968–N .. | RSPA–97–2992 | Air Liquide America Corp., Houston, TX. | 49 CFR 177.834(i)(3) | To authorize the unloading of Division 2.1 and 2.2 material from DOT Specification cargo tanks without the physical presence of an unloader. (Mode 1) |
| 11970–N | RSPA–97–2993 | Exxon Chemical, Inc., Baytown, TX. | 49 CFR 172.101, 178.245–1(c). | To authorize the transportation in commerce of DOT-Specification 51 portable tanks equipped with a bottom outlet and no internal shutoff valve for use in transporting pyrophoric solids, inorganic, n.o.s., Division 4.2. (Modes 1, 2, 3.) |
| 11971–N .. | RSPA–97–2994 | Regional Airline Assoc., Washington, DC. | 49 CFR 173.34(e) ..... | To authorize an alternative retesting procedure for Specification 4DA and 4DS hermetically sealed cylinders which serves as components of aircraft systems. (Modes 1, 2.) |
| 11972–N .. | RSPA–97–2996 | Snaketan, Woodland, CA. | 49 CFR 172.411, 172.448, 172.519, 173.118. | To authorize the transportation in commerce of small quantities of hazardous materials as essentially non-regulated. (Mode 1.) |

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1804; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 10, 1997.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 97–27672 Filed 10–17–97; 8:45 am]

**BILLING CODE 4910–60–M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for modification of exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before November 4, 1997.

**ADDRESS COMMENTS TO:** Dockets Unit, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION:**

Copies of the applications are available for inspection in the Dockets Unit, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.

| Application No. | Docket No. | Applicant | Modification of exemption |
|---|---|---|---|
| 11344–M | ..... | E.I. DuPont, Wilmington, DE (See Footnote 1) ..... | 11344 |
| 11956–M | RSPA–97–2988 | Scott Aviation, Lancaster, NY (See Footnote 2) ..... | 11956 |

[1] To modify the exemption to provide for tank cars, containing chlorine, Division 2.3, to remain standing with unloading connections attached without the physical presence of an unloader.

[2] To reissue the exemption originally issued on an emergency basis for protective breathing equipment (PBE), containing chemical oxygen generators which utilize special integral packaging as a secondary means of preventing actuation.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transporatation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on October 10, 1997.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

[FR Doc. 97–27673 Filed 10–17–97; 8:45 am]

**BILLING CODE 4910–60–M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Meetings of Pipeline Safety Advisory Committees

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub.L. 92–463, 5 U.S.C. App. 1) notice is hereby given of the following meetings of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) and the Technical Pipeline Safety Standards Committee (TPSSC). Each Committee meeting, as well as a joint session of the two Committees, will be held at the Adams Mark Hotel, 2900 Briarpark Drive at Westheimer, Houston, TX 77042.

On November 18, 1997, at 9:00 a.m., the THLPSSC will meet. OPS will discuss current regulatory activities, and the THLPSSC will review the following OPS proposed rulemakings: (1) Incorporation by Reference of Industry Standard on Leak Detection; (2) Risk-Based Alternative to Pressure Testing Rule; and (3) Adoption of Industry Standards for Breakout Tanks. Part of the Advisory Committee's function is to discuss OPS proposed rulemakings and assess, by vote, if the rulemaking is feasible, reasonable, and practicable.

On November 18, 1997 at 1:00 p.m., the THLPSSC will be joined by members of the TPSSC for a joint session in which OPS will provide a brief update on major OPS activities. However, this session will focus on the issue of cost-benefit analysis. Topics of discussion will include: (1) A description of the approach to cost-benefit analysis by both OPS and the pipeline industry; and (2) the role of the Advisory Committees in reviewing cost benefit in their review of OPS rulemakings, in accordance with the Accountable Pipeline Safety and Partnership Act of 1996.

OPS will hold a public meeting on risk management in conjunction with the Technical Advisory Committee meetings on the morning of November 19, 1997, from 8:00 A.M. TO 12:00 noon. OPS announced this meeting in a **Federal Register** notice (62 FR 50654), published on September 26, 1997. The purpose of this meeting is to provide an update on the Risk Management Demonstration Program and to receive input on the progress of the Demonstration Program thus far and on the specific demonstration projects under review.

On November 19, 1997, at 1:00 p.m. the TPSSC will meet. Although this committee will not be voting on any OPS proposed rulemakings, brief updates of OPS regulatory activities will be provided by OPS staff.

Each meeting will be open to the public. Members of the public may present oral statements on the topics. Due to the limited time available, each person who wants to make an oral statement must notify Peggy Thompson, Room 2335, Department of

Transportation, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–4595, no later than November 5, 1997. Requests should include the topics to be addressed and the time requested to address each topic. The presiding officer may deny any request to present an oral statement and may limit the time of any oral presentation. Members of the public may present written statements to the Committee before or after any meeting.

Issued in Washington, DC, on October 14, 1997.

**Richard B. Felder,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 97–27715 Filed 10–17–97; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–33 (Sub–No. 114X)]**

### Union Pacific Railroad Company—Abandonment Exemption—in Washburn County, WI

On September 30, 1997, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Hayward Industrial Lead, extending from milepost 83.32 near Trego to milepost 96.0 near Hayward Junction, in Washburn County, WI, which traverses U.S. Postal Service ZIP Codes 54888 and 54875, a distance of 12.68 miles.[1] The line includes the non-agency stations of Trego at milepost 83.3, Earl at milepost 87.3, and Spring Brook at milepost 91.4.

The line does contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 16, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $900. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 10, 1997. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 114X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Joseph D. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for the hearing impaired is available at (202) 565–1695.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: October 15, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–27734 Filed 10–17–97; 8:45 am]

**BILLING CODE 4915–00–P**

[1] UP states that the Hayward Industrial Lead previously extended from Trego in Washburn County to a location near Hayward in Sawyer County, WI. The segment between Hayward Junction and Hayward was acquired by Wisconsin Central Ltd. (WCL) pursuant to an acquisition exemption in *Wisconsin Central Ltd.—Acquisition Exemption— Lines of Union Pacific Railroad Company*, STB Finance Docket No. 33116 (STB served Apr. 17, 1997). WCL operates another rail line that connects to the acquired line at Hayward Junction. UP states that the line to be abandoned does not now connect to any UP rail line.

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is solciting comments concerning the Request By Owner For Reissue of United States Savings Bonds/Notes To Add Beneficiary Or Coowner, Eliminate Beneficiary Or Decedent, Show Change Of Name, And/Or Correct Error In Registration.

**DATES:** Written comments should be received on or before December 22, 1997, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request By Owner For Reissue Of United States Savings Bonds/Notes To Add Beneficiary Or Coowner, Eliminate Beneficiary Or Decedent, Show Change Of Name, And/Or Correct Error In Registration.

*OMB Number:* 1535–0023.

*Form Number:* PD F 4000.

*Abstract:* The information is requested to support a request for reissue and to indicate the new registration required.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 600,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 300,000.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 14, 1997.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 97–27686 Filed 10–17–97; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application by Preferred Creditor for Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities And/Or Related Checks In An Amount Not Exceeding $500.

**DATES:** Written comments should be received on or before December 22, 1997, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application By Preferred Creditor For Disposition Without Administration Where Deceased Owner's Estate Includes United States Registered Securities And/Or Related Checks In An Amount Not Exceeding $500.

*OMB Number:* 1535–0042.

*Form Number:* PD F 2216.

*Abstract:* The information is requested to support a request for payment by a preferred creditor of a decedent's estate.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or Businesses.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 835.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 14, 1997.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 97–27687 Filed 10–17–97; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Subscription For Purchase and Issue of U.S. Treasury Securities, State and Local Government Series.

**DATES:** Written comments should be received on or before December 22, 1997, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Subscription For Purchase And Issue Of U.S. Treasury Securities—State And Local Government Series.

*OMB Number:* 1535–0092.

*Form Number:* PD F 4144.

*Abstract:* The information is requested to establish accounts for the owners of securities of State and Local Government Series.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* State or Local Government.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 55 minutes.

*Estimated Total Annual Burden Hours:* 4,585.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are

invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 14, 1997.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 97–27688 Filed 10–17–97; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing U.S. Treasury Certificates of Indebtedness—State and Local Government Series.

**DATES:** Written comments should be received on or before December 22, 1997, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulations Governing United States Treasury Certificates Of Indebtedness—State and Local Government Series, United States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series.

*OMB Number:* 1535–0091.

*Abstract:* The information is requested to establish an investor account, issue and redeem securities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* State or local governments.

*Estimated Number of Respondents:* 1,000.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 167.

**Request For Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

**DATED:** October 14, 1997.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 97–27689 Filed 10–17–97; 8:45 am]

**BILLING CODE 4810–39–P**

Federal Register

Monday
October 20, 1997

Part II

# Environmental Protection Agency

**40 CFR Part 112**

**Oil Pollution Prevention; Non-Transportation Related Onshore Facilities; Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 112**

**[FRL–5909–5]**

## Oil Pollution Prevention; Non-Transportation Related Onshore Facilities

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

**ACTION:** Denial of petition requesting amendment of the Facility Response Plan rule.

**SUMMARY:** EPA is denying the request submitted by various trade associations to amend the Facility Response Plan (FRP) rule that the Agency promulgated under section 311(j) of the Clean Water Act (CWA), as amended by the Oil Pollution Act (OPA) of 1990. These organizations had requested that EPA modify the FRP rule in a number of ways to treat facilities that handle, store, or transport animal fats and vegetable oils in a manner differently from those facilities that store petroleum-based oils. EPA believes that the petition did not substantiate the claimed differences between animal fats and vegetable oils and petroleum oils so as to support a further differentiation between these groups of oils under the FRP rule. Instead, EPA continues to find that a worst case discharge or substantial threat of discharge of animal fats and/or vegetable oils to navigable waters, adjoining shorelines, or the exclusive economic zone could reasonably be expected to cause substantial harm to the environment, including wildlife that may be killed by the discharge of fats or vegetable oils. Moreover, EPA believes that in setting different response strategies for petroleum and non-petroleum oils, (with animal fat and vegetable oils in the latter category), the FRP rule already provides for adequate differentiation in response planning requirements for all covered facilities.

**ADDRESSES:** The official record for this decision is located in the Superfund Docket, at the U.S. Environmental Protection Agency, [Docket Number SPCC–3]. The docket is available for inspection between 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays, at US EPA Crystal Gateway 1 (CG1), 1235 Jefferson Davis Highway, Arlington, VA 22202. Appointments to review the docket can be made by calling 703–603–8917. The public may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, a charge of 15 cents will be incurred for each additional page, plus a $25.00 administrative fee.

**FOR FURTHER INFORMATION CONTACT:** Bobbie Lively-Diebold, Oil Pollution Center, Office of Emergency and Remedial Response (5203G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 at 703–356–8774 (lively.barbara@epamail.epa.gov); or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323).

**SUPPLEMENTARY INFORMATION:** The contents of this Denial of Petition are listed in the following outline:



## I. Background

The OPA (Pub. L. 101–380, 104 Stat. 484) was enacted to expand prevention and preparedness activities, improve response capabilities, ensure that shippers and oil companies pay the costs of spills that do occur, provide an additional economic incentive to prevent spills through increased penalties and enhanced enforcement, establish an expanded research and development program, and establish a new Oil Spill Liability Trust Fund administered by the U.S. Coast Guard.

Section 4202(a) of the OPA amends CWA section 311(j) to require regulations for owners or operators of facilities to prepare and submit ''a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.'' This requirement applies to all offshore facilities and any onshore facility that, ''because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable

waters, adjoining shorelines, or the exclusive economic zone'' (''substantial harm facilities'').

On July 1, 1994, EPA published its Final Rule amending the Oil Pollution Prevention regulation (40 CFR part 112) to incorporate new requirements to implement amended section 311(j)(5) of the CWA. (Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities; Final Rule, 59 FR 34070, July 1, 1994). Under authority of section 311(j)(1)(C) of the CWA, the Final Rule also requires planning for a small and medium discharge of oil, as appropriate.

In the final rule, EPA determined that for the purposes of section 311(j) planning, the OPA includes non-petroleum oils. The Agency noted that the definition of ''oil'' in the Clean Water Act includes oil of any kind, and that EPA uses this broad definition in 40 CFR part 110, Discharge of Oil. Animal fats and vegetable oils fall within the CWA definition of ''oil.''

Only a small number, no more than 1¼ percent of the total SPCC community regulated (approximately 5,400 of a total of 435,000 facilities) under 40 CFR part 112.1–112.7 meet the criteria for substantial harm under 40 CFR 112.20. Only a small number of the 5,400 substantial harm facilities (an estimated 50 to 100) store or use vegetable oil and animal fat and have prepared and submitted FRPs.

*A. The Organizations' Petition*

By a letter dated August 12, 1994, EPA received a ''Petition for Reconsideration and Stay of Effective Date'' of the OPA-mandated FRP final rule as that rule applies to facilities that handle, store, or transport animal fats or vegetable oils. The petition was submitted on behalf of seven agricultural organizations (''the Organizations'' or ''Petitioners''): the American Soybean Association, the Corn Refiners Association, the National Corn Growers Association, the Institute of Shortening & Edible Oils, the National Cotton Council, the National Cottonseed Products Association, and the National Oilseed Processors Association.

To support the Petition, the Organizations referenced an industry-sponsored report titled ''Environmental Effects of Release of Animal Fats and Vegetable Oils to Waterways'' (prepared by ENVIRON Corporation, June 28, 1993), and an associated study titled ''Diesel Fuel, Beef Tallow, RBD Soybean Oil and Crude Soybean Oil: Acute Effects on the Fathead Minnow, Pimephales Promelas'' (prepared by Aqua Survey, Inc., May 21, 1993). Both the report and the study had been submitted to EPA during the facility response plan rulemaking as enclosures to a comment filed over nine months after the close of the comment period. Based, in part, on these studies (the ENVIRON report and Aqua Survey study), the Petitioners asked EPA to create a regulatory regime for response planning for non-petroleum, ''non-toxic'' oils separate from the regime established for petroleum oils and ''toxic,'' non-petroleum oils.

The report and the study provided information on certain physical, toxicological, and chemical properties of animal fats and vegetable oils compared with other types of oil. The petitioners argued that according to the ENVIRON report, the presence of animal fats and vegetable oils in the environment does not cause significant harm. Six specific conclusions of the ENVIRON report regarding vegetable oils and animal fats were that these substances are not toxic to the environment; are essential components to human and wildlife diets; readily biodegrade; are not persistent in the environment like petroleum oils; do have a high Biochemical Oxygen Demand (BOD), which could result in oxygen deprivation where there is a large spill in a confined body of water that has low flow and dilution; and can coat aquatic biota and foul wildlife.

The Petitioners also submitted an Appendix to their Petition that included specific suggested language to amend the July 1, 1994, FRP rule. The submitted language would have resulted in the following changes regarding facilities that handle, store, or transport animal fats and vegetable oils: Further clarified the definition of animal fats and vegetable oil (set out in Appendix E, 1.2 of the FRP); allowed mechanical dispersal and ''no action'' options to be considered in lieu of the oil containment and recovery devices otherwise specified for response for a worst case discharge; required the use of a containment boom only for the protection of fish and wildlife and sensitive environments; and increased required on-scene arrival time for response resources from 12 hours (including travel time) to 24 hours plus travel time for medium discharges and worst case Tier 1 response resources.

The Federal natural resource trustee agencies, including the Fish and Wildlife Service (FWS), had reviewed the ENVIRON study. In an April 11, 1994, letter to the Department of Transportation's (DOT) Research and Special Projects Administration (RSPA), the FWS stated that the Report did not provide an accurate assessment of the dangers that non-petroleum oils pose to fish and wildlife and environmentally sensitive areas. The letter stated that the key facts were misrepresented, incomplete, or omitted in the Report. FWS also observed that the ENVIRON report failed to give appropriate significance to the fouling potential of edible oils (USDOI/FWS, 1994).

The National Oceanic and Atmospheric Administration (NOAA) also had evaluated the effects on the environment of spilled non-petroleum oils, including coconut, corn, cottonseed, fish, and palm oils. (Memorandum of Record, dated June 3, 1993, from the Department of Commerce (DOC)/NOAA Hazardous Materials Response and Assessment Division.) The NOAA assessment, based on literature research, addresses physical and chemical properties and toxicity of these and other oils, and indicates that some edible oils, when spilled, may have adverse environmental effects. (The views of the FWS and NOAA on the adverse effects of animal fats and vegetables are discussed in detail in the preamble to the U.S. Coast Guard's final rule setting forth response plan requirements for marine transportation-related facilities, [61 FR 7890, 7907–7908, Feb. 29, 1996] and are included in the docket that supports this decision. These views also are discussed in EPA's Request for Data and Comment on Response Strategies for Facilities That Handle, Store, or Transport Certain Non-Petroleum Oils, 59 FR 53742–53743, October 26, 1994.)

On October 26, 1994, in view of the differing scientific conclusions reached by the Petitioners, the FWS, and other groups and agencies, EPA requested broader public comment on issues raised by the Petitioners in a notice and request for data (Request for Data and Comment on Response Strategies for Facilities That Handle, Store, or Transport Certain Non-Petroleum Oils, 59 FR 53742, October 26, 1994). These issues included whether to have different specific response approaches for releases of animal fats and vegetable oils (rather than increased flexibility), and the effects on the environment of releases of these oils. EPA also asked commenters to recommend specific data that relate to the comparison of petroleum and non-petroleum oils. EPA received fourteen comments in response to its October 26, 1994, notice and request for data.

Of these fourteen commenters, most agreed with the trade associations' request that EPA should modify the FRP rule. Most of the commenters asserted that, based upon the ENVIRON report, animal fats and vegetable oils are readily biodegradable and not persistent

in the environment. Certain commenters also argued that vegetable oils and animal fats are less toxic than other types of oils. Other commenters argued that edible oils pose less risk to the environment because they are typically stored in smaller tanks at food processing facilities, whereas petroleum-based oils are stored in larger tanks at petroleum facilities. One commenter, citing the unnecessary and burdensome regulations and the excellent spill record of the animal fat and vegetable oil industry, stated that EPA should differentiate animal fats and vegetable oils from other types of oils. One commenter questioned the accuracy of the ENVIRON report and stated that non-petroleum oils can adversely affect fish and wildlife and environmentally sensitive areas.

*B. Background on the Processing and Storage of Vegetable Oils and Animal Fats*

In 1992, approximately 20.8 billion pounds of vegetable oils and animal fats were consumed in the United States, including over 14.8 billion pounds for edible uses; and more than 5.9 billion pounds for inedible uses, such as soap, paint or varnish, feed, resins and plastics, lubricants, fatty acids, and other products (Hui, 1996a). The extent of processing of vegetable oils and animal fats depends on the ultimate use of the product. Chemical composition, which determines the toxicity and fate of oils in the environment, changes at each step in processing, as impurities or specific components are removed or chemicals formed; chemical composition can also be changed by storage, heating, or reactions in the environment (Hui, 1996d; Brekke, 1980).

Processing steps in vegetable oil facilities are generally independent operations that are not connected by continuous flow, and between each processing step there may be one or more storage tanks (Hui, 1996d). Many crude vegetable oil storage tanks, which are usually constructed of welded carbon steel, have a capacity of 1 million pounds (approximately 140,000 gallons) (Hui, 1996d). They may be located in the open or enclosed in a structure. Storage tanks for finished fats and oils are generally made of iron, stainless steel, or aluminum and typically hold between 75 and 200 tons (about 21,000 to 56,000 gallons) of product.

In a typical integrated vegetable oil processing facility, steps may include crude oil storage, preparation, extraction and meal finishing, removal of gums and lecithin processing, caustic refining, bleaching and dry removal of gums and waxes, hydrogenation, interesterification, fractionation, deodorizing, and shortening or margarine production (Hui, 1996d; Brekke, 1980). During these steps, several classes of materials may be removed, such as gums, phospholipids, pigments, free fatty acids, color bodies, pigments, metallic prooxidants, and residual soaps. New compounds, including oxidation products, polymers and their decomposition products, may be formed and contaminants introduced during processing (Hui, 1996d).

Impurities are also removed and chemical structure modified during processing of animal fats (Hui, 1996d). The major animal fats are lard and tallow. Steps in the processing of animal fats may include rendering, bleaching, hydrogenation, deodorizing, interesterification, and fractionation. Rendering, the removal of fat from animal tissues using heat or mechanical means, is often a continuous process that results in products that require no further treatment. Further refining removes materials, such as free fatty acids or collagen or protein, or changes the characteristics of the fat for specialized use.

Spills of crude vegetable oils containing gums, phospholipids, free fatty acids, and a host of other chemical components can differ greatly from spills of processed oils in their persistence in the environment, the environmental compartments in which they are distributed, the breakdown products that they form, their rate of degradation, and the exposure and environmental effects that they produce. Some minor components of oils can affect their properties or cause adverse health and environmental effects. Spilled oils and fats can be transformed by physical, chemical, or biological processes to form products that are more or less toxic than the original oil, depending on the specific oil and the products that are formed.

The EPA has considered the Petitioners' claims in detail. EPA's technical evaluation on the Petitioners' claims is set forth in section II. EPA's responses to suggested changes in the FRP regulation are provided in section III. Detailed studies and information to support this document are provided in a Technical Document, which is located in the Docket.

## II. Technical Evaluation of Petitioners' Claims

*A. General*

The Petitioners claim that unlike most if not all other oils, animal fats and vegetable oils are non-toxic, readily biodegradable, not persistent in the environment, and in fact are essential components of human and wildlife diets. Most of the Petitioners' arguments focus on toxicity, although toxicity is only one of several mechanisms by which oil spills cause environmental damage.

In making its claims, the Petitioners have disregarded fundamental scientific principles and ignored a large body of scientific evidence that was considered by EPA in its promulgation of rules implementing the requirements of the CWA. The ENVIRON report submitted by the Petitioners acknowledges that animal fats and vegetable oils can cause oxygen deprivation and coating of animals, but the Petitioners incorrectly minimize the importance of these mechanisms in causing environmental damage and rely instead on limited studies in narrow areas of toxicity, which are then improperly generalized to support the Petitioners' claims.

Petitioners' submission emphasizes that animal fats and vegetable oils are used by all organisms for food. The ingestion of small quantities of edible oils by humans, however, is a completely different situation from spills of oil into the environment. These situations differ markedly in the extent and duration of exposure, the route of exposure, the species exposed, the composition of the chemicals involved, the circumstances surrounding the exposure, and the types of effects produced—factors that determine the toxicity and severity of the adverse effects of chemicals. Thus, even if the human consumption of small quantities of oils in food were judged completely safe, no inferences could be drawn about the toxicity and other effects of vegetable oils and animal fats on environmental organisms exposed in the very different circumstances of oil spills.

The Petitioners' arguments about toxicity do not address the central issue: Spills of animal fats and vegetable oils kill or injure fish, birds, mammals, and other species and produce a host of other undesirable effects. Whether this death and destruction results from toxicity or from other processes, spills of animal fats and vegetable oils should be prevented and if spills occur, quickly removed to reduce the environmental harm and other adverse effects they produce.

*B. Petitioners' Claim: Animal Fats and Vegetable Oils Are Non-Toxic*

The Petitioners claim that EPA's implementation of the response plan provisions and other regulatory changes

under the CWA are inconsistent with established regulatory principles and with the available scientific data related to animal fats and vegetable oils, which, unlike other oils, are non-toxic.

EPA Response: For a number of reasons that are detailed in this document and the Technical Document, EPA disagrees with the Petitioners' contention that animal fats and vegetable oils are non-toxic when spilled into the environment. First, while the Petitioners rely on laboratory tests that measure only the acute lethal effects of some vegetable oils and animal fats in one species of fish, these tests say nothing about other acute toxic effects or long-term toxic effects, or toxic effects on other species or ecosystems, or toxic effects of oil spilled in the environment under conditions that differ from those in the laboratory. Second, the tests submitted by the Petitioners cannot demonstrate ''non-toxicity'' of vegetable oils and animal fats; indeed the tests described in the study only measure the lethality of the oils tested under a given set of experimental conditions. Third, other information and data indicate that animal fats and vegetable oils, their components, and degradation products are not as ''non-toxic'' as the Petitioners assert. Fourth, while low levels of certain animal fats and vegetable oils or their components may be essential constituents of the diet of humans and wildlife, adverse effects occur from exposure to high levels of these chemicals. Numerous examples in the scientific literature demonstrate that essentiality does not confer safety and essential elements can produce toxic effects (Klaassen et al., 1986; NAS, 1977a; Rand and Petrocelli, 1985; Hui, 1996b).

Furthermore, EPA emphasizes that toxicity is only one of several mechanisms by which oil spills cause environmental damage. As discussed below, the physical effects of spilled oil—such as coating animals and plants with oil and suffocation of aquatic organisms from oxygen depletion—and the destruction of the food supply kill birds and mammals, destroy fish and other aquatic species, and damage their habitats.

By contaminating food sources, reducing breeding animals and plants that provide future food, contaminating nesting habitats, and reducing reproductive success through contamination and reduced hatchability of eggs, even oils that remain in the environment for relatively short periods of time can cause long-term deleterious effects years after the oil was spilled.

1. How Animal Fats and Vegetable Oils Produce Adverse Environmental Effects

The deleterious environmental effects of spills of petroleum oils and non-petroleum oils, including animal fats and vegetable oils, are produced through physical contact and destruction of food sources as well as toxic contamination (USDOC/NOAA, 1996; NAS, 1985e; Crump-Wiesner and Jennings, 1975; Frink, 1994; Frink and Miller, 1995; Hartung, 1995; USDOI/FWS, 1994). Nearly all of the most immediate and devastating environmental effects from oil spills—such as smothering of fish or coating of birds and mammals and their food with oil—are physical effects related to the physical properties of oils and their physical interactions with living systems (Hartung, 1995).

While these immediate physical effects and effects on food sources may not be considered the result of ''toxicity'' in the classic sense—i.e., effects that are produced when a chemical reacts with a specific receptor site of an organism at a high enough concentration for a sufficient length of time (Rand and Petrocelli, 1985)—severe debilitation and death of fish and wildlife are caused by spills of animal fats and vegetable oils, other non-petroleum oils, and petroleum oils and their products. Adverse environmental effects can occur long after the initial exposure to animal fats and vegetable oils because of toxicity, persistence of products in the environment, or destruction of food sources and habitat and diminished reproduction resulting from physical effects or toxicity.

2. Physical Properties

Petroleum oils and non-petroleum oils, including vegetable oils and animal fats, share common physical properties and produce similar environmental effects (Crump-Wiesner and Jennings, 1975; USDOI, 1994; Frink, 1994). When spilled in the aquatic environment, petroleum oils, animal fats and vegetable oils and their fatty acid constituents may float on the water's surface, become solubilized or emulsified in the water column, or settle on the bottom as a sludge, depending on their physical and chemical properties (Crump-Wiesner and Jennings, 1975; DOC/NOAA, 1992, 1996). Vegetable oils and animal fats that are solid at room temperature still serve as potent physical contaminants and are much more difficult to remove from affected animals than petroleum oil (Frink, 1994).

While the physical properties of vegetable oils and animal fats are highly variable, most fall within in a range that is similar to the physical parameters for petroleum oils. (See Appendix I, Table 1: Comparison of Physical Properties of Vegetable Oils and Animal Fats With Petroleum Oils and Table 2: Comparison of Vegetable Oils and Animal Fats with Petroleum Oils). Common properties—such as solubility, specific gravity, and viscosity—are responsible for the similar environmental effects of petroleum and vegetable oils and animal fats. Petroleum and vegetable oils and animal fats can enter all parts of an aquatic system and adjacent shoreline, and similar methods of containment, removal and cleanup are used to reduce the harm created by spills of petroleum and vegetable oils and animal fats.

3. Chemical Composition

The chemical composition and physical properties of petroleum and non-petroleum oils, including vegetable oils and animal fats, determine their fate in the environment (where they go, reactions, rate of disappearance) and the exposure and adverse effects that they produce. The chemical composition changes at each step in processing, as impurities or specific components are removed or chemicals formed (Hui, 1996d; Brekke, 1980). Chemical composition can also change with storage, heating, or reactions in the environment.

The main constituents of vegetable oils and animal fats are esters of glycerol and fatty acids (Hui, 1996b). The ester linkages can be hydrolyzed to yield free fatty acids and glycerol. While triglycerides (triacylglycerols) predominate, fats and oils also contain mono- and diglycerides (mono-and diacylglycerols) and other lipids, e.g., phosphatides and cholesterol, free fatty acids, and small amounts of other compounds. Fats and oils also contain other minor components, such as polynuclear aromatic hydrocarbons (PAHs). Like vegetable oils and animal fats, petroleum crude oils are hydrocarbon mixtures that can be further processed to make specific products; but the hydrocarbon constituents of petroleum oils are primarily alkanes (paraffins), cycloalkanes, and aromatic hydrocarbons (IARC, 1989).

Fatty acids largely determine the chemical and physical properties of triglycerides (Hui, 1996a) and influence their fate and effects in the environment. The structure of the fatty acids can change as they are processed, stored, heated, or transformed by physical, chemical, and biological processes in the environment. The fatty acid composition of vegetable oils and

animal fats varies with plant or animal species, season, geographical location, feed, and other factors.

The physical and chemical properties of petroleum and non-petroleum oils can change after they have spilled into the environment. Spilled oil can be transformed through a wide variety of physical, chemical, and biological processes (USDOC/NOAA, 1992a, 1996). These processes are affected by many factors, among them temperature, oxygen, light, ionizing radiation, and the presence of metals (Kiritsakis, 1990; Hui, 1996a, 1996d).

As the composition of the oil changes, so does its fate in the environment and its toxicity. The products that are formed can be more or less toxic than the original oil, depending on the specific oil and the products that are formed. Oxidation of vegetable oils and animal fats, which may contribute rancid off-flavors and odors, can create products, such as cyclic monomers and oxycholesterols that are toxic at relatively low concentrations (Hui, 1996a). Polymers of soybean oil and sunflower oil can form concrete-like aggregates with soil or sand that cannot be readily degraded by bacteria and remain in the environment for many years after they are spilled (Minnesota, 1963; Mudge, 1995, 1997a, 1997b). Petroleum oils also undergo oxidation and polymerization reactions and can form tars that persist in the environment for years (NAS, 1985d).

4. Environmental Effects

Spills of petroleum and vegetable oils and animal fats can harm aquatic organisms and wildlife in many ways (Crump-Wiesner and Jennings, 1975):

- Oil can coat the feathers and fur of birds and mammals and cause drowning and hypothermia and increased vulnerability to starvation and predators from lack of mobility.
- Oils can act on the epithelial surfaces of fish, accumulate on gills, and prevent respiration. The oil coating of surface waters can interfere with natural processes of reaeration and photosynthesis. Organisms and algae coated with oil may settle to the bottom with suspended solids along with other oily substances that can destroy benthic organisms and interfere with spawning areas.
- Oils can increase BOD and deplete water of oxygen sufficiently to kill fish.
- Oils can cause starvation of fish and wildlife by coating food and removing the food supply. Animals that ingest large amounts of oil through contaminated food or preening themselves may die as the result of the oil ingested. Animals can also starve because of increased energy demands needed to maintain body temperature when they are coated with oil.
- Oils can exert a direct toxic action on fish, wildlife, or their food supply.
- Oils can taint the flavor and cause intestinal lesions from laxative properties in fish.
- Oils can foul shorelines and beaches. Oil spills can also create rancid odors.

The environmental effects of vegetable oils and animal fats and petroleum oils, their chemical and physical properties, and their environmental fate are compared in Appendix I, Table 2.

*a. Physical Effects of Spilled Oil.* Physical effects produce nearly all of the most immediate and devastating environmental effects from oil spills. Even oils that remain in the environment for relatively short periods of time can cause long-term deleterious effects years after the oil was spilled.

Coating with Oil. Among the immediate effects of oil spills is the coating of the feathers of birds and fur of mammals (Hartung, 1995). Coating of animals and their food supply is produced by spills of petroleum and non-petroleum oils alike. Birds and some mammals, such as sea otters and river otters that depend upon entrained air for buoyancy and insulation, are particularly vulnerable to harm from spills of non-petroleum and petroleum oils (NAS, 1985e; Hartung, 1967, 1995). In freshwater or tidal brackish waters, oiled birds are usually waterfowl and wading birds, such as herons (Alexander, 1983).

Birds and mammals become coated with oil when they land in an oil slick or surface from underneath (Hartung, 1995). Oil alters the structure and function of the feathers and fur by disrupting their orderly arrangement, thereby reducing entrainment of air and causing loss of buoyancy and thermal insulation (Rozemeijer, 1992; Leighton, 1995; Frink and Miller, 1995; NAS, 1985e; Alexander, 1983; Hartung, 1967, 1995; Crump-Wiesner and Jennings, 1975). As the plumage absorbs water, the weight and body mass of the birds increases, and the birds sink and may drown. Birds and mammals, with feathers or fur matted down by petroleum or non-petroleum oils, can also die from hypothermia and/or dehydration and diarrhea or fall victim to predators.

Birds that are able to endure excess chilling while avoiding their predators may reach shore and sit or stand in a state of shock (NAS, 1985e; Alexander, 1983). To maintain body temperature, such birds would have to eat twice the normal amount of food; yet they are often isolated from their food supply (Hartung, 1967, 1995; Alexander, 1983). Fat and muscular energy reserves of these birds are rapidly exhausted and their body temperature drops (Hartung, 1967; Croxall, 1977; Alexander, 1983; Rozemeijer et al., 1992). As their appetite declines, death from starvation ensues. Similarly, sea otters with fur coated with oil require increased metabolism to compensate for major changes in conductance and heat flow across the body surface (Hartung, 1967, 1995; Kooyman, 1977; Williams et al., 1990; NAS, 1985e).

Oiled birds tend to preen their feathers and may ingest large amounts of oil from attempting to clean themselves and from consuming oil-contaminated food and oil particles (Frink, 1994; Frink and Miller, 1995; Alexander, 1983; NAS, 1985e; Hartung, 1965, 1967, 1995). Bird rescuers have described dead birds with organs filled with oil from eating oiled food (Lyall, 1996; Frink and Miller, 1995). Oil can also be transferred to birds through consumption of fouled prey or direct contact with the oiled shoreline or surface water (Frink and Miller, 1995; Smith and Herunter, 1989). The coated birds that are observed after oil spills are probably a small proportion of the total affected, as weakened birds are likely victims of predators (Hartung, 1995; Alexander, 1983; NAS, 1985e; Lyall, 1996; Frink and Miller, 1995; McKelvey et al., 1980; Smith and Herunter, 1989; Minnesota, 1963).

Small spills of vegetable oil, animal fat and petroleum oils can cause great ecological damage, depending upon the location of the spill and other factors. Even a small spill of vegetable oil can be far more damaging to aquatic birds than certain petroleum oils (McKelvey et al., 1980; Smith and Herunter, 1989).

Suffocation. Suffocation and death of fish and other biota are often the consequence of oxygen depletion of the water. Oxygen depletion can result from reduced oxygen exchange across the air-water surface below the spilled oil or from the high BOD produced by microor ganisms degrading oil (Crump-Wiesner and Jennings, 1975; Mudge, 1995). While a higher BOD is associated with greater biodegradability, it also reflects the increased likelihood of oxygen depletion and potential suffocation of aquatic organisms under certain environmental conditions (Crump-Wiesner and Jennings, 1975). Oxygen depletion and suffocation are produced by petroleum and non-petroleum oils, including animal fats and vegetable oils. Under certain conditions, however, some vegetable oils and animal fats

present a far greater risk to aquatic organisms than other oils spilled in the environment, as indicated by their greater BOD.

According to studies designed to measure the degradation of fats in wastewater, some food oils exhibit nearly twice the BOD of fuel oil and several times the BOD of other petroleum-based oils (Groenewold, 1982; Institute, 1985; Crump-Wiesner and Jennings, 1975). While the higher BOD of food oils is associated with greater biodegradability by microorganisms using oxygen, it also reflects the increased likelihood of oxygen depletion and suffocation of aquatic organisms under certain environmental conditions (Groenewold, 1982; Institute, 1985; Crump-Wiesner and Jennings, 1975). Oil creates the greatest demand on the dissolved oxygen concentration in smaller water bodies, depending on the extent of mixing (Crump-Wiesner and Jennings, 1975).

Contamination of Eggs. After spills of non-petroleum and petroleum oils, oil can be transferred from birds' plumage to the eggs they are hatching. Petroleum and non-petroleum oils, including vegetable oils and animal fats, can smother an avian embryo by disrupting the egg/air interface, sealing pores, and preventing gas exchange (Albers, 1977; Szaro and Albers, 1977; Leighton, 1995; USDOI, 1994).

In addition to the severe physical effects produced by non-petroleum and petroleum oils, some petroleum oils can also damage embryos apparently through mechanisms of toxicity (Albers, 1977; Szaro and Albers, 1977; Leighton, 1995; Szaro, 1977; NAS, 1985e). Very small quantities of petroleum or crude oil cause mortality and developmental effects in avian embryos from a wide variety of species (Leighton, 1995; NAS, 1985c). Whether vegetable oils and animal fats can harm embryos through toxicity as well as physical effects is unknown, for no studies of the toxicity of vegetable oils and animal fats to avian embryos and developing birds were located.

*b. Effects of Oil on Metabolic Requirements.* To survive spills of petroleum and non-petroleum oils, animals require increased energy (NAS, 1985e; Hartung, 1967, 1995). Birds coated with oil must eat twice their food ration to maintain body temperature (Hartung 1967, 1995). Yet birds are often isolated from their food sources following an oil spill or find their food coated with oil (Hartung 1967, 1995). Sublethal effects can increase vulnerability to disease or decrease growth and reproductive success, although the individual may continue to live for some time (NAS, 1985e; Frink and Miller, 1995; Smith and Herunter, 1989).

Studies of polluted animals show that physiological stress is manifested in higher energy demand (Sanders et. al., 1980). When increasing environmental stress greatly elevates metabolism and reduces assimilation, little energy remains for growth and reproduction, so that most species disappear and only a few tolerant species survive in chronically polluted environments. Oil pollution also forces animals to turn from the most economical biochemical pathways to other more costly physiological pathways.

*c. Effects of Oil on Food and the Food Web, Communities, and Ecosystems.* The effects of oil on the food web and community structures depend on the type and amount of oil spilled, the physical nature of the area, nutritional status, oxygen concentration, and previous exposure of the impacted area (NAS, 1985e). Geographic location appears far more important in determining the impacts of oil spills than spill size (Frink and Miller, 1995; McKelvey et al., 1980). The community structure and activities of microbes that degrade petroleum oil are affected by both catastrophic and chronic spills. The risks from oil spills can be shifted from those associated with toxicity to those associated with habitat, e.g., predator-prey interaction (NAS, 1985e).

The vulnerability of species and individuals to oil spills varies greatly (NAS, 1985e), and the extent and rate of recovery depends on many factors. In enclosed waters where recruitment of organisms from outside becomes less important, intrinsic factors may limit the recovery of the zooplankton community. Plant communities too can be affected long after an oil spill, with imbalances persisting for a decade or more, even after the floral community is reestablished (Sanders et al., 1980). When diversity and density have increased and stabilized many years after a spill, behavioral responses may continue to be distorted or biochemical pathways may be shifted from efficient to more costly pathways.

*d. Indirect Effects.* While not generally regarded as classic ''toxicity,'' high levels of fatty acids and triglycerides from vegetable oils and animal fats can upset the fermentation and digestion of ruminants, such as cattle, goats, deer, antelope, sheep, moose, buffalos, and bighorn sheep (Van Soest, 1994). Although intake of normal levels of lipids does not affect fermentation in ruminants, excess unsaturated fatty acids and triglycerides can profoundly suppress essential fermentation bacteria and alter fermentation balance, lipid metabolism, and milk fat production. Methane suppression is likely with a single large dose of unsaturated oil that exceeds the threshold of tolerance by fermentation bacteria. A practical limit for fat of about 8–10% of dietary dry matter is expected (personal communication, D. Ullrey, 1996).

Indirect effects also occur when petroleum oil is spilled in the environment (NAS, 1985e). After a spill of number 5 fuel oil, the herring population was reduced because of increased fungal damage to fish eggs, which in turn resulted from a decreased population of amphipods which graze fungi growing on fish eggs.

5. Toxicity

Adverse effects occur through both non-toxic and toxic mechanisms. Whether an adverse effect occurs through toxicity or other mechanisms is often unknown (Yannai, 1980). For example, birds exposed to spilled oil may die from non-toxic mechanisms —starvation, hypothermia, drowning, shock, susceptibility to predators because of a food supply that is inadequate to support increased energy requirements, and consumption of oiled food or oil from preening that clogs their organs— or from the toxicity of chemicals or biotransformation products in the oil. The deaths of the birds occur, regardless of the mechanisms involved or knowledge about these mechanisms.

Toxicology is the study of the adverse effects of chemicals on living organisms, including lethality; reproductive effects; effects on development; cancer; effects on the nervous system, kidney, liver, immune system, or other organs; and biochemical effects, such as enzyme inhibition (Klaassen et. al., 1986; Rand and Petrocelli, 1985). To examine the nature of toxic effects and evaluate the probability of their occurrence, factors that affect toxicity must be known. A brief discussion of toxicity is presented below. The supporting Technical Document discusses toxicology in greater depth.

*a. Principles of Toxicology.* The toxicity of chemicals depends on factors that are related to the organism itself, chemical composition, external environmental factors, and the exposure situation. The necessity of considering many factors in the evaluation of toxicity is underscored in basic textbooks about toxicology, such as *Casarett and Doull's Toxicology* that state:

''* * * Whether or not a toxic response occurs is dependent * * * on the chemical

and physical properties of the agent, the exposure situation, and the susceptibility of the biologic system or subject. Thus to characterize fully the potential hazard of a specific chemical agent, we need to know not only what type of effect it produces and the dose required to produce the effect but also information about the agent, the exposure, and the subject * * *'' (Amdur *et al.,* 1991).

The hazards and risks from environmental exposures to chemicals are assessed with toxicological studies in the laboratory and with epidemiological studies, while field studies may be used to assess the ecological effects of chemicals on multiple species or ecosystems (NAS, 1985c; NAS, 1977a; OSTP, 1985; Rand and Petrocelli, 1985). Toxic chemicals enter the body primarily by ingestion, inhalation, and skin contact (Klaassen et al., 1986). The toxic effects from acute exposure to a chemical (e.g., a single dose during a short period of time such as 24 hours) may differ greatly from those produced by long-term (chronic) exposures. Toxic effects can be immediate or they can be delayed.

A substance that is harmless at low concentrations in food may be hazardous if it comprises a large portion of the diet. Because there is little margin of safety for many of the elements to which people are exposed daily, the daily intake of many elements in the diet, such as iron, could not be increased 5 or 10 times without adverse effects (Klaassen *et al.,* 1986).

*b. Exposure From Oil Spills.* Spills of petroleum and vegetable oils and animal fats during processing, storage, and transportation can result in acute or chronic exposures to fish and wildlife. Not only massive spills but small quantities that are spilled repeatedly may result in environmental harm (Alexander, 1983; McKelvey et al., 1980; Smith and Herunter, 1989). Small volume spills can produce severe environmental damage because of the behavior of oils in the environment, their physical effects, and the toxicity of some oil constituents and transformation products. Many of the immediate, devastating effects of spilled petroleum and vegetable oils and animal fats, such as coating, suffocation, and other physical effects, occur during acute exposures. Long-term effects have also been reported from spills of petroleum oil, vegetable oils and animal fat.

During an oil spill, the potential for significant exposures is very high (Hartung, 1995). Unlike laboratory experiments using controlled amounts of oil, large amounts of oil may be released during spills. While the initial mortalities of birds and mammals exposed to spilled oil are usually from drowning or hypothermia resulting from coating, the ingestion of oil begins to contribute to effects later as birds consume large amounts of oil through preening or ingestion of oil-contaminated food and oil particles (Hartung, 1967, 1995). Fish and other aquatic organisms may die from suffocation soon after an oil spill or exhibit toxic effects, including cancer and adverse effects on growth and reproduction, following acute or chronic exposures to spilled oils and fats or their breakdown products.

Spilled oil can be transformed through a wide variety of physical, chemical, and biological weathering processes that change oil composition, behavior, exposure routes, and toxicity (USDOC/NOAA 1992, 1996). Whether the environmental fate and toxicity of the transformation products differs from that of the parent depends upon the specific oil and products that are formed.

*c. Toxicity of Petroleum Oils.* The toxic effects of petroleum oils are summarized in Appendix I, Table 2. The effects of petroleum oils have been investigated extensively in many species (NAS, 1985e; IARC, 1984; Albers, 1995). Commonly reported individual effects of petroleum oils include impaired reproduction and reduced growth as well as death in plants, fish, birds, invertebrates, reptiles and amphibians; blood, liver, and kidney disorders in fish, birds, and mammals; malformations in fish and birds; altered respiration or heart rate in invertebrates, fish, reptiles, and amphibians; altered endocrine function in fish and birds; altered behavior in many animal species; hypothermia in birds and mammals; impaired salt gland function in birds, reptiles, and amphibians; altered photosynthesis in plants; and increased cells in gills and fin erosion in fish. Among the group effects of petroleum are changes in local population and community structure in plants, invertebrates and birds and changes in biomass of plants and invertebrates.

Petroleum oils affect nearly all aspects of physiology and metabolism and produce impacts on numerous organ systems of plants and animals as well as altering local populations, community structure, and biomass (Albers, 1995; NAS, 1985e). Impaired reproduction, reduced growth and development, malformations, behavioral effects, blood and liver and kidney disorders, altered endocrine function, and a host of other effects of petroleum oils on organisms have been reported.

Certain petroleum products and crude oil fractions are associated with increased cancer in refinery workers and laboratory animals (IARC, 1989). Many of these petroleum oils contain benzene and polynuclear aromatic hydrocarbons (PAHs), toxic constituents that are carcinogenic in humans and animals. Untreated and mildly treated mineral oils are carcinogenic to humans. In experimental animals, some distillates and cracked residues derived from the refining of crude oil and residual (heavy) fuel oils are carcinogenic. There is limited evidence in experimental animals for the carcinogenicity of unleaded automotive gasoline, fuel oil number 2, crude oil, and naphtha and kerosene produced by certain processes.

*d. Toxicity of Vegetable Oils and Animal Fats.* The toxicity of vegetable oils and animal fats and the toxic effects on many systems and organs in the body are summarized in Appendix I, Table 2 and described briefly below. A detailed discussion of these effects is included in the supporting Technical Document.

The acute and chronic toxicity of vegetable oils and animal fats, types of fats, and their components and degradation products have been evaluated in toxicology and epidemiological studies. Chemical and physical properties of the particular animal fat or vegetable oil, the exposure situation, the biologic systems exposed, and the environmental conditions that are present are factors that influence the toxicity of a chemical.

Acute lethality tests are among several measures used to evaluate acute toxicity. They can be employed to rank chemicals or to screen doses that may be selected for longer term toxicity testing, or they can be an early step in tiered hazard assessment approaches. The use of different protocols and test species in acute lethality tests makes comparisons between tests difficult. For example, although the Petitioners claim that the tests conducted by Aqua indicate that smaller amounts of petroleum oils than certain vegetable oils and animal fats kill half the population of some aquatic species; other acute lethality studies suggest that by one measure, vegetable oils are more toxic than petroleum-derived mineral oil. In studies comparing the acute lethality of corn oil, cottonseed oil, and petroleum-derived mineral oil in albino rats, no rats receiving mineral oil died, while smaller doses of the vegetable oils administered for a shorter time period killed rats (Boyd, 1973).

Vegetable oils and animal fats produce other types of acute toxicity as well. Like petroleum oils, vegetable oils

and animal fats are laxatives that can produce diarrhea or cause lipid pneumonia in animals. These effects can compromise the ability of animals in the wild to escape their predators (USDOI, 1994; Frink, 1994). Clinical signs of toxicity in rats fed large amounts of corn oil or cottonseed oil for 4 or 5 days include decreased appetite, loss of body weight, abnormal lack of thirst, diarrhea, fur soiling, listlessness, pale skin, incoordination, cyanosis (dark blue skin color from deficient oxygenation of the blood), and prostration, followed by respiratory failure and central nervous system depression, hypothermic coma, and death. Autopsies of the rats showed violent local irritation of the gastrointestinal tract, which allowed the absorption of oil droplets into the bloodstream and deposition of oil in tissues, resulting in inflammation, congestion in the blood vessels, dehydration, degenerative changes in the kidney, loss of organ weights, and stress reaction (Boyd, 1973).

Animals exposed to vegetable oils and animal fats can manifest a range of chronic toxic effects. High levels of some types of fats increase growth and obesity but cause early death in several species of animals and may decrease their reproductive ability or the survival of offspring (NAS/NRC, 1995). On the other hand, the growth of some fish decreases with elevated levels of vegetable oils (Salgado, 1995; Mudge 1995, 1997a). Mortality of mussels exposed to one of four vegetable oils began after 2 or 3 weeks of exposure. Growth inhibition, effects on shells and shell lining, and decreases in foot extension activity that are essential to survival were observed in mussels exposed to low levels of sunflower oil.

Dietary fat consumption has been associated with the incidence of some types of cancer, including mammary and colon cancer, in laboratory animals and humans (Hui, 1996a; USDHHS, 1990; FAO/WHO, 1994). The intake of dietary fat or certain types of fat has also been correlated with the incidence of coronary artery disease, diabetes, and obesity in epidemiological studies (Hui, 1996a; FAO/WHO, 1994; Nelson, 1990; Katin at al, 1995). High dietary fat intake has also been linked to reduced longevity and altered reproduction in laboratory animals and altered immunity, altered steroid excretion, and effects on bone modeling and remodeling in humans.

Some vegetable oils and animal fats contain toxic constituents, including specific fatty acids and oxidation products formed by processing, heating, storage, or reactions in the environment (Hui, 1996a; Berardi and Goldblatt, 1980; Yannai, 1980; Mattson, 1973). Toxic effects on the heart, red blood cells, and immune system; effects on metabolism; and impairment of reproduction and growth can be caused by constituents or transformation products of vegetable oils and animal fats. In addition, some constituents of vegetable oils and animal fats cause cancer in rainbow trout, while lipid oxidation products may play a role in the development of cancer and atherosclerosis (Hendricks at al 1980a and 1980b).

Acute Toxicity: Acute Lethality Test ($LC_{50}$ Test) Submitted by Petitioners. The tests by Aqua that were submitted by the Petitioners are acute lethality tests that measure only the death of organisms. These tests provide no data on nonlethal acute toxicity, including irreversible damage, or long-term effects experienced by organisms and ecosystems. The $LC_{50}$ (lethal concentration 50) value or $LD_{50}$ (lethal dose 50) value does not describe a ''safe'' level but rather a level at which 50% of test organisms are killed under the experimental conditions of the test (Rand and Petrocelli, 1985; Klaassen *et al.*, 1986). (A high $LC_{50}$ value indicates low acute lethal toxicity, for a large concentration of chemical is needed to cause 50% mortality.) If the Aqua test results were accurate, they would indicate that diesel fuel kills half the population of fathead minnows at lower concentrations than aerated crude soybean oil, RBD soybean oil, and beef tallow. Spills of petroleum oils, vegetable oils and animal fats that result in $LC_{50}$ concentrations in the environment could kill half the organisms with sensitivity similar to fathead minnows when conditions are identical to those in the Aqua tests.

Although the manner in which the Aqua tests were conducted precludes accurate determination of the $LC_{50}$ values, the tests nevertheless demonstrate that petroleum oils and vegetable oils and animal fats can injure and kill fish by toxicity or oxygen depletion and suffocation. In the first set of the Aqua tests, all of the minnows exposed to diesel fuel and unaerated crude soybean oil died. The fish surfaced and gulped for air or swam spasmodically before dying, just as they do in the environment when suffocating from oxygen depletion following spills of petroleum and non-petroleum oils, including vegetable oils and animal fats.

Results Questionable. However, the test procedures used by Aqua render questionable the results suggesting that diesel fuel is more deadly at lower concentrations than soybean oil. The procedures deviate in important ways from standardized methodology, although the Aqua report states that test procedures are based on accepted methodologies. Appendix I, Table 3: Comparison of Aqua Methods and Standard Acute Aquatic Testing Methods lists key differences between the methods used by Aqua and the standard methods referenced in the Aqua report as well as more recent methods published by these same organizations that were omitted from the Aqua report. The accuracy of the $LC_{50}$ estimates provided by Aqua is highly doubtful because of the following deficiencies:

- Oxygen depletion. In the first set of Aqua tests, dissolved oxygen was below acceptable levels in the vessels with crude soybean oil. It is impossible to determine whether oxygen depletion or toxicity killed fish.
- Short exposure period. The Aqua tests were conducted for only 48 hours, instead of the 96 hours used in most methods. Fish that are alive at 48 hours may not survive for 96 hours.
- Unknown concentrations of test material encountered by fish during the test: (1) Oil sheens floated on test solutions and cloudiness was so severe that fish could not be observed for 24 hours; (2) the Aqua report contained no data on actual chemical concentrations of parent chemical or breakdown product, a critical determination in static tests where concentrations change over time (Rand and Petrocelli, 1985; NAS, 1985c). Aqua relied instead on the original nominally designated concentrations that are highly dubious, especially given the turbidity of the test solutions that cleared up over the course of the test, the likely degradation of test material in the aerated test system, and the use of vessels that were not stainless steel or glass and may have adsorbed test material; (3) the Aqua test did not aerate all test solutions and controls, did not maintain dissolved oxygen concentration at 80% or more of the nominal concentration, and did not test non-aerated and aerated oils together—requirements of standardized methods that allow gentle aeration. If vegetable oils degrade rapidly, as Petitioners claim elsewhere, aeration will increase the degradation of the oils in the test system; (4) the Aqua report provided no data on oil particle size, even when visual inspection showed that solutions of test material were cloudy and the NAS study referenced in the report cautioned against relying on visual inspections of clarity (NAS, 1985c); and (5) improper data reporting and evaluation. Results from two dissimilar tests were combined, although the tests

lacked a common test substance, used different test conditions, failed to measure actual concentrations, and included no estimates of variability between the two sets of tests. Aqua also failed to provide data on confidence intervals and slopes, as required by all of the standardized methods referenced by Aqua and by the Aqua protocol.

Relevance of Acute Lethality Tests to Spills in the Environment Challenged. Serious questions remain about the relevance of the $LC_{50}$ laboratory results to spills in the environment (NAS, 1985c, 1985e). The many test variables that influence estimates of $LC_{50}$—including the nature of the chemicals or mixtures tested, test parameters (e.g., route and method of administration, frequency and duration of exposure, mixing energy, temperature, salinity, static vs. flow-through systems, duration of observations) and biological factors (e.g., species selected for testing, sex, age or life-stage, weight, contamination history of the organism)—rarely reflect the conditions that occur following a spill (Rand and Petrocelli, 1985; NAS, 1985c; Wolfe, 1986; Abel, 1996). The water-soluble fraction used in static tests does not simulate the dynamic process of the change in stages between aqueous and oil phases that depends on parameters unique to each spill (NAS, 1985c). Once oil is spilled in the environment, the composition, concentration, and toxicity of oil and its components can be profoundly altered by chemical and biological processes, such as evaporation and biological oxidation.

Further, acute lethality tests by their very nature usually provide no data on toxic effects other than death (NAS, 1985c; Rand and Petrocelli, 1985; Klaassen *et al.,* 1986). Indeed, a widely-used toxicology text warns that ''defining acute toxicity based only on the numeric value of an $LD_{50}$ is dangerous'' (Hayes, 1982). Animals that survive a toxic response nevertheless may suffer irreversible damage (NAS, 1985e). These nonlethal, adverse effects must be considered in assessing the risks of chemical exposure. Nor do acute lethality tests measure long-term effects or effects on ecological communities or changes in predator-prey relationships which occur, for example, when animals coated with spilled oil are weakened and become more susceptible to predators.

Acute Toxicity: Other Acute Lethality Tests (Aquatic Tests). (See Appendix I, Table 2, for other aquatic lethality information.) Free fatty acids are among the products formed from vegetable oils and animal fats by processing, storage, heating, or reactions in the environment. Static tests with juvenile fathead minnows indicate that oleic acid, which is found in Canola, safflower, and sunflower oils, is more acutely lethal at 96 hours than at 24 hours and is intermediate in lethality in tests of a series of 26 organic compounds (USEPA, 1976; Hui, 1996a).

Acute Toxicity: Other Acute Lethality Tests (Tests with Laboratory Animals). (See Appendix I, Table 2.) Studies comparing the acute lethality of corn oil, cottonseed oil, and mineral oil in albino rats show that by one measure cottonseed oil and corn oil are more toxic than petroleum-derived mineral oil, although interpretation of the studies is complicated by differences in the experimental protocol (Boyd, 1973). No albino rats receiving mineral oil by gavage (tube into stomach) for 15 days died, while smaller doses of cottonseed oil and corn oil administered for a shorter time period killed rats.

The toxic effects differed significantly in rats receiving corn oil or cottonseed oil and those administered mineral oil (Boyd, 1973). Clinical signs of toxicity in rats receiving corn oil or cottonseed oil included anorexia (decreased appetite), loss of body weight, abnormal lack of thirst, decreased urination, diarrhea, fur soiling, listlessness, pallor (pale skin), incoordination, cyanosis (dark blue skin color from deficient oxygenation of the blood), and prostration (Boyd, 1973). Rats administered corn oil died after respiratory failure and hypothermic coma, while death followed central nervous system depression and coma in rats ingesting cottonseed oil. Autopsies showed violent local irritation of the gastrointestinal tract that allowed the absorption of oil droplets into the bloodstream. Oil droplets were deposited in many body organs with resultant inflammation, vascular congestion, degenerative changes in the kidney, and other effects. In contrast, no deaths occurred among rats administered mineral oil for 15 days and clinical signs differed in many respects from those observed in rats treated with corn or cottonseed oil.

Chronic Toxicity. Appendix I, Table 2 summarizes the chronic toxicity of vegetable oils and animal fats and petroleum oils. Cancer and adverse effects on growth, reproduction, development, and longevity as well as other toxic effects have been observed in several species following chronic or subchronic exposures to vegetable oils and animal fats or their constituents. (Subchronic exposures are longer than acute exposures, generally 1–3 months for rodents and longer than 4 days for aquatic species.)

Dietary fat and some classes of fats that are found in vegetable oils and animal fats have been associated with the increased incidence of some types of cancer, including mammary and colon cancer, in laboratory animals and humans (Hui, 1996a; USDHHS, 1990; FAO/WHO, 1994). The intake of dietary fat or of certain types of fat has also been correlated with the incidence of coronary artery disease, diabetes, and obesity in epidemiological studies. High dietary fat intake has also been linked to reduced longevity and altered reproduction in laboratory animals and altered immunity, altered steroid excretion, and effects on bone modeling and remodeling in humans.

In addition, some vegetable oils and animal fats contain toxic constituents or form toxic degradation products, including specific fatty acids and oxidation products, when they undergo processing, heating, storage, or reactions in the environment. The toxic effects of these chemicals are summarized briefly in Appendix I, Table 2 and described further in section II.5.d Toxicity of Specific Fatty Acids and Other Constituents of Vegetable Oils and Animal Fats. Among the toxic effects observed after exposure to these chemicals are cardiac toxicity, rupture of red blood cells, growth suppression, anemia, impaired reproduction, and adverse effects on the immune system and metabolism. In addition, the cyclopropene fatty acid constituents of cottonseed oil and some other vegetable oils cause liver cancer in rainbow trout and increase carcinogenesis of other chemicals, and some oxidation products may play a role in the development of colon cancer and atherosclerosis.

Cancer. Unlike petroleum oils that contain a large proportion of PAHs, including some PAHs that are animal and/or human carcinogens, vegetable oils and animal fats contain only small amounts of PAHs (Kiritsakis, 1991; IARC, 1984). Dietary fat intake and consumption of some classes of fats that are found in vegetable oils and animal fats have been implicated in the development of certain types of cancer—including cancer of the breast and colon and probably cancer of the prostate and pancreas—in studies of laboratory animals and in epidemiological studies (NAS/NRC, 1985c; Hui, 1996a; USDHHS, 1990; FAO/WHO, 1994). An expert panel organized by two United Nations organizations concluded that abundant data show that animals fed high-fat diets develop tumors of the mammary gland, intestine, skin, and pancreas more readily than animals fed low-fat diets, although caloric restriction can override

the effect (WHO/FAO, 1994). Animal studies also indicate correlations between total fat intake and liver cancer and between high-fat diets and certain types of chemically-induced or light-induced skin tumors. Studies describing the relationships between fat consumption and cancer in animals and humans have been summarized recently (Hui, 1996a).

Development of some types of cancer is influenced by the type of fat consumed. Breast cancer increased (shortened latency period for tumor appearance, promotion of growth, and increased mammary tumor incidence) in rodents receiving diets rich in the essential fatty acid linoleic acid (polyunsaturated fatty acid or PUFA of the n-6 family) compared to rodents consuming diets high in saturated fatty acids (Hui, 1996a). In contrast, fish oil containing different fatty acids (n-3 PUFA) inhibited mammary tumor development, probably by inhibiting the effects of linoleic acid. The incidence of colon cancer is strongly associated with diet, especially diets high in total fat and low in fiber content in laboratory animals and epidemiological studies (Hui 1996a; USDHHS, 1990). Some types of fat, such as dietary cholesterol and certain long-chain fatty acids, have been proposed as colon cancer promoters, while other types of fat (n-3 PUFA) may inhibit development of colon cancer (Hui, 1996a).

Non-Carcinogenic Toxic Effects. The non-carcinogenic toxic effects of vegetable oils and animal fats on aquatic organisms and laboratory animals are summarized in Appendix I, Table 2, briefly described below and are discussed in greater detail in the Technical Document.

Non-Carcinogenic Toxic Effects on Mussels. The detrimental environmental effects of sunflower oil have been investigated extensively in laboratory studies and in the field at the site of the 1991 wreck of the cargo tanker M.V. Kimya, where much of its 1500-tonne cargo of crude sunflower oil was spilled over a 6–9 month period (Mudge *et al.*, 1993, 1994, 1995; Mudge, 1995, 1997b; Salgado, 1992, 1995). Mussels died in the intertidal shores at sites near the wreck; in other areas where mussels survived, their lipid profiles revealed an altered fatty acid composition reflecting the fatty acids in sunflower oil (Mudge et al., 1995; Mudge, 1995, 1997a, 1997b; Salgado, 1992, 1995). Mobile species that left the spill area were replaced with other species, affecting diversity.

Sunflower oil, olive oil, rapeseed oil, and linseed oil produced several types of adverse effects in mussels at low exposure rates in the laboratory (Salgado, 1995; Mudge, 1995; Mudge, 1997a). These four vegetable oils killed mussels or reduced their growth rate as much as fivefold within 4 weeks, even at low exposure rates (1 part of oil in 1000 in a flow-through sea water system). Mussels exposed to sunflower oil were more likely to die. Exposure to sunflower oil created behavioral differences in the mussels, such as decreased foot extension activity and altered gaping patterns. Interference with foot extension activity that allows the mussels to form threads for attachment to the substratum can dislodge mussels and endanger their survival; removal of the oil reversed the effect (Salgado, 1995).

All four oils killed mussels in mortality studies in the laboratory; 10% mortality was observed in mussels exposed to sunflower oil, rapeseed oil, or olive oil for up to 4 weeks, while 70% or 80% mortality was reported when mussels were exposed to linseed oil (Salgado, 1995; Mudge, 1997b). No control mussels died. Mussels began dying the second week after exposure to linseed or sunflower oil, and later when exposed to rapeseed or olive oil. Death may have been caused by suffocation in mussels that refused to gape in the presence of the oil or by formation of a toxic metabolite. The death of mussels in aerated growth tanks where anoxia (lack of oxygen) was not the cause of death suggests that vegetable oils kill mussels through mechanisms of toxicity.

The shells of mussels exposed to the vegetable oils in the laboratory lacked the typical nacre lining, perhaps because of altered behavior in the presence of oil stressors (Salgado, 1995; Mudge, 1997a). The internal shell surfaces of mussels treated with vegetable oils were chalky in contrast to controls that exhibited an iridescent luster. Prolonged closure of the mussels in response to oil can cause anoxia and increase the acidity of the internal water with dissolution of the inner shell.

Sunflower oil from the wreck of the M.V. Kimya polymerized in water and on sediments and formed hard ''chewing gum balls'' that washed ashore over a wide area or sank, contaminating the sediments inhabited by benthic and intertidal communities near the spill (Mudge, 1995). Concrete-like aggregates of sand bound together with sunflower oil remain on the shore near the site of the M.V. Kimya spill almost six years later (Mudge, 1995, 1997a, 1997b; Mudge *et al.*, 1995). In laboratory experiments with saltmarsh sediments simulating a spill over a 35-day period, linseed oil percolated rapidly through the sediments but sunflower oil polymerized and formed an impermeable cap, reducing oxygen and water permeability (Mudge *et al.*, 1995; Mudge, 1997a). In the environment, oxygen reduction would eventually produce anoxia in sediments with the death and removal of benthic organisms, changes in species from a community that is aerobic to an anaerobic community, and erosion of the saltmarsh sediments (Mudge *et al.*, 1994, 1995).

Non-Carcinogenic Toxic Effects on Fish. Other studies have also shown that exposure to an excess of fat or fatty acids can be detrimental to fish, even though fish and other aquatic organisms require certain essential fatty acids for growth and survival. Poor growth and low feed efficiency were observed in rainbow trout fed 4% or more of certain polyunsaturated acids (Takeuchi and Watanabe, 1979). High levels of dietary fatty acids reduced growth in channel catfish; while saturated, monounsaturated, or PUFA from fish oil enhanced channel catfish growth (Stickney and Andrews, 1971, 1972). Some dietary fatty acids inhibited the growth of common carp, but saturated and monounsaturated acids and other classes of polyunsaturated fatty acids from fish oil enhanced carp growth (Murray *et al.*, 1977). More recent papers show the relatively efficient use of high levels of dietary lipid by warmwater and coldwater fishes, provided essential fatty acid requirements are met (NAS/NRC, 1981a, 1983). Increased lipid intake, however, has been associated with increased deposition of body fat.

Non-Carcinogenic Toxic Effects on Laboratory Animals. The chronic toxic effects of petroleum oils and vegetable oils and animal fats on laboratory animals are summarized in Appendix I, Table 2 and detailed in the accompanying Technical Document. High levels of dietary fat have been associated with shortened lifespan and altered reproduction in laboratory animals (NAS/NRC, 1995). While 5% dietary fat is recommended for most laboratory animals, growth usually increases significantly when animals are fed higher levels of fat. Apparently, this increased growth comes at a high cost, however, for longevity is often reduced and reproduction may be affected adversely in animals consuming high levels of fat.

The relationship between dietary fat intake and kidney diseases has been demonstrated in laboratory animals (Hui, 1996a). Rats, rabbits, and guinea pigs fed high cholesterol diets developed kidney damage. Diets containing 2% cholesterol increased the

incidence or severity of coronary atherosclerosis in rats exposed chronically to the cold (Sellers and Baker, 1960). Histological aberrations in the small intestine and nearby lymph nodes have also been reported in rats consuming high doses of fish oil concentrate in a subchronic toxicology study (Rabbani et al., 1997).

Increasing the consumption of some dietary lipid components, such as oleic acid and cholesterol, also increases the need for other fatty acids in rats (NAS/NRC, 1995). The ratios of PUFA and polyunsaturated to saturated fatty acids greatly influence tissue lipids and the formation of important compounds, such as prostaglandins. The type of fat can influence bone formation rates and fatty acid composition of cartilage in chicks (Hui, 1996a).

Toxicity of Specific Fatty Acids and Other Constituents of Vegetable Oils and Animal Fats. In addition to the adverse effects produced in humans and other animals by high fat diets or by consumption of certain classes of fats and oils, toxic effects can be produced by constituents of some animal fats and vegetable oils, including specific fatty acids and gossypol, and their transformation products (Hui, 1996a; Berardi, 1980; Yannai, 1980; Mattson, 1973). While plant breeding and processing can reduce the levels of some constituents in the final product, the constituents are present during the early stages of processing and storage of some vegetable oils and may enter the environment. Although the development of varieties of glandless, gossypol-free cottonseed and new varieties of rape seed with little erucic acid have reduced these two constituents in some oils, gossypol is found in crude oils and in oils derived from older cottonseed varieties with greater resistance to disease and insects and high amounts of erucic acid are contained in rapeseed oil used for the manufacture of lubricants and fatty acid derivatives (Hui, 1996a, 1996b). Toxic materials can be formed during normal processing procedures, heating, and storage or by reactions that occur when such materials are released in the environment. Spills of crude vegetable oils may differ greatly in their toxicity and other effects from spills of processed vegetable oils and animal fats. Figure 1: Toxicity and Adverse Effects of Components and Transformation Products of Vegetable Oils and Animal Fats illustrates the variety of toxic effects that may be caused by constituents and breakdown products of vegetable oils and animal fats. For example, small amounts of gossypol are lethal when they are ingested for prolonged periods despite the relatively high $LD_{50}$ values obtained in acute toxicity tests; fat accumulated in heart muscle of weanling rats after a single day of consuming diets containing erucic acid; and cyclopropene acids, such as sterculic acid, are liver carcinogens in rainbow trout (Berardi, 1980; Mattson, 1973; Hendricks et al., 1984). Phytoestrogens, which occur naturally in some legumes and oils, including soybean, fennel, coffee, and anise oils, exhibit estrogen-like activity in reproductive organs of laboratory animals (Hui, 1996a; Sheehan, 1995; Levy et al., 1995).

When vegetable oils are spilled, air, moisture and heat in the environment can cause these oils to form various harmful oxidation products, which may be more toxic than the original product. Releases of used oil from restaurants or releases of oil during refining may already contain toxic oxidation products that may be further oxidized in the environment. Cholesterol oxidation products or COPs that are formed by autooxidation of cholesterol when it is exposed to air, heat, photooxidation, and oxidative agents have numerous biological activities and may play a role in the development of atherosclerosis (Hui, 1996a). Lipid oxidation products (LOPs) that can be formed when unsaturated fatty acids are oxidized upon exposure to oxygen, light, and inorganic and organic catalysts have been associated with colon cancer (Hui, 1996a; Hoffmann, 1989; Lawson, 1995).

FIGURE 1. TOXICITY AND ADVERSE EFFECTS OF COMPONENTS AND TRANSFORMATION PRODUCTS OF VEGETABLE OILS AND ANIMAL FATS

| Component or transformation products | Type of oil | Effects |
|---|---|---|
| Gossypol [1,2,3] ..... | Cottonseed oil ..... | Cardiac irregularity in several species of animals, death from circulatory failure or rupture of red blood cells and decreased oxygen-carrying capacity in blood.<br>Discolors egg yolks in laying hens by interacting with yolk iron; effect decreased by ferrous sulfate, increased by cyclopropene fatty acids in cottonseed oil.<br>Crosslinks proteins in several species; reduces protein quality, uncouples respiratory-linked energy processes, reduces activity of respiratory enzymes and protein kinases and proteins involved in sterol, steroid, and fatty acid metabolism.<br>High $LD_{50}$ in acute tests for mice and swine, but small amounts are lethal when ingested for prolonged period.<br>Death from pulmonary edema in subacute poisoning; wasting and lack of assimilation of food with chronic poisoning.<br>Depressed appetite, loss of body weight, diarrhea, effects on red blood cells, heart and lung congestion, degenerative changes in liver and spleen, various pathological effects depending on species.<br>Body weight depression, reduced sperm production and motility in male rats; loss of appetite, diarrhea, hair loss, anemia, hemorrhages in stomach and intestines, congestion in stomach, intestines, lungs, and kidneys of rats.<br>Spastic paralysis of hind legs, degeneration of sciatic nerve, rapid pulse, cardiac effects in cats.<br>Posterior incoordination, stupor, lethargy, weight loss, diarrhea, vomiting, loss of appetite, lung and heart congestion, hemorrhaging of liver, fibrosis of spleen and gallbladder in dogs.<br>Stupor, lethargy, loss of appetite, spastic paralysis, decreased litter weights, congestion of large intestine, hemorrhaging in small intestines, lungs, brain, and legs in rabbits. |

FIGURE 1. TOXICITY AND ADVERSE EFFECTS OF COMPONENTS AND TRANSFORMATION PRODUCTS OF VEGETABLE OILS AND ANIMAL FATS—Continued

| Component or transformation products | Type of oil | Effects |
|---|---|---|
| | | Weight loss, decreased appetite, leg weakness, reduced red blood cells, congestion, vacuoles in liver, enlarged gallbladder and pancreas, decreased egg size, decreased egg hatchability, discolored yolk in poultry. |
| | | Thumps or labored breathing, weakness, emaciation, diarrhea, enzyme effects, hair discoloration, dilated heart, reduced hemoglobin, lipid in kidneys, widespread congestion of organs in swine. |
| | | Erratic appetite, breathing difficulties, fatty degeneration of liver, decreased blood clotting, and death in young calves but no toxicity in older ruminants. |
| | | No human toxicity in China, where gossypol used as male contraceptive, antifertility reversible. |
| Erucic Acid [2,4,5] ..... | Rapeseed oil, mustardseed oil. | Adverse effects on heart in laboratory animals; inflammation of heart in rat , fat deposition until fat content of heart 3 to 4 times normal, fat droplets visible in heart followed by mononuclear cell infiltration and replacement of fat and droplets with fibrous tissue in muscle; weanling rats accumulated fat in heart muscle after only one day; fatty infiltration of heart absent with fully hydrogenated rapeseed oil, indicating effects from erucic acid; erucic acid in heart muscle in rats exposed long-term; changes in skeletal muscle in rats. |
| | | Lipid accumulation in hearts of rats, hamsters, minipigs, squirrel monkeys and ducklings; fluid accumulation around heart and liver cirrhosis in ducklings. |
| | | Enlarged spleen, increased cell permeability and destruction of red blood cells in guinea pigs (erucic and nervonic acids in rapeseed oil). |
| | | Growth suppression in rats, pigs, chickens, turkeys, guinea pigs, hamsters, and ducklings fed rapeseed oil; suppressed body weight gain in rats fed fats plus erucic acid. |
| | | Degenerative changes in liver and kidney, fewer and smaller offspring in rats fed high levels of rapeseed oil. |
| Cyclopropene Fatty Acids [2,3,4,6,7,8,9,10]. | Cottonseed oil, kapok seed oil, cocoa butter. | Discolors egg whites, can be removed by hydrogenation; growth suppression in rats; reduced comb development in roosters. |
| | | Impaired female reproduction in laboratory animals and hens; depressed egg production, reversible in hens; embryomortality in hens and rats; developmental abnormalities in rats, increased mortality in rat pups. |
| | | Liver carcinogen in rainbow trout; increases carcinogenic effects of other chemicals; adverse effects on cholesterol and fatty acid metabolism in several species; aortic atherosclerosis in rabbits; liver damage in rabbits and rainbow trout. |
| Oxidation Products [2,4,11,12,13,14,15]. | Many vegetable oils and animal fats. | Cholesterol Oxidation Products (COPs): Numerous biological activities include adverse effects on blood vessels, destruction of cells, mutagenicity, suppression of immune response, inhibition of certain metabolic mechanisms; may contribute to development of atherosclerosis. |
| | | Lipid Oxidation Products (LOPs): Associated with colon cancer; lipid peroxides act as cancer promoters or cocarcinogens and form crosslinks between DNA and proteins; lipid peroxidation correlated with severity of atherosclerosis. |
| | | Oxidative fatty acid fraction of products of thermal and oxidative changes from prolonged heating of fats and oils in laboratory studies (may not simulate commercial heat treatment); severe heart lesions, distended stomach, kidney damage, hemorrhage of liver and other tissues, reduced liver enzyme activity in laboratory animals; reduced body weight gain and feed consumption, enlarged liver and kidney, damage to thymus and sperm reservoir, diarrhea, skin inflammation, and fur loss in weanling rats fed heated corn and peanut oil; reduced antioxidant tocopherol in gastrointestinal tract of chicks fed thermally oxidized PUFA; reports of formation of cocarcinogens during heating of corn oil and promotion of chemically-induced mammary tumors. |
| Branched Chain Fatty Acids [3,4,16]. | Ruminant fats, dairy products. | Individuals with genetic disorder Refsum's syndrome: neurological abnormalities resulting from inability to metabolize branched chain fatty acids. |

[1] Berardi and Goldblatt, 1980
[2] Hui, 1996a
[3] Hayes, 1982
[4] Mattson, 1973
[5] Roine et al., 1960
[6] Phelps et al., 1965
[7] Lee et al., 1968
[8] Miller et al., 1969
[9] Hendricks et al., 1980a
[10] Hendricks et al., 1980b
[11] Yannai, 1980
[12] Boyd, 1973
[13] Frankel, 1984
[14] Artman, 1969
[15] Andrews et al, 1960
[16] Steinberg et al., 1971

6. Epidemiological Studies

Although the focus of this document is the environmental effects of spilled vegetable oils and animal fats, a brief discussion of the effects of these oils on human health is included for several reasons. First, the ENVIRON report submitted by the Petitioners incorrectly states that there are no accumulating or otherwise harmful components in animal fats and vegetable oils that are irritating, toxic, or carcinogenic; and that animal fats and vegetable oils are consumed safely by wildlife and humans. The large number of human health studies, many with a substantial population size, provide a significant data base for examining the effects of long-term oral exposure to fats and certain classes of fats or their components or degradation products.

Second, humans may be exposed to spilled non-petroleum and petroleum oils through several routes. Inhalation of harmful vapors and dusts or mists and aerosols is often a significant route of human exposure to spilled petroleum oils, though it is rarely an important exposure route of less volatile vegetable oils and animal fats.

Third, humans and many animals often handle chemicals by similar mechanisms in the body and exhibit similar toxic effects, a tenet underlying the frequent use of animal tests in evaluations of human health risk. For example, certain PAHs that are human carcinogens also cause cancer in laboratory animals and in fish and other aquatic organisms in the environment. Thus, the findings of epidemiology studies are relevant to the evaluation of mechanisms of toxicity in animals, particularly when the epidemiology studies are large enough to overcome statistical limitations that are found with smaller data sets.

*a. Human Health.* Although fat is a major component of the human diet, the consumption of high amounts of fat or certain types of dietary fats and oils has been associated with several chronic diseases (Hui, 1996a; FAO/WHO, 1994; Nelson, 1990; Katan *et al.*, 1995). In a number of epidemiology studies, the intake of dietary fat and some fat types (e.g., saturated fats, unsaturated fats, polyunsaturated fatty acids, trans-fatty acids, cholesterol) has been correlated with the incidence of coronary artery disease. Dietary fat consumption has been associated with the incidence of certain types of cancer, including mammary and colon cancer, presumably because dietary fat is acting as a cancer promoter. Dietary fat intake has also been linked to hypertension, diabetes, and obesity (Hui, 1996a). Other studies report that high dietary fat intake is related to altered immunity and altered steroid excretion and may affect bone modeling and remodeling.

In many animal and human studies, dietary fat intake has been linked to cardiovascular disease and atherosclerosis through its effects on the levels of cholesterol and triglycerides in plasma and the lipid composition of lipoproteins (Hui, 1996a). A 2% rise in risk of coronary heart disease has been predicted for every 1% increase in serum cholesterol. The American Heart Association, American Cancer Society, and National Cancer Institute have recommended lowering fat intake to 30% of total consumed calories in adults; the American Heart Association also recommends limiting the intake of polyunsaturated fatty acids to less than 10% of calories and replacing saturated acids with monounsaturated acids (USDHHS, 1990; FAO/WHO, 1994; Hui 1996a).

*b. Comparison of Effects From Oil Spills With Human Consumption of Vegetable Oils and Animal Fats.* The ENVIRON report, which was submitted by the Petitioners, draws incorrect comparisons between the human consumption of vegetable oils and animal fats and the environmental effects of oil spills. The effects on humans who consume small quantities of vegetable oils and animal fats in their foods cannot be easily translated to environmental effects produced by oil spills. These situations differ in many respects. A few of the differences are highlighted below:

- Differences in factors relating to the host organism: Sensitivity; humans may not be the most sensitive species. Species differences; while similarities in metabolism and biokinetic parameters exist between some species, it is often unclear how effects on humans can be translated to effects on fish. Differences in susceptibility; there are no controls for differences in genetics, age, life-stage, strain, gender, health, nutritional status, presence of other chemicals, or other factors inherent to the exposed organisms.
- Differences in dose-response relationships. It is unclear how dose-response relationship can be extrapolated from humans to other species, even if such information had been provided.
- Exposure. Exposure differs in route, frequency, and duration. Animals are exposed to large quantities of oil during an oil spill, and the exposure may be short-term or long-term. The animals may ingest the oil, or they may be exposed through their gills or skin. Humans consuming foods, however, are exposed to small quantities of oils for intermittent periods of time, and their exposure is via ingestion only.
- Differences in chemical composition. The composition of oils used in small quantities in processed foods may differ from the composition of the oils spilled in the environment, particularly when the oils are acted upon by chemical and biological processes in the environment.
- Environmental factors. The effects of oil in the environment depend on a wide variety of factors, including pH and temperature. These factors are different from those that affect humans consuming food oils.
- Effects. Effects, such as reduced egg hatchability or effects on molting, cannot be measured in humans.
- Ecosystems. Ecosystems, food webs, and predator-prey relationships can be affected by oil spills; these are not factors in determining human health effects.
- Statistical power of studies. Those epidemiologic studies with large numbers of people have demonstrated possible adverse effects from consumption of high levels of dietary fat or types of fat. Negative studies may indicate that too few subjects were included in the study or that confounding factors obscured the effect because of statistical limitations of the methodology.

7. Other Adverse Effects of Oil Spills

*a. Aesthetic Effects: Fouling and Rancidity.* Fouling of beaches and shoreline and rancid odors have been reported after spills of vegetable oils and animal fats; some real-world examples are provided in section II.D.2. Rancidity is the deterioration of fats and oils in the presence of oxygen (oxidative rancidity) or water (hydrolytic rancidity) with formation of off-flavors and odors (Hui, 1996b, 1996d; Kiritsakis, 1990). The hydrolysis and oxidation of spilled vegetable oils and animal fats and decomposition of hydroperoxides leads to formation of aldehydes, ketones, fatty acids, hydroperoxides, and other compounds that produce off-flavors and rancid odors. Rancidity occurs especially with oils that contain PUFA, such as linoleic acid (Hui, 1996a). Fish oils, which contain high levels of PUFA, are especially susceptible to oxidative rancidity and production of toxic byproducts and are often supplemented with antioxidants to reduce their oxidation.

Unlike vegetable oils and animal fats, rancid odors have not been reported following petroleum oil spills, although off-flavors and tainting of fish have occurred (Crump-Wiesner, 1975;

Hartung, 1995). Fish collected near petroleum refineries or in petroleum-polluted areas can be tainted (Lee, 1977), and commercial species have been contaminated with petroleum oils (Michael, 1977). Thousands of observations of floating tar balls and beach tar have been tabulated over a 4-year period in a petroleum monitoring project for marine pollution (NAS, 1985d).

*b. Fire Hazards.* While some petroleum oils and products present fire and explosion hazards, most vegetable oils and animal fats do not, unless flammable chemicals, such as hexane used during processing, are present or temperatures are elevated. A few vegetable oils, such as coconut oil (copra oil) are spontaneously combustible (Lewis, 1996). Because of their low vapor pressures, some petroleum products are highly volatile and flammable. In addition, most vegetable oils and animal fats have a high flash point (temperature at which decomposition products can be ignited), while the flash point for many petroleum products is below or near room temperature.

Although most vegetable oils and animal fats do not easily catch fire by themselves, once fires begin they are difficult to extinguish and may cause considerable environmental damage. For example, a butter and lard fire in Wisconsin that was apparently started by an electric forklift resulted in the release of some 15 million pounds of melted butter that threatened nearby aquatic resources (Wisconsin, 1991a, 1991b, 1991c; Wisconsin State Journal, 1991a, 1991b, 1991c, 1991d, 1991e).

*c. Effects on Water Treatment.* Oils and greases of animal and vegetable origin and those associated with petroleum sources have long been a concern in wastewater control (USEPA, 1979; Metcalf and Eddy, 1972). Too much oil, i.e., spills or discharges of oil and grease to a municipal wastewater treatment system in quantities that exceed the levels the treatment plant was designed to handle, can overwhelm the water treatment plant that maintains sanitary conditions and removes water pollutants that are harmful to aquatic organisms or interfere with the recreational value of waters (Institute, 1985; Metcalf and Eddy, 1972). Certain fatty acid products, such as quaternary amines, may inhibit biological treatment and affect in-plant facilities and downstream municipal sanitary sewage treatment facilities (Hui, 1996d).

Under normal operations, floating oil can be removed before wastewater is discharged to water treatment plants, and highly variable discharges of flow and organics can be minimized (Institute, 1985). With large quantities of spilled oil and high organic loads, however, these conditions may not be controlled adequately and water treatment systems can be damaged. To prevent potential damage to water treatment plants from oil spills, officials may halt water treatment and interrupt water supplies, as occurred when 15 municipal drinking water intakes were shut down following a spill of one million gallons of diesel fuel from a collapsed storage tank at the Ashland Oil facility in Floreffe, Pennsylvania in 1988 (USEPA, 1988).

8. FWS Comments

The FWS submitted a memorandum with the following position to the EPA in 1994. The potential for harm from petroleum and non-petroleum oils is equivalent; the path to injury is different. Edible non-petroleum oils cause chronic effects with the potential of mortality. Both petroleum and non-petroleum oil impact natural resources through the fouling of coats and plumage of wildlife. Secondary effects from fouling include drowning, mortality by predation, starvation, and suffocation. The removal of edible oil is more difficult and strenuous for wildlife due to the low viscosity of vegetable oil, which allows deeper penetration into body plumage or fur and thorough contamination of the wildlife.

Edible oils ingested in large quantities can cause lipid pneumonia. Edible oil consumed by wildlife during preening or cleaning of their coats also acts as a laxative resulting in diarrhea and dehydration. Small amounts of edible oil on plumage can cause thermal circulation troubles and embryo death in eggs exposed to oil through disruption of egg/air interface (USDOI/FWS, 1994).

### *C. Petitioners' Claim: Animal Fats and Vegetable Oils Are Essential Components of Human and Wildlife Diets*

Petitioners claim that animal fats and vegetable oils are essential components of human and wildlife diets.

EPA Response: While EPA agrees that some components of animal fats and vegetable oils are essential components of human and wildlife diets, EPA disagrees with the Petitioners that all animal fats and vegetable oils are essential components of human and wildlife diets. Most species require only one or two essential fatty acids. Most animals need some level of fat to supply energy and fat-soluble vitamins. Intake of high levels of dietary fat, some types of fat, and essential fatty acids, however, can cause adverse effects.

While low levels of certain chemicals are essential for health, exposure to high levels of these chemicals produces toxicity. Numerous examples in the scientific literature demonstrate that essentiality does not confer safety and essential elements can produce toxic effects. Among these chemicals are vitamin A; the fatty acid a-linolenic acid, an essential fatty acid in humans and coldwater fish; and trace metals such as iron, manganese, selenium, and copper (Klaassen et al., 1986; NAS, 1977a; USEPA, 1980; Rand and Petrocelli, 1985; Abernathy, 1992; Hui, 1996a; NAS/NRC 1981a).

Further, high levels of fats and oils alter the requirements for essential fatty acids and change the balance between certain types of lipids and fatty acids. For many species of fish and laboratory animals, levels of essential fatty acids must be increased for the animals to tolerate high lipid levels (NAS/NRC, 1983, 1995). High levels of some fatty acids (n-6 PUFA, including the essential fatty acid linoleic acid) deplete other fatty acids (n-3 PUFA, including the essential fatty acid a-linolenic acid), thereby creating nutritional deficiency. In addition, constituents of vegetable oils and animal fats also affect requirements for essential fatty acids. Erucic acid, a constituent of rapeseed oil, adversely affects reproduction in rats by interfering with the metabolism of essential fatty acids (Roine *et al.*, 1960).

Animals often die from starvation after oil spills destroy their food supply by oiling food or making it unavailable. In addition to a reduction in food supply and a need to consume twice their normal amount of food to maintain body temperature (Hartung, 1965; 1995), oiled birds that are unable to float or fly cannot retrieve food from the water that usually provides their food. Bird rescuers have described dead birds with organs were filled with oil after eating oiled food or consuming oil while preening their feathers to remove oil (Croxall, 1975; Lyall, 1991; Frink and Miller, 1995). Thus, EPA finds that Petitioners' arguments are non-persuasive and have little relevance to the large quantities of oil released into the environment from oil spills.

1. Nutritional Requirements for Dietary Fat

In addition to their roles in cellular structure, membrane integrity, and microsomal enzyme function, fats play an important nutritional role by supplying energy and essential nutrients (Rechigl, 1981; Hui, 1996b; Van Soest,

1982). The caloric value of fats is more than twice that of carbohydrates or proteins (Hui, 1996a). Fats are a source of the fat-soluble vitamins A, D, E, and K and are rich in antioxidants, including tocopherols, such as vitamin E, and carotenes such as provitamin A. They also facilitate the digestion and absorption of vitamins.

The nutritional requirements for dietary fat vary greatly among species. A diet containing about 5% dietary fat is recommended for most laboratory animals (NAS/NRC, 1995). Growth usually increases greatly in animals fed a diet containing higher levels of fat, but lifespans are shortened and lactation performance and reproduction adversely affected in rats fed diets with 30% lipid (French *et al.,* 1953). In minks, diets with 35–40% fat have been satisfactory for meeting energy requirements, but higher levels (44–53%) are recommended for fur development, pregnancy and lactation (NAS/NRC, 1992.) Up to 44% fresh fat was used in fox diets without detrimental effects (NAS/NRC, 1992). For coldwater fish, 10% to 20% lipid is needed in diets, and higher levels of lipid alter carcass composition by deposition of excess lipid and reduction of the percentage of body protein (NAS/NRC, 1981a).

Nutritional requirements for fats are affected by environmental influences and the health status of the organisms. Birds must consume twice as much food after a spill for thermal regulation (Hartung, 1967). In laboratory animals, the requirement for certain fatty acids (n-6 PUFA) is increased during lactation (NAS/NRC, 1995).

For many animals (cattle, goats, and sheep), vitamin and energy requirements rather than specific dietary requirements for fat are enumerated (NAS/NRC 1981b; NAS/NRC, 1985; NAS/NRC, 1984). Certain types of fat are necessary for other animals. For example, sterols and perhaps lecithin are necessary for crustaceans (NAS/NRC, 1983).

Dietary Requirements of Wild Animals. Unlike domestic animals that are fed under regimens to maximize their productivity, wild animals and free-ranging domestic animals may have different nutritional requirements for their survival, growth, and reproduction (Van Soest, 1982). Diets that promote growth and obesity may also shorten life and are undesirable for wild animals.

2. Essential Fatty Acids (EFA)

Certain unsaturated fatty acids that must be supplied in the diet are called essential, because humans or other animals lack the enzymes to synthesize them (Hui, 1996a; Rechigl, 1983). Two fatty acids are considered essential in humans—linoleic acid and a-linolenic acid (Hui 1996a). These essential fatty acids are required for fetal development and growth. Long-chain n-3 polyunsaturated fatty acids, such as a-linolenic acid, are needed by the brain and retina; learning disabilities and loss of visual acuity have been observed in animals with low levels of these fatty acids. A balance of PUFA from both the n-6 and n-3 families is needed to maintain health (Hui, 1996a).

EFA requirements differ according to species. In chickens, 1% of the EFA linoleic acid is required; the essentiality of a-linolenic acid has not yet been proven for poultry (NAS/NRC, 1994). Linoleic acid is an EFA for pigs; arachidonic, which is generally added to swine diets, can be synthesized from linoleic acid (NAS/NRC, 1988). Minks require linoleic acid, and rabbits can develop EFA deficiency (NAS/NRC, 1992, 1977b). Silver foxes need 2 to 3 grams of EFA linoleic and linolenic acids daily to prevent skin problems and dandruff (NAS/NRC, 1992). The dietary EFA requirements of ruminants are about an order of magnitude lower than those of non-ruminants (Van Soest, 1982).

Studies of fish and crustaceans demonstrate that EFA requirements of aquatic animals vary with species and are apparently related to the ability of the animals to convert linolenic acid (18:3w3) to highly unsaturated fatty acids (Kanazawa et al., 1979). While some animals can synthesize necessary fatty acids, others require them in their diets. The n-3 fatty acids are essential for good health and growth in rainbow trout, red sea bream, and turbot (NAS/NRC, 1981a). For chum salmon, the requirement for linoleic and linolenic acids is 1%, or 0.5–1% for n-3 PUFA in the diet. For coho salmon, the optimal level of n-3 fatty acids is 1–2.5%, and the optimal level of n-3 plus n-6 fatty acids appears to be approximately 2.5%. EFA requirements can be affected by many factors, including fat content of the diet and temperature. In fish, EFA requirements change with temperature and culture conditions (NAS/NRC, 1983, 1981a.)

3. Adverse Effects of High Levels of EFAs

While certain levels of fat and essential fatty acids are necessary, higher levels can produce adverse effects. Although requirements for linolenic acid, a n-3 polyunsaturated fatty acid, are as high as 0.5% of total caloric intake in humans, consumption of a diet high in the same family of fatty acids (n-3 PUFA) may cause oxidative stress to cell membranes through lipid oxidation reactions, thereby increasing requirements for antioxidants (Hui, 1996a).

A balance of types of lipid and various fatty acids is needed. For example, many species of fish and laboratory animals tolerate high levels of lipid if the essential fatty acid levels are increased. (NAS/NRC, 1983, 1995). Similarly, a high level of other dietary components can increase the need for certain PUFAs (n–6 PUFA) in rats, and alter the fatty acid balance (between n–6 PUFA and n–3 PUFA) (NAS/NRC, 1995). High levels of some fatty acids (n–6 PUFA) deplete other fatty acids (n–3 PUFA), thereby creating adverse effects associated with nutritional deficiency.

Compared to rodents consuming diets high in saturated fatty acids, rodents receiving diets rich in linoleic acid—one of the two essential fatty acids for humans—exhibited increased development of breast tumors, including a shortened latency period for tumor appearance, promotion of tumor growth, and increased incidence of mammary tumors (Hui, 1996a). Once the dietary linoleic acid exceeded 4–5% of total calories, saturated or unsaturated fats linearly increased tumor incidence. Dietary linoleic acid enhanced the spread of mammary tumors to lungs in rats, apparently by acting as a cancer promoter. Fish oil, which contains n–3 PUFAs, inhibited mammary tumor development, apparently inhibiting the effects of linoleic acid.

The importance of balance in essential fatty acids is clearly seen in studies of coldwater fish. An optimum level of unsaturated fatty acids is required for maximum growth of coldwater fish, and the requirement for n–3 fatty acids may be species-specific (NAS/NRC, 1981a). EFA deficiency is characterized by poor growth as well as numerous other symptoms, and the deficiency of most symptoms can be reversed with certain fatty acids (n–3 PUFA); the addition of other fatty acids (n–6 PUFA) to the diet reverses some symptoms, while others are aggravated.

In coho salmon, extremely low and high levels of n–3 fatty acids inhibit growth; concentrations of n–6 fatty acids above 1% also depressed growth (NAS/NRC, 1981a). In studies of rainbow trout fed different levels of triglycerides containing n–3 and n–6 fatty acids in diets containing 10% lipid, growth was reduced when diets were deficient in n–3 fatty acids, high in n–6 and low in n–3 fatty acids, or high in both n–3 and n–6 fatty acids.

4. Adverse Effects of High Levels of Fats and Oils

Although fat intake is necessary to provide energy, vitamins, and EFA, ingestion of high levels of dietary fat can cause adverse effects in fish and aquatic species, other animals, and humans. The adverse effects of consumption of high levels of dietary fat and certain classes of fat by humans and animals have been discussed extensively in section II.C.3.

5. Relevance of EFA Principles to Spills

For most animals, only one or two fatty acids are essential, and these are not necessarily the fatty acids present in an oil spill. Animals require only small quantities of these EFAs that are provided in a normal diet, and these quantities must be in balance. While low levels of one or two fatty acids are needed by some species, in several species tested, high levels of these fatty acids produce adverse effects by toxicity or by creating nutrient imbalances that deplete other essential nutrients.

After a spill, high levels of animal fats and vegetable oils other than the EFA are present in the environment. High levels of total dietary fat, certain classes of fats, imbalances of types of fat, and some components and breakdown products produce adverse effects in laboratory animals and in some animals that have been examined in the field and are associated with adverse effects in humans. Further, some constituents of vegetable oils, such as erucic acid in cottonseed oil, actually interfere with EFA metabolism, thereby causing adverse effects (Roine et al., 1960).

When food is coated with oil from a spill of vegetable oils or animal fats, animals are unable to forage or consume the food or suffer the consequences of ingesting large quantities of oil as they consume food. Oil-coated birds die of hypothermia or starvation when they are unable to obtain or consume twice their normal amount of food to provide the increased metabolic requirements needed to survive oil spills.

Some oils, their constituents, or transformation products remain in the environment for years. By contaminating the food source biomass, reducing breeding animals and plants that provide future food sources, contaminating nesting habitats, and reducing reproductive success through contamination and reduced hatchability of eggs, oil spills can cause long-term effects for years even if the oil remains in the environment for relatively short periods of time.

6. FWS Comments on Essential Fatty Acids

The FWS commented that although fats and oils are used by cells of living organisms in small amounts, too much will cause harm to organisms through means other than toxicity. Ingestion of concentrated vegetable oil or animal fat could cause indigestion, nausea, and diarrhea. This could incapacitate a bird or mammal (USDOI/FWS, 1994).

*D. Petitioners' Claim: Animal Fats and Vegetable Oils Are Readily Biodegradable and Do Not Persist in the Environment*

EPA disagrees with Petitioners' claim that all animal fats and vegetable oils are readily biodegradable and notes that when biodegradation does occur in the environment, it can lead to oxygen depletion and death of fish and other aquatic organisms. Some products formed by biodegradation and other transformation processes are more toxic than the original oils and fats. While some animal fats and vegetable oils are degraded rapidly under certain conditions, others persist in the environment years after the oil was spilled (Mudge *et al.*, 1995; Mudge, 1995, 1997a, 1997b). Further, spilled animal fats and vegetable oils can cause long-term deleterious environmental effects even if they remain in the environment for relatively short periods of time, because they destroy existing and future food sources, reduce breeding animals and plants, and contaminate eggs and nesting habitats.

Every spill is different. How long the vegetable oil or animal fat remains in the environment after it is spilled, what proportion of the oil is degraded and at what rate, what products are formed, and where the oil and its products are transported and distributed are determined by the properties of the oil itself and those of the environment where the oils is spilled. Factors such as pH (acidity), temperature, oxygen concentration, dispersal of oil, the presence of other chemicals, soil characteristics, nutrient quantities, and populations of various microorganisms at the location of the spill profoundly influence the degradation of oil.

Like petroleum oils, vegetable oils and animal fats can float on water, settle on sediments or shorelines, and form emulsions when there is agitation or prolonged exposure to heat or light (Crump-Wiesner and Jennings, 1975; DOC/NOAA, 1992, 1996). Environmental processes can alter the chemical composition and environmental behavior of the spilled oils and influence their proximity to environmentally sensitive areas and the environmental damage they cause.

The detrimental environmental effects of several spills of vegetable oils and animal fats are described below and in Appendix I, Table 4: Effects of Real-World Oil Spills. These reports provide examples of the effects of some specific spills where death, injuries, and damage were observed. No structured survey on the effects and numbers of victims of spills of vegetable oils and animal fats has been conducted (Rozemeijer *et al.*, 1992). Because birds and other animals show only a ''wet look'' when they are coated with vegetable oils and animal fats, they are difficult to identify and may never be found if they sink when they die or are consumed by predators (NAS, 1985e).

1. Chemical and Biological Processes Affecting Vegetable Oils and Animal Fats in the Environment

Vegetable oils and animal fats that are spilled in the environment can be transported and transformed by a wide variety of physical, chemical, and biological processes that alter the composition of the oil, its fate in the environment, and its toxicity. Oil that is spilled in inland waters, such as small rivers and streams, may be especially harmful if there are limited oxygen resources in the water body and little dispersal of the oil (NOAA/FWS, 1996).

Whether the toxicity of these transformation products formed by chemical and biological processes increases compared to that of the original oil depends on the specific oil and the products that are formed. For example, lipid oxidation products that are formed following exposure of fats to oxygen, light, and inorganic and organic catalysts have been associated with colon cancer; and cholesterol oxidation products that are formed by autoxidation of cholesterol exposed to air, heat, photooxidation, and oxidation agents have numerous biological activities (Hui, 1996a). (See section II.B.5.d for a discussion of the toxicity of transformation products.)

*a. Chemical Processes.* The fate of petroleum and non-petroleum oils can be altered by environmental processes. Primary weathering processes include spreading, evaporation, dissolution, dispersion, emulsification, and sedimentation (DOC/NOAA, 1992a, 1994, 1996). The rate and relative importance of each of these processes depends on the specific oil that is spilled and environmental conditions that are present and that may change over time. Wind transport, photochemical degradation, and microbial degradation may also play

important roles in the transformation of petroleum oils, vegetable oils and animal fats.

Different parts of the ecosystem are affected as the composition of the spilled oil changes. For example, weathered petroleum oils penetrate into marsh vegetation less than fresh oil, for weathered oil is composed of relatively insoluble compounds and often forms mats or tarballs (DOC/NOAA, 1994; Hartung, 1995; NAS, 1985e). Thus, weathering decreases the potential exposure to fish through the water column while increasing the potential exposure of species that ingest tarballs. As the lighter fractions dissolve or evaporate, oil sinks, thereby contaminating sediments and contributing to water column toxicity. Spilled sunflower oil is hydrolyzed and polymerized to chewing gum balls that can be washed ashore or can sink and cover sediments, thereby exposing benthic and intertidal marine communities (Mudge, 1993).

Vegetable oils and animal fats can undergo several types of chemical reactions. They can be hydrolyzed to yield free fatty acids and diglycerides, monoglycerides, or glycerol; this hydrolysis can be catalyzed by acids, bases, enzymes, and other substances (Hui, 1996a; Lawson, 1995; Kiritsakis, 1990; Hoffmann, 1989). Vegetable oils and animal fats can be oxidized to form hydroperoxides and free radicals which perpetuate the oxidation reaction until they are destroyed by reacting with other chemicals, such as natural or added antioxidants. The free radicals that initiate an autoxidation reaction are formed by decomposition of hydroperoxides, exposure to heat or light, or other means. COPs are formed by autoxidation of cholesterol that is exposed to air, heat, photooxidation, and oxidative agents derived from dietary sources and metabolism (Hui, 1996a).

Several types of reactions can occur during processing, cooking, or storage of fats and oils, including hydrogenation of unsaturated fatty acids in oils (hardening); esterification; interesterification, including transesterification; and halogenation (Lawson, 1995; Hui, 1996a; Hoffmann, 1989; Yannai, 1980). Thermal oxidation and polymerization during cooking, frying, or processing operations at high temperatures, generally between 180°C to 250°C, can lead to conjugation (act of being joined) of polyunsaturated fatty acids and cylization and the formation of volatile decomposition products.

*b. Biological Processes.* Petroleum oils and vegetable oils and animal fats that are spilled in the environment can be transformed by bacteria, yeast, fungi, and other microorganisms. Although microbial degradation rarely occurs when there are controlled conditions during normal storage of animal fats and vegetable oils, microorganisms can grow on vegetable oils and animal fats and degrade them when environmental conditions are favorable (Ratledge, 1994).

Investigations of biological approaches to remediating sites contaminated with petroleum oils have shown that numerous environmental factors must be carefully controlled for biodegradation to be effective in reducing contamination from oily materials in soil (Venosa et al., 1996; Salanitro *et al.*, 1997). While bioremediation has been used for soil cleanup at some petroleum-contaminated sites (e.g., in tests at refineries, in treatment of oily sludges in oil and gas operations, and at pipeline sites for spills of crude oil), successful cleanup requires management of appropriate levels of applied waste to soil, aeration and mixing, nutrient fertilizer addition according to the ratios of carbon: nitrogen: phosphorus present, pH amendment, and moisture control to optimize degradation by soil micoorganisms (Salanitro *et al.*, 1997). The extent of biodegradation apparently depends upon the type of soil and crude oil involved.

The promise and the limitations of microbial degradation have been highlighted in numerous studies of factors influencing the microbial utilization of animal fats and vegetable oils (Ratledge, 1994). These studies were conducted in experimental cultures and cannot be applied readily to cleanups of oil spills, where control of pH, oil dispersal, and nutrient supplementation are difficult to achieve. They are described briefly, primarily to illustrate the complexity of biotransformation processes, the many factors that can affect biodegradation, and the difficulty in accurately reflecting conditions and determining rates of biodegradation or other transformation processes at specific spill locations. A more detailed discussion of the microbial degradation of vegetable oils and animal fats is provided in the accompanying Technical Document. (See Technical Document, Claims V and VI, Biological Processes, Section A.)

Factors that affect the biodegradation of oils include pH, dispersal of oil, dissolved oxygen, presence of nutrients in the proper proportions, soil type, type of oil, and the concentration of undissociated fatty acids in water. In addition to microorganisms, other biota can also alter the chemical composition of vegetable oils and animal fats. The reactions may depend on the species, for organisms such as invertebrates, lack enzymes that participate in certain metabolic pathways found in other organisms.

*c. Rancidity.* Biological and chemical processes can lead to the formation of rancid products that cause off-flavors and unpleasant odors. Rancidity results from the oxidation of unsaturated fatty acids that are acted upon by peroxide radicals or enzymes to form a variety of products, some of which are toxic (Hui, 1996a; Yannai, 1980). Rancidity can also be produced by hydrolysis of triglycerides and lipolysis by microorganisms or natural enzymes (Kiritsakis, 1990). The hydrolysis and oxidation of spilled vegetable oils and animal fats leads to formation of aldehydes, ketones, fatty acids, and other compounds responsible for off-flavors and rancid odors. The rate of rancidity increases with thermal decomposition of fats (Hui, 1996a), although enzymatic peroxidation and oxidation of unsaturated fatty acids by lipoxygenases can also occur in plant food stuffs even during storage at low temperature and in the dark (Yannai, 1980).

2. Environmental Fate and Effects of Spilled Vegetable Oils and Animal Fats: Real-World Examples

The reports in this section describe the spread of vegetable oils and animal fats after spills into the environment and detail the deleterious effects produced by these spills. While some aspects of specific spills have been discussed earlier, the examples presented below demonstrate that factors such as the nature of the oil, its environmental fate, and proximity of the spill to environmentally sensitive areas determine the adverse effects of spills of vegetable oils and animal fats in the environment. Many spills are never reported. Animals injured or killed by oils may never be found, for they are highly vulnerable to predators or may drown and sink (USDOI, 1994; Frink, 1994; NAS, 1985e). Thus, the reports that are summarized in Appendix I, Table 4 and below are not a comprehensive study of the adverse environmental effects of spills of vegetable oils and animal fats, but rather a snapshot revealing some of the deleterious effects caused by spills of oil into the environment.

Minnesota Soybean Oil and Petroleum Oil Spills. Oil from two spills in Minnesota killed thousands of ducks and other waterfowl and wildlife or injured them through coating with oil. The peak of waterfowl damage occurred

within two days of the breakup of ice on the Minnesota and Mississippi rivers in the spring of 1963 (Minnesota, 1963; USDHHS, 1963). There were two sources of oil—an estimated 1 million to 1.5 million gallons of soybean oil that entered the Minnesota River via the Blue Earth River when storage facilities failed at a plant in Mankato, Minnesota; and an estimated 1 million gallons of low viscosity cutting oil that escaped to the Minnesota River near Savage, Minnesota, from a marsh that was flooded with oil when storage facilities failed. Oil spilled during the winter months from mechanical failure of storage tanks or pipelines, moved little until the breakup of ice in the spring. The varnish-like covering of willows on the river banks showed that the soybean oil had escaped into the river during the spring run-off.

While the petroleum oil and soybean oil slicks could not be distinguished by field observation, laboratory analysis of samples of oil and oil scraped from ducks revealed that soybean oil caused much of the waterfowl loss (Minnesota, 1963). Approximately 5,300 birds were affected or killed by oil, including 1369 live oil-soaked ducks rescued and 1842 dead birds collected. They included lesser scaup ducks, ringnecked ducks, coots and grebes, several other types of ducks, gulls, and mergansers, and a cormorant. While some birds may have been counted more than once, the numbers probably underestimate the impact of the oil spills, because ducks covered with oil crawl into dense cover and are hard to find.

Mammals and other dead animals were reported, including about 26 beaver, 177 muskrats, and 50 others, among them turtles, herons, kingfisher, songbirds, other birds, skunk, squirrel, dog, and cows (Minnesota, 1963). The death of 7,000 fish was attributed to causes other than oil pollution, because winterkill is common in shallow backwater areas of the river and a BOD study indicated that the sample analyzed would not have sufficient oxygen demand to significantly affect oxygen resources in the river. Bottom fauna used as fish food may have been affected temporarily in localized areas.

The character of the soybean oil on and in the water changed with time, as thick orange-colored slicks that were first observed changed to pliable greyish and somewhat rubbery floating masses that were stringy or somewhat rounded and were sometimes surrounded by a light oil slick (Minnesota, 1963). Limited areas of the bottom were covered.

Oil that normally floated on the surface of the river tended to sink to the lake bottom or settled into low areas of the river bottom near the shoreline, apparently because of entrapment of heavy materials in the oily mass. A sample of soybean oil collected from the bottom of the lake contained sand, dirt, twigs, and leaves when it was analyzed in the laboratory.

Soybean oil also mixed with sand on the beach, creating a hard crust 3 feet above water level. White balls, apparently from soybean oil that was once near the surface of a lake, moved toward shore and broke up into long, white stringy material that collected on shore. Pools of tough, milky material covered with brown scum were found in low areas of the beach along with a hard varnish-like crust on the beach.

Spill of Coconut Oil, Palm Oil, and Edible Materials. In 1975, a cargo ship that was carrying primarily vegetable oils and edible raw materials (copra or dried coconut meat, palm oil, coconut oil, and cocoa beans) went aground on Fanning Atoll, Line Island and dumped its cargo onto a pristine coral reef (Russell and Carlson, 1978). The effects of the oily substances were similar to those following a petroleum oil spill. Fish, crustaceans, and mollusks were killed. Shifts in the algal community were observed, with excessive growth of some types of green algae and the elimination of other algal competitors. The effects on the algal community continued for about 11 months.

Sunflower Oil Spill in North Wales. When a cargo of unrefined sunflower oil was spilled into the environment off the coast of Anglesey, North Wales in January 1991, surface slicks of the oil were formed for many miles around the ship (Mudge *et al.,* 1993; Salgado, 1992, 1995). Some oil was hydrolyzed and polymerized to form ''chewing gum balls'' that were washed ashore over a wide area. The denser balls sank, allowing the sunflower oil to contact a wide range of benthic and intertidal communities near the spill. Sunflower oil polymerized in seawater and formed lumps that could not be degraded by bacteria.

Mussels that were near the spill died. Polymerized sunflower oil formed a cap that reduced the permeability of sediments to water and oxygen and killed organisms living on the sediments (Mudge et al., 1993, 1995, Mudge, 1995). Polymerization of sunflower oil that washed ashore produced concrete-like aggregates that still persist nearly 6 years after the spill (Mudge, 1997a, 1997b).

Rapeseed Oil Spills in Vancouver Harbor. Three small spills of rapeseed oil caused greater losses of birds than 176 spills of petroleum oils over a 5-year period in Vancouver harbor from 1974 to 1978 (McKelvey et al., 1980). An estimated 35 barrels of rapeseed oil killed an estimated 500 birds, while all of the petroleum oil spills combined oiled less than 50 birds, perhaps because the vegetable oils lacked the strong, irritating odor of petroleum or its eye-catching iridescence. Both petroleum and non-petroleum oils coat the feathers of birds, destroying their waterproofing qualities and allowing water to penetrate to the skin with loss of insulation and buoyancy, which results in exposure, and death (Mudge, 1995; Hartung, 1967; NAS, 1985e; Smith and Herunter, 1989; Rozemeijer, 1992).

Another spill of rapeseed oil (Canola) occurred in Vancouver Harbor on February 26, 1989 (Smith and Herunter, 1989). During product transfer, an estimated 400 gallons of rapeseed oil spilled into the harbor. A thin film covered large portions of the harbor, and a patchy slick of yellow oil from the spill site to the center of the harbor was visible from above. It was estimated that at least 700 birds were in the harbor at the time of the spill, including 500 diving ducks, 100 gulls, and 100 other divers.

Initially, booms were not used to contain the spill, and an attempt to disperse the oil with multiple passes of a small tug through the thick oil were ineffective (Smith and Herunter, 1989). EPA notes that the trade association requested that this ineffective mechanical dispersal be allowed as a response to spills of vegetable oil and animal fat under the FRP rule. After several hours, booms were set up to contain the oil and skimmer boats recovered the oil.

Cleanup was concluded 15 hours after the spill was discovered (Smith and Herunter, 1989). Nevertheless, 88 oiled birds of 14 species were recovered after the spill, and half of them were dead. Oiled birds usually are not recovered for 3 days after a spill, when they become weakened enough to be captured. Of the survivors, half died during treatment.

The authors caution that because vegetable oils are edible, they may not be considered as threatening to aquatic birds as petroleum oils. However, the end result is the same. Birds die (Smith and Herunter, 1989). The number of casualties from the rapeseed oil spills was probably higher than the number of birds recovered, because heavily oiled birds sink and dying or dead birds are captured quickly by raptors and scavengers.

Smith and Herunter emphasize that containing and recovering the spilled oil as soon as possible is critical to minimizing environmental damage

(1989). Using booms, testing transfer lines, having spill detection equipment in place, training on-site personnel, and reporting spills immediately are essential to reducing environmental harm.

Fat and Oil Pollution in New York State Waters. Pollution of surface waters by oils and fats from a wide variety of sources killed waterfowl, coated boats and beaches, tainted fish, and created taste and odor problems in water treatment plants in New York State (Crump-Wiesner and Jennings, 1975). Sources of the fats and oils included spills, food and soap manufacturing, refinery wastes, construction activities, industrial waste discharges, and sanitary sewage. Grease-like substances were seen along the shore or floating in Lake Ontario. Grease-balls that contaminated the shoreline near Rochester and smelled like fat or lard were analyzed and characterized as mixtures of animal and vegetable fats with similar fatty acid contents.

Spills of Fish Oil Mixtures in South Africa. Oil that was discharged from a fish factory effluent pipe near Bird Island, Lamberts Bay, South Africa, the breeding ground for 5,000 pairs of Cape Gannets and home to tens of thousands of Cape Cormorants and 500 Jackass Penguins, killed at least 709 Cape Gannets, 5,000 Cape Cormorants, and 108 Jackass Penguins (Percy Fitzpatrick Institute, 1974). A few days after the oiling incident, researchers found penguins covered with a sticky, white, foul-smelling coat of oil. They were shivering on the shore and gannet chicks, who were observed walking straight into the oil, were dead or dying. They observed a milky white sea on one side of the island and a frothy mixture and clots of oil thrown up on the island. The oil smelled strongly of fish.

Damage from fish-oil pollution was detailed at two other fish factories in South Africa (Newman and Pollock, 1973). In the rock lobster sanctuary at St. Helena Bay, 10,000 rock lobsters and thousands of sea urchins were killed, probably from oxygen depletion caused by the release of organic material from the fish factory. At least 100,000 clams died near a fish factory at Saldanha Bay along with large numbers of black mussels and prawns and some polychetes and anemones. Other effects were also described by the authors: the sea was discolored and smelled, water quality was poor, and the aesthetic appeal of the beaches located near a town and popular camping site was adversely affected.

Spill of Nonylphenol and Vegetable Oils in the Netherlands. Thousands of seabirds, mostly Guillemots and Razorbills, washed ashore in the Netherlands during a four-month period from December 1988 to March 1989 (Zoun, 1991). They were covered with an oil-like substance. Nearly all of the 1,500 sick birds that were taken to bird hospitals died; many exhibited emaciation, aggressive behavior, bloody stools, and leaky plumage. Autopsies and pathological examination of 30 birds revealed hepatic degeneration and necrosis as well as aspergilliosis in the air sacs and lungs. Chemical analysis of the feathers and organs showed the presence of high levels of nonylphenol and vegetable oils, such as palm oil. No source of the contaminants was established, but they may have been discharged from a ship.

Soybean Oil Spills in Georgia From a Tanker Truck and a Vegetable Oil Refinery. Aesthetic effects were a major concern to property owners on an oiled cove at Lake Lanier, Georgia (Rigger, 1997). The strong, unpleasant odor of soybean oil spilled from a tanker truck became more rancid as the oil weathered. Rapid response action minimized the damage and costs, although the oil adhered to boat dock floats and boats and produced several thousand dollars in claims for cleaning boats and docks and replacing dock floats.

In a vegetable oil refinery in Macon, Georgia, soybean oil was released from an aboveground storage tank that was accidentally overfilled (Rigger, 1997). Rapid response prevented significant damage from the spilled oil, which had flowed through a storm water system and entered a stream. Investigation of the spill incident revealed that previous spills from the facility had entered the sanitary sewer system and damaged the sewage treatment plant.

Wisconsin Butter Fire and Spill. In 1991, a major butter and grease fire apparently triggered by an electric forklift destroyed two large refrigerated warehouses at Central Storage facility in Madison, Wisconsin and resulted in the release of large volumes of butter, lard, cheese, meat, and other food products (Wisconsin, 1991a, 1991b, 1991c; Wisconsin State Journal, 1991a, 1991b, 1991c, 1991d, 1991e). The warehouses contained 15 million pounds of butter—much of it part of the USDA surplus program. Thick, black smoke filled the air, and melted butter and lard streamed from the burning building and threatened to pollute a nearby creek and lake.

The quick action of firefighters, city engineers, and other responders was credited by the company and state environmental officials with saving a nearby creek and lake from environmental disaster and limiting the losses and injuries from the fire (Wisconsin, 1991; Wisconsin State Journal, 1991a, 1991b, 1991c, 1991d, 1991e). If the buttery material had flowed through storm sewers into the creek and lake, it could have depleted the available oxygen required by walleyed pike, bass, and other aquatic organisms living in the creek and connecting lake and ruined a recent one million dollar cleanup effort in the watershed.

After the cleanup was largely completed, the Wisconsin Department of Natural Resources declared as hazardous substances the thousands of gallons of melted butter that ran offsite and the mountain of damaged and charred meat products spoiling in the hot sun and creating objectionable odors. The Wisconsin DNR stated that these products posed an imminent threat to human health and the environment.

3. FWS Comments on Degradation

Vegetable oils and animal fats may biodegrade quicker than petroleum; however, in the short term, this advantage is neutralized by the ability of many petroleum compounds to evaporate quickly. In addition, the higher BOD of vegetable oils and animal fats pose an increased risk of oxygen depletion in shallow waters and wetlands. Both kinds of oil will degrade more slowly in low-energy waters and can become submerged in an anoxic aquatic habitat, settle to the bottom and into sediments, or form thick layers because the vegetable oil is no longer being exposed to oxygenated waters or surroundings. In such instances, the edible oil or fat will remain in the environment for a long period of time and continue to create a risk to the natural environment. The variability of circumstances surrounding each spill (location, spill volume, weather, tides, water currents, effectiveness of spill response) will have a greater influence in the short term on environmental effects than will biodegradability. (USDOI/FWS, 1994)

*E. Petitioners' Claim: Vegetable Oils and Animal Fats Have a High BOD, Which Could Result in Oxygen Deprivation Where There Is a Large Spill in a Confined Body of Water*

Petitioners claim that vegetable oils and animal fats have a high BOD, which could result in oxygen deprivation where there is a large spill in a confined body of water with low flow and dilution.

EPA Response: EPA agrees with the Petitioners' claim that vegetable oils and

animal fats have a high BOD, which could lead to oxygen depletion and severe environmental consequences. (For a detailed discussion of this topic, see section II.B.4.a.Suffocation.) EPA disagrees, however, that oxygen depletion would occur only with large oil spills. Small spills are sufficient to cause oxygen depletion and suffocation and death of fish and other biota, depending on the conditions that apply at the location of the spill. Oxygen depletion can result from reduced oxygen exchange across the air-water surface below the spilled oil or from the high BOD by microorganisms degrading oil (Crump-Wiesner and Jennings, 1975; Mudge, 1995). Examples of environmental damage produced by small spills of vegetable oils and animal fats are provided above.

While a higher BOD is associated with greater biodegradability, it also reflects the increased likelihood of oxygen depletion and potential suffocation of aquatic organisms under certain environmental conditions (Crump-Wiesner and Jennings, 1975). Oxygen depletion and suffocation are produced by petroleum and vegetable oils and animal fats. Under certain conditions, however, some vegetable oils and animal fats present a far greater risk to aquatic organisms than other oils spilled in the environment, as indicated by their greater BOD.

According to studies designed to measure the degradation of fats in wastewater, some food oils exhibit nearly twice the BOD of fuel oil and several times the BOD of other petroleum-based oils (Groenewold, 1982; Institute, 1985; Crump-Wiesner and Jennings, 1975). While the higher BOD of food oils is associated with greater biodegradability by microorganisms using oxygen, it also reflects the increased likelihood of oxygen depletion and suffocation of aquatic organisms under certain environmental conditions (Groenewold, 1982; Institute, 1985; Crump-Wiesner, 1975). Oil creates the greatest demand on the dissolved oxygen concentration in smaller water bodies, depending on the extent of mixing (Crump-Wiesner and Jennings, 1975).

FWS Comments on BOD. Decomposition of vegetable oils and animal fats causes oxygen depletion problems for aquatic species (USDOI/FWS, 1994).

*F. Petitioners' Claim: Vegetable Oils and Animal Fats Can Coat Aquatic Biota and Foul Wildlife*

EPA Response: EPA agrees with the Petitioners' claim that vegetable oils and animal fats can coat aquatic biota and foul wildlife but disagrees with the lack of significance accorded this potentially devastating effect in Petitioners' ENVIRON report. Many animals and plants die when they are coated with spilled petroleum oils or vegetable oils and animal fats. (See section II.B.4.a. Coating with Oil for a discussion of these effects.) Coating with oil can contaminate existing and future food sources, destroy habitat, and damage eggs and nesting areas, thereby inflicting environmental damage years after an oil spill occurs (Frink and Miller, 1995).

Trustees Comments on Fouling. The biggest oversight of the ENVIRON report, which was never subject to peer review as are journal publications, is the insignificance given to the fouling potential of vegetable oils and animal fats (USDOI/FWS, 1994). Wildlife rehabilitators consider edible oils and fats to be some of the most difficult of substances to remove from wildlife because of their low viscosity. These less viscous oils are good wetting agents, allowing deeper penetration into plumage or fur and creating a thoroughly contaminated animal, as opposed to surface and intermediate penetration. In many instances, complete removal can only be accomplished with extremely hot water, which is detrimental because of scalding, and excessive washing.

The FWS takes issue with statements in the ENVIRON report that observed birds clean themselves and return to feeding areas (USDOI/FWS, 1994). Such observations are difficult to confirm without banding or radio tagging the birds and closely observing them. It is highly doubtful that the birds were able to clean themselves, for only minuscule amounts of oil can be completely preened from plumage. Even birds fouled with petroleum oils will preen and fly back to their nests. Small amounts of oil on the birds' plumage can cause thermal circulation trouble and smother embryos in eggs exposed to the oil. Birds may appear to act normally, but it is not the immediate effects of the oils but those that appear later that cause problems. Secondary effects from fouling include drowning, mortality by predation, starvation, and suffocation.

Both petroleum and non-petroleum oils foul the coats and plumage of wildlife (USDOI/FWS, 1994). The risks from vegetable oils and animal fats are magnified by their lack of repugnant smell or iridescence to frighten wildlife away, making it more likely that wildlife will come in contact with these oils.

## III. Petitioners' Suggested Language To Amend the July 1, 1994, Facility Response Plan Rule

This section begins with a short discussion about EPA's inland area of jurisdiction and also provides some characterization of the amounts of vegetable oil and animal fats produced or consumed, and reported spills. These discussions are followed by EPA's response to the Petitioners' specific regulatory language to amend the July 1, 1994, facility response plan rule.

*A. Background*

Examples of water systems that occur in the inland area within EPA's zone of authority are major freshwater rivers, smaller streams, creeks, lakes and wetlands or mixed freshwater—saltwater estuary and wetlands areas subject to tides. (See a Memorandum of Understanding [MOU] between the Secretary of Transportation and the EPA Administrator dated November 24, 1971 [36 FR 24080].) Many of these areas, including wetlands and estuary areas, are often very sensitive, highly productive areas where a large number of organisms such as shrimp, crabs, fish, and water fowl nest, breed and feed. Lakes and larger rivers may be used as water supplies and have drinking water and industrial intakes that must be protected. Inland spills have a much higher potential to contaminate both ground and surface water supplies. Some lakes, estuaries and bays are often highly developed with industry, recreational beaches, marinas and other highly visible areas that need protection from oil spills.

Vegetable oil and animal fat were among the most frequently spilled organic materials, ranking sixth and seventh respectively, and were responsible for over 6% of all spills (384 of 6076 spills) of organic materials reported along the coasts and major waterways in the United States in 1973–1979 (Wolfe, 1986). Other authors estimate that at least 5% of all spill notifications are for vegetable oils and animal fats (Crump-Wiesner, 1975). Of the 18,000 to 24,000 spills in the United States reported annually to the National Response Center and EPA Regions, 2–12% are from non-petroleum oils, including vegetable oils and animal fats (USEPA/ERNS, 1995, 1996). These figures represent the minimum number of spills; it is likely that they greatly underestimate the actual number of spills because of significant underreporting. A comparison was made of reports of spills in Ohio of vegetable oil and soybean oil from January, 1984 to June, 1993 to the State

of Ohio Environmental Protection Agency (Ohio EPA) and to the National Response Center (NRC). Only 7 of 27 reports (26%) to the Ohio EPA were also reported to the NRC (USEPA, 1994a). There were a number of reports of vegetable and soybean oil spills to the NRC that were not on the State list (USEPA, 1994a).

*B. Regulatory Language Changes Proposed by the Petitioners*

Language to further clarify the definition of vegetable oil and animal fats. EPA Response: EPA has decided not to incorporate Petitioners' proposed definitions of ''animal fat and vegetable oils'' in the regulatory provisions of section 112.2. In issuing the final FRP rule, EPA included a definition of ''non-petroleum oil'' in an Appendix to the rule. (See 40 CFR part 112, Appendix E, section 1.2.3.) ''Non-petroleum oil'' is defined to mean ''oil of any kind that is not petroleum-based. It includes, but is not limited to, animal and vegetable oils.'' *Id*.

EPA included this definition of ''non-petroleum oil'' in the rule because the Agency established different and more flexible response planning requirements for facilities that handle, store, or transport non-petroleum oil, including animal fats and vegetable oils. For example, in calculating required response resources for non-petroleum facilities, the owner/operator of such a facility, including those facilities which handle, store, or transport animal fats or vegetable oils, is not required to use emulsification or evaporation factors in Appendix E of the rule. Rather, these facilities need only: (1) Show procedures and strategies for responding to the maximum extent practicable to a worst case discharge; (2) show sources of equipment and supplies necessary to locate, recover, and mitigate discharges; (3) demonstrate that the equipment identified will work in the conditions expected in the relevant geographic area, and respond within the required times; and (4) ensure the availability of required resources by contract or other approved means. 40 CFR Part 112, Appendix E, section 7.7. Importantly, EPA does not prescribe the type or amount of equipment that preparers of response plans for non-petroleum oil discharges must identify. *Id*.

Moreover, at the time of issuing the final rule, EPA also set forth definitions for both ''animal fat'' and ''vegetable oil'' in the preamble to the FRP rule (59 FR 34070, 34088 (July 1, 1994)). To assist owners and operators in distinguishing between oil types, EPA defined ''animal fat'' to mean ''a non-petroleum oil, fat, or grease derived from animal oils not specifically identified elsewhere.'' *Id*. The Agency defined ''vegetable oil'' to mean ''a non-petroleum oil or fat derived from plant seed, nuts, kernels or fruits not specifically identified elsewhere.'' *Id*. The Agency stands behind these definitions, and because EPA is not modifying the FRP rule as requested by Petitioners (see below), the Agency sees no need to include these definitions in the rule provisions.

Petitioners express a concern that animal fats and vegetable oils have been included with other types of ''non-petroleum oils,'' although the planning requirements for owners and operators of *all* facilities storing ''non-petroleum'' oils are more flexible than those requirements for facilities storing, handling, or transporting petroleum oil. Petitioners' main concern appears to be premised upon the claim that vegetable oils and animal fats are ''non-toxic'' compared to other non-petroleum oils. EPA believes that Petitioners have failed to make a demonstration that animal fats and vegetable oils should be subject to less stringent planning requirements than other types of non-petroleum oils. This is so for all of the reasons set forth elsewhere in this notice.

Allow mechanical dispersal and ''no action'' options to be considered in lieu of oil containment and recovery devices specified for response to a worst case discharge of vegetable oil and animal fats. EPA Response: The Agency declines this proposed language. Although the ''no action'' and mechanical dispersal options proposed by the Petitioners may be considered in response to an actual spill under certain conditions, i.e., river currents too high for the effective use of a boom, neither option would meet the intent of OPA for planning purposes. The intent of OPA was for industry to plan for and secure the equipment and resources needed to respond to a worst case discharge, which may be a discharge of 1 million gallons or greater for a large vegetable oil facility.

A ''no action'' plan would allow a large amount of oil to remain in the environment, which would in turn cause immediate physical effects to resources that could extend for considerable distances as the oil spreads. This oil would have the potential to remain in the environment for long periods of time.

One issue raised by the Petitioners is that the response to a spill of vegetable oil or animal fat may do more harm to the environment than a ''no action'' alternative. A consideration in the response to any type of oil, including petroleum or vegetable oil or animal fat, is whether the measures used in response to the spill will cause unacceptable damage to a specific type of environment. This determination is based on the conditions existing at the time of the spill. Specific spill conditions will often dictate the need for different techniques for the same water environment or shoreline habitat. A study, which evaluated the relative impact of various generic characteristics of response techniques in the absence of oil, rated booming and skimming as having a ''Low'' impact in open water, small lakes/ponds, large rivers and small rivers and streams (DOC/NOAA, 1992) and therefore, causing little environmental harm.

Mechanical dispersal of the vegetable oil or animal fat into the water column could shut down or negatively impact drinking intakes due to flavor changes and odors, reduce cooling efficiency in cooling waters of power plants, contaminate food from receiving waters, increase BOD levels, violate water quality standards, cause sludges, and adversely impact benthic organisms and the resulting food chain in inland areas. Oil dispersed by mechanical means may resurface and cause further environmental damage in the same area or a different area depending on the characteristics of the water body. (See section II.D.2, Rapeseed Oil Spills in Vancouver Harbor on the ineffective use of mechanical dispersal.) This Notice references studies that document spills of vegetable oils that have remained in the water environment for several years and that continued to kill shellfish and other organisms.

Limit the use of containment boom to the protection of fish and wildlife and sensitive environments: EPA's Response. Based on tests and studies summarized in the data in this Decision Document and the Technical Document, vegetable oils and animal fats clearly have adverse impacts on the aquatic and terrestrial environment and its inhabitants. EPA declines to modify the FRP rule as suggested by the Petitioners. EPA continues to believe that an OPA required FRP must limit the impacts of the oil through response techniques that include containment and removal in addition to protection of priority fish and wildlife and environmentally sensitive areas.

The Area Contingency Plan (ACP) identifies and prioritizes the fish and wildlife and environmentally sensitive areas to be protected and also determines the type of protection to be used when a spill occurs. CWA section 311(j)(5)(C)(I) requires that a FRP must be consistent with the applicable ACP, which usually requires that a

containment boom be positioned to protect drinking water intakes and environmentally sensitive areas.

In addition, facility response planning must also include the use of measures appropriate to the body of water to contain and limit and concentrate the spread of oil for removal. The spreading rate of oil is a function of its viscosity. Low viscosity materials spread easily over the surface of water. At lower temperature, the oil spreads less rapidly. Generally, vegetable oils and petroleum oils are of low viscosity. The spread of spilled oil over a large area will hamper recovery of the oil. The thicker the concentration of animal fat or vegetable and petroleum oil in an area, the greater the efficiency for oil removal. As the oil spreads over time into thinner slicks, its removal becomes less efficient and more costly. In tidally influenced areas, oil may move back and forth with each tide and be redeposited on the shore line, tidal flats, and marshes and cause adverse effects.

Since vegetable oils and animal fats usually have few volatile fractions and therefore usually do not decrease in volume through evaporation as do many of the lighter factions of petroleum oils, most of the quantity of vegetable oil and animal fats spilled into water remain in the environment. When this happens, there is the potential for adverse impacts to environmentally sensitive areas and water intakes. Although most vegetable oils and animal fats break down more quickly than some petroleum oils, under certain conditions and times of the year, these oils may remain in the aquatic environment for long periods of time, polarize and form toxic degradation products and kill shellfish and other organisms.

If a facility storing animal fat and/or vegetable oil does not provide for the use of containment booms in its plan to respond to a worst case discharge, it will not have the equipment and trained personnel available for an actual spill and many miles of shoreline and aquatic resources over a large area of water may be impacted. Rapid and immediate response and removal, including the use of containment booms, offer the most effective means of minimizing the immediate and long term effects of spills of petroleum and non-petroleum oils, including vegetable oils and animal fats. EPA does not believe that the Petitioners have shown why the use of containment booms should be limited to only protecting fish and wildlife and environmental sensitive areas. Without the use of containment booms, a worst case discharge of vegetable oil or animal fats could cause harm not only to fish and wildlife and environmentally sensitive areas, but also damage the aquatic and terrestrial environment. Such a discharge could also present risks to humans if the vegetable oil and animal fats adversely affect drinking water intakes.

Increase the time for the arrival of on-scene response resources for medium discharges and worst case Tier 1 response resources to 24 hours plus travel time from the currently required 12 hours including travel arrival time: EPA's Response. A rapid response to an oil spill is important in the recovery of as much oil product as possible. Any oil that remains in the environment will continue to adversely impact the aquatic and shoreline environment and cause lasting damage. (This document contains discussions of environmental, physical and other impacts that occur when vegetable oil and animal fats are spilled.) A 24 hour plus travel time delay in the arrival of response resources would result in an unacceptable increase in impacts to drinking water intakes, fish and wildlife and sensitive environments, greater response costs, less product recovered, and increased water and other types of pollution.

A delay in the arrival of response resources will increase the difficulty of the removal of the spilled oil and will also result in an increase in the cost to recover this oil. If effective containment and cleanup procedures are initiated within an hour of a spill occurrence, estimated removal costs are $250 per barrel (42 gallons). If two or more hours elapse before the oil is removed, the cost can be four or more times that amount and continue to increase with the time to respond to the release (USEPA, 1995). The ''window of opportunity'' for the most effective and efficient response to oil spills occurs within the early hours after the spill.

Immediate action is required when oil spills occur on water to prevent the oil from becoming so widely spread that containment and cleanup become extremely expensive and a larger area of fish and wildlife and environmentally sensitive areas are adversely affected. There are immediate physical effects to the environment from releases of vegetable oil and animal fat. There is the potential for additional sensitive areas to be contaminated within the 24 hours plus travel time proposed by the Petitioners for the arrival of response resources. This is 12 hours plus travel time longer than the FRP requirement for rivers, canals, inland, and near shore areas. Sensitive areas within many additional miles would be affected with the delay in the arrival of response resources proposed by the Petitioners since booms would not be made available for their protection until much later. Rapid response is imperative to limit adverse effects, protect resources, and contain oil for removal.

Extending the time for arrival of response resources would increase the FRP distance calculation for a facility and could result in additional vegetable oil and animal fat facilities meeting the criteria for substantial harm and having to prepare and submit a facility response plan to EPA. The requirements for determination of substantial harm in the FRP rule for facilities with 1 million gallons or above capacity includes a calculation in Appendix C–III of 40 CFR Part 112 of the distance an oil discharge from the facility would travel within the time it would take for the appropriate tier of response resources to arrive. Once the distance is calculated, the facility must determine whether fish and wildlife and environmentally sensitive areas or drinking water intakes are located within this distance. If so, the facility is considered a substantial harm facility and must prepare and submit a response plan. An additional twelve hours plus travel response time would more than double the distance a spill could travel on water before the arrival of response resources and therefore potentially increase impacts to drinking water intakes and environmentally sensitive areas and increase the number of vegetable oil and animal fat facilities that have to prepare and submit FRPs. For the above reasons, EPA declines to modify the FRP rule in this manner.

## IV. Conclusions

The environmental effects of petroleum and non-petroleum oils, including vegetable oils and animal fats, are similar because of physical and chemical properties common to both. Many of the most devastating effects of spills of petroleum oils and vegetable oils and animal fats are physical effects, such as coating of animals, suffocation, or starvation. Some tests measuring BOD suggest that certain vegetable oils and animal fats may present a greater environmental risk of suffocation to organisms than spilled petroleum oils under certain conditions. Petroleum oils and vegetable oils and animal fats can be transferred to the eggs of nesting birds from the parents' feathers and smother the embryos inside. Embryos in eggs are also killed by petroleum oils through mechanisms of toxicity; whether non-petroleum oils also cause direct embryotoxicity has not been evaluated in tests.

Petroleum oils and vegetable oils and animal fats, can enter all parts of the

aquatic environment and adjacent shoreline. They can form a layer on water, settle on the bottom in sediments, foul shorelines, and be transported and distributed to other areas.

Some vegetable oils and animal fats, their components, or breakdown products remain in the environment for years. Whether or not the oil persists in the environment, spilled oil can have long-lasting deleterious environmental effects. By contaminating food sources, reducing breeding animals and plants that provide future food, contaminating nesting habitats, and reducing reproductive success through contamination and reduced hatchability of eggs, oil spills can cause long-term effects years later even if the oil remains in the environment for relatively short periods of time.

In addition to physical effects and the destruction of food and habitat, petroleum oils and vegetable oils and animal fats, their constituents, or degradation products can cause short-term and long-term toxic effects in some animals. Petroleum oils contain PAHs and benzene which are animal and human carcinogens. While vegetable oils and animal fats contain only small quantities of PAHs, high dietary intake of fats and certain types of fats have been associated with increased cancer incidence in laboratory animals and humans as well as coronary artery disease, diabetes, obesity, and altered immunity and other effects. Lethality, impaired growth, reproductive effects, and behavioral effects are among the subchronic and chronic toxic effects observed in other studies of vegetable oils and animal fats.

Spills of petroleum and vegetable oils and animal fats can affect drinking water supplies, and they have forced the closing of water treatment systems. Rancid smells, fouling of beaches, and destruction of recreational areas have been reported after spills of vegetable oils and animal fats.

Small spills of petroleum and vegetable oils and animal fats can cause significant environmental damage. Real-world examples of oil spills demonstrate that spills of petroleum oils and vegetable oils and animal fats do occur and produce deleterious environmental effects. In some cases, small spills of vegetable oils can produce more environmental harm than numerous larger spills of petroleum oils.

Because petroleum oils and vegetable oils and animal fats exhibit similar behavior in the environment, similar methods are used to contain them and attempt to clean them up after a spill. Because every spill is different, decisions on what cleanup methods are most effective and least harmful to the environment must be made case-by-case, considering the nature of the oil, the characteristics of the contaminated area, and the proximity of the spill to environmentally sensitive areas.

Once oil is spilled in the environment, however, the opportunities for reducing environmental damage and other adverse effects are limited. Although methods for rescuing and cleaning oil-contaminated birds, otters, and other wildlife have improved, only a small proportion of affected animals are recovered, and even fewer of the rescued animals survive. Further, by affecting current and future food sources, nesting habitats, and reproduction, oil spills can damage the environment long after the spilled oil has been removed from the environment. Prevention measures and rapid response offer the only effective means of minimizing the immediate, devastating effects and long-term environmental effects of spills of petroleum and non-petroleum oils, including vegetable oils and animal fats.

In summary, EPA finds that Petitioners' arguments about the manner in which environmental species die or become injured following spills of vegetable oils and animal fats, their claims about degradation of oil in the environment, and their assertion that fats are essential to humans and wildlife in no way obviate the need to prevent spills of vegetable oils and animal fats that can cause lasting environmental damage. Nor do the Petitioners' claims obviate the need to reduce environmental damage from these spills by planning in advance for effective response resources and actions. EPA hereby declines to modify the July 1, 1994, Final Rule.

Dated: October 1, 1997.

**Timothy Fields, Jr.,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

## Acronym List

ACP—Area Contingency Plan
BOD—Biological Oxygen Demand
CFR—Code of Federal Regulations
COPs—Cholesterol Oxidation Products
CWA—Clean Water Act
DNA—Deoxyribonucleic Acid
DNR—Department of Natural Resources
DOT—Department of Transportation
EFA—Essential Fatty Acids
EPA—Environmental Protection Agency
ERNS—Emergency Response Notification System
FAO/WHO—Food and Agriculture Organization/World Health Organization
FR—Federal Register
FRP—Federal Response Plan
FWS—Fish and Wildlife Service
IARC—International Agency for Research on Cancer
Institute—Institute of Shortening and Edible Oils, Inc.
$LC_{50}$—Lethal Concentration 50
$LD_{50}$—Lethal Dose 50
LOPs—Lipid Oxidation Products
MOU—Memorandum of Understanding
NAS—National Academy of Sciences
NOAA—National Oceanic and Atmospheric Administration
NRC—Nuclear Regulatory Commission
NRC—National Response Center
OPA—Oil Pollution Act
PAHs—Polynuclear Aromatic Hydrocarbons
PCBs—Polychlorinated Biphenyls
PUFA—Polyunsaturated Fatty Acid (n-6 PUFA, including essential fatty acid linoleic acid; n-3 PUFA, including the essential fatty acid, a-linolenic acid)
RCRA—Resource Conservation and Recovery Act
RSPA—Research and Special Projects Administration
SPCC—Spill Prevention Countermeasure and Control
USDA—United States Department of Agriculture
USDHHS—United States Department of Health and Human Services
USDOC—United States Department of Commerce
USDOI—United States Department of Interior
USEPA—United States Environmental Protection Agency

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## Appendix I—Supporting Tables



TABLE 1.—COMPARISON OF PHYSICAL PROPERTIES OF VEGETABLE OILS AND ANIMAL FATS WITH PETROLEUM OILS

| Oil type | Solidification point | Solubility | Specific Gravity at 25°C unless otherwise specified | Vapor pressure (mmHg) |
|---|---|---|---|---|
| **Edible Oils** | | | | |
| Tallow | 40 to 46°C [1] | Insoluble in water [1] | 0.87 at 80°C [3] | |
| Corn oil | 14 to 20°C [4] | Insoluble in water; soluble in acetone.[1,2] | 0.916–0.921 [4], 0.91875.[5] | Negligible.[6] |
| Coconut oil | Solid to liquid at 15°C, 1 atm.[7] | Insoluble in water; very soluble in ether.[1] | 0.922 [7] | |
| Rapeseed/Canola oil | −2 to −10°C; liquid at 15°C.[4] | Insoluble in water; soluble in chloroform and ether.[4] | 0.913–0.917 [8] | 250°C, 0.535mmHg.[9] |
| Fish oil | −2 to 4°C; liquid at 15°C.[4] | Insoluble in water [1] | 0.93 at 20°C.[7] | |
| Soybean oil | −10 to −16°C; liquid at 15°C.[5] | Insoluble in water and acetone.[1] | 0.916–0.922 [4], 0.9175 [5] | 250°C, 0.351mmHg.[9] |
| Cottonseed oil | 0 to −5°C; liquid at 15°C.[4] | Insoluble in water; slightly soluble in alcohol.[1] | 0.915–0.921 [4], 0.917 [5] | 250°C, 0.317mmHg.[9] |
| Palm oil | Solid to liquid at 15°C, 1 atm.[7] | Insoluble in water.[1] | 0.920–0.927 (fruit), 0.952 (seed).[4] | |
| Lard | −2 to 4°C [1] | Insoluble in water or cold alcohol; soluble in ether and benzene.[1] | 0.917 [4] <1 [1] | |
| **Petroleum Oils** | | | | |
| Diesel | Liquid at 15°C, 1 atm [7] | Insoluble in water [7] | 0.841 at 16°C [7] | 38°C, 0.201mmHg.[9] |
| Fuel Oil #1 (kerosene) | Liquid at 15°C, 1 atm [7] | Insoluble in water; miscible with other petroleum solvents.[1] | 0.80 [4] | 21°C, 2.12–26.4mmHg.[11] |
| Fuel Oil 2–D | Liquid at 15°C, 1 atm [7] | Insoluble in water [7] | 0.87–0.9 at 20°C [7] | 21°C, 2.12–26.4mmHg.[11] |
| Crude | Liquid at 15°C, 1 atm [7] | Insoluble in water [7] | 0.89 [8] | 37.8°C, 3.27mmHg.[10] |
| Fuel Oil #6 Residual | Liquid at 15°C, 1 atm [7] | Insoluble in water [7] | 0.95 approx. at 20°C [7] | 37.8°C, 0.092mmHg.[10] |
| Jet Fuel JP #7 | | | | 260°C, 2,480 mmHg.[12] |
| T 1 | | | | 180–380°C, 6,907mmHg.[13] |
| T 6 | | | | 170–450°C, 7,120mmHg.[13] |

| Oil type | Viscosity dynamic (centipoises) | Viscosity kinematic (centistokes) |
|---|---|---|
| **Edible Oils** | | |
| Tallow | 16.5 at 100°C [3] | |
| Corn oil | 30.8 at 40°C [5] | |
| Coconut oil | 32.6 at 32°C [7] | 29.79 at 37.8°C.[14] |
| Rapeseed/Canola oil | | 50.64 at 37.8°C [14], 62.6 at 25°C, 36.7 at 40°C for RBD Soybean Oil.[5] |
| Fish oil | | 32.7 at 37.8°C (cod liver 12).[14] |
| Soybean oil | 28 at 40°C [15] | 28.49 at 37.8°C [14], 50.1 at 25°C, 28.9 at 40°C.[5] |
| Cottonseed oil | 34 at 40°C [15] | 38.88 at 37.8°C.[14] |
| Palm oil | | |
| Lard | 45 at 40°C [15] | 44.41 at 37.8°C.[14] |
| **Petroleum Oils** | | |
| Diesel | 11.9 at 37.8°C [7] | 6.8 at 20°C.[10] |
| Fuel Oil #1 (kerosene) | 1.15 at 21°C [7] | 1.7 at 15°C.[10] |
| Fuel Oil 2–D | 1.97 at 21°C [7] | 2.0 to 3.6 at 38°C.[10] |
| Crude | 5.5 at 21°C [7] | 5.96 at 20°C.[10] |
| Fuel Oil 6 Residual | 123 to 233 at 20°C [10] | >130 at 40°C.[10] |

[1] HSDB: Hazardous Substances Data Base. National Library of Medicine, 1997.
[2] USDOC/NOAA, 1994.
[3] Chemical Hazards Response Information System (CHRIS), DOT, USCG, January, 1991.
[4] Merck Index, 1989.
[5] Hui, 1996a, 1996b.
[6] Material Safety Data Sheet (MSDS), 1997, Corn Oil, Fisher Scientific.
[7] Chemical Hazards Response Information System (CHRIS), Department of Transportation, U.S. Coast Guard, 1995.

[8] Allen and Nelson, 1983.
[9] Murata et al., 1993.
[10] Whiticar et al., 1993.
[11] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, 1995b.
[12] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, 1995c.
[13] Dubovkin et al.,1981. Translated.
[14] Rescorla and Carnahan, 1945.
[15] Weiss, 1983.

TABLE 2.—COMPARISON OF VEGETABLE OILS AND ANIMAL FATS WITH PETROLEUM OILS

| | Vegetable oil/animal fats | Petroleum oils |
|---|---|---|
| Chemical Properties: | | |
| Chemical Structure | Triglycerides (triacylglycerols), cholesterol, phospho lipids, fatty acids, other components in crude oils.[1,2,3]. | Alkanes, cycloalkanes, aromatic hydrocarbons, polynuclear aromatic hydrocarbons (PAHs), other components in crude oils.[4] |
| Chemical Form | Some liquids, some solids.[1,5,6,7,8,9] | Some liquids, some solids.[10,11,12,13] |
| Physical Properties: | | |
| Density | Most 0.908–0.927 at 20 ° C; most float on water, some sink.[1,5,6,7,9,14]. | Most 0.80–0.95 at 20° C; most float on water, some sink.[8,9,14] |
| Solubility | Most insoluble in water, soluble in organic solvents.[6,8,9]. | Most insoluble in water, soluble in organic solvents.[6,8, 12] |
| Viscosity | Wide range, depends on temperature.[1,5,7,8,15,16]. | Wide range, depends on temperature.[8,10] |
| Volatility | Generally small proportion volatile, most not volatile.[1,5,13,17]. | Some fractions (e.g., gasoline) volatile, some not volatile; 11–90% volatile, depending on type of oil.[10,11,12,18] |
| Environmental Fate: | | |
| Environmental Distribution | Oil found in water, soil/sediment, biota; usually little in air.[1,5,19,20,21,22,23]. | Oil found in water, air, soil/sediment, biota.[4,12,24,25,26,27,28,29,30,31,32,33] |
| Persistence | May persist in environment for many years or degrade rapidly; depends on oil, media, environmental conditions where spilled.[22,34,35,36,37]. | May persist in environment for many years; depends on oil, media, environmental conditions where spilled.[6, 30,38,39] |
| Chemical, Physical, and Biological Reactions. | Oxidation, hydrolysis, polymerization, photolysis, other chemical reactions; degraded by microorganisms, metabolized by plants and animals.[1,2,3,40,41]. | Oxidation, photolysis, weathering processes; degraded by microorganisms; petroleum components taken up by plants and animals, metabolized by macroinvertebrates and some other animals.[4,30,33] |
| Toxic Components, Degradation Products | Some oils contain toxic components or may be degraded to form toxic products.[1,2,43,44,45]. | Many contain benzene, PAHs, and other toxic components; may be degraded to form toxic products.[46,47,48] |
| Physical Effects: | | |
| Smothering | Yes; suffocation when oil blocks aeration at water surface or depletes oxygen through biodegradation.[20,22,49,50,51,52,53]. | Yes; suffocation from oxygen depletion.[30,47] |
| Coating | Yes, can cause hypothermia, increased need for food, loss of buoyancy, decreased ability to escape predators.[22,29,36,37,54,55,56,57,58,59]. | Yes, can cause hypothermia, increased need for food, loss of buoyancy, decreased ability to escape predators.[28,29,47,54,55,56,57,58] |
| Egg Contamination | Yes; can be transferred from coated parents and kill embryos by blocking air exchange at egg surface.[22,29,54,55,56,57,58]. | Yes; can be transferred from coated parents and kill embryos by blocking air exchange at egg surface and by toxicitytion.[28,29,47,56,57,60,61,62,63] |
| Food and Habitat Destruction | Yes; can cause starvation or ingestion of oiled food, destruction of future food sources, destruction of habitat, community effects.[22,29,55,56,57]. | Yes, can cause starvation or ingestion of oiled food that clogs organs, destruction of future food sources, destruction of habitat, community effects.[28,29,47,54,55,56,57,58,61,64,65] |
| Lethality ($LD_{50}$, $LC_{50}$) | Results vary by test, organism, conditionsG546,47,66,67 Tests submitted by Petitioners Other tests: Corn oil and cottonseed more lethal than mineral oil in albino rats—55 g/kg was LD50 for 5 days for corn oil and for 4 days for cottonseed oil; no fatalities at 130 g/kg with mineral oil for 15 days.[69] Other tests: Several free fatty acids intermediate in lethality in series of chemicals in fathead minnows.[70] Other tests: Mussels died after two weeks or more of exposure to low levels of oils (0.3 ml/min flowrate for oils, 300 ml/min flowrate seawater).[19,21]. | Results vary by test, organism, conditions.[46,47,66,67,68] Tests submitted by petitioner Other tests: 0.5–28 ppm 96-hour LC50 static tests for some aromatic hydrocarbons for selected marine macroinvertebrates and fish.[46,47,68] |
| Acute Toxicity | Laxative, diarrhea, lipid pneumonia, decreased ability to escape predators; some vegetable oils, such as safflower oil, are irritating to human skin and eyes.[55,56,57,71,72] | Laxative, decreased ability to escape predators, pneumonia; affects lung, liver, kidney, blood, gastrointestinal and nervous systems.[28,29,47,57] |
| Chronic Toxicity: | | |

TABLE 2.—COMPARISON OF VEGETABLE OILS AND ANIMAL FATS WITH PETROLEUM OILS—Continued

| | Vegetable oil/animal fats | Petroleum oils |
|---|---|---|
| Cancer | High-fat diets and diets containing certain types of fats increase cancer incidence in studies of laboratory animals and epidemiological studies.[1,73,74,75,76,77,78]. | Benzene and some PAHs are human carcinogens; certain crude oil fractions and petroleum products sufficient evidence of carcinogenicity in laboratory animals and associated with increased cancer in refinery workers.[47,48,79] |
| Effects on Growth | High levels of some types of fats increase growth and obesity but early death and decreased reproductive ability in several species of animals; elevated levels of some oils or components decrease growth in some fish; growth inhibition in mussels exposed to low levels of sunflower oil.[1,21,35,74,78,80,81,82,83,84,85,86]. | Petroleum hydrocarbons affect nearly all aspects of physiology and metabolism; reduced feeding rates in most animal species studied at concentrations similar to those in spills; benthic organisms especially sensitive; varying responses in marine plants.[28,29,38,47] |
| Reproductive and Developmental Effects | Decreased reproduction or growth and survival of offspring in some animals ingesting high levels of oils; kills embryos in eggs by physical effects, unknown whether toxicity also occurs.[22,55,56,57,74]. | Affect broad range of reproductive and developmental processes; sensitivities to hydrocarbons vary widely between species and life stages; significant reproductive impairment rarely seen in field although coral, mussels, fiddler crabs,fish, birds, crustaceans, teleosts can be affected, some for years; decreased reproductive capacity and malformations in fish, birds; reduced egg production and toxicity in several bird species.[28,29,30,38,47,59,60,61,62] |
| Other Toxic Effects | Effects on shells of mussels exposed to low levels of oils, decreased foot extension activity; human and some animal studies show correlation of high levels of dietary fats with coronary artery disease, some types of cancer, hypertension, diabetes, obesity, altered immunity, altered steroid excretion, effects on bone modeling; increased atherosclerosis in rats fed high cholesterol levels; decreased lifespan in some animals consuming high levels of certain types of oils that increased growth and obesity.[1,21,35,73,74,78,86,87]. | Affect broad range of organ systems and functions; increased vulnerability to disease and decreased growth and reproductive success; adverse skin effects in workers; components affect immune and hematopoeitic systems.[28,29,30,38,39,47,48] |
| Toxicity of Components or Degradation Products. | Most common chronic toxic effects of gossypol, a cottonseed oil component, in animals are cardiac irregularity, circulatory failure or rupture of red blood cells, and death; erucic acid in rapeseed oil and mustardseed oil causes cardiac effects, fat deposition in hearts of animals, growth suppression, anemia, and other effects, affects essential fatty acids; cyclopropene fatty acids in cottonseed and other oils suppress growth and impair female reproduction in laboratory animals, produce embryomortality in hens and rats, increase liver toxicity of other chemicals, and cause liver cancer in rainbow trout; oxidation products of animal fats and vegetable oils—cholesterol oxidation products can adversely affect the heart, immune system, and metabolism, and some lipid oxidation products may act in cancer development and affect atherosclerosis.[1,42,43,44,88,89,90,91,92,93]. | Single exposures to benzene, a component of petroleum oils, at very high concentrations fatal in man; can cause central nervous system stimulation followed by depression and respiratory failure; can produce nausea, giddiness, headache, unconsciousness, convulsions, and paralysis; chronic exposure of humans to benzene can produce anemia and other blood effects and decrease immune defense mechanisms; some PAHs, components of petroleum oils, have reproductive effects and cause birth defects in animals and can affect skin, body fluids, and the immune system after short and long-term exposures in animals, and cause some respiratory effects in workers; some breakdown products are mutagenic or linked to carcinogenicity.[12,28,29,38,47,48,66,79,94] |
| Indirect Effects | High levels of oils upset fermentation and digestion in ruminants.[95]. | Fuel oil no. 5 reduced herring population by decreasing amphipod grazers that control fungal damage to fish eggs.[47] |
| Aesthetics (Fouling, Rancidity) | Rancid odors of breakdown products; fouling of beaches, polymers formed in water and on sediments and concrete-like aggregates of oil and sand foul beaches.[1,2,3,5,19,21,22,34,35,96]. | Fouling of beaches with tar balls and weathered oil.[31,32,33,47] |
| Fire/Explosion Hazard | Usually not a hazard, unless hexane or other chemicals present.[1,2,15,17]. | Many petroleum products contain volatile chemicals that are flammable or explosive under certain conditions.[11,12,18,31,39] |

TABLE 2.—COMPARISON OF VEGETABLE OILS AND ANIMAL FATS WITH PETROLEUM OILS—Continued

| | Vegetable oil/animal fats | Petroleum oils |
|---|---|---|
| Interference With Water Treatment ..... | Large amounts can overwhelm microorganisms used in water treatment plants; treatment plants must be shut down and alternative water supply provided to prevent disruption from spills.[96,97,98,99,100]. | Spills can interfere with water treatment processes, requiring shutdown of plants and provision of alternate water supply; can contaminate groundwater.[30,52,97,98,99] |

[1] Hui, 1996a
[2] Hoffmann, 1989
[3] Lawson, 1995a
[4] NAS, 1985a
[5] Hui, 1996b
[6] Hazardous Substances Data Base, National Library of Medicine, 1997
[7] CHRIS (Chemical Hazards Response Information System), DOT, 1991
[8] CHRIS (Chemical Hazards Response Information System), DOT, 1995
[9] Merck Index, 1989
[10] Whiticar et al., 1993
[11] Dubovkin et al., 1995
[12] USDHHS/ATSDR, 1995b
[13] Material Safety Data Sheet on Corn Oil, 1997
[14] Allen and Nelson, 1983
[15] Rescorla and Carnahan, 1936
[16] Weiss, 1983
[17] Murata et al., 1993
[18] USDHHS/ATSDR,1995a
[19] Salgado, 1992
[20] Mudge et al., 1993
[21] Mudge, 1995
[22] Crump-Wiesner and Jennings, 1975
[23] Russell and Carlson, 1978
[24] Sanders et al., 1980
[25] Shaw, 1977
[26] Lee, 1977
[27] Teal, 1977
[28] Alexander, 1983
[29] Hartung, 1995
[30] USDOC/NOAA, 1996
[31] USDOC/NOAA, 1992b
[32] Clark, 1993
[33] NAS, 1985d
[34] Mudge, 1997a
[35] Mudge, 1997b
[36] Minnesota, 1963
[37] USDHHS, 1963
[38] Entrix, 1992
[39] USDOC/NOAA, 1992a
[40] Hui, 1996d
[41] Ratledge, 1994
[42] Hayes, 1982
[43] Mattson, 1973
[44] Berardi and Goldblatt, 1980
[45] Rechcigl, 1983
[46] NAS, 1985c
[47] NAS, 1985e
[48] IARC, 1989
[49] Mudge et al., 1995
[50] Mudge et al., 1997b
[51] Straughan , 1977
[52] Groenewold et al., 1982
[53] Institute, 1985
[54] Michael, 1977
[55] USDOI/FWS, 1994
[56] Frink, 1994
[57] Frink and Miller, 1995
[58] Rozemeijer et al., 1992
[59] Smith and Herunter, 1989
[60] Albers, 1995
[61] Leighton, 1995
[62] Albers, 1977
[63] Szaro and Albers, 1977
[64] Croxall, 1975
[65] Lyall, 1996
[66] Klaassen et al., 1986
[67] Rand, 1985
[68] Mecklenburg et al., 1977
[69] Boyd, 1973
[70] USEPA, 1976
[71] Gilman et al., 1985
[72] Lewis, 1996
[73] USDHHS, 1990
[74] NAS/NRC, 1995

[75] Tannenbaum, 1942
[76] Carroll, 1990
[77] Freedman, 1990
[78] FAO/WHO, 1994
[79] IARC, 1984
[80] NAS/NRC, 1983
[81] NAS/NRC, 1981a
[82] Takeuchi and Watanabe, 1979
[83] Stickney and Andrews, 1971
[84] Stickney and Andrews, 1972
[85] Murray et al., 1977
[86] Salgado, 1995
[87] Sellers and Baker, 1960
[88] Frankel, 1984
[89] Hendricks et al., 1980a
[90] Phelps et al., 1965
[91] Miller et al., 1969
[92] Roine et al., 1960
[93] Yannai, 1980
[94] USDHHS/ATSDR, 1995d
[95] Van Soest, 1994
[96] Rigger, 1997
[97] USEPA, 1978; Identification of Conventional Pollutants, 43 FR 32857–32859, July 28, 1978
[98] USEPA, 1979; Final Rule, Identification of Conventional Pollutants, 44 FR 44501–44503, July 30, 1979
[99] Metcalf and Eddy, 1972
[100] Goodrich, 1980

TABLE 3. COMPARISON OF AQUA METHODS AND STANDARD ACUTE AQUATIC TESTING METHODS

| Method | Number of species | Fish size | Acclimation |
|---|---|---|---|
| AQUA Report 1993 ..... | 1—Fathead minnow ... | 0.066±0.041 g, 20.4±3.7 mm, approximately 4 weeks old. | 5 days. |
| USEPA/OPP 1982 (update 1985) [1]. | 2—1 warmwater, 1 coldwater (2—1 warmwater, 1 coldwater). | 0.5-5 g, very young not used, longest no more than twice shortest (0.5-5g). | (At least 2 weeks). |
| ASTM 1986 ..... | List of recommended species. | 0.5-5 usually, not very young, similar size and age, length of longest no more than twice shortest. | 2 days or more with 100% dilution water and maximum temperature, change no more than 3 °C over 72 hours. |
| USEPA/OTS 1985 (update 1987). | Fathead minnow or other listed species. | 2±1 cm recommended length ..... | Held 12 to 15 days before testing; maintained in water of quality to be used in test at least 7 days. |
| USEPA/ORD 1985 (update 1991) {update 1993b} [2]. | Species depends on regulatory requirements. | Age: 1–90 days {Age: 1–14 days} ..... | At least 24 hours in 100% dilution water at temperature range of test. |
| APHA 1989 ..... | List; sensitive to effluent, material, envi. conditions. | Most sensitive life stage, depending on test purpose; longest no more than 1.5 times length of shortest. | Acclimate fish to lab conditions at least 14 days; 100% dilution water for at least 2 days. |
| OECD 1984 ..... | 1 or more ..... | Recommended total length for several species; 2±1 cm for fathead minnow; rationale if others. | 12 days or more; fish exposed to water of test quality and temperature at least 7 days. |
| EEC 1984 ..... | 1 or more ..... | Recommended length 5±2 cm for fathead minnow. | 12 days or more; fish exposed to water of test quality and temperature at least 7 days. |

| Method | Static test duration | Aeration |
|---|---|---|
| AQUA Report 1993 ..... | 48 hours ..... | No—Set 1.<br>Yes—Crude soybean oil and diesel fuel, set 2 aerated for 48 hours; others not aerated. |
| USEPA/OPP 1982 (update 1985) ..... | 96 hours (96 hours) ..... | (No, except aerate reconstituted water prior to use). |
| ASTM 1986 ..... | 96 hours, except 48 hours for daphnids and midge larvae; record mortality at 24, 48, 96 hours for $LC_{50}$. | May gently aerate all chambers and controls; use simultaneous test without aeration; toxicant concentration in aerated chamber not more than 20% lower than unaerated. |
| USEPA/OTS 1985 (update 1987) ..... | 96 hours preferred, mortality at 24, 48, 72, 96 hours, $LC_{50}$, 95% confidence limits (96 hours). | Dilution water aerated until oxygen saturation, stored 2 days without further aeration. |
| USEPA/ORD 1985 (update 1991) {update 1993b}. | 24–48 hours; 96 hours, some states (24–96 hours, depends on requirements). | May alter results, only as last resort; none, unless dissolved oxygen <4mg/l, at which time gentle single-bubble aeration (Aeration rate not over 100 bubbles/min in all test solutions). |
| APHA 1989 ..... | 96 hours for $LC_{50}$; 24 hours, range-finding ..... | Avoid aerating, because aeration may alter results. |
| OECD 1984 ..... | 96 hours preferred; mortality recorded at 24, 48, 72, and 96 hours and $LC_{50}$. | May be used if no significant loss of test substance; must show test substance concentration at least 80% nominal concentration over test period. |

| Method | Static test duration | Aeration |
|---|---|---|
| EEC 1984 | 96 hours preferred, 48 hours minimum; morality recorded each 24 hours and $LC_{.50}$. | |

| Method | Test Vessels | Dissolved oxygen |
|---|---|---|
| AQUA Report 1993 | Polyethylene buckets | Protocol says not below 4.5 mg/l (but was below 4.5 in 100% beef tallow and all concentrations of crude soybean oil, Set 1). |
| USEPA/OPP 1982 (update 1985) | (Glass or welded stainless steel; polyethylene absorbs test materials; for other materials, analyze toxicant concentration). | Measure concentration at start and every 48 hours to end; first 48 hrs., 60–100% saturation, then 40–100% (Measure in control, high, medium, low concentration). |
| ASTM 1986 | Welded stainless steel or glass; size and shape of chamber may affect results if toxicant volatilizes or sorbs onto chamber. | 60–100% saturation for first 48 hours, 40–100% saturation after 48 hours. |
| USEPA/OTS 1985 (update 1987) | Not contain substances that leached or dissolved into aqueous solutions or chemical sorption; glass, stainless steel, perfluorocarbon plastic. | Maintain above 4.5 mg/l or at least 60% air saturation value. |
| USEPA/ORD 1985 (update 1991) {update 1993b}. | Usually soft glass {Borosilicate glass or non-toxic disposable plastic, covered}. | 4 mg/l minimum warmwater species, 6 mg/l minimum coldwater species. |
| APHA 1989 | No material with leachable substances or adsorbs substances from water; stainless steel probably best, glass adsorbs organics; do not use rubber or plastics with fillers, additives, stabilizers.. | At or near saturation, never below 4 mg/l or 60% saturation. |
| OECD 1984 | Chemically inert materials, suitable capacity | At least 60% of air saturation value throughout. |
| EEC 1984 | | At least 60% of air saturation value at selected temperature throughout. |

| Method | Dilution Water | Chemical Analysis of Concentration |
|---|---|---|
| AQUA Report 1993 | 72 mg/l $CaCO_3$ (moderately hard, lab fresh water deionized). | None reported; nominal concentrations listed in report. |
| USEPA/OPP 1982 (update 1985) | Describe source, characteristics, pretreatment (Reconstituted water, soft, aged 1–2 weeks, aerated before use or natural water, hardness 40–48 mg/l as $CaCO_3$; animals not stressed). | Describe methods, concentration, validation and blanks if done (Chemical analysis of test solutions preferred, especially if aerated, material insoluble, containers not stainless steel or glass, or chemical adsorbs to container). |
| ASTM 1986 | Test organisms survive without stress or grow and reproduce; reconstituted, surface, or natural water, requirements described. | Measure concentration at beginning and end in all chambers if possible; desirable to measure degradation products and report methods of analysis, standard deviation and validation studies. |
| USEPA/OTS 1985 (update 1987) | Drinking, natural, or reconstituted water, 50–250 mg/l as $CaCO_3$, pH6–8.5 preferred. | Measure concentration in each at beginning and end; validate analytical methods, degradation products not interfere; replicates within 20% (Concentration in each chamber not vary >30% from measured at start). |
| USEPA/ORD 1985 (update 1991) {update 1993b}. | Receiving water, other surface water, ground water, soft synthetic water {Same water, culturing and dilution}. | Use methods in CWA Sec 304(h) for analysis {Measure in each test concentration at start, daily, and end}. |
| APHA 1989 | Reconstituted or natural water; standard water conditions for comparative toxicity, sensitivity tests. | Measure concentration in each container at start and once during test; measured concentration within 15% of calculated. |
| OECD 1984 | Drinking, natural or reconstituted water; prefer hardness 50–250 mg $CaCO_3$ per liter, pH 6–8.5. | Must show concentration maintained and measured concentration at least 80% of nominal. |
| EEC 1984 | Drinking water, natural water, reconstituted water; prefer 50–250 mg/l as $CaCO_3$, pH 6–8.5. | Evidence from analysis, chemical properties, or test system used that concentration maintained and within 80% of initial concentration. |

| Method | Results reported |
|---|---|
| AQUA Report 1993 | 48-hour $LC_{50}$; no confidence limits reported, but protocol says intervals computed. |
| USEPA/OPP 1982 (update 1985) | Effect criteria, percent with effects; 96-hour $LC_{50}$, 95% confidence limits, slope or show $LC_{50}$>100 mg/l (at least 30 organisms exposed) or >100,000 times maximum expected environmental concentration or estimated environmental concentration (Methods, materials, organisms, $LC_{50}$, 95% confidence limits, slope, calculations, chemical analysis). |
| ASTM 1986 | 24, 48, and 96-hour $LC_{50}$, 95% confidence limits, percentage died at each concentration and controls, calculation methods, and detailed information on test and organisms and findings, validation studies for analytical methods and accuracy. |
| USEPA/OTS 1985 (update 1987) | Test procedures and conditions, preparation of test solutions, maximum concentration with 0% mortality, minimum concentration with 100% mortality, cumulative mortality each concentration and time, $LC_{50}$ based on nominal concentration at each time, 95% confidence limits, concentration-mortality curve at end, procedures for determining $LC_{50}$, mortality of controls, test according to guidelines. |

| Method | Results reported |
|---|---|
| USEPA/ORD 1985 (update 1991) {update 1993b}. | Chemical analysis, organisms died or effect in each chamber, observations, $LC_{50}$, 95% confidence intervals and methods to calculate, deviation from methods {Raw toxicity data, relationship between $LC_{50}$ and NOAEL if NOAEL, pass/fail}. |
| APHA 1989 | $LC_{50}$'s for exposure times, 95% confidence limits; mortality in controls, describe test conditions and methods, observations, test material, response criteria. |
| OECD 1984 | Cumulative percent mortality vs. concentration; $LC_{50}$; confidence limits, p=0.95; where data inadequate, geometric mean of highest concentration with 0% mortality and lowest concentration with 100%. |
| EEC 1984 | Methodology, highest concentration with 0% mortality, lowest concentration with 100% mortality, cumulative mortality, control, $LC_{50}$, 95% confidence limits, $LC_{50}$ calculations, dose-response at end, slope, dissolved oxygen and pH and temperature every 24 hours. |
| **Method** | **Special considerations** |
| AQUA Report 1993 | |
| USEPA/OPP 1982 | Required to register end-use pesticide product introduced directly into aquatic environment, $LC_{50}$ below or |
| (update 1985) | equal to maximum expected environmental concentration, or ingredient enhances toxicity |
| | (Required if insoluble; flow-through if high BOD; 17–22 °C, at least 10 organisms/concentration, loading limits; reviews statistical analysis; invalid if aerated or not glass or solubility problems). |
| ASTM 1986 | Use flow-through if chemical has high BOD; loading limits specified so dissolved oxygen acceptable, metabolic products not above acceptable level, and no crowding; temperature not vary > 1°C; 10 organisms per concentration group. |
| USEPA/OTS, 1985 | Guidelines for development of test rules standards, test data under Toxic Substances Control Act; loading |
| (update, 1987) | limits; 23° ± 2°C. |
| USEPA/ORD 1985 | For National Pollutant Discharge Elimination System effluents; definitive vs. screening tests; loading, limits; |
| (update 1991) | 20° C; 2 replicates, 10 organisms/concentration. |
| {update 1993b} | {If pH outside 6–9, two parallel tests, one adjusted; or static renewal or flow-through}. |
| APHA 1989 | 5 concentrations and control; 10 fish/tank, 20 fish/concentration; species in receiving water or similar, available for tests, healthy in lab, important trophic link or economic resource. |
| OECD 1984 | 21–25° C; carry out without pH adjustment, adjust pH of stock solution if necessary so concentration not changed and no reaction or precipitation. |
| EEC 1984 | 20–24 °C ± 1°C; carry out without pH adjustment, adjust if necessary; interpret results with care if stability or homogeneity of test substance not maintained. |

[1] In some instances, other test conditions were allowed (USEPA, 1996). Draft Amendment to Standard Evaluation Procedures, 1996 states: Individual fish should weigh 0.1–5 g. Hardness of natural dilution water of less than 200 mg/l as CaCO3 can be used in lieu of reconstituted water for organic chemicals. Chemicals that are poorly soluble or with a water solubility less than 100 ppm (<100 mg/l) should be tested up to the maximum water solubility if certain conditions apply.

[2] Final Report of Fourth Edition, August, 1993.

TABLE 4.—EFFECTS OF REAL-WORLD OIL SPILLS

| Name and location of spill | Oil spilled | Effects |
|---|---|---|
| Minnesota Soybean Oil and Petroleum Oil Spills (1962–1963).[1,2] | 1 to 1.5 million gallons soybean oil from storage facilities, 1 million gallons low viscosity cutting oil. | Killed thousands of ducks and other waterfowl and wildlife or injured them through coating; 5,300 birds injured or died, 26 beavers, 177 muskrats. |
| | | Formed stringy, rubbery masses with slicks; sank to bottom; milky material and hard crusts of soybean oil with sand on beaches. |
| | | Soybean oil caused much of waterfowl loss, as shown by lab analysis of oil scraped from ducks. |
| Fanning Atoll Spill (1975).[3] | Cargo ship with coconut oil, palm oil, and edible materials; ran aground, dumped cargo onto coral reef. | Effects similar to petroleum oil spill. |
| | | Killed fish, crustaceans, mollusks; shifts in algal community continued for 11 months. |
| Kimya Spill, North Wales (1991).[4,5,6,7,8] | Cargo of unrefined sunflower oil ... | Killed mussels, shifts in ecological communities around spill. |
| | | Polymerized, covered bottom, killed benthic organisms; formed impermeable cap, shut out oxygen, bacteria cannot break down; polymers remain nearly 6 years later. |
| | | Concrete-like aggregates of oil and sand on beach. |
| | | Lab studies of mussels show small amounts of sunflower and other vegetable oils kill mussels after 2 weeks; affect mussel lining. |
| Rapeseed Oil Spills (1974–1978).[9] | 3 small spills, total about 35 barrels rapeseed oil. | Greater losses of birds from 3 small spills of rapeseed oil than 176 spills of petroleum oils over 5 years in Vancouver Harbor. |
| | | Killed 500 birds; petroleum spills killed less than 50 birds. |
| | | Perhaps vegetable oils lack strong, irritating odor of petroleum oils, so birds do not avoid. |
| (1989).[10] | About 10 barrels (400 gallons) of rapeseed oil. | 88 oiled birds of 14 species, half of them dead; half of rescued birds died; casualties probably higher. |
| | | About 300 oiled Barrow's Goldeneyes spotted 2 days after spill crowded onto islands where they remained for 2 days—fate unknown, but weakened birds often die. |

TABLE 4.—EFFECTS OF REAL-WORLD OIL SPILLS—Continued

| Name and location of spill | Oil spilled | Effects |
|---|---|---|
| Fat and Oil Pollution in New York State Waters (1967).[11] | Wide variety of sources. ..... | Killed waterfowl, coated boats and beaches, tainted fish, created taste and odor problems in water treatment plants.<br>Grease like substances on shore or floating on Lake Ontario; shoreline grease balls smelled like lard, analyzed as mixtures of animal and vegetable fats. |
| Spills of Fish Oil Mixtures near Bird Island, Lamberts Bay, South Africa (1974).[12] | Fish factory effluent pipe near breeding ground for Cape Gannets. | Killed at least 709 Cape Gannets, 5,000 Cape Cormorants, and 108 Jackass Penguins.<br>Penguins with sticky, white, foul-smelling coat of oil shivering; gannet chicks dead.<br>Milky white sea and clots of oil on island smelling of fish. |
| Releases at two other fish factories at St. Helena Bay and Saldanha Bay, South Africa (1973).[13] | Two other fish factories; storage pits and processing effluents and off loading water from vessels. | Two other fish factories; at one, killed 10,000 rock lobsters and thousands of sea urchins probably from oxygen depletion; at second, killed 100,000 clams and black mussels, prawns, polychetes, and anemones, and smelled bad and adversely affected aesthetics of beaches and camping site. |
| Soybean Oil Spills in Georgia (1996).[14] | Soybean oil from tanker truck and soybean vegetable oil refinery with overfilled aboveground storage tank. | Aesthetic effects at Lake Lanier; rancid oil as weathered; adhered to boats and docks.<br>At Macon, rapid response prevented significant damage from oil, which flowed through storm water system and entered stream; previous spills from facility had entered sanitary sewer system and damaged sewage treatment plant. |
| Spill of Nonylphenol and Vegetable Oils in Netherlands (December,1988 to March, 1989).[15] | Unknown source ..... | Thousands of seabirds, mostly Guillemots and Razorbills, washed ashore.<br>1,500 sick birds died; covered with oil, emaciation, aggressive behavior, bloody stools, leaky plumage; liver damage, lung infections.<br>High levels of nonylphenol and vegetable oils, such as palm oil. |
| Wisconsin Butter Fire and Spill (1991).[16,17,18,19,20,21,22,23] | Butter, lard, cheese as well as meat and other food products. | Released 15 million pounds of butter and 125,000 pounds of cheese into the environment and damaged at least 4.5 million pounds of meat; thousands of pounds of butter ran offsite; rapid response prevented flow of buttery material through storm sewers to nearby creek and lake, where fish and other aquatic organisms could have suffocated from oxygen depletion.<br>Destroyed two large refrigerated warehouses with $10 million to $15 million in property damage.<br>Cost tax payers $13 million for butter and cheese stored under USDA surplus program.<br>Damage to fire equipment from grease, loss of business, overtime pay for 300 firefighters and responders, costs for cleaning equipment and drains, rodent control.<br>Environmental cleanup costs; thousands of gallons of melted butter; butter and spoiled meat declared hazardous waste. |

[1] Minnesota, 1963.
[2] USDHHS, 1963.
[3] Russell and Carlson, 1978.
[4] Salgado, 1992.
[5] Mudge et al., 1993.
[6] Mudge et al., 1995.
[7] Mudge, 1997a.
[8] Mudge, 1997b.
[9] McKelvey et al., 1980.
[10] Smith and Herunter, 1989.
[11] Crump-Wiesner and Jennings, 1975.
[12] Percy-Fitzpatrick Institute, 1974.
[13] Newman and Pollock, 1973.
[14] Rigger, 1997.
[15] Zoun et al., 1991.
[16] Wisconsin, 1991a.
[17] Wisconsin, 1991b.
[18] Wisconsin, 1991c.
[19] Wisconsin State Journal, 1991a.
[20] Wisconsin State Journal, 1991b.
[21] Wisconsin State Journal, 1991c.
[22] Wisconsin State Journal, 1991d.
[23] Wisconsin State Journal, 1991.

## Appendix II—Edible Oil Regulatory Reform Act Differentiation

*Edible Oil Regulatory Reform Act*

Congress enacted the Edible Oil Regulatory Reform Act on November 20, 1995. The Act requires all Federal agencies (with the exception of the Food and Drug Administration) to (1) differentiate between and establish separate classes for animal fats and oils and greases, fish and marine mammal oils, oils of vegetable origin, including oils from certain seeds, nuts, and kernels, from other oils and greases, including petroleum; and (2) apply standards to different classes of fats and oils based on certain considerations. In

differentiating between the classes of fats, oils, and greases, each Federal agency shall consider differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes. These requirements apply when Federal agencies are issuing or enforcing any regulation or establishing any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease under any Federal law.

EPA's Final Rule amending the Oil Pollution Prevention regulation (Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities; Final Rule, 59 FR 34070, July 1, 1994) was promulgated before the Edible Oil Regulatory Reform Act was enacted; Congress did not make the requirements of the Act retroactive. EPA is, therefore, not obligated to evaluate the statutory criteria to determine if a further differentiation between edible oils and other oils should be made in its Final Rule. EPA does, however, present the following information in support of its conclusion that spills of vegetable oils and animal fats can indeed pose a serious risk to fish, wildlife, and sensitive environments.

A summary of the properties and effects of vegetable oil and animal fats are presented in Appendix I, Tables 1 and 2. Additional detailed discussion and studies of these properties and effects are contained in the Technical Document in support of this document.

Physical Properties. Vegetable oils and animal fats are generally solids in water at ambient temperatures. They both have limited water solubility but high solubility in organic solvents. They generally are of low viscosity, have a low evaporation potential, and their specific gravity can range from 0.87 to 0.92. Petroleum oils also have limited water solubility and high solubility in organic solvents. They form an emulsion in turbulent water, and they evaporate faster than edible oils. Their specific gravity can range from 0.78 to 0.97. Data regarding petroleum oil's solidity and viscosity vary. (See Appendix I, Table 1. Comparison of Physical Properties of Vegetable Oils and Animal Fats with Petroleum Oils and Table 2. Comparison of Vegetable Oils and Animal Fats with Petroleum Oils.

Vegetable oils and animal fats and petroleum oils all have similar physical properties. One difference is the low volatility of most vegetable oils and animal fats, which results in less product removed from a spill by evaporation and reduces the combustion and explosive potential of these oils.

Chemical Properties. Animal fats and vegetable oils are water-insoluble substances that consist predominantly of glyceryl esters of fatty acids or triglycerides. Petroleum oils are extremely complex mixtures of chemical compounds. Many classes of compounds are present in petroleum, and each class is represented by many components. For example, hydrocarbons are a major class of constituents of petroleum. Similar behavior of fatty acids and petroleum oil in the aquatic environment is largely a result of their predominantly hydrocarbon character.

Biological Properties. Some vegetable oils and animal fats do biodegrade more readily than petroleum oils; however, because their evaporation potential is low, vegetable oils and animal fats may tend to stay in the water in larger quantities and for longer periods of time than petroleum oils. Under certain circumstances, vegetable oils and animal fats can remain in the environment for periods of time greatly exceeding their potential degradation time. Environmental circumstances play an important part with regard to the comparative degradation rates of petroleum and non-petroleum oils including vegetable oil and animal fats. Both kinds of oil degrade more slowly in low-energy and poorly oxygenated waters, and both tend to disappear quickly in high-energy, well oxygenated, open water areas. Both petroleum and non-petroleum oils can remain in the environment for extended periods of time if buried under sediment or spilled in large enough quantities to form thick layers. The high BOD of vegetable oils and animal fats increases the rate of biodegradation but also quickly depletes the available oxygen of the surrounding environment. This could result in significant harm to shallow near-shore areas or wetlands. Oxygen depletion could be as serious as toxicity with regard to its impact on aquatic wildlife.

Environmental Effects. Certain effects of non-petroleum oils are similar to the effects of petroleum oils because of the physical properties common to both. Significant environmental harm from petroleum oils, animal fats and vegetable oils, and other non-petroleum oils can occur as a result of the following: physical effects such as coating with oil, suffocation, contamination of eggs and destruction of food and habitat, short and long term toxic effects, pollution and shut down of drinking water supplies, rancid smells, fouling of beaches and recreational areas.

Summary of Analysis after Reviewing the Act's Criteria. Based on the significant degree of similarity between animal fats and vegetable oils and other petroleum and non-petroleum oils, especially with respect to negative environmental effects associated with the common physical properties of all oils, EPA stands by its decision not to make further changes to its July 1, 1994, Final Rule. The Final Rule already provides a greater degree of flexibility for owners or operators of facilities storing only non-petroleum oils, including vegetable oils and animal fats, to devise different and more appropriate response strategies than owners or operators of petroleum oil facilities.

[FR Doc. 97–27261 Filed 10–17–97; 8:45 am]

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Federal Register

Monday
October 20, 1997

## Part III

# Department of Housing and Urban Development

**24 CFR Part 3280**

**Snow Load Map for Manufactured Homes; Technical Correction; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 3280**

**[Docket No. FR–4276–F–01]**

## Snow Load Map for Manufactured Homes; Technical Correction

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

**ACTION:** Final rule.

**SUMMARY:** This rule corrects the omission of a snow load map from the codified regulations establishing standards for the construction and safety of manufactured houses. The design requirements and designations applicable to the snow loads to which a manufactured home must be designed have not changed, even though other unrelated revisions have been made to the applicable section of the regulations. These other revisions have been included in the Code of Federal Regulations (CFR), however, a map that illustrated the designated snow load zones was inadvertently omitted from the CFR. This final rule corrects the omission by recodifying the snow load map.

**EFFECTIVE DATE:** November 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Room 9158, (202) 708–6401; or Marion Connell, Director, Manufactured Housing and Standards Division, Room 9152, (202) 708–6409 (these are not toll-free numbers). For hearing-and speech-impaired persons, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339. The address for both of these persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000.

**SUPPLEMENTARY INFORMATION:** On January 14, 1994, at 59 FR 2456, HUD published a final rule that, in part, revised several provisions in 24 CFR 3280.305(c), to improve the resistance of manufactured homes in high wind zones to wind damage. Because of the scattered nature of the revisions made at that time and because the maps in the then-existing codification were full-page graphics that were referenced in the regulations only as being included in § 3280.305 and were not clearly referenced as being included in a particular paragraph of that section, there was confusion about the amendatory instructions which resulted in the omission of the graphic for the snow load requirements in subsequent editions of the CFR.

This final rule clarifies that the snow load map that had been included as a graphic in earlier editions of the CFR has not been changed as a result of the January 1994 or any subsequent rulemaking. In addition to this explanation in the preamble of this rule, this rule amends the regulations at § 3280.305(c) to reinsert the omitted snow load map and to reference clearly that the snow and wind load maps are codified as part of paragraph (c)(4) of § 3280.305. Appropriate references have, therefore, been added to the heading of the table in paragraph (c)(3)(i) and to paragraph (c)(4) of § 3280.305.

The Roof Snow Load Zone Map that is recodified by this rule is the same map that manufacturers have been continuing to include on the Data Plate, as required by § 3280.305(c)(4), since the requirement for the map was first made effective by a final rule published on December 15, 1975 (40 FR 58752, 58762).

Over the years, the Department has received inquiries from communities subject to large snow accumulations that express concern that HUD's snow load standards do not adequately protect the public in these areas. As indicated in § 3280.305(c)(3)(ii), HUD has authority to establish more stringent requirements for manufactured homes in areas where records or experience indicate significant differences from the snow load requirements established by the chart and map in § 3280.305(c). Any person or community interested in strengthening the snow load requirement for manufactured homes in a specific area or jurisdiction may contact HUD, at the address stated above, to request reconsideration of the applicable requirement.

In addition, the Department invites observations from interested parties, which might include suggestions for updating the snow load map and standards. The existing boundaries are often unclear, and there may be significant variations of snow fall within a particular snow load area. HUD is particularly interested in suggestions on how to protect persons living in manufactured homes in areas subject to high snow loads, without unduly increasing consumer costs or burdening retailers and manufacturers. These suggestions may include specific alternate protections for consumers in high snow load areas. HUD also invites suggestions on methods that could be used in the future to determine snow load requirements in areas where standard methods of data collection or periods of evaluation are not adequate, for example where substantial local variations result from differences in elevation.

### Justification for Final Rulemaking

In general, in accordance with the Department's regulations on rulemaking (24 CFR part 10), the Department publishes a rule for public comment before issuing a rule for effect. Part 10 does provide, however, for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment. Public procedure is unnecessary because this action does not affect any of the requirements that have been, or currently are, in effect with respect to the required design loads for roofs in the designated snow load areas. The recodification of the snow load map should merely make it easier to identify and understand the application of the current requirements regarding the design requirements for manufactured homes in the various snow load areas.

### Findings and Certifications

*Environmental Impact*

This amendment is excluded from the environmental review requirements of the National Environmental Policy Act (42 U.S.C. 4321–4347) and the other related Federal environmental laws and authorities, as set forth in 24 CFR part 50. In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not ''direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate property acquisition, disposition, lease, rehabilitation, alteration, demolition, or new construction, or set out or provide for standards for construction or construction materials, manufactured housing, or occupancy.'' Accordingly, under 24 CFR 50.19(c)(2), this amendment is categorically excluded because it amends a previous document where the underlying document as a whole would not fall within the exclusion set forth in 24 CFR 50.19(c)(1), but the amendment by itself does.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before

publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely makes a technical correction and does not change any of the requirements of the program.

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have ''federalism implications'' because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number is 14.171.

**List of Subjects in 24 CFR Part 3280**

Fire prevention, Housing standards, Incorporation by reference, Manufactured homes, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, part 3280 of title 24 of the Code of Federal Regulations is amended as follows:

## PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for part 3280 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 5403, and 5424.

2. Section 3280.305 is amended as follows:

a. Paragraph (c)(3)(i) is amended by adding the following heading in the first column of the first row of the table: ''Zone (see Map in § 3280.305(c)(4))''; and

b. Paragraph (c)(4) is amended by revising the second sentence and by adding after the graphic ''Basic Wind Zone Map for Manufactured Housing'' a graphic entitled ''Roof Snow Load Zone Map'', as follows:

**§ 3280.305 Structural design requirements.**

* * * * *

(c) * * *

(3) * * *

(i) * * *

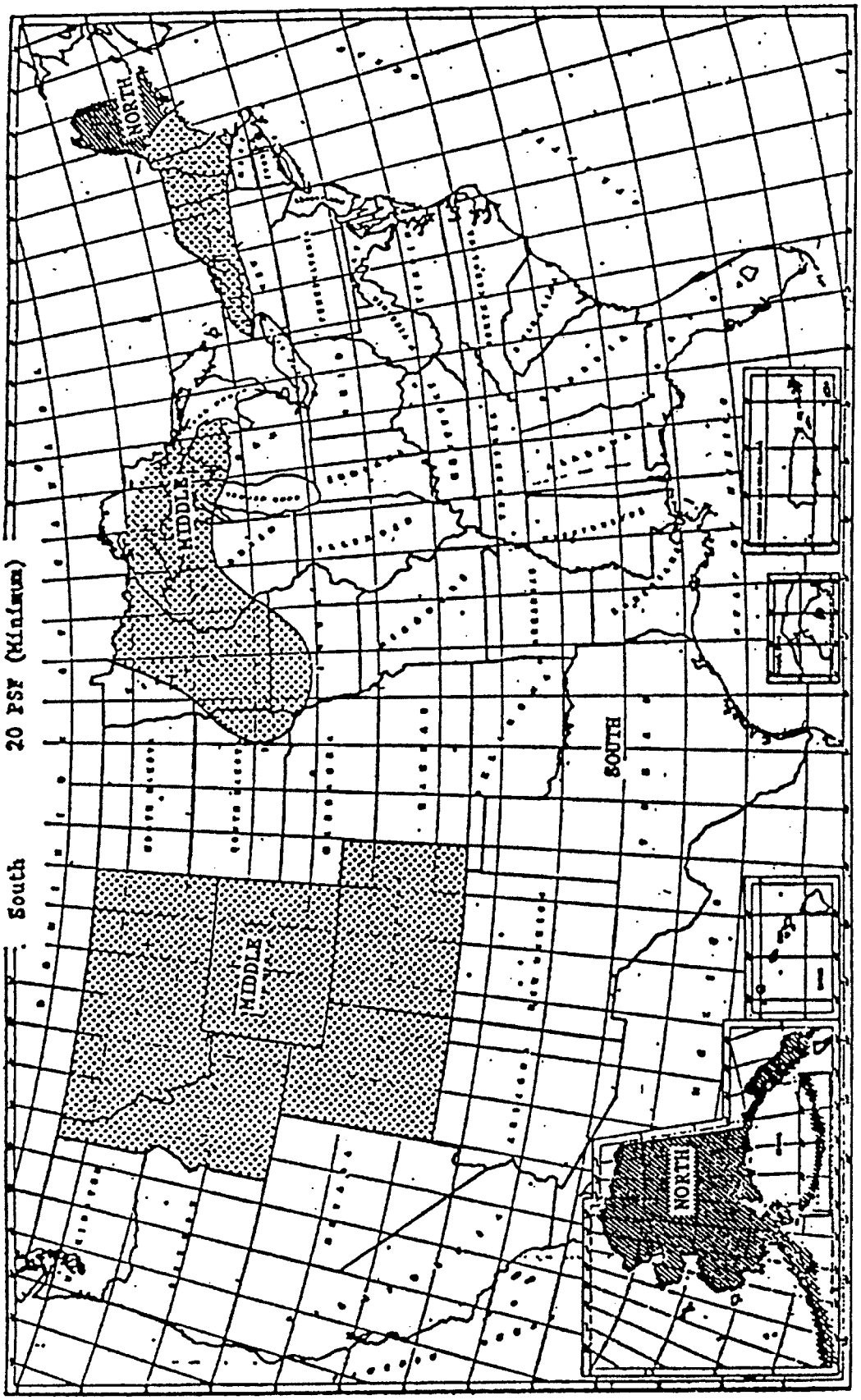
| Zone (see Map in § 3280.305(c)(4)) | Pounds per square foot |
|---|---|
| North Zone | 40 |
| Middle Zone | 30 |
| South Zone | 20 |

* * * * *

(4) * * * The Data Plate shall include reproductions of the Load Zone Maps shown in this paragraph (c)(4), with any related information. * * *

* * * * *

BILLING CODE 4210–27–P




ROOF LOAD ZONE MAP

North 40 PSF (Snow)

Middle 30 PSF (Snow)

South 20 PSF (Minimum)

* * * * *

Dated: October 4, 1997.

**Nicolas P. Retsinas,**

*Assistant Secretary for Housing, Federal Housing Commissioner.*

[FR Doc. 97–27675 Filed 10–17–97; 8:45 am]

**BILLING CODE 4210–27–C**

federal register

Monday
October 20, 1997

Part IV

# Environmental Protection Agency

**40 CFR Part 80**

**Transitional and General Opt Out Prodecures for Phase II Reformulated Gasoline Requirements; Final Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

**[FRL–5903–3]**

## Transitional and General Opt Out Procedures for Phase II Reformulated Gasoline Requirements

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

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations for states to opt-out of the federal reformulated gasoline (RFG) program for areas where a state had previously voluntarily opted into the program. The previously published opt-out provisions provide that EPA-approved opt-out petitions become effective 90 days from approval. Under today's action, if a state has not submitted an opt-out petition to EPA by December 31, 1997, it must participate in the federal RFG program until December 31, 2003. The Agency believes this rule is necessary to ensure a smooth transition between the two phases of the reformulated gasoline program. The use of Phase II RFG will provide greater health benefits than Phase I by requiring further reductions from the refiners' 1990 gasoline baseline for volatile organic compounds (VOCs) and toxics by about 25% and 20% respectively. The requirements also include a nitrogen oxides ($NO_X$) reduction of about 6%.

Effective January 1, 2004, the current opt-out procedures become effective again. States that want to end their involvement in the federal RFG program prior to December 31, 1999, and not participate in Phase II of the program, must submit a complete opt-out petition to EPA by December 31, 1997.

Today's action does not affect the regulations for opting in to the RFG program. In a separate action EPA will publish a final rule which would permit former ozone nonattainment areas to opt into the federal reformulated gasoline program.

**EFFECTIVE DATE:** This final rule is effective November 19, 1997.

**FOR FURTHER INFORMATION CONTACT:** Christine Hawk or Diane Turchetta at U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 233–9000.

**SUPPLEMENTARY INFORMATION:** A copy of this action is available on the OAQPS Technology Transfer Network Bulletin Board System (TTNBBS) and on the Office of Mobile Sources' World Wide Web cite, http://www.epa.gov/OMSWWW. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919–541–5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, or 9600 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

(M) OMS
(K) Rulemaking and Reporting
(3) Fuels
(9) Reformulated gasoline

A list of ZIP files will be shown, all of which are related to the reformulated gasoline rulemaking process. Today's action will be in the form of a ZIP file and can be identified by the following title: OPTOUT.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:
<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

### Regulated Entities

Entities potentially regulated by this action are those which produce, supply or distribute motor gasoline. Regulated categories and entities include:

| Category | Examples of regulated entities |
|---|---|
| Industry | Petroleum refiners, motor gasoline distributors and retailers. |
| State governments | State departments of environmental protection. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### Extended Summary

EPA published a Notice of Proposed Rulemaking on March 28, 1997, (62 FR 15077) proposing changes to the existing opt-out rule which provides criteria and general procedures for states to opt-out of the RFG program through December 31, 1997. This final rule promulgates the revisions as proposed by EPA with minor changes. 61 FR 35673 (July 8, 1996).

This final rule applies to areas where the state voluntarily opted into the federal RFG program and subsequently decides to withdraw from it referred to as ''opt-out.'' This final rule establishes the criteria and procedures for states to opt-out from the RFG program after December 31, 1997. Today's rule does not change the process a state must follow to petition for removal from the program or the criteria used by EPA to evaluate a request. For example, the rule maintains the requirements that the governor, or the governor's authorized representative, submit an opt-out petition. This rule changes the time period before the opt-out becomes effective for opt-out petitions received from January 1, 1998, through December 31, 2003. This period includes the remaining two years of Phase I (January 1, 1998 to December 31, 1999) and the first four years of Phase II (January 1, 2000, to December 31, 2003).

This final rule specifies that for all opt-out petitions received on or before December 31, 1997, the previously published procedures (61 FR 35673) will apply and that the effective date that an area will no longer be a covered area as defined in 40 CFR section 80.70 will be 90 days (or more at a state's request) from the date of EPA's letter of notification to the Governor of the requesting state or from the effective date of an agency approval of a revision to the State Implementation Plan (SIP) where applicable. States which have opted in to the RFG program that do not submit a completed opt-out request by December 31, 1997 and subsequently submit an opt-out request before January 1, 2004, will be required to participate in the federal RFG program, including

Phase II of the program, until at least December 31, 2003. The opt-out request will be effective January 1, 2004 or 90 days from the Agency's written notification to the State approving the opt-out petition, whichever date is later, unless the Governor requests a later date.

The Agency may grant up to a five month extension to the December 31, 1997 deadline in limited circumstances. An extension can be granted where the State's Legislature has pending legislation on the use of federal RFG that was active prior to March 28, 1997, when this opt-out rule was proposed. The request for an extension must demonstrate that the legislation cannot reasonably be acted upon until after the December deadline. Such legislation must be related to either opting out of or remaining in the RFG program. The Governor must submit a request for an extension to EPA containing such information before December 31, 1997. The Agency can then grant an extension up to May 31, 1998.

Today's requirements will also cover those areas opting into the RFG program subsequent to December 31, 1997; areas opting-in during that time period must remain in the program at least until December 31, 2003. The opt-out procedures would revert back to the previously published rule (90 day requirements) as of January 1, 2004.

Today's action will help provide certainty to the industry as it makes decisions that are likely to affect the supply and cost of RFG, which in turn could affect the cost-effectiveness of Phase II RFG. Additionally, the action maintains the flexibility that states have in air quality planning to the degree possible and practicable.

## I. Opt-out Petitions Received January 1, 1998 Through December 31, 2003; and After December 31, 2003

### *A. Background*

The federal reformulated gasoline (RFG) program is designed to reduce ozone levels and air toxics in areas of the country that are required to or volunteer to adopt the program. Reformulated gasoline reduces motor vehicle emissions of the ozone precursors, specifically volatile organic compounds (VOC), through fuel reformulation. RFG also achieves a significant reduction in air toxics. In Phase II of the program emissions of nitrogen oxides ($NO_X$), another precursor of ozone, are also reduced. The Clean Air Act requires RFG in ten metropolitan areas with the highest levels of ozone.[1] In section 211(k)(6), Congress provided the opportunity for states to opt-in to the RFG program for other areas classified under Subpart 2 of Part D of Title I as ozone nonattainment areas.

EPA issued final rules establishing requirements for RFG on December 15, 1993. 59 FR 7716 (February 16, 1994). During the development of the RFG rule, a number of states inquired as to whether they would be permitted to opt-out of the RFG program at a future date, or opt-out of certain requirements. This was based on their concern that the air quality benefits of RFG, given their specific needs, might not warrant the cost of the program, specifically focusing on the more stringent standards in Phase II of the program (starting in the year 2000). States with that concern wished to retain the flexibility to opt-out of the program. Other states indicated they viewed RFG as an interim strategy to help bring their nonattainment areas into attainment sooner than would otherwise be the case.

The regulation issued on December 15, 1993, did not include procedures for opting-out of the RFG program because EPA had not proposed and was not ready to adopt such procedures at that time. Since then, the Agency has adopted general procedures for future opt-outs. 61 FR 35673 (July 8, 1996). These procedures apply to opt-out petitions received through December 31, 1997.

Based upon EPA concerns regarding smooth implementation of Phase II of the RFG program and public comments that were received in response to the Notice of Proposed Rulemaking (60 FR 31269) published June 14, 1995, EPA is changing the regulations in this final rule for opt-out petitions received between January 1, 1998, through December 31, 2003. The previously published procedures in place today (61 FR 35673) will take effect again beginning January 1, 2004.

In the proposal to the previous opt-out rulemaking, EPA outlined its rationale for determining that it is appropriate to interpret section 211(k) as authorizing states to opt-out of the program. 60 FR 31269 (June 14, 1995). EPA concluded that any conditions on opting out should be focused on achieving a reasonable transition out of the program. There were two primary areas of concern to the Agency. The first was coordination of air quality planning. The second involved appropriate lead time for industry to transition out of the program.

Today's final rule addresses this lead time concern by changing the conditions for opting out during the period from January 1, 1998, to December 31, 2003. As the effective date for Phase II RFG (January 1, 2000) approaches, industry must make investment decisions based in part on anticipated demand for RFG. Unanticipated changes in demand, due to opt-outs, could make cost recovery of investment difficult. To avoid this, refiners would tend to minimize capital investments and rely on costly operational changes which may be more to meet the Phase II requirements. This approach to compliance requirements could lead to higher gasoline prices which would diminish the cost-effectiveness of EPA's RFG program. Thus, EPA believes it must consider these special circumstances which affect industry directly and consumers indirectly and make appropriate changes to the opt-out procedures. Therefore, EPA is requiring states to decide by December 31, 1997 if they intend for opt-in areas to participate in Phase I RFG up to December 31, 1999, and/or to participate in Phase II RFG, which begins on January 1, 2000. If a state has not submitted an opt-out petition by December 31, 1997, it must continue to participate in Phase I RFG through December 31, 1999, and participate in Phase II RFG until December 31, 2003. The Agency however may grant up to a five month extension to the December 31, 1997 deadline if the state meets specific criteria.

### *B. Statutory Authority*

The statutory authority for the action in this rule is granted to EPA by section 211(c) and (k) and section 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 (c) and (k) and 7601(a). For a more complete discussion of statutory authority, see the proposal for general rules establishing criteria and procedures for states to opt-out of the RFG program. 60 FR 31271 (June 14, 1995).

As discussed there, EPA believes it is appropriate to interpret section 211(k) as authorizing states to opt-out of the RFG program, provided that a process is established for a reasonable transition out of the program. EPA believes allowing states to opt out is consistent

[1] EPA recognizes that there are currently ten areas required to use Federal RFG and that these areas currently do not have an opt-out option. Those areas are: Los Angeles–Anaheim–Riverside, CA; San Diego County, CA; Hartford–New Haven–Meriden–Waterbury, CT; New York–Northern New Jersey–Long Island–Connecticut area; Philadelphia–Wilmington–Trenton–Cecil County, MD; Chicago–Gary–Lake County, IL–Indiana–Wisconsin area; Baltimore, MD; Houston–Galveston–Brazoria, TX; Milwaukee–Racine, WI; Sacramento, CA.

with the Act's recognition that states have the primary responsibility to develop a mix of appropriate control strategies needed to reach attainment with the NAAQS. Given this deference to state decision making, it follows that the conditions on opting out should be geared towards achieving a reasonable transition out of the RFG program, as compared to requiring a state to justify its decision.

EPA has identified two principal areas of concern in this regard. The first involves coordination of air quality planning. The second involves appropriate lead time for industry to transition out of the program. Today's rule addresses the latter concern. EPA's authority allows it the discretion to authorize opt-outs in a way that appropriately balances the interests of the parties affected by the regulations. The previous rule establishing opt-out criteria and procedures placed only limited conditions on the states, focusing on the information that must be submitted before EPA may approve an opt-out request. The previous rule also generally required a 90-day time period to pass before an EPA-approved opt-out became effective. Today, EPA is proposing to lengthen this time period for certain future opt-outs because it believes the circumstances affecting industry have changed enough to warrant an appropriate change.

*C. Need for a Required Participation Period*

In the NPRM, EPA proposed a four year required participation period in Phase II for RFG opt-in areas. EPA solicited comments on the impact of future opt-outs during this time period, and the expected impacts on supply and cost from such opt-outs if they were allowed to occur. Two petroleum associations commented that they support the establishment of a minimum participation period for the Phase II RFG program which would provide market certainty and stabilization. One association specifically remarked that industry needs market certainty to not only ensure adequate planning and investments to satisfy RFG demand at the lowest cost, but to continue investments in RFG facilities by providing assurance that the program would be in effect for a reasonable time to allow a return on investment. It further commented that EPA must make every effort to guarantee a stable regulatory climate for the highly capital intensive RFG program. The other association remarked that it agreed with the U.S. Department of Energy's (DOE's) comments to the Agency's June 1995 NPRM, specifically the cost recovery issue. Several refiners/suppliers commented that they agree with the associations' comments. One company added that the Agency must take into account the long term impact on all parties, including small refiners and marketers when deciding RFG opt-ins or opt-outs. A state commented that consumers would benefit from a stable price market which would be encouraged by a long-term commitment to the program. The Agency did not receive any comments arguing against the need for a required participation period.

Based on these comments, EPA maintains its belief in the need for a required Phase II participation period as proposed. The proposed requirement was prompted by the concerns expressed by DOE in its comments during the previous opt-out rulemaking. Specifically, DOE commented that a short time frame to opt-out by states who originally intended to participate in Phase II of the RFG program makes it difficult for refiners to recover their investments in refinery facilities needed to comply with the requirements of Phase II RFG. (Air Docket A–94–68) The Department further explained in its comments that the ability to price gasoline at a level that recovers investments depends very heavily on marginal supply and demand. Small unanticipated changes in demand, whether due to market forces or changing regulatory requirements, can make cost recovery of investment difficult, and cause gasoline prices to rise or fall.

Refinery investments for Phase II RFG were originally estimated by the U.S. Department of Energy (DOE) to be about $1 billion for East Coast refiners and about $2 billion for Gulf Coast PADD III refiners. These estimates were included in DOE's December 1994 report, *Estimating the Costs and Effects of RFG. Using improved modeling and real-world RFG* production volume data, EPA worked closely with API and DOE to improve the DOE refinery model. This work was conducted in concert with EPA's review of the $NO_x$ waiver petition submitted by the American Petroleum Institute (API). Based on the over 200 improvements and changes to the refinery model, DOE released an updated report in 1997 entitled *Re-Estimation of the Refining Cost of RFG $NO_x$* Control. The updated investment estimates in this report for 6.8% $NO_x$ reduction range from about $0.2 to $0.8 billion for PADD I and about $0.0 to $0.6 billion for PADD III.

The investment estimates decreased for several reasons but predominantly because refiners are producing a lower volume of RFG than was originally anticipated in 1994 due to subsequent opt-outs, due to a smaller quantity of spillover than anticipated, and because the refinery models used have been revised to more accurately project capital investments by the refining industry. Although the investment estimates are lower, EPA agrees with DOE's assessment that the estimated investments remain significant and that a required participation period is still appropriate. Such a requirement will encourage refiners to make the appropriate investments which in turn will help keep RFG prices low.

Refiners who expect to be producing Phase II RFG starting January 1, 2000, and who need additional facilities to meet the requirements of that gasoline, are likely to begin making commitments to refinery investments in 1997, two years in advance of the Phase II start date. The decision to invest in the capital needed to comply with Phase II RFG is based on each refiner's product capabilities, desire to participate in the program, and likely anticipated demand.

Those refiners who chose to supply Phase II RFG are each uniquely situated to comply with the year 2000 Phase II requirements. Different levels of investment will be pursued by each refiner when investment is chosen or is necessary. The largest investments are expected to be made in the areas of desulfurization and alkylation to control sulfur and olefins. Some are expected to make early refinery changes to come into compliance with the complex model requirements in 1998. While the economic burden of Phase II compliance will fall disproportionately on some refiners, the Agency's main concern in this final rule is to provide a stable regulatory environment which will not unreasonably inhibit cost recovery, given that this could lead to supply problems and cost fluctuations that could diminish the appeal and cost-effectiveness of the RFG program.

*D. Four Year Required Participation Period From January 1, 2000 to December 31, 2003*

In the NPRM, EPA proposed a four year required participation period to attempt to strike a balance between the potential adverse impacts if refiners have too little time to recoup their Phase II investments and the need of states for some flexibility in using RFG. The Agency solicited comments on the range of investment recovery periods needed by the refineries who plan to invest capital in refining equipment for Phase II RFG.

Several refiners and petroleum associations commented that a four year commitment period is not necessarily sufficient or is the minimum amount of time refiners would need to recover investments made to produce Phase II RFG. These commenters referenced DOE's comments that an eight year period is more adequate given the current competitive gasoline market, as well as EPA's statement that refiners would need a six year investment recovery period assuming a 10% real rate of return (62 FR 15077). Two refiners encouraged EPA to adopt a six year participation period while one suggested at least ten years based on the argument that manufacturing Phase II RFG is a long range project with expected pay outs of 10–20 years. Conversely, two states and two refiners/suppliers of RFG commented that a four-year period is adequate for several reasons including that it strikes a balance between sufficient certainty for RFG producers and flexibility for states to chose air quality control measures, markets tend to become more efficient over time, and that an extended required period may not provide additional cost recovery but instead create a disincentive to continue participation in the program.

The above comments do not represent any new information or compelling arguments to change the proposed four-year participation period beyond four years. Thus the EPA continues to believe that a four year period is the most appropriate. The Agency is not trying to assure that all refiners will recover investments made in Phase II RFG production in a given time period. EPA is instead seeking to structure the federal RFG program in a way that minimizes the potential abrupt decrease in demand that could occur to refiners, thereby making it difficult to recover investments associated with producing this product. The potential for such decreases in demand soon after the implementation of Phase II RFG could be a disincentive to refiners to invest in the kind of capital that would tend to reduce future supply problems and to sustain the cost-effectiveness of the program. This is because a refiner's decision to invest in Phase II RFG is based, in part, upon an opt-in state's decision to have EPA require the sale of Phase II RFG in a particular area. RFG market uncertainty is increased when opt-in states are not bound to remain in the RFG program and by the relatively simple process for states to opt out of the RFG program provided for in the previously published rule. Without greater assurance of the markets for Phase II reformulated gasoline over a sufficient period of time, refiners may limit or delay investments and prepare for a smaller than currently-predicted RFG demand.

EPA is committed to ensuring that non-attainment areas around the country attain the National Ambient Air Quality Standards (NAAQS), including the ozone standard. EPA recognizes, however, that under the Clean Air Act the states play a primary role in attaining the NAAQS, including choosing those control measures they prefer to include in their plans to attain and maintain the NAAQS. EPA is committed to maintaining, if possible and practical, the flexibility that states have in air quality planning by establishing procedures to opt out and substitute alternative control measures where the state considers appropriate. The Agency believes that requiring RFG in opt-in states for a period greater than four years may create a disincentive for continued participation in those areas where this program is currently considered a cost-effective control measure for the control of ground-level ozone and toxics.

EPA believes that today's action achieves a balance between allowing states with voluntary RFG areas the flexibility to opt-out of the program and giving industry a certain level of assurance as to a predictable demand for Phase II RFG during the important investment recovery period of the program's early years. Today's action helps maintain a consistent market, adequate supplies and reasonable prices, thus maintaining the RFG program's cost-effectiveness.

*E. Effective Date for Approved Opt-Out Petitions*

In the NPRM, EPA proposed to change the date on which EPA-approved opt-out petitions become effective for opt-out petitions received January 1, 1998, through December 31, 2003. The EPA proposed that States which previously opted in to the RFG program that do not submit an opt-out request by December 31, 1997, and subsequently submit a completed opt-out request before January 1, 2004, will be required to participate in Phase II of the program until December 31, 2003. The opt-out request will be effective January 1, 2004 or 90 days from the Agency's written notification to the State approving the opt-out petition, whichever is later.

The Agency also proposed that if a state submits an opt-out request prior to December 31, 1997, the state can designate the opt-out to occur at any future date beyond the minimum 90-day period required under current opt-out procedures as long as it is not a date beyond December 31, 1999. Areas opting into the RFG program subsequent to December 31, 1997, will be treated the same as areas opting in prior to that date and will also be included in Phase II of the program until December 31, 2003.

A state commented that the December 31, 1997 deadline should be extended if the Agency revises the National Ambient Air Quality Standards (NAAQS) in the summer of 1997. It stated that a change in the NAAQS would require analysis to verify the appropriateness of RFG as a control strategy and that the proposed opt-out deadline would not be sufficient for the state to make such a decision. The Agency understands this air quality planning concern for a revision to the NAAQS, but extending the opt-out deadline a few months would not be of any significant value to the states for purposes of making decisions on control strategies to meet the new ozone standard. Extending the deadline much beyond December 31, 1997 could jeopardize the intent of the rulemaking by not providing industry with sufficient lead time to make necessary investment decisions.

A representative of the state of Maine commented that the opt-out deadline should be extended at least until end of May 1998. The state discussed the controversy within that state surrounding the decision of whether or not to stay in the RFG program and expressed the importance of providing its legislature the opportunity to approve such decisions. The state's legislative session ended June 1997 and is not scheduled to reconvene until January 1998. In January 1997, a bill was introduced in Maine's Legislature to opt the state out of the RFG program. The Legislature did not act on this legislation and carried it over to the next legislative session beginning January 1998 for consideration. The EPA believes that a limited extension is justified under these circumstances and that a limited extension would not negate the intent of the rulemaking since only a small refining market would be affected. Thus in this final rule EPA is allowing a Governor, that requests an extension so the legislature can consider a decision, to submit a letter to EPA before December 31, 1997 to request an extension up to May 31, 1998. To be eligible for an extension, the State's Legislature must have pending RFG legislation that cannot reasonably be acted upon until after the December deadline. Such legislation must be related to either opting out of or

remaining in the RFG program and it must have been introduced prior to March 28, 1997, the date of the opt-out proposal. The Governor must submit a request for an extension to EPA containing such information before December 31, 1997. The Agency then may grant an extension up to May 31, 1998.

*F. Return to Existing Procedures*

EPA further proposed that, beginning on January 1, 2004, opt-out requests from states again be approved based on the opt-out provisions in effect before January 1, 1998. A petroleum association commented that opt-outs must follow formal rulemaking process as provided for under the CAA, and that approved opt-outs published by July 1 in a given year should be effective January 1 of the following year to provide adequate time for refiners to meet averaging requirement planning and survey programs.

EPA does not agree that a separate rulemaking must be conducted for each future opt-out request. The petition based process established in the previous opt-out rulemaking (61 FR 35673) addresses, on a case by case basis, future individual state requests to opt out of the federal RFG program. The regulations establish clear and objective criteria for EPA to apply in these future non-rulemaking actions. These criteria address when a state's petition is complete and the appropriate transition time under the regulations. This application of regulatory criteria on a case by case basis to future individual situations does not require notice and comment rulemaking, either under section 307(d) of the Clean Air Act or the Administrative Procedure Act.

The EPA believes the petition approach is the most appropriate as it will allow for expeditious and consistent Agency action on the individual opt-out requests presented by states. It also provides greater certainty in the market than individual rulemakings could provide. Lastly, it provides quick approval for opt-out requests while maintaining a sufficient transition period to minimize costly market disruptions. In certain cases, the affected parties will be able to comment on the state action. In those states where the RFG program is included as a part of an approved state implementation plan (SIP), affected parties that are concerned with the impacts of an opt-out would have the opportunity to comment on a state's revised plan that removes RFG as an air control measure.

At a state's request, the opt-out could be effective later than 90 days after approval of the petition or revised SIP. In such a case, a state must indicate in its petition to the Agency the desired effective date for the opt-out. EPA recommends that a state consider an opt-out date which becomes effective on one of the RFG program's natural transition points. These natural transition points are identified as January 1, the start of the averaging season, and May 1 and September 15, the beginning and end, respectively, of the VOC control season. The Agency supports state efforts to accommodate these natural transition points.

*G. Variations to Proposal*

In the NPRM, EPA requested comments on two specific possible variations to the proposal in anticipation of interest in these options by outside parties:

(1) An area that reaches attainment of the ozone standard and is redesignated during the period of January 1, 1998, through December 31, 2003, would be allowed to submit an opt-out request to be approved by EPA using the same 90 day opt-out effective date applicable before December 31, 1997 (See 61 FR 35673, July 8, 1996). A petroleum association commented that it opposed this variation of allowing areas to opt out of the program if they redesignate to attainment. It specified that this variation would undercut, possibly negate, the opportunity for cost recovery, create investment uncertainties and instability that EPA is trying to avoid through this rulemaking, and is inconsistent with the rationale underlying the rest of the proposal. Most comments from industry agreed with the association's argument against the variation. One RFG supplier, however, commented that such a variation is important to state, local, and consumer involvement to have every incentive to reach attainment classification as soon as possible.

The EPA believes that this variation could jeopardize the intent of the rule and thus is not including it in the final rule. While the Agency agrees that states should have every incentive to reach attainment, EPA does not believe this variation provides an incentive great enough to outweigh the risk of undercutting the purpose of the rule. If some states have areas that are redesignated to attainment during the required participation period, their state implementation plans (SIP), if applicable, would need to be revised. Even if these processes were completed within the required period, it is likely that the state would need to retain RFG in its maintenance plan to remain in attainment. Thus this variation would not necessarily provide an additional incentive to reach attainment of the ozone standard but instead would retain an element of market uncertainty which contradicts the purpose of the requirement.

(2) A similar participation period for areas first opting into the RFG program subsequent to December 31, 1999, requiring these areas to participate in Phase II of the program for at least four years from the date of their opt-in. This variation, referred to as a ''rolling required period'', would establish the effective date for the removal of an area from the program as January 1, 2004, or 90 days from the Agency's written notification approving the opt-out, or four years from the effective date of their opt-in, whichever date is later, for all opt-out requests received after January 1, 2000.

Several commenters supported a rolling period to avoid stranded investments. However, one supplier remarked that it may not be necessary to continue with a four year period beyond 2003. The EPA believes that with the information available today and with the uncertainty of the future, the Agency cannot conclude that there is a need for a rolling period to assure a continued cost-effective RFG program. The Agency did not receive a compelling argument or information to continue with a required period for new opt-in areas. The program which began in 1995 has remained very stable with only one new opt-in. If a few areas were to opt-in the future, they may well be located near a pipeline or appropriate infrastructure to meet the new demand without additional refinery investments. However, if new areas opt in remote locations or if there are numerous new areas, industry may need to make unanticipated investments which could impact the price of RFG. In this latter instance a rolling period may be necessary.

EPA believes that based on information available today there is not sufficient justification to include a rolling period in this final rule. However, since the Agency is committed to ensuring a cost-effective RFG program to achieve air quality goals, EPA will take any necessary action in the future if new information indicates a rolling period is warranted.

**II. Environmental Impact**

If an area opts out of the RFG program, it will not receive the reductions in VOCs, oxides of nitrogen ($NO_X$), and air toxics that are expected from this program. Instead, the areas would be subject to the federal controls on Reid vapor pressure for gasoline in the summertime, and would only

receive control of NOx and air toxics through the requirements of the conventional gasoline anti-dumping program. These latter requirements are designed to ensure that gasoline quality does not degrade from the levels found in 1990. These areas would be foregoing the air quality benefits obtained from the use of RFG.

In this final rule, EPA continues to recognize that states have the primary responsibility to develop the mix of control strategies needed to attain and maintain the NAAQS, and should have flexibility in determining the mix of control measures needed to meet their air pollution goals. However, the final rule also seeks to ensure through the required participation period that the potential for a state to decide to opt-out of Phase II of the RFG program does not cause adverse impacts on the market demand for Phase II RFG during the initial years of the program and thus maintains the cost-effectiveness of the RFG program. EPA expects that states will in fact act prudently in exercising their ability to opt-out under these rules. Any environmental impacts of opting out are, therefore, not expected to occur in isolation, but in a context of states exercising their responsibility and developing appropriate control strategies for their areas' air pollution goals.

## III. Executive Order 12866

Under Executive Order 12866,[2] the Agency must determine whether a regulation is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[3]

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

## IV. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''UMRA''), P.L. 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of final rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, for any rule subject to Section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that today's final rule does not trigger the requirements of UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

## V. Economic Impact and Impact on Small Entities

The Administrator has determined that this rule will not have a significant impact on a substantial number of small entities. A regulatory flexibility analysis has therefore not been prepared. This final rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs and decrease costs to consumers in the affected areas by providing more certainty for regulated parties. This final rule imposes no new requirements on states.

With respect to the portion of today's action which requires participation until January 1, 2004, of opt-in areas unless they request to opt-out prior to January 1, 1998, today's final rule is not expected to result in any additional compliance cost to regulated parties. It does no more than maintain the status quo for those entities who have been supplying RFG to the RFG opt-in areas and imposes no additional requirements on parties that must comply with the RFG regulations.

With respect to the portion of today's final rule which would apply to opt-out requests applied for on or after January 1, 2004, the final rule is not expected to result in any additional compliance cost to regulated parties and in fact is expected to decrease compliance costs to those entities who previously supplied RFG to the area opting out. This rule also establishes a transition period which maximizes affected parties' ability to plan for smooth transition from the RFG program, minimizing disruption to the motor gasoline marketplace. This transition period is reasonably expected to allow parties to turn over existing stocks of RFG to conventional gasoline.

## VI. Paperwork Reduction Act

This action does not add any new requirements under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final FRG/anti-dumping rule and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

## VII. 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

[2] *See* 58 FR 51735 (October 4, 1993).

[3] *Id.* at section 3(f)(1)–(4).

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).

**List of Subjects in 40 CFR Part 80**

Environmental protection, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 9, 1997.

**Carol M. Browner,**

*Administrator.*

**Final Rulemaking**

Accordingly, 40 CFR part 80 is amended as follows:

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

**Authority:** Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.72 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 80.72 Procedures for opting out of the covered areas.**

(a) In accordance with paragraph (b) of this section, the Administrator may approve a petition from a state asking for removal of any opt-in area, or portion of an opt-in area, from inclusion as a covered area under § 80.70. If the Administrator approves a petition, he or she shall set an effective date as provided in paragraph (c) of this section. The Administrator shall notify the state in writing of the Agency's action on the petition and the effective date of the removal when the petition is approved.

* * * * *

(c)(1) For opt-out petitions received on or before December 31, 1997, except as provided in paragraphs (c)(2) and (c)(3) of this section, the Administrator shall set an effective date for removal of an area under paragraph (a) of this section as requested by the Governor, but no less than 90 days from the Agency's written notification to the state approving the opt-out petition, and no later than December 31, 1999.

(2) For opt-out petitions received on or before December 31, 1997, except as provided in paragraph (c)(3) of this section, where RFG is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date under paragraph (a) of this section shall be the date requested by the Governor, but no less than 90 days from the effective date of Agency approval of a revision to the plan that removes RFG as a control measure.

(3)(i) The Administrator may extend the deadline for submitting opt-out petitions in paragraphs (c)(1) and (2) of this section for a state if:

(A) The Governor or his authorized representative requests an extension prior to December 31, 1997;

(B) The request indicates that there is active or pending legislation before the state legislature that was introduced prior to March 28, 1997;

(C) The legislation is concerning opting out of or remaining in the reformulated gasoline program; and

(D) The request demonstrates that the legislation cannot reasonably be acted upon prior to December 31, 1997.

(ii) The Administrator may extend the deadline until no later than May 31, 1998. If the deadline is extended, then opt-out requests from that state received during the extension shall be considered under the provisions of paragraphs (c)(1) and (2) of this section.

(4) For opt-out petitions received January 1, 1998 through December 31, 2003, except as provided in paragraph (c)(5) of this section, the Administrator shall set an effective date for removal of an area under paragraph (a) of this section as requested by the Governor but no earlier than January 1, 2004 or 90 days from the Agency's written notification to the state approving the opt-out petition, whichever date is later.

(5) For opt-out petitions received January 1, 1998 through December 31, 2003, where RFG is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date for removal of an area under paragraph (a) of this section shall be the date requested by the Governor, but no earlier than January 1, 2004, or 90 days from the effective date of Agency approval of a revision to the plan that removes RFG as a control measure, whichever date is later.

(6) For opt-out petitions received on or after January 1, 2004, except as provided in paragraph (c)(7) of this section, the Administrator shall set an effective date for removal of an area as requested by the Governor, but no less than 90 days from the Agency's written notification to the state approving the opt-out petition.

(7) For opt-out petitions received on or after January 1, 2004, where RFG is contained as an element of any plan or plan revision that has been approved by the Agency, other than as a contingency measure consisting of a future opt-in, then the effective date for removal of an area under paragraph (a) of this section shall be the date requested by the Governor, but no less than 90 days from the effective date of Agency approval of a revision to the plan that removes RFG as a control measure.

* * * * *

[FR Doc. 97–27725 Filed 10–17–97; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday
October 20, 1997

## Part V

# The President

**Notice of October 17, 1997—Continuation of Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia**

**Federal Register**
Vol. 62, No. 202
Monday, October 20, 1997

# Presidential Documents

**Title 3—**

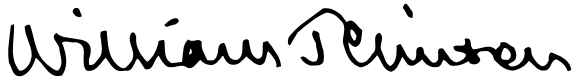
## The President

**Notice of October 17, 1997**

## Continuation of Emergency With Respect to Significant Narcotics Traffickers Centered in Colombia

On October 21, 1995, by Executive Order 12978, I declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of significant foreign narcotics traffickers centered in Colombia, and the unparalleled violence, corruption, and harm that they cause in the United States and abroad. The order blocks all property and interests in property of foreign persons listed in an Annex to the order, as well as foreign persons determined to play a significant role in international narcotics trafficking centered in Colombia, to materially assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the order, or to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the order. The order also prohibits any transaction or dealing by United States persons or within the United States in such property or interests in property. Because the activities of significant narcotics traffickers centered in Colombia continue to threaten the national security, foreign policy, and economy of the United States and to cause unparalleled violence, corruption, and harm in the United States and abroad, the national emergency declared on October 21, 1995, and the measures adopted pursuant thereto to deal with that emergency, must continue in effect beyond October 21, 1997. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency for 1 year with respect to significant narcotics traffickers centered in Colombia.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
*October 17, 1997.*

[FR Doc. 97–27936
Filed 10–17–97; 10:37 am]
Billing code 3195–01–P

Federal Register

Monday
October 20, 1997

## Part VI

# Office of Management and Budget

**Cancellation Pursuant to Line Item Veto Act; Energy and Water Development Appropriations Act, 1998; Notices**

## OFFICE OF MANAGEMENT AND BUDGET

### Cancellation Pursuant to Line Item Veto Act; Energy and Water Development Appropriations Act, 1998

October 17, 1997.

One Special Message from the President under the Line Item Veto Act is published below. The President signed this message on October 17, 1997. Under the Act, the message is required to be printed in the **Federal Register** (2 U.S.C. 691a(c)(2)).

**Clarence C. Crawford,**

*Associate Director for Administration.*

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THE WHITE HOUSE,
Washington,
*October 17, 1997.*

Dear Mr. President:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the ''Energy and Water Development Appropriations Act, 1998'' (H.R. 2203, approved October 13, 1997). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

*William J. Clinton*

The Honorable Albert Gore, Jr.,
*President of the Senate, Washington, D.C. 20510.*

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THE WHITE HOUSE,
Washington,
*October 17, 1997.*

Dear Mr. Speaker:

In accordance with the Line Item Veto Act, I hereby cancel the dollar amounts of discretionary budget authority, as specified in the attached reports, contained in the ''Energy and Water Development Appropriations Act, 1998'' (H.R. 2203, approved October 13, 1997). I have determined that the cancellation of these amounts will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest. This letter, together with its attachments, constitutes a special message under section 1022 of the Congressional Budget and Impoundment Control Act of 1974, as amended.

Sincerely,

*William J. Clinton*

The Honorable Newt Gingrich,
*Speaker of the House of Representatives, Washington, D.C. 20515.*

Cancellation No. 97–57

### CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Energy and Water Development Appropriations Act, 1998'' (H.R. 2203).

**1(A). Dollar Amount of Discretionary Budget Authority:** $3,500 thousand for Lake George, Hobart, Indiana on pages 3 and 54 of House Report 105–271, dated September 26, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The Lake George, Hobart, Indiana, project, which would require total Federal funding of $3.5 million, would have the Army Corps of Engineers fund dredging and construction of sediment traps to reduce further sediment build-up of a recreation lake owned and operated by the City of Hobart. This Administration and previous Administrations have given low priority to Corps participation in projects whose primary benefits are local recreation. Generally, the Corps will build cost-shared recreation facilities only if it is a relatively small part of a Federal project that focuses on one or more of the Corps' primary missions (e.g., flood control, navigation). Since the primary purpose of this project is to enhance local recreation opportunities at a non-Federal lake, it should be undertaken by local interests.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −2,100 |
| 1999 | −1,400 |
| 2000 | ..... |
| 2001 | ..... |
| 2002 | ..... |
| Total | −3,500 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$3,500 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Army Corps of Engineers.

**2(A). Bureau:** n/a.

**2(A). Governmental Function/Project (Account):** Dredging of Lake George, Hobart, Indiana (Construction, General).

**2(B). States and Congressional Districts Affected:** Indiana, 1st Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Indiana: three; 1st District: one.

Cancellation No. 97–58

### CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Energy and Water Development Appropriations Act, 1998'' (H.R. 2203).

**1(A). Dollar Amount of Discretionary Budget Authority:** $800 thousand for Neabsco Creek, Virginia, on page 56 of House Report 105–271, dated September 26, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The Neabsco Creek Flood Control Project, Prince William County, Virginia, which would require total Federal funding of over $1 million, would have the Army Corps of Engineers remove creek debris and accumulated sediment from the channel of Neabsco Creek. The Corps of Engineers previously conducted studies under two of its program authorities (Sections 205 and 208) to determine whether a project could be developed that is technically and economically feasible, environmentally acceptable, and is consistent with Administration policies. Both studies concluded that no economically justified project could be developed for this area. In fact, the

studies concluded that the Federal investment would return less than 50 cents on the dollar (national benefit—cost ratio of less than 0.5 to 1.0). The Administration previously informed Congress that it opposed authorization of this project during Congressional consideration of the Water Resources Development Act of 1996.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| | |
|---|---|
| Fiscal year: | |
| 1998 | −480 |
| 1999 | −320 |
| 2000 | |
| 2001 | |
| 2002 | |
| Total | −800 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$800 thousand in FY 1998

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Army Corps of Engineers.

**2(A). Bureau:** n/a.

**2(A). Governmental Function/Project (Account):** Removal of debris and sediment from the channel of Neabsco Creek, Virginia (Construction, General).

**2(B). States and Congressional Districts Affected:** Virginia, 11th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Virginia: four; 11th District: one.

Cancellation No. 97–59

## CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

### Report Pursuant to the Line Item Veto Act, P.L. 104–130

**Bill Citation:** ''Energy and Water Development Appropriations Act, 1998'' (H.R. 2203).

**1(A). Dollar Amount of Discretionary Budget Authority:** $1,900 thousand for Sardis Lake (Shady Cove Marina), Yazoo Basin, Mississippi, on pages 6, 34, and 58 of House Report 105–271, dated September 26, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The Sardis Lake, Mississippi, project, which would require an estimated total Federal funding of $4 million ($2.1 million was appropriated in FY 1997), would have the Army Corps of Engineers dredge at full Federal expense a section of Sardis Lake to create a marina basin for leisure craft and recreational opportunities. This Administration and previous Administrations have given low priority to Corps participation in projects whose primary benefits are local recreation. Generally, the Corps will build cost-shared recreation facilities only if it is a relatively small part of a project that focuses on one or more of the Corps' primary missions (e.g., flood control, commercial navigation). Since the primary purpose of this project is to enhance local recreation navigation, it should be undertaken by local interests.

Furthermore, it is premature to begin construction of this project. The Army Corps of Engineers has not completed the normal project planning and review process applied to all such projects to determine whether the project is technically and economically feasible, environmentally acceptable, and is consistent with Administration policies. Completing this process helps ensure that Federal funds are used only to construct projects that generate a positive economic return to the Nation and meet all environmental requirements.

Finally, this project has not been subject to the normal Congressional hearing and authorization process.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| | |
|---|---|
| Fiscal year: | |
| 1998 | −1,425 |
| 1999 | −475 |
| 2000 | |

*Outlay changes*—Continued

[In thousands of dollars]

| | |
|---|---|
| 2001 | |
| 2002 | |
| Total | −1,900 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$1,900 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Army Corps of Engineers.

**2(A). Bureau:** n/a.

**2(A). Governmental Function/Project (Account):** Dredging of section of Sardis Lake, Mississippi (Flood Control, Mississippi River and Tributaries, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee).

**2(B). States and Congressional Districts Affected:** Mississippi, 1st and 4th Congressional Districts.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Mississippi: one; 1st District: one; 4th District: one.

Cancellation No. 97–60

## CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

### Report Pursuant to the Line Item Veto Act, P.L. 104–130

**Bill Citation:** ''Energy and Water Development Appropriations Act, 1998'' (H.R. 2203).

**1(A). Dollar Amount of Discretionary Budget Authority:** $800 thousand for Chena River Dredging, Fairbanks, Alaska on page 7, 35, and 58 of House Report 105–271, dated September 26, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The Chena River Dredging, Fairbanks, Alaska, project, which would require total Federal funding of $800 thousand, would have the Army Corps of Engineers dredge at full Federal expense

a recreation channel for use by a single tour boat operator. There is no authorized Army Corps of Engineers navigation project in the area. This Administration and previous Administrations have given low priority to Corps participation in projects whose primary benefits are local recreation. Generally, the Corps will participate in a recreation features only if it is a relatively small part of a project that focuses on one or more of the Corps' primary missions (e.g., flood control, commercial navigation). Since the primary purpose of this project is to enhance local recreation navigation, it should be undertaken by local interests. In addition, it is premature to begin construction of this project. This project has not completed the normal Corps of Engineers project planning and review process applied to all Corps projects to determine whether the project is technically and economically feasible, environmentally acceptable, and is consistent with Administration policies. Completing this process helps ensure that Federal funds are used only to construct projects that generate a positive economic return to the Nation and meet all environmental requirements.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −480 |
| 1999 | −320 |
| 2000 | ..... |
| 2001 | ..... |
| 2002 | ..... |
| Total | −800 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$800 thousand in FY 1998

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Army Corps of Engineers.

**2(A). Bureau:** n/a.

**2(A). Governmental Function/Project (Account):** Dredging of channel on Chena River, Fairbanks, Alaska (Operation and Maintenance, General).

**2(B). States and Congressional Districts Affected:** Alaska, Representative At Large.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Alaska: one.

Cancellation No. 97–61

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Energy and Water Development Appropriations Act, 1998'' (H.R. 2203).

**1(A). Dollar Amount of Discretionary Budget Authority:** $6,000 thousand for Allegheny River (Kittanning Riverfront Park), Pennsylvania, on pages 7, 35, and 65 of House Report 105–271, dated September 26, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The Allegheny River (Kittanning River Front Park), Pennsylvania, project, which would require total Federal funding of $6 million, would have the Army Corps of Engineers dredge at full Federal expense a new recreation channel to allow passenger boat operators access to Kittanning Riverfront Park. There is no Federal channel there now. This Administration and previous Administrations have given low priority to Corps participation in projects whose primary benefits are local recreation. Generally, the Corps will build cost-shared recreation facilities only if it is a relatively small part of a Federal project that focuses on one or more of the Corps' primary missions (e.g., flood control, commercial navigation). Since the primary purpose of this project is to enhance local recreation navigation separable from the existing Federal channel, it should be undertaken by local interests. Further, it is premature to fund construction of this project. This project has not completed the normal Corps of Engineers project planning and review process applied to all Corps projects to determine whether the project is technically and economically feasible, environmentally acceptable, and is consistent with Administration policies. Completing this process helps ensure that Federal funds are used only to construct projects that generate a positive economic return to the Nation and meet all environmental requirements.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −3,600 |
| 1999 | −2,400 |
| 2000 | ..... |
| 2001 | ..... |
| 2002 | ..... |
| Total | −6,000 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$6,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Army Corps of Engineers.

**2(A). Bureau:** n/a.

**2(A). Governmental Function/Project (Account):** Dredging of channel on Allegheny River, Pennsylvania (Operation and Maintenance, General).

**2(B). States and Congressional Districts Affected:** Pennsylvania, 12th Congressional District.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Pennsylvania: four; 12th District: three.

Cancellation No. 97–62

**CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY**

**Report Pursuant to the Line Item Veto Act, P.L. 104–130**

**Bill Citation:** ''Energy and Water Development Appropriations Act, 1998'' (H.R. 2203).

**1(A). Dollar Amount of Discretionary Budget Authority:** $ 1,000 thousand and $300 thousand, In-situ Copper Mining Research Project, on page 69 of House Report 105–271, dated September 26, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation: Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The purpose of this project has been to demonstrate the technical, economic, and environmental feasibility of in-place recovery of low-grade, copper oxide material. The total cost to date of this demonstration project, which was initially funded in FY 1988 as a Bureau of Mines research project, is $31.7 million. Federal funding to date totals $26.5 million, including $16.8 million for contract work with the private partners and $9.7 million for in-house Federal research.

Federal funding of this demonstration effort is no longer justified. The demonstration facility began operations in February 1996 and test data have been furnished to the Bureau of Reclamation since that time and will continue to be furnished from tests conducted prior to close-out. The FY 1996 appropriation for the Bureau of Mines included funds to close out the In-situ Copper Mining demonstration project. The Bureau of Reclamation assumed oversight responsibility for close out of this project in February 1996. Additional funding beyond FY 1996 was not needed to complete this orderly close out and was not requested in either the President's FY 1997 or FY 1998 Budgets, although Congress added funds in both years. The private cost-sharing partners will keep the $5 million demonstration facility after close-out and can continue the demonstration effort if they believe it is warranted.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −1,053 |
| 1999 | −247 |
| 2000 | ..... |
| 2001 | ..... |
| 2002 | ..... |
| Total | −1,300 |

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** -$1,300 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of the Interior.

**2(A). Bureau:** Bureau of Reclamation.

**2(A). Governmental Function/Project (Account):** In-situ Copper Mining Research Project, Applied Science and Technology Development Program (Water and Related Resources).

**2(B). States and Congressional Districts Affected:** Arizona, 5th and 6th Congressional Districts.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** Arizonia: one; 5th District: one; 6th District: one.

Cancellation No. 97–63

## CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

### Report Pursuant to the Line Item Veto Act, P.L. 104–130

**Bill Citation:** Energy and Water Development Appropriations Act, 1998 (H.R. 2203)

**1(A). Dollar Amount of Discretionary Budget Authority:** $1,000 thousand for a research and development partnership to manufacture electric transmission lines using aluminum matrix composite materials on page 82 of House Report 105–271, dated September 26, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The provisions would start a program to fund cost-shared development of high-voltage power cables that use aluminum matrix composites (ceramic fibers glued together with aluminum) for the support member rather than steel as is the current practice. This would provide first-year funding for a program that has been proposed by a private consortium of manufacturing companies and utilities. Materials previously provided to the Department of Energy by the consortium indicated that this would be a 4-year program with a total estimated Federal cost of $15 million, so most of the program costs would be incurred in FY 1999–2001.

There is substantial private-sector incentive to engage in this development, and a Federal subsidy is unnecessary. The Department of Energy eliminated their electric transmission-line R&D program several years ago, so cancellation of these funds would have no effect on on-going programs at the Department of Energy.

**1(D): Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of this cancellation, Federal outlays will not increase, as specified below. Future outlays of $14 million may also potentially be avoided. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | −450 |
| 1999 | −400 |
| 2000 | ..... |
| 2001 | ..... |
| 2002 | ..... |
| Total | −1,000 |

**2(A). Agency:** Department of Energy.

**Bureau:** Energy Efficiency and Renewable Energy.

**Governmental Function/Project (Account):** Energy/Solar and Renewable Energy/Electric Energy Systems (Energy Supply).

**2(B). States and Congressional Districts Affected:** Minnesota, 5th Congressional District.

**2(C). Total Number of Cancellations (Inclusive) in Current Session in each State and District Indicated Above:** Minnesota: one; 5th District: one.

Cancellation No. 97–64

## CANCELLATION OF DOLLAR AMOUNT OF DISCRETIONARY BUDGET AUTHORITY

### Report Pursuant to the Line Item Veto Act, P.L. 104–130

**Bill Citation:** ''Energy and Water Development Appropriations Act, 1998'' (H.R. 2203).

**1(A). Dollar Amount of Discretionary Budget Authority (thousands):** $4,000 thousand for the Nuclear Regulatory Commission to license a multi-purpose canister design on page 13 of House Report 105–271, dated September 26, 1997.

**1(B). Determinations:** This cancellation will reduce the Federal

budget deficit, will not impair any essential Government functions, and will not harm the national interest.

**1(C), (E). Reasons for Cancellation; Facts, Circumstances, and Considerations Relating to or Bearing Upon the Cancellation; and Estimated Effect of Cancellation on Objects, Purposes, and Programs:** The provision would require the Department of Energy (DOE) to provide the Nuclear Regulatory Commission (NRC) $4 million to license a multi-purpose canister (MPC) design. Multi-purpose canisters are expected to be used for temporary storage, transportation, and permanent disposal of spent nuclear fuel (SNF) from commercial nuclear power plants and high level waste from the DOE nuclear weapons complex.

The provision is objectionable for two reasons. First, it constitutes an unwarranted corporate subsidy and would undermine current legal requirements that the NRC recover virtually 100 percent of its costs of operation through charging fees to licensees. The NRC currently awards Certificates of Compliance (''licenses'' or ''COCs'') to canister designers on a cost-reimbursable basis, as required by law. Five of the six known spent fuel storage and transportation cask vendors in the United States have already submitted applications for certification for dual-purpose (as opposed to multi-purpose) canisters to the NRC and, in the absence of this provision, can expect to pay between $400,000 and $600,000 to NRC to complete the 2–3 year certification process for each application. (Dual purpose canisters can be used for temporary storage and transportation but not permanent disposal of spent nuclear fuel.)

Second, it will be impossible for the NRC to certify or license an MPC until the Federal government selects a permanent disposal site and the NRC agrees to the waste acceptance criteria for the disposal canisters to be placed at that site. Under current DOE plans, the Federal government will not decide on a permanent nuclear waste disposal site until at least 2001.

**1(D). Estimated Fiscal, Economic, and Budgetary Effect of Cancellation:** As a result of the cancellation, Federal outlays will not increase, as specified below. This will have a commensurate effect on the Federal budget deficit and, to that extent, will have a beneficial effect on the economy.

*Outlay changes*

[In thousands of dollars]

| Fiscal year: | |
|---|---|
| 1998 | ..... |
| 1999 | ..... |
| 2000 | ..... |
| 2001 | −2,000 |
| 2002 | −2,000 |
| Total | −4,000 |

*Outlay changes*—Continued

[In thousands of dollars]

**1(F). Adjustments to Non-Defense Discretionary Spending Limits**

**Budget authority:** −$4,000 thousand in FY 1998.

**Outlays:** The estimated outlay effect for each year is shown above.

**Evaluation of Effects of These Adjustments upon Sequestration Procedures:** If a sequestration were required, such sequestration would occur at levels that are reduced by the amounts above.

**2(A). Agency:** Department of Energy and Nuclear Regulatory Commission.

**2(A). Bureau:** Department of Energy/Office of Civilian Radioactive Waste Management.

**2(A). Governmental Function/Project (Account):** Nuclear Regulatory Commission multipurpose canister licensing (Nuclear Waste Disposal Fund).

**2(B). States and Congressional Districts Affected:** All.

**2(C). Total Number of Cancellations (inclusive) in Current Session in each State and District identified above:** The provision would have had a national effect.

[FR Doc. 97–28061 Filed 10–17–97; 4:36 pm]

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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.

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- Pennsylvania; published 8-21-97
- South Carolina; published 8-20-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Texas; published 8-19-97

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- South Carolina; published 9-11-97
- Tennessee; published 9-11-97
- Utah and Wyoming; published 9-11-97

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- American institutions of research recognized for preserving residence for naturalization purposes—
  - Missouri Botanical Garden; published 9-19-97

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- Methylene chloride; occupational exposure; published 10-20-97

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

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**NUCLEAR REGULATORY COMMISSION**

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- Electric utility industry; restructuring and economic deregulation; public health and safety effects; policy statement; published 8-19-97

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**Coast Guard**

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**Federal Aviation Administration**

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- Saab; published 9-11-97

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**National Highway Traffic Safety Administration**

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  - Passenger car brake systems; published 9-5-97

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Plant-related quarantine, domestic:
- Mexican fruit fly; comments due by 10-20-97; published 8-20-97

**AGRICULTURE DEPARTMENT**

**Federal Crop Insurance Corporation**

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  - Pollock; comments due by 10-22-97; published 10-7-97
- Magnuson Act Provisions; comments due by 10-22-97; published 9-22-97
- West Coast States and Western Pacific fisheries—
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- Ohio; comments due by 10-22-97; published 9-22-97
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

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