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# federal register

Thursday
November 13, 1997

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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 96–102–2]**

### Asian Longhorned Beetle; Quarantine Regulations

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with one change, an interim rule that amended the domestic quarantine regulations by quarantining a small area in the boroughs of Brooklyn and Queens, NY, and a small area in the vicinity of Amityville, NY, because of infestation of the Asian longhorned beetle and by restricting the interstate movement of regulated articles from these quarantined areas. These actions are necessary to prevent the artificial spread of this plant pest from infested areas in the State of New York to noninfested areas of the United States.

**EFFECTIVE DATE:** December 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734–5255.

**SUPPLEMENTARY INFORMATION:**

### Background

The Asian longhorned beetle (ALB) (*Anoplophora glabripennis*), native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy trees of maple (including Norway, sugar, silver, red, and others), horse chestnut, poplar, willow, elm, locust, mulberry, chinaberry, apple, cherry, pear, and citrus. It may also attack other species of hardwood trees. ALB bores into the heartwood of host trees, eventually killing the host trees. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on and over-winter in the interior of the trees. Adult beetles emerge in the spring and summer months from large, round holes approximately ⅜-inch in diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles fly for 2 to 3 days, when they feed and mate. Adult females then lay eggs in grooves that they make on the branches of trees. A new generation of ALB is produced each year.

First detected in the United States in August 1996, ALB has been found in hardwood trees in an area in the boroughs of Brooklyn and Queens, NY, and in the vicinity of Amityville, NY. In these locations, the beetle appears to prefer maple and horse chestnut trees. However, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are also subject to infestation. Therefore, if this pest moves into the hardwood forests of the northeastern United States, severe economic impact to the nursery and forest products industries in that part of the United States could result.

In an interim rule effective on February 28, 1997, and published in the **Federal Register** on March 7, 1997 (62 FR 10412–10419, Docket No. 96–102–1), we amended the domestic quarantine regulations in 7 CFR part 301 by adding a new subpart 301.51, ''Asian Longhorned Beetle.'' The regulations in the new subpart quarantine a small area in the boroughs of Brooklyn and Queens, NY, and a small area in the vicinity of Amityville, NY, because of infestation of ALB and restrict the interstate movement of regulated articles from these quarantined areas. These actions are necessary to prevent the artificial spread of this plant pest from infested areas in the State of New York to noninfested areas of the United States.

We solicited comments concerning the interim rule for 60 days ending May 6, 1997. We received one comment by that date. It was from a representative of a State government.

The commenter asked that we expand the list of regulated articles to include all hardwood trees, not just those tree types that have been determined to be susceptible to infestation by ALB based on current infestations in New York State and scientific literature. The commenter also asked that we require burning of infested material because chipping or grinding infested material may not destroy all of the adult beetles, larvae, or eggs in the material. Lastly, the commenter suggested that we establish guidelines for host tree replantings in quarantined areas to limit ALB access to host sources in quarantined areas.

Based on this comment, we are adding birch (*Betula*) and Rose of Sharon (*Hibiscus syriacus L.*) to the list of regulated articles. These two plant types have proven to be likely host material for ALB. At this time, we do not feel that it is necessary to list all hardwood trees as regulated articles because we have not determined that hardwood trees other than those currently listed as regulated articles and those added to the list of regulated articles by this document are likely hosts for ALB. However, we continue to monitor infestations in the quarantined areas, and if necessary, we will add additional plant types to the list of regulated articles in the future.

All infested material is destroyed under a cooperative agreement with the State of New York. The cooperative agreement requires additional mitigating measures (e.g., chipping and burning of infested host material) to prevent the spread of ALB. Therefore, there is no need to require the burning of infested material in the regulations.

In quarantined areas and their environs in New York State, there is an abundance of host trees. Therefore, a probihition on the planting of host species in quarantined areas would have little or no impact on the spread of ALB. However, when infested trees in the quarantined area are removed for processing, replacement trees are ordinarily non-host species. We are making no changes to the interim rule in response to this portion of the comment.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule, with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, and Executive Orders 12372 and 12988.

### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579–0122.

Accordingly, the interim rule amending 7 CFR part 301 that was published at 62 FR 10412–10419 on March 7, 1997, is adopted as a final rule with the following changes:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.51–2, paragraph (a) is revised to read as follows:

### § 301.51–2 Regulated articles.

* * * * *

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Betula* (birch), *Hibiscus syriacus L.* (Rose of Sharon), *Malus* (apple), *Melia* (chinaberry), *Morus* (mulberry), *Populus* (poplar), *Prunus* (cherry), *Pyrus* (pear), *Robinia* (locust), *Salix* (willow), *Ulmus* (elm), and *Citrus.*

* * * * *

Done in Washington, DC, this 6th day of November 1997.

**Charles P. Schwalbe,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–29869 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 989

**[Docket No. FV97–989–3 IFR]**

## Raisins Produced From Grapes Grown In California; Modifications to the Raisin Diversion Program

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

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

**SUMMARY:** This rule modifies the raisin diversion program (RDP) currently authorized under the Federal marketing order for California raisins. The marketing order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Under the raisin diversion program, producers are issued certificates representing reserve raisins for voluntarily reducing their raisin production in order to bring raisin supplies more closely in line with market needs. Producers may then sell these certificates to handlers, who, in turn, can redeem the certificates for reserve raisins. This rule makes various modifications to the diversion program to improve compliance and bring the program in line with current industry practices. Improving compliance with the RDP will help ensure equity among all producers who participate in the program, and help maintain the integrity of the RDP.

**DATES:** Effective November 14, 1997; comments received by January 12, 1998 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule modifies the raisin diversion program currently authorized under the Federal marketing order for California raisins. Under the RDP, producers are issued certificates representing reserve raisins for voluntarily reducing their raisin production in order to bring raisin supplies more closely in line with

market needs. Producers may then sell these certificates to handlers, who, in turn, can redeem the certificates for reserve raisins. This rule makes various modifications to the RDP to improve compliance and bring the RDP in line with current industry practices. Improving compliance with the RDP will help ensure equity among all producers who participate in the program, and help maintain the integrity of the RDP.

The Federal marketing order for California raisins provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage of the crop must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve pool raisins are disposed through certain programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for sale to any market; exported to authorized countries; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. The RDP is another program concerning reserve pool raisins authorized under the order, and may be used as a means for controlling overproduction. The RDP is described in the following paragraphs.

Pursuant to § 989.56 of the order, the Committee meets by November 30 of each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the Committee determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the Committee. Such producers then curtail their production by vine removal or some other means established by the Committee and receive a certificate from the Committee which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the Committee and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The Committee then gives the handler raisins from the reserve pool in an amount equal to the tonnage represented by the diversion certificate.

Section 989.156 of the order's administrative rules and regulations prescribes additional procedures for the RDP. At a meeting on August 14, 1997, the Committee unanimously recommended that various changes be made to these additional RDP procedures to improve compliance and bring the RDP in line with current industry practices.

The first change to the RDP recommended by the Committee concerns references throughout § 989.156 to partial production units. Such references are contained in paragraphs (d), (h)(2), (h)(3), (i), (s)(1), and (s)(3) of § 989.156. As defined in § 989.156(o), a production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). For example, a production unit could be 30 acres of raisins surrounded by a permanent road on two sides and permanent fencing on the other two sides.

Partial production units have been allowed under the RDP in past years. For instance, in the 30-acre production unit example, three rows of vines from that unit could qualify as a partial production unit under the RDP. Under § 989.156(s)(3) of the order's administrative rules and regulations, the determination of the tonnage allowed for acreage removed for such a partial unit would be computed by multiplying the previous year's tonnage produced and verified on the entire unit by the ratio of the acreage removed divided by the acreage contained in the total production unit. However, the Committee is concerned that some producers may be removing weak vines in a production unit and getting credit under the RDP for an inflated amount of tonnage. In the 30-acre example, a producer could have an average past production of 2.2 tons of raisins on the entire unit, remove three rows of low-producing vines that averaged only 1.5 tons of raisins per acre, and get credit in the RDP for 2.2 tons of raisins per acre. Although § 989.56(a) of the order specifies a cap of 2.75 tons of raisins per acre for an approved production unit (which can be changed through informal rulemaking), the Committee is still concerned that actual production on a partial unit could be inflated.

Thus, the Committee recommended that partial production units no longer be accepted as part of the RDP. This change will help ensure that producers who participate in an RDP do not receive credit for an inflated amount of tonnage and gain a financial advantage over other producers. This change will help ensure equity among all producers who participate in the program, and help maintain the integrity of the RDP.

In addition, the Committee believes that this change will improve the accuracy of the amount of tonnage accepted into the RDP. When an RDP is established, a quantity of raisins equivalent to the amount diverted would be made available in the subsequent crop year from the prior year's reserve. This RDP diverted tonnage from the reserve is included in the Committee's marketing policy computations for that year and subject to free and reserve percentages. Thus, it is important for the Committee to have as accurate a figure as possible for RDP tonnage. The Committee believes that not allowing partial production units into the RDP will improve the accuracy of this figure. Appropriate changes have been made to the applicable paragraphs to implement this recommended change.

According to Committee staff, most of the RDP applications over the years have been for full production units. The partial unit authority has typically been used by a producer desiring to receive credit under the RDP for a few weak rows of vines, which usually amounts to less than an acre. Thus, this change is not expected to adversely impact RDP participants.

The second change recommended by the Committee concerns paragraph (g) of § 989.156 regarding procedures to verify whether producers under the RDP are curtailing their production. This section currently specifies that committees of industry persons may be established to serve as agents of the Committee in assuring producer compliance with the RDP. These groups of industry persons may be furnished approved RDP applications and are to advise the Committee on the progress of the diversion within a particular district.

Such industry committees have been utilized during only one season since the inception of the RDP in 1985. Committee staff has assumed the functions of monitoring producer diversion and assuring program compliance. Thus, the Committee recommended that reference to these RDP industry committees be removed from § 989.156(g) of the order's administrative rules and regulations.

This change will bring RDP procedures in line with current industry practices.

A third change to the RDP recommended by the Committee concerns paragraph (h) of § 989.156 regarding compliance. Paragraph (h)(1) of § 989.156 currently specifies that an approved applicant must remove or spur-prune vines to preclude grapes from being produced and harvested on the production unit involved in the program: *Provided,* That vine removal may be the only acceptable means of diversion in some seasons as determined by the Committee. If the Committee representatives or agents determine that there is an average of more than four bunches per vine remaining on a properly spur-pruned production unit, the producer must be notified in writing and given 2 weeks to remove such bunches.

The Committee recommended that this section be modified to remove the impression that spur-pruning is the only acceptable method of diverting the crop, other than removing the vines altogether. Other methods such as spraying with certain substances should also be allowed. Producers should be allowed to remove and destroy the bunches of grapes by whatever method they choose in order to receive a diversion certificate. The Committee also recommended that the word ''acceptable'' in the first sentence in § 989.156(h)(1) be removed because it is not necessary. In addition, the Committee recommended that the section be modified to strengthen the requirement regarding producer notification of noncompliance with the RDP. Specifically, Committee staff must notify producers ''immediately by certified mail,'' in writing, and give producers 2 weeks to remove extra bunches. The Committee believes that this added language will strengthen producer compliance with the RDP.

The Committee also recommended that paragraph (h)(3) of § 989.156 concerning failure to divert be revised to specify that any producer who has more than one production unit and fails to divert on an approved production unit may be denied the opportunity to participate in the next RDP on all of that producer's production units. The current provisions specify that the producer should be denied participation, and not the specific production unit. However, the provisions have been interpreted so that producers only have been denied the opportunity to participate in the next RDP on the unit that was not properly diverted, not all of that producer's units. The clarification will eliminate the confusion and is expected to provide producers more incentive to remain in compliance with the RDP because the clarified provisions specify that the failure to comply could mean denial to participate on any of that producer's production units in the next RDP. Thus, this provision is expected to strengthen producer compliance with the RDP which will help ensure that the integrity of the program is maintained.

The fourth change to the RDP recommended by the Committee concerns paragraph (o) of § 989.156. This section defines a production unit. As previously mentioned, a production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). Under the RDP, producers must be able to document to the Committee the previous year's production data for that specific area by means of sales receipts or other delivery or transfer documents which indicate the creditable fruit weight delivered to handlers from that specific area. Additional criteria are specified for new production units and existing units that may have been transferred to another producer.

The Committee believes that additional information may be necessary in some cases to verify the appropriate production figure to apply to a production unit. There have been concerns that some producers have inflated their production units under past RDP's by reporting statistics showing higher than actual raisin production. For example, since diversion certificate tonnage is based on the tons of raisins delivered per acre during the prior year, producers could inflate their tonnage by acquiring raisins from another source and adding them to deliveries from their production units, thereby receiving credit for a greater amount of raisins than actually produced on the acreage. By inflating yield figures, producers could receive diversion certificates equal to more raisins from the reserve pool than they actually would have produced from those production units.

Thus, the Committee recommended that authority be added to paragraph (o) of § 989.156 authorizing Committee staff to request additional documentation to substantiate the tonnage of raisins produced on any known production unit. This documentation may include information such as tray count, employee payroll records, prior years' production for all production units, and insurance records. This information is maintained by producers in the normal course of business. Such information for approved production units, in addition to producers' other known production units, will give Committee staff another tool to ensure producer compliance with the RDP so that the integrity of the program is maintained.

This rule also makes minor changes to remove obsolete language in paragraph (s)(1) in § 989.156. That paragraph makes two references to provisions particular to the 1985 calendar year which marked the inception of the RDP. Certain parameters regarding dates particular to 1985 were incorporated into the order's administrative rules and regulations that are no longer necessary. Thus, this rule removes those two references.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 8 handlers, and a majority of producers, of California raisins may be classified as small entities. Twelve of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 8 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This rule modifies the RDP currently authorized under § 989.56 of the Federal marketing order for California raisins. Under the RDP, the Committee issues diversion certificates to producers who have removed grapes in accordance with § 989.156 to reduce raisin production and bring raisin supplies more closely in line with market needs. Such certificates represent an amount of reserve tonnage raisins equal to the amount of raisins diverted. Diversion certificates may be submitted by producers only to handlers. Any handler holding diversion certificates

may redeem such certificates for reserve pool raisins from the Committee. This rule makes various modifications to § 989.156 of the order's administrative rules and regulations concerning the RDP. The changes include: Removing authority for the diversion of partial production units in an RDP; removing authority for committees of industry persons to assist the Committee in compliance efforts; clarifying that spur-pruning is not the only acceptable method of aborting a crop; and making other changes to strengthen compliance with the RDP. These changes will help improve compliance with the RDP and bring the program in line with current industry practices.

Regarding the impact of this rule on affected entities, the changes are designed to either improve compliance with the RDP, or are administrative in nature to bring the RDP in line with current industry practices. None of the changes concerning compliance are expected to increase the cost of administering the RDP. Also, because most of the producer applications over the years have been for full production units, rather than for partial production units, discontinuance of partial production units as part of the RDP is not expected to increase appreciably costs to producers. Moreover, the addition of other methods of diversion, like chemical application, should have a positive affect. The changes are intended to ensure equity among all those participating in the RDP and to maintain the integrity of the program. Thus, the changes are expected to be equally beneficial to all affected entities who are adhering to the requirements of the program, regardless of size.

Other alternatives to the RDP procedures were considered by the raisin industry prior to the Committee's recommendation. The Committee has an appointed Amendment Subcommittee and Working Group which have held several public meetings throughout the year to consider changes to the RDP and other order provisions. One alternative considered was to leave the RDP procedures unchanged. However, the Committee concluded that the changes established by this rule were necessary to improve the RDP and better accomplish program objectives. The Working Group also considered adding to the rules and regulations a scale that would correlate production ranges with an appropriate production cap for each range, to help ensure that participating producers did not receive credit for an inflated amount of tonnage and gain a financial advantage over other participants. Another related option concerned modifying the rules and regulations to specify that the production cap should be based on a 5-year rolling average of production per acre with a maximum of 2.75 tons per acre. However, Committee staff indicated that data concerning total industry production on a per acre basis was not available, and the Working Group decided not to recommend these changes.

The Working Group also considered adding guidelines to the RDP procedures for hardship cases where producers have been denied participation in an RDP. For example, there have been cases in past seasons where producers have submitted an application to participate in an RDP, curtailed production, and then been denied a certificate from Committee staff because such producers did not satisfy the terms of the RDP (*i.e.,* could not document their previous year's production). Under the current rules and regulations, such producers have the option of appealing such a decision to the Committee and ultimately the Department. After some deliberation, the Working Group decided not to change this appeal process by trying to specify various ''what if'' scenarios in the rules and regulations. The group believed it was best to address each such situation on a case-by-case basis. Ultimately, the full Committee concluded that the changes to the RDP previously discussed were appropriate at this time.

Regarding any additional reporting or recordkeeping requirements, this rule allows Committee staff to request additional information from producers participating in an RDP to verify production. However, such information will only be requested on a case-by-case basis for use as a compliance tool when the information submitted on a producer's application concerning a unit's production is significantly greater than past production on the unit, production on neighboring units, or the industry norm, or when Committee staff is unable to verify production based on submitted documentation. For instance, if a producer had multiple production units of similar size, and the production on the unit to be diverted was significantly different than the others, the Committee wants its staff to be authorized to request additional information such as that mentioned to verify the accuracy of the producer application. Additional information may be needed in cases where the production on a unit to be diverted is significantly different from that of neighboring production units. As a third example, if information obtained from weigh tags and other delivery documents provided to the Committee did not correspond to the production figure indicated on the producer's application, Committee staff may request additional information.

This rule will not require new forms and the number of producers for which additional information may be requested is expected to be small. According to the Committee staff, only about 5–10 percent of producer applications raise questions for which additional information may be needed. During the industry's last diversion program in 1996 which provided for only vine removal (as opposed to allowing spur pruning), 66 producers participated. In 1995's program, which provided for spur pruning and vine removal, 778 producers participated. The Department plans to monitor producer reporting under this rule during the first season an RDP is implemented.

Using the 778 participation figure and the 10 percent figure for questionable applications, a total of 78 producer applicants might need to provide additional information. The Committee staff estimated that it will take each of these participants about 10 minutes to compile, package, and submit this information. Thus, the time taken by the 78 participants as a group will total about 13 hours, and this time is currently approved under OMB No. 0581–0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

This rule does not impose a reporting burden above that currently approved for small and large raisin producers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the raisin industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 14, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. As previously mentioned, the Committee's Amendment Working Group met throughout the year at public meetings

to discuss various changes to the raisin order, including the recommended changes to the RDP. The Working Group made its recommendations concerning revisions to the RDP to the Amendment Subcommittee on August 7, 1997. The Amendment Subcommittee in turn made its recommendations to the full Committee on August 14, 1997. All of these meetings were public meetings and both large and small entities were able to participate and express their views. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

As stated earlier and in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178.

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

This rule also invites comments on modifications to the diversion program authorized under the California raisin order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; (2) the order specifies that the Committee must meet by November 30 of each crop year to review pertinent data and decide whether a diversion program should be implemented; the Committee plans to meet on November 13 to review this issue and this rule should be in place prior to implementation of any diversion program; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects in 7 CFR Part 989**

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 989.156, paragraph (s)(3) is removed, and the first sentence of paragraph (d), and paragraphs (g),(h), (i), (o), and (s)(1) are revised to read as follows:

### § 989.156 Raisin diversion program.

* * * * *

(d) *Priority of applications and allocations of tonnage.* Those producer applications indicating that the vines of the producing units will be removed shall receive first priority over other applicants when reserve tonnage under the program is to be allocated. * * *

* * * * *

(g) *Verification.* Any applicant whose application has been approved, authorizes Committee representatives and agents to have access to the production unit in the diversion program during reasonable business hours during the crop year to confirm compliance with the program. Notice will be provided to the applicant of such visits.

(h) *Compliance.* (1) *Methods of diversion.* An approved applicant shall be required to remove the vines, spur-prune the vines, remove the bunches or take other means to preclude grapes from being produced and harvested on the production unit: *Provided,* That vine removal may be the only means of diversion in some seasons as determined and announced by the Committee. Bunches which occur on vines in an approved production unit shall be removed and destroyed by the applicant before maturity. If the Committee representatives or agents determine that there is an average of more than four bunches per vine remaining on an approved production unit, the producer shall be notified immediately by certified mail, in writing, and given 2 weeks to remove such bunches. Grafting vines of one varietal type to another varietal type does not constitute removal of vines under the program.

(2) *Period of diversion.* An approved applicant must remove the grapes, or vines, indicated on the application within the production unit designated in the application not later than June 1 of the crop year in which a raisin diversion program is implemented. Producers who remove the vines on a production unit after August 15 may qualify for a diversion program for that crop year if a diversion program is announced and if diversion on that unit and vine removal after August 15 can be documented and verified.

(3) *Failure to divert.* Any raisin producer who does not take the necessary measures to remove the grapes on an approved production unit by June 1, or any raisin producer who has indicated the removal of vines or the intent to remove the vines and who does not remove such vines on an approved production unit by June 1, shall not be issued a diversion certificate, may be subject to liquidated damages and interest charges as provided in paragraph (q) of this section, may be subject to an injunctive action under the Act, and may be denied the opportunity to participate in the next diversion program, when implemented: *Provided,* That any producer who has more than one production unit and fails to divert on an approved production unit may be denied the opportunity to participate on all of that producer's production units, in the next diversion program. For spur-pruned vines, this date may be extended 2 weeks from the date of the inspection of a producer's vineyard if more than four bunches on spur-pruned vines are present at the time of inspection.

(i) *Issuance of certificates.* When preliminary percentages are announced, the Committee shall issue diversion certificates to those approved applicants who have removed grapes in accordance with this section. Such certificates shall represent an amount of reserve tonnage raisins equal to the amount of raisins diverted from the production unit(s) specified in the producer application, or additional quantity granted by the Committee when vines are diverted through vine removal or any other means established by the Committee, as the case may be. If, prior to issuance of a certificate, the Committee is notified by an approved applicant that such applicant's interest in the production unit(s) involved in the program has been transferred to another person, the Committee may substitute the transferee for the applicant provided the transferee agrees to comply with the provisions of this section.

* * * * *

(o) *Production unit.* For the purposes of the raisin diversion program, a

production unit is a clearly defined geographic area with permanent boundaries (either natural or man-made). A producer must be able to document to the Committee the previous year's production data for that specific area by means of sales receipts or other delivery or transfer documents which indicate the creditable fruit weight delivered to handlers from that specific area. If the information submitted by producers on the application concerning a unit's production is significantly greater than past production on the unit, production on neighboring units, or the industry norm, or the production is unable to be verified based on submitted documentation, the Committee may request additional documentation such as tray count, payroll records, prior years' production, and insurance records to substantiate the tonnage of raisins produced on all production units that such applicant controls or owns. Producers' would not be precluded from submitting other information substantiating production if those producers' desired. A new production unit will not be eligible for the raisin diversion program until at least 1 year's production has been grown and is documented. An existing production unit, transferred to a new or expanding producer, is eligible for the raisin diversion program as soon as the previous year's production can be properly documented.

* * * * *

(s) *Additional opportunity for vine removal.* (1) The Committee may announce a date later than that provided in § 989.156(b), by which producers, who agree to remove the vines on a production unit may file an application to participate in a raisin diversion program. The announced date shall be not later than May 1. The diversion certificates will be issued only for the production units from which vines are removed. The total tonnage available to such applicants shall not exceed the tonnage determined by deducting the tonnage approved for applications received on or before December 20 from the total tonnage announced as eligible by the Committee for diversion. Applications shall be considered and approved on a first-come, first-served, basis and shall not be given preference over the tonnage approved for applications received on or before December 20. The vines shall be removed from the production units for which such applications are approved not later than June 1.

* * * * *

Dated: November 7, 1997.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 97–29971 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Part 204

**[INS No. 1845–97]**

**RIN 1115–AE77**

## Prima Facie Review of Form I–360 When Filed by Self-Petitioning Battered Spouse/Child

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

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

**SUMMARY:** This interim rule amends the Immigration and Naturalization Service (Service) regulations to enable the Service to review Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant, filed by a battered spouse or child, to determine whether a prima facie case has been established. Recent legislation broadened the definition of aliens who qualify for public assistance to include battered aliens, and specifically those aliens whose self-petitions have been approved and those who file a self-petition which establishes a prima facie case for immigrant classification under the Violence Against Women Act.

**DATES:** *Effective Date:* This interim rule is effective November 13, 1997.

*Comment Date:* Written comments must be submitted on or before January 12, 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, Attn: Public Comment Clerk. To ensure proper handling, please reference the INS number 1845–97 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3291 to arrange an appointment.

**FOR FURTHER INFORMATION CONTACT:** Karen FitzGerald, Staff Officer, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, Room 3214, Washington, DC 20536, telephone (202) 514–5014.

**SUPPLEMENTARY INFORMATION:**

### Background

The Immigration and Nationality Act (the Act) allows a citizen or lawful permanent resident (LPR) of the United States to seek immigrant status for certain alien relatives from the Service. In order to receive this benefit, a visa petition must be filed on behalf of the alien relative and approved by the Service. The alien must then qualify for immigrant visa issuance abroad or adjustment of status in the United States.

Historically, the initiation of the visa petition process was solely at the discretion of the U.S. citizen or LPR relative. For that reason, the citizen or LPR effectively controlled the ability of an alien spouse or child to regularize his or her immigration status. Congress, in the Violent Crime Control and Law Enforcement Act of 1994 (the Crime Bill), Public Law 103–322, dated September 13, 1994, recognized the potential for misuse of this discretion within households where domestic violence occurs. Title IV of the Crime Bill, the Violence Against Women Act (VAWA), contains provisions which enable these battered spouses and children to self-petition for immigrant classification, thus limiting the ability of an abusive citizen or LPR to use the immigration laws to perpetuate further violence against a spouse or child residing in the United States.

### Interim Rule

On March 26, 1996, the Service published an interim rule at 61 FR 13061, establishing the eligibility requirements for battered spouses and children using the self-petitioning process. The Service received numerous comments which are under consideration as the final rule is prepared for publication. This rule does not in any way alter the eligibility or evidentiary requirements set forth in that interim rule.

### Impact of New Legislation

Since the Service published its interim rule, Congress has enacted new legislation that affects the ability of most aliens to receive public assistance. In the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Congress mandated that only ''qualified aliens,'' as defined by statute, were eligible for public assistance. Section 501 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), amended the definition of ''qualified alien'' to include battered aliens, including certain aliens who file or have

approved self-petitions. This ''qualified alien'' status is afforded not only to aliens with approved self-petitions, but also to those who file a self-petition which establishes a prima facie case for immigrant classification.

**Purpose of Establishing a Prima Facie Case**

At the present time, the Service adjudicates the Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant, and issues a notice of approval to those self-petitioning spouses and children who demonstrate eligibility. Upon approval of the self-petition, the applicant is a ''qualified alien'' for purposes of the PRWORA. Often, however, the initial submission does not comply with all of evidentiary burdens required for the Service to adjudicate the self-petition. In such cases, pursuant to Service regulations, self-petitioners are generally sent a request for evidence which sets forth the deficiencies of the application and allows the applicant 60 days in which to submit supplemental documentation. The applicant may be granted an additional 60 days at the discretion of the Service pursuant to current regulations at 8 CFR 204.1(h).

However, because battered aliens can be ''qualified aliens'' without approval of the petition, the Service must also evaluate the petition and the evidence submitted in support of the petition to determine if the alien has established a prima facie case. Although the statute affords benefits to those who establish prima facie eligibility, neither the statute nor the legislative history adequately details the requirements for establishing this eligibility. Conventional dictionary definitions are of little assistance in this regard. Without standards, determinations could be made inconsistently and with varying constancy to Congressional intent, which would be detrimental to the purpose of the statute and to the individual petitioner trying to meet it. This interim rule explains the standards to be utilized by the Service in determining whether the petitioner has established a prima facie case.

**Requirements for Demonstrating a Prima Facie Case**

The prima facie determination will be made only after a self-petition has been filed with the Service, and the decision to issue that Notice of Prima Facie Case (Notice) rests solely with the Service. In evaluating whether a self-petitioner has established a prima facie case, the Service must have evidence of each of the required elements of the self-petition as detailed in Service regulations at § 204.2 (c)(1) and (e)(1). Accordingly, self-petitioners should submit Form I–360 and credible relevant evidence in support of the petition addressing each of the statutory elements as detailed in the instructions accompanying Form I–360: (1) existence of the qualifying relationship; (2) the citizenship or immigration status of the abuser; (3) the self-petitioner's eligibility for immigrant classification; (4) residence in the United States; (5) evidence that, during the qualifying relationship, the petitioner and abuser resided together in the United for some unspecified period of time; (6) battery or extreme cruelty; (7) good moral character; (8) extreme hardship; and (9) in the case of a self-petitioning spouse, good faith marriage. The elements and evidentiary requirements are set forth in 8 CFR § 204.2 (c)(1) and (e)(1).

If the Service determines that a petitioner has demonstrated prima facie eligibility, a Notice of Prima Facie Case will be issued. The Notice is neither a benefit nor immigration status in its own right, and an applicant cannot apply solely for a Notice of Prima Facie Case. The decision to issue such a notice rests solely with the Service. Applicants are encouraged to submit full documentation at the earliest possible time. However, bona fide candidates for self-petitioning should not postpone filing the petition because they are unable to immediately comply with all of the regulatory requirements.

As an example, an applicant who has been unable to obtain police reports from each place of residence during the past 3 years could submit other supporting documentation which addresses the good moral character element of the adjudication. For the purpose of making a prima facie determination, an affidavit from the applicant stating he or she has never been arrested and is a person of good moral character may be considered acceptable for purposes of establishing a prima facie case. However, on its own, this affidavit is not sufficient to meet the evidentiary burden of § 204.2 (c)(2)(v) and (e)(2)(v). Before final adjudication, the applicant must still submit police reports or, if they are unavailable, some other type of documentation as required by those provisions.

The Service's decision to issue or not to issue a Notice will not be a factor in the adjudication of the underlying petition, nor will it constitute a binding determination of the credibility of the evidence submitted. Prima facie evidence will not always fully or completely satisfy the evidentiary burdens, and may be contradicted by evidence, documentation, or affidavits (or any other credible evidence) which come to the attention of the Service after a favorable prima facie determination has been made. Self-petitioners should be aware that such situations may result in the denial of the I–360 petition, even if a favorable prima facie determination was initially made. Conversely, the Service's decision not to issue the Notice of Prima Facie Case is not fatal to the underlying petition.

The prima facie evaluation will consist of an initial review of the Form I–360 and the supporting documentation. Applicants who set forth a prima facie case will receive a Notice of Prima Facie Case to document their ''qualified alien'' status for public benefits. The Notice is valid until the Service has adjudicated the petition. At present, the Service intends to issue the Notice with a validity period of 150 days, which exceeds the time required for adjudication in the majority of these cases. In those few cases when the Service is unable to complete the adjudication within the 150-day period, the applicant will be able to request an extension pursuant to the instructions on the Notice. Because the Notice is intended solely for the purpose of enabling petitioners to apply for public benefits within the United States, the Service will only issue the Notice to petitioners residing in the United States.

**Filing and Initial Processing**

Because the prima facie determination is not a separate benefit granted by the Service, the procedures that an applicant must follow are those set forth in the interim rule. The only procedural change concerns the filing of the Form I–360. As a result of the Direct Mail Notice published at 62 FR 16607 on April 7, 1997, all I–360 petitions filed by a self-petitioning spouse, child, or parent on behalf of a battered child, must be mailed directly to the Vermont Service Center, 75 Lower Weldon Street, St. Albans, VT 05479. Self-petitioners will be provided with documentation indicating the Service has received the self-petition (Notice of Receipt). After reviewing the petition, the Service will mail applicants notification of the status of the petition. Regardless of whether a Notice of Prima Facie Case is issued, applicants who receive notice of an adverse preliminary finding will have the opportunity to respond with additional evidence or arguments. The self-petitioner will be advised by the Service as to the additional evidence or documentation needed to support the petition, and will be provided the opportunity to submit this additional evidence until the Service makes a final decision.

**Good Cause Exception**

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d). It is in the public interest to provide prima facie determinations, which will enable qualifying spouses and children to apply for public assistance benefits. These resources and services may be critical to some applicants as they seek safety and independence from the abuser.

**Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because of the following factors: This rule addresses the grant of immigration benefits to certain individuals based on a family relationship to an abusive citizen or lawful permanent resident of the United States. This rule affects individuals, not small entities, and the economic impact is not significant.

**Executive Order 12866**

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to and approved by the Office of Management and Budget.

**Executive Order 12612**

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 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 sections 3(a) and 3(b)(2) of E.O. 12988.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Paperwork Reduction Act**

This interim rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule have been previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of control numbers.

**List of Subjects in 8 CFR Part 204**

Administrative practice and procedure, Aliens, Employment, Immigration, Petitions.

## PART 204–IMMIGRANT PETITIONS

1. The authority citation for part 204 is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 1641; 8 CFR part 2.

2. Section 204.2 is amended by adding new paragraphs (c)(6) and (e)(6), to read as follows:

**§ 204.2 Petitions for relatives, widows, and widowers, and abused spouses and children.**

* * * * *

(c) * * *

(6) *Prima facie determination*—(i) Upon receipt of a self-petition under paragraph (c)(1) of this section, the Service shall make a determination as to whether the petition and the supporting documentation establish a ''prima facie case'' for purposes of 8 U.S.C. 1641, as amended by section 501 of Public Law 104–208.

(ii) For purposes of paragraph (c)(6)(i) of this section, a prima facie case is established only if the petitioner submits a completed Form I–360 and other evidence supporting all of the elements required of a self-petitioner in paragraph (c)(1) of this section. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition.

(iii) If the Service determines that a petitioner has made a ''prima facie case,'' the Service shall issue a Notice of Prima Facie Case to the petitioner. Such Notice shall be valid until the Service either grants or denies the petition.

(iv) For purposes of adjudicating the petition submitted under paragraph (c)(1) of this section, a prima facie determination—

(A) Shall not be considered evidence in support of the petition;

(B) Shall not be construed to make a determination of the credibility or probative value of any evidence submitted along with that petition; and,

(C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of paragraph (c)(2) of this section.

* * * * *

(e) * * *

(6) *prima facie determination*—(i) Upon receipt of a self-petition under paragraph (e)(1) of this section, the Service shall make a determination as to whether the petition and the supporting documentation establish a ''prima facie case'' for purposes of 8 U.S.C. 1641, as amended by section 501 of Public Law 104–208.

(ii) For purposes of paragraph (e)(6)(i) of this section, a prima facie case is established only if the petitioner submits a completed Form I–360 and other evidence supporting all of the elements required of a self-petitioner in paragraph (e)(1) of this section. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition.

(iii) If the Service determines that a petitioner has made a ''prima facie case'' the Service shall issue a Notice of Prima Facie Case to the petitioner. Such Notice shall be valid until the Service either grants or denies the petition.

(iv) For purposes of adjudicating the petition submitted under paragraph (e)(1) of this section, a prima facie determination:

(A) Shall not be considered evidence in support of the petition;

(B) Shall not be construed to make a determination of the credibility or

probative value of any evidence submitted along with that petition; and,

(C) Shall not relieve the self-petitioner of his or her burden of complying with all of the evidentiary requirements of paragraph (e)(2) of this section.

* * * * *

Dated: July 21, 1997.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 97–29770 Filed 11–12–97; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–CE–89–AD; Amendment 39–10196; AD 97–23–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Avions Pierre Robin Model R3000 Airplanes

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

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

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to all Avions Pierre Robin Model R3000 airplanes that are equipped with yaw damper Modification No. 013. This AD requires inspecting the bridle cable ends for correct installation in the grooved screw, inspecting for correct cable winding on the capstan and correct cable tension, and correcting any discrepancies found. This AD also requires installing lockwire to the tension adjustment screw. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to prevent the rudder control from becoming jammed because of the yaw damper control cables slipping out of the groove on the tension adjustment screw, which could result in a reduction in the directional controllability of the airplane.

**DATES:** Effective December 5, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 5, 1997.

Comments for inclusion in the Rules Docket must be received on or before December 8, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 97–CE–89–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 03 80 44 20 50; facsimile: 03 80 35 60 80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–89–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karl M. Schletzbaum, Aerospace Engineer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

**SUPPLEMENTARY INFORMATION:**

### Events Leading to Issuance of This AD

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Avion Pierre Robin Model R3000 airplanes that are equipped with yaw damper Modification No. 013. The DGAC reports an incident where the yaw damper jammed due to the cable slipping out of the tension adjustment screw during operation. This condition, if not corrected in a timely manner, could result in the rudder control becoming jammed with possible reduction in the directional controllability of the airplane.

### Relevant Service Information

Avions Pierre Robin has issued Service Bulletin No. 152, dated September 30, 1996, which specifies the following:

—inspecting the bridle cable ends for correct installation in the grooved screw;

—inspecting for correct cable winding on the capstan and correct cable tension;

—correcting any discrepancies found; and

—installing lockwire to the tension adjustment screw.

The DGAC classified this service bulletin as mandatory and issued French AD 97–079(A), dated March 12, 1997, in order to assure the continued airworthiness of these airplanes in France.

### The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Pierre Robin Model R3000 airplanes of the same type design registered in the United States that are equipped with yaw damper Modification No. 013, the FAA is issuing an AD. This AD requires inspecting the bridle cable ends for correct installation in the grooved screw, inspecting for correct cable winding on the capstan and correct cable tension, correcting any discrepancies found, and installing lockwire to the tension adjustment screw. Accomplishment of the actions of this AD would be in accordance with the previously referenced service bulletin.

### Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–89–AD.'' The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**97–23–08 Avions Pierre Robin:** Amendment 39–10196; Docket No. 97–CE–89–AD.

*Applicability:* Model R3000 airplanes; all serial numbers; certificated in any category, that are equipped with yaw damper Modification No. 013.

**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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required prior to further flight after the effective date of this AD, unless already accomplished.

To prevent the rudder control from becoming jammed because of the yaw damper control cables slipping out of the groove on the tension adjustment screw, which could result in a reduction in the directional controllability of the airplane, accomplish the following:

(a) Inspect the bridle cable ends for correct installation in the grooved screw and inspect for correct cable winding on the capstan and correct cable tension in accordance with Avions Pierre Robin Service Bulletin No. 152, dated September 30, 1996. Prior to further flight, correct any discrepancies in accordance with this service bulletin.

(b) Install lockwire to the tension adjustment screw in accordance with Avions Pierre Robin Service Bulletin No. 152, dated September 30, 1996.

(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) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) The inspections and installation required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 152, 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 Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in French AD 97–079(A), dated March 12, 1997.

(f) This amendment (39–10196) becomes effective on December 5, 1997.

Issued in Kansas City, Missouri, on October 31, 1997.

**James E. Jackson,**

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

[FR Doc. 97–29535 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–275–AD; Amendment 39–10202; AD 97–21–16]**

**RIN 2120–AA64**

## Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

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

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

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 97–21–16 that was sent previously to all known U.S. owners and operators of Dassault Model Mystere-Falcon series airplanes by individual notices. This AD requires a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions. This action is prompted by a report indicating that erroneous minimum anti-icing N1 thrust setting indications were displayed on the Engine Indication Electronic Display (EIED). The actions specified by this AD are intended to prevent flightcrew use of erroneous N1 thrust setting information displayed on the EIED, which could result in in-flight shutdown of engine(s).

**DATES:** Effective November 18, 1997, to all persons except those persons to whom it was made immediately effective by emergency AD 97–21–16, issued October 14, 1997, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before December 15, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**FOR FURTHER INFORMATION CONTACT:** International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** On October 14, 1997, the FAA issued emergency AD 97–21–16, which is applicable to Dassault Model Mystere-Falcon 50 series airplanes. That action was prompted by a report indicating that erroneous minimum anti-icing N1 thrust setting indications were displayed on the Engine Indication Electronic Display (EIED). The erroneous minimum N1 indications do not correspond with minimums specified in the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) for operations in icing conditions. This condition, if not corrected, could result in flightcrew use of erroneous N1 thrust setting information displayed on the EIED and consequent in-flight shutdown of engine(s).

## FAA's Conclusions

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

## Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 97–21–16 to prevent flightcrew use of erroneous N1 thrust setting information displayed on the EIED, which could result in in-flight shutdown of engine(s). The AD requires revision of the Limitations Section of the AFM to include procedures to use values indicated in Normal Section 4, Sub-section 140, Page 2, of the AFM to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions.

## Interim Action

This AD is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

## Publication and Effectivity of AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on October 14, 1997, to all known U.S. owners and operators of Dassault Model Mystere-Falcon series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

## Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–275–AD.'' The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

**97–21–16 Dassault Aviation:** Amendment 39–10202. Docket 97–NM–275–AD.

*Applicability:* Model Mystere-Falcon 50 series airplanes, serial numbers 251, 253, and subsequent, equipped with Allied-Signal TFE–731–40 engines; 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 in-flight shutdown of the engine(s) due to the flightcrew using erroneous N1 speed values displayed on the Engine Indication Electronic Display (EIED), accomplish the following:

(a) Within 1 day after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to add the following. This may be accomplished by inserting a copy of this AD in the AFM.

''Operation in Icing Conditions: The N1 speed of the operating engines must not be less than the minimum values specified in Normal Section 4, Sub-section 140, Page 2, of the AFM.''

(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, International Branch, ANM–116, Transport 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, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

**Note 3:** The subject of this AD is addressed in French telegraphic airworthiness directive No. T 97–310–019 (B), dated October 10, 1997.

(d) This amendment becomes effective on November 18, 1997, to all persons except those persons to whom it was made immediately effective by emergency AD 97–21–16, issued October 14, 1997, which contained the requirements of this amendment.

Issued in Renton, Washington, on November 5, 1997.

**Darrell M. Pederson,**

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

[FR Doc. 97–29789 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–35–AD; Amendment 39–10204; AD 97–23–15]**

**RIN 2120–AA64**

## Airworthiness Directives; Fairchild Model F–27 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Fairchild Model F–27 series airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit positioning power levers below the flight idle stop during flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop during flight. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller ground beta range 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.

**EFFECTIVE DATE:** December 18, 1997.

**ADDRESSES:** Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Peter LeVoci, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7514; fax (516) 568–2716.

**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 Fairchild Model F–27 series airplanes was published in the **Federal Register** on April 24, 1997 (62 FR 19948). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to provide a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

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

### Conditional Support for the Proposal

One commenter supports the intent of the proposed rule, but remarks that, if an inherent design problem exists on the affected airplanes to allow flightcrews to select the power levers below the flight idle stop while in flight, the FAA should consider the addition of a mechanical means to preclude such selection. The FAA acknowledges the commenter's concern, and may consider additional rulemaking to address that concern in the future on certain airplanes. However, until such final action is identified, the FAA considers it appropriate to proceed with issuance of this AD. No change to the AD is required.

### Request To Withdraw the Proposal

One commenter, an operator, requests that the proposed rule be withdrawn for the following reasons. One, the commenter points out that the Fairchild Model F–27 series airplane has been type certificated for more than 35 years and has flown millions of flight hours without a single report of an intentional or inadvertent ground fine pitch (GFP) selection in flight. Two, the commenter's research of the flight manuals revealed that there is no normal or abnormal operational condition that would result in GFP selection being made in flight. Therefore, the commenter considers the unsafe condition to be a ''perceived'' problem. Three, the commenter states that, because the Model F–27 series airplane is equipped with a Rolls-Royce Dart engine that requires a positive torque pressure on approach, the power lever must be positioned beyond flight

idle with the propeller in a corresponding position above the flight fine lock to maintain a positive torque pressure. Therefore, the commenter concludes that the system design is adequate and that an unsafe condition does not exist. Four, the commenter considers that the proposed rule would cause a ''great economic burden'' to the owners and operators. Five, the commenter states that the FAA did not specify that the ''perceived'' unsafe condition does affect airplanes built in accordance with the requirements of part 4B of the Civil Air Regulations (CAR).

The FAA does not concur with the commenter's request to withdraw the proposed rule. As explained in the proposed rule, the accident/incident history of several airplanes involving intentional or inadvertent operation of the propellers in the beta range indicates that an unsafe condition does exist on airplanes equipped with turboprop engines. The FAA considers that revision of the AFM, as required in the final rule, will ensure that pilots are reminded that positioning of power levers below the flight idle stop while the airplane is in flight is prohibited. The FAA further considers this to be a minimum action to ensure that pilots do not carry certain flight habits from an airplane design that mitigates the effects of beta inflight over to a design that does not.

However, the FAA notes that the commenter addresses GFP rather than operations below the flight idle stop, although the operations manual refers to both. To clarify the usage of those terms, the FAA has added the phrase ''(i.e., including ground fine pitch)'' as a parenthetical definition of ''below the flight idle stop'' in paragraph (a) of the final rule.

In addition, since operators may simply insert a copy of the AD into the AFM in order to comply with the requirements of this rule, the FAA cannot consider that action to be a ''great economic burden.''

Finally, the FAA did not specify that the AD was also applicable to airplanes that had been type certificated in accordance with the requirements of part 4b of the CAR since, by definition, the applicability of this AD specifically states that the AD applies to all airplanes.

## Conclusion

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

## Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

## Cost Impact

There are approximately 70 Fairchild Model F–27 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 7 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 $420, 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, 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:

**97–23–15 Maryland Air Industries:** Amendment 39–10204. Docket 97–NM–35–AD.

*Applicability:* All Fairchild Model F–27 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 and 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 action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop (i.e., including ground fine pitch) 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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 2:** Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the New York 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) This amendment becomes effective on December 18, 1997.

Issued in Renton, Washington, on November 6, 1997.

**Darrell M. Pederson,**

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

[FR Doc. 97–29824 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–34–AD; Amendment 39–10203; AD 97–23–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Fairchild Model FH–227 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Fairchild Model FH–227 series airplanes, that requires revising the Airplane Flight Manual (AFM) to prohibit positioning of the power levers below the flight idle stop during flight, and to add a statement of the consequences of such positioning of the power levers. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines in which the propeller ground beta range 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 when the airplane is in flight.

**EFFECTIVE DATE:** December 18, 1997.

**ADDRESSES:** Information pertaining to this rulemaking action may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

**FOR FURTHER INFORMATION CONTACT:** Peter LeVoci, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7514; fax (516) 568–2716.

**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 Fairchild Model FH–227 series airplanes was published in the **Federal Register** on April 24, 1997 (62 FR 19951). That action proposed to require revising the Limitations Section of the Airplane Flight Manual (AFM) to prohibit positioning the power levers below the flight idle stop while the airplane is in flight, and to add a statement of the consequences of positioning the power levers below the flight idle stop while the airplane is in flight.

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

### Conditional Support for the Proposal

The commenter supports the intent of the proposed rule, but remarks that, if an inherent design problem exists on the affected airplanes to allow flightcrews to select the power levers below the flight idle stop while in flight, the FAA should consider the addition of a mechanical means to preclude such selection. The FAA acknowledges the commenter's concern, and may consider additional rulemaking to address that concern in the future on certain airplanes. However, until such final action is identified, the FAA considers it appropriate to proceed with issuance of this AD. No change to the AD is required.

### Clarification of the Rule

Since the issuance of the NPRM, the FAA has noted that operations manuals for certain airplanes equipped with Dart turboprop engines may contain reference to ''ground fine pitch'' rather than ''operations below the flight idle stop,'' as specified in the proposed rule. Although the operations manuals refer to both of those phrases, the FAA finds that some clarification is necessary. Therefore, the FAA has added the phrase ''(i.e., including ground fine pitch)'' in paragraph (a) of the final rule as a parenthetical definition of ''operations below the flight idle stop'' in 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 change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

### Interim Action

This is considered interim action until final action is identified, at which time the FAA may consider further rulemaking.

### Cost Impact

The FAA estimates that there are approximately 45 Fairchild Model FH–227 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1 airplane 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 the single U.S. operator is estimated to be $60.

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

### Regulatory Impact

The regulations 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, 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:

**97–23–14 Maryland Air Industries:** Amendment 39–10203. Docket 97–NM–34–AD.

*Applicability:* All Fairchild Model FH–227 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 and 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 action may be accomplished by inserting a copy of this AD into the AFM.

''Positioning of power levers below the flight idle stop (i.e., including ground fine pitch) 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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

Operators shall submit their requests through an appropriate FAA Maintenance Operations Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York 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) This amendment becomes effective on December 18, 1997.

Issued in Renton, Washington, on November 6, 1997.

**Darrell M. Pederson,**

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

[FR Doc. 97–29825 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. 97–ACE–17]**

## Amendment to Class E Airspace, Jefferson City, MO

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

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends the Class E airspace area at Jefferson City Municipal Airport, Jefferson City, MO. The FAA has developed a Nondirectional Radio Beacon (NDB) Runway (RWY) 30 Standard Instrument Approach Procedure (SIAP) to serve the Jefferson City Municipal Airport. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations at this airport. A review of the airspace required for instrument approaches at Jefferson City Memorial Airport indicates that the surface airspace area extension to the southeast can be removed. The enlarged area will contain the new NDB RWY 30 SIAP in controlled airspace.

**DATES:** *Effective date:* 0901 UTC April 23, 1998.

*Comment date:* Comments must be received on or before January 15, 1998.

**ADDRESSES:** Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–17, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

**SUPPLEMENTARY INFORMATION:** The FAA has developed a RWY 30 SIAP utilizing the NDB at Jefferson City, MO. The amendment to Class E airspace at Jefferson City, MO, will provide additional controlled airspace at and above 700 feet AGL to contain the SIAP within controlled airspace. A review of the airspace required for instrument approaches at Jefferson City Memorial Airport indicates that the Class E surface area extension to the southeast can be removed. The areas will be depicted on appropriate aeronautical charts. Class E surface area extensions are published in paragraph 6004, and areas extending from 700 feet or more above the surface of the earth are published in 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 Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the

date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

### Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ACE–17.'' The postcard will be date stamped and returned to the commenter.

### Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have significant economic impact, positive or negative, 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

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 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 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 71.1 of 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 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.*

* * * * *

**ACE MO E4 Jefferson City, MO [Revised]**

Jefferson City Memorial Airport, MO
(Lat. 38°35′28″ N., long. 92°09′22″ W.)
NOAH NDB
(Lat. 38°38′14″ N., long. 92°14′41″ W.)
ALGOA LOM
(Lat. 38°32′53″ N., long. 92°04′19″ W.)

That airspace extending upward from the surface within 2.6 miles each side of the Jefferson City Memorial Airport localizer back course extending from the 4.1-mile radius of Jefferson City Memorial Airport to 5 miles northwest of the airport. 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.*

* * * * *

**ACE MO E5 Jefferson City, MO [Revised]**

Jefferson City Memorial Airport, MO
(Lat. 38°35′28″ N., long. 92°09′22″ W.)
NOAH NDB
(Lat. 38°38′14″ N., long. 92°14′41″ W.)
ALGOA LOM
(Lat. 38°32′53″ N., long. 92°04′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Jefferson City Memorial Airport and within 3.1 miles each side of the NOAH NDB 303° bearing extending from the 6.6-mile radius to 14.3 miles northwest of the airport, and within 4 miles each side of the Jefferson City ILS localizer course extending from the 6.6-mile radius to 11.8 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on November 4, 1997.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 97–29834 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. 97–ACE–19]**

## Amendment to Class E Airspace, Eagle Grove, IA

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

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends the Class E airspace area at Eagle Grove Municipal Airport, Eagle Grove, IA. The FAA has developed a Global Positioning System (GPS) Runway (RWY) 31 Standard Instrument Approach Procedure (SIAP) to serve the Eagle Grove Municipal Airport, Eagle Grove, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 31 SIAP in controlled airspace.

**DATES:** *Effective date:* 0901 UTC April 23, 1998.

*Comment date:* Comments must be received on or before January 15, 1998.

**ADDRESSES:** Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–19, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Airspace Branch, Air Traffic Division, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

**SUPPLEMENTARY INFORMATION:** The FAA has developed a GPS RWY 31 SIAP at Eagle Grove Municipal Airport, Eagle Grove, IA. The amendment to Class E airspace at Eagle Grove, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAP within controlled airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, 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 Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

## Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ACE–19.'' The postcard will be date stamped and returned to the commenter.

## Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 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 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 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 10, 1997, is amended as follows:

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

* * * * *

**ACE IA E5 Eagle Grove, IA [Revised]**

Eagle Grove Municipal Airport, IA
(Lat. 42°42′35″ N., long 93°54′58″ W.)
Eagle Grove NDB
(Lat. 42°42′31″ N., long 93°54′38″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Eagle Grove Municipal Airport and within 2.6 miles each side of the 306° bearing from the Eagle Grove NDB extending from the 6.4-mile radius to 7.4 miles northwest of the airport, excluding that airspace within the Clarion, IA, Class E airspace area.

* * * * *

Issued in Kansas City, MO, on November 4, 1997.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 97–29833 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Parts 510 and 558

## New Animal Drugs for Use in Animal Feeds; Salinomycin and Bacitracin Zinc

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two abbreviated new animal drug applications (ANADA's) filed by Alpharma Inc. The ANADA's provide for using approved salinomycin and bacitracin zinc Type A medicated articles to make Type C medicated broiler chicken feeds used for the prevention of coccidiosis and for increased rate of weight gain. This document is also amending the animal drug regulations to reflect the correct sponsor name for Alpharma Inc.

**EFFECTIVE DATE:** November 13, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey M. Gilbert, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1602.

**SUPPLEMENTARY INFORMATION:** Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA's 200–204 and 200–210 that provide for combining approved salinomycin and bacitracin zinc Type A medicated articles to make Type C medicated broiler feeds containing salinomycin 40 to 60 grams per ton (g/t) and bacitracin zinc 10 to 50 g/t. The Type C medicated feed is used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, and for increased rate of weight gain.

ANADA 200–204, filed by Alpharma Inc., provides for using approved BIO–COX® (Hoffmann-LaRoche Inc.'s salinomycin NADA 128–686) and ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223) Type A medicated articles to make the combination drug Type C medicated feeds. ANADA 200–210, also filed by Alpharma Inc., provides for using approved SACOX® (Hoechst-Roussel Vet's salinomycin ANADA 200–075) and ALBAC® (Alpharma Inc.'s bacitracin zinc ANADA 200–223) Type A medicated articles to make the combination drug Type C medicated feeds.

Alpharma Inc.'s ANADA 200–204 is approved as a generic copy of Hoffmann-LaRoche, Inc.'s NADA 139–235. Alpharma Inc.'s ANADA 200–210 is approved as a generic copy of Hoechst-Roussel Vet's ANADA 200–089. The ANADA's are approved as of September 19, 1997, and the regulations are amended in 21 CFR 558.550(b)(1)(vii)(*c*) to reflect the approvals. The basis for approval is discussed in the freedom of information summaries.

FDA is also amending the animal drug regulations in 21 CFR 510.600(c)(1) and (c)(2) to reflect the correct firm name for Alpharma Inc.

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

FDA has determined under 21 CFR 25.33(a)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects

*21 CFR Part 510*

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

*21 CFR Part 558*

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

### § 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for ''ALPHARMA INC.'' and in paragraph (c)(2) in the entry for ''046573'' by removing the name ''ALPHARMA INC.'' and adding in its place ''Alpharma Inc.''

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

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

**Authority:** 21 U.S.C. 360b, 371.

### § 558.550 [Amended]

4. Section 558.550 *Salinomycin* is amended in paragraph (b)(1)(vii)(*c*) by removing ''No. 000004'' and adding in its place ''Nos. 000004 and 046573''.

Dated: October 30, 1997.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 97–29905 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF THE TREASURY

## Departmental Offices

## 31 CFR Part 1

## Privacy Act of 1974; Implementation

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Final Rule.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of an amendment to exempt the system of records entitled, ''Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS 34.018,'' from certain provisions of the Privacy Act.

**EFFECTIVE DATE:** November 13, 1997.

**FOR FURTHER INFORMATION CONTACT:** Michael Sincavage, Director, 6103/Privacy Operations, Governmental Liaison & Disclosure, Internal Revenue Service at (202) 622–6240.

**SUPPLEMENTARY INFORMATION:** The Department of the Treasury published a notice of a proposed rule exempting a system of records from certain provisions of the Privacy Act of 1974, as Amended, at 60 FR 40797, dated August 10, 1995. The Internal Revenue Service published an alteration to the system notice on July 31, 1995, at 60 FR 30972.

Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt any system of records within the agency from certain provisions of the

Privacy Act of 1974 if the system is investigatory material compiled for law enforcement purposes. The Internal Revenue Service has as its principal function enforcement of the tax law of the United States. System of records Treasury/IRS 34.018—Integrated Data Retrieval System Security Files, contains records that enable the Service to investigate and monitor the activities of its employees to ensure the protection and confidentiality of tax return information. The information in this system is used in investigations relating to unauthorized use of the Integrated Data Retrieval Files.

The proposed rule requested that public comments be sent to the Director, Office of Disclosure, Internal Revenue Service no later than September 11, 1995. No comments pertaining to the proposed rule were received by the Office of Disclosure. Accordingly, the Department of the Treasury is hereby giving notice that the system of records entitled, ''Integrated Data Retrieval System (IDRS) Security Files—Treasury/IRS 34.018,'' is exempt from certain provisions of the Privacy Act. The following are the reasons why certain systems of records maintained by the Internal Revenue Service are exempt pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974.

(1) 5 U.S.C. 552a(c)(3). This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at his request. The reasons for exempting systems of records from the foregoing provision are as follows:

(i) The release of disclosure accounting would put the subject of an investigation on notice of the existence of an investigation and that such person is the subject of that investigation;

(ii) Such release would provide the subject of an investigation with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to whom the disclosure is made. The release of such information to the subject of an investigation would provide the subject with significant information concerning the nature of the investigation and could result in the altering or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy;

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating this person and the scope of the investigation, and could aid the individual in impeding or compromising investigations by those agencies.

(2) 5 U.S.C. 552a(d)(1),(2),(3), and (4), (e)(4)(G) and (H) and (f). These provisions of the Privacy Act relate to an individual's right to notification of the existence of records pertaining to such individual; requirements for identifying an individual who requests access to records; the agency procedures relating to access to records and the contest of the information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in such record systems. The reasons for exempting systems of records from the foregoing provisions are as follows: To notify an individual at the individual's request of the existence of records in an investigative file pertaining to such individual or to grant access to an investigative file could interfere with investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others, disclose the identity of confidential sources and reveal confidential information supplied by such sources; and disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. In cases where an exemption from this provision has been claimed, the reasons are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures;

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

(4) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting systems of records from the foregoing provisions are as follows:

(i) The Internal Revenue Service will limit its inquiries to information which is necessary for the enforcement and administration of tax laws. However, an exemption from the foregoing provision is needed because, particularly in the early stages of a tax audit or other investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgement and timing. What appears relevant and necessary when collected may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(iii) When information is received by the Internal Revenue Service relating to violations of law within the jurisdiction of other agencies, the Service processes this information through Service systems in order to forward the material to the appropriate agencies.

As required by Executive Order 12866, it has been determined that this final rule is not a significant regulatory action and, therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The final rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this rule will not impose new record keeping, application, reporting, or other types of information collection requirements.

## List of Subjects in 31 CFR Part 1

Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

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

**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

### § 1.36 [Amended]

2. Section 1.36 of Subpart C is amended by adding the following text in numerical order under the heading THE INTERNAL REVENUE SERVICE:

* * * * *

(b) * * *

(1) * * *

| Name of System | No. |
|---|---|
| * * * * * | |
| Integrated Data Reporting System (IDRS) Security Files ..... | 34.018 |

| Name of System | No. |
|---|---|
| * * * * * | |

* * * * *

Dated: October 3, 1997.

**Alex Rodriguez,**

*Deputy Assistant Secretary (Administration)*

[FR Doc. 97–29794 Filed 11–12–97; 8:45 am]

**Billing Code: 4830–01–F**

## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 17

**RIN 2900–AI84**

## Grants to States for Construction or Acquisition of State Home Facilities

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the ''Medical'' regulations regarding applications for grants to States for the construction or acquisition of State home facilities. VA awards grants based on a priority ranking system. Usually, the higher priority applications deplete the available funding to the extent that the lowest ranking application to be offered funding is offered only a partial grant. This final rule provides that if the lowest ranking grant application receives only a partial grant in a fiscal year and if such grant award is partial solely because VA has insufficient funds for a full grant, the application would be placed at the top of the list within its priority group for the next fiscal year. Often applicants are hesitant to accept a partial grant because of the uncertainty of receiving an additional grant the next fiscal year. This final rule will encourage States to accept a partial grant by creating the likelihood that the State would receive an additional grant in the subsequent fiscal year. Accordingly, this will help ensure that VA would be able to award grants to higher priority applicants that might otherwise reject partial funding.

Also, this final rule provides that the applicant receiving partial funding and receiving priority as proposed will not be required to submit a second application for additional funds in the subsequent fiscal year, but could be required to update information already submitted. The first application would normally be adequate because the grant award in the second fiscal year would be for the same project which received the partial grant award.

Further, the final rule provides that the total amount awarded for the application may not exceed 65 percent of the total cost of the project as determined at the time of the second grant award for that grant application. This is consistent with the statutory requirement that limits grant awards to no more than 65 percent of the estimated cost construction or acquisition.

**DATES:** *Effective Date:* December 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen Greve, Geriatrics and Extended Care Strategic Healthcare Group, (202) 273–8534.

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** on July 29, 1997 (62 FR 40492), VA proposed to amend the ''Medical'' regulations in 38 CFR part 17 as set forth in the SUMMARY portion of this document. The document provided a 60-day comment period, which ended on September 29, 1997. Three commentors submitted comments, all of whom expressed full approval for the provisions of the proposed rule.

Based on the rationale set forth in the proposed rule and this document, the provisions of the proposed rule are adopted as a final rule without change.

The Secretary hereby certifies that the adoption of this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule will affect grants to States and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of secs. 603 and 604.

The Catalog of Federal Domestic Assistance program number for this document is 64.005.

### List of Subjects in 38 CFR Part 17

Administrative practice and procedure. Alcohol abuse, Alcoholism, Claims, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: November 3, 1997.

**Hershel W. Gober,**

*Acting Secretary of Veterans Affairs.*

For the reasons set forth above, 38 CFR part 17 is amended as set forth below:

## PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follow:

**Authority:** 38 U.S.C. 501, 1721, unless otherwise noted.

2. In § 17.212, paragraph (d) is added and the authority citation for the section is revised to read as follows:

**§ 17.212 Scope of grants program.**

* * * * *

(d)(1) Notwithstanding paragraph (c) of this section and the provisions for ranking projects within a priority group in § 17.213(c)(3)(i), the Secretary shall give an application first priority within the priority group to which it is assigned on the list of projects established under § 17.213(d) for the next fiscal year if:

(i) the State has accepted a grant for that application as of August 15 of the current fiscal year that is less than the amount that the Secretary would have awarded if VA had sufficient grant funds to award the grant in such amount in that fiscal year; and

(ii) the application is the lowest ranking application on the priority list for the current fiscal year for which grant funds are available as of August 15 of that year.

(2) The Secretary shall not require a State to submit a second grant application for a project which receives priority under paragraph (d)(1) of this section but may require the State to update information already submitted in the application for the project. The Secretary shall determine the amount of a second grant at the time of the award of that grant. In no case shall the total amount awarded for the application exceed 65 percent of the total cost of the project as determined at the time of the second grant award for that grant application.

(Authority: 38 U.S.C. 8135(b))

[FR Doc. 97–29788 Filed 11–12–97; 8:45 am]

**BILLING CODE 8320–01–M**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA 034–0048; FRL–5917–5]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

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

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing limited approvals and limited disapprovals of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on September 23, 1992 and May 14, 1997. This final action will incorporate these rules into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from the formulation and manufacture of pharmaceuticals and cosmetics and from facilities that load organic liquids into tank trucks, trailers, or railroad tank cars. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

**EFFECTIVE DATE:** This action is effective on December 15, 1997.

**ADDRESSES:** Copies of the rules and EPA's evaluation report for each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 92123–1095.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

**SUPPLEMENTARY INFORMATION:**

### I. Applicability

The rules being approved into the California SIP include: South Coast Air Quality Management District (SCAQMD) Rule 1103, Pharmaceuticals and Cosmetic Manufacturing Operations; and SCAQMD Rule 462, Organic Liquid Loading. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 13, 1991 and October 13, 1995, respectively.

This Federal Register action for the South Coast Air Quality Management District excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997. [1]

### II. Background

On September 23, 1992 in 57 FR 43960 and May 14, 1997 in 62 FR 26460, EPA proposed granting limited approval and limited disapproval of the following rules into the California SIP: SCAQMD Rule 1103, Pharmaceutical and Cosmetic Manufacturing Operations, and SCAQMD Rule 462, Organic Liquid Loading. Rule 1103 was adopted by SCAQMD on December 7, 1990 and Rule 462 was adopted by SCAQMD on June 9, 1995. These rules were submitted by the CARB to EPA on May 13, 1991 and October 13, 1995, respectively. These rules were submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the proposed rules (PRs) cited above.

EPA has evaluated the above rules for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PRs. EPA is finalizing the limited approval of these rules in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. SCAQMD Rule 1103 deficiencies include the following: (1) Air Pollution Control Officer discretion in the approval of equivalent control systems; (2) inadequate recordkeeping requirements for key operating parameters for monitoring control systems; (3) the lack of necessary recordkeeping requirements to show compliance with exemption levels; and (4) the lack of a test method for measuring vapor pressure. In SCAQMD Rule 462 the deficiency is the definition of ''facility vapor leak'' that allows a measurement distance of 2 centimeters from the source according to procedures listed in EPA Test Method 21. This 2 centimeter distance is inconsistent with EPA Test Method 21, which requires measurement at the surface of the source or 1 centimeter for moving parts. A detailed discussion of the rule provisions and evaluations has been provided in the PRs and in the technical support documents (TSDs) available at EPA's Region IX office (TSDs dated June 19, 1992 (Rule 1103) and March 12, 1997 (Rule 462)).

### III. Response to Public Comments

A 30-day public comment period was provided in 57 FR 43960 and 62 FR 26460. EPA received no comments on the PRs.

### IV. EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rules. The limited approval of these rules is being finalized under section 110(k)(3) in light of EPA's

[1] The State has recently changed the names and boundaries of the air basins located within the Southeast Desert Modified AQMA. Pursuant to State regulation the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin (17 Cal. Code. Reg. § 60114); the Victor Valley/Barstow region in San Bernardino County and Antelope Valley Region in Los Angeles County is a part of the Mojave Desert Air Basin (17 Cal. Code. Reg. § 60109). In addition, in 1996 the California Legislature established a new local air agency, the Antelope Valley Air Pollution Control District, to have the responsibility for local air pollution planning and measures in the Antelope Valley Region (California Health & Safety Code § 40106).

authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rules strengthen the SIP. However, the rules do not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the PRs. Thus, in order to strengthen the SIP, EPA is granting limited approval of these rules under sections 110(k)(3) and 301(a) of the CAA. This action approves the rules into the SIP as federally enforceable rules.

At the same time, EPA is finalizing the limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of Part D of the Act. As stated in the PRs, upon the effective date of this FR, the 18-month clock for sanctions and the 24-month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the FR, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rules covered by this FR have been adopted by the SCAQMD and are currently in effect in the SCAQMD. EPA's limited disapproval action will not prevent a local agency or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## V. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

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

SIP approvals under sections 110 and 30l, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

### *C. Unfunded Mandates*

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this 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 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: October 24, 1997.

**Felicia Marcus,**

*Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

**Authority:** 42 U.S.C. 7401–7671q.

## Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(184)(i)(B)(*5*) and (225)(i)(A)(*2*) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(184) * * *

(i) * * *

(B) * * *

(*5*) Rule 1103, adopted on December 7, 1990.

* * * * *

(225) * * *

(i) * * *

(A) * * *

(2) Rule 462, revised on June 9, 1995.

* * * * *

[FR Doc. 97–29863 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

**[FL–70–1–9738a; FRL–5920–3]**

## Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Florida

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the Sections 111(d)/129 State Plan submitted by Florida on November 18, 1996, for implementing and enforcing the Emissions Guidelines (EG) applicable to

existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons/day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb.

**DATES:** This final rule is effective January 12, 1998 unless significant material, and adverse comments are received by December 15, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Joey LeVasseur at the Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, and at Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

**FOR FURTHER INFORMATION CONTACT:** Scott Davis at 404/562–9127 or Joey LeVasseur at 404/562–9035.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, Subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated Subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons/day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, Subparts Eb and Cb apply only to MWC units with individual capacity to combust more than 250 tons/day of municipal solid waste (large MWC units).

Under section 129 of the Act, emission guidelines are not Federally enforceable. Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the emission guidelines. State Plans must be at least as protective as the emission guidelines, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR Part 60, Subpart B. EPA originally promulgated the Subpart B provisions on November 17, 1975. EPA amended Subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in Subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

This action approves the State Plan submitted by Florida to implement and enforce Subpart Cb, as it applies to large MWC units only.

## II. Discussion

The Florida Department of Environmental Protection (FDEP) submitted to EPA the following in their 111(d)/129 State Plan for implementing and enforcing the emission guidelines for existing MWCs in the State: Legal Authority; Enforceable Mechanisms; Inventory of MWC Units; Emission Inventory; Compliance Schedules and Closure Agreements; Testing, Monitoring, Recordkeeping and Reporting; Annual State Progress Reports; and applicable State regulations (Rules 62–204.800(8), 62–296.416, and 62–296.401(6) of the Florida Administrative Code) on November 18, 1996. FDEP submitted its plan before the Court of Appeals vacated Subpart Cb as it applies to small MWC units. Thus, FDEP's plan covers both large and small MWC units. As a result of the *Davis* decision and subsequent vacatur order, there are no emission guidelines promulgated under sections 111 and 129 that apply to small MWC units. Accordingly, EPA's review and approval of FDEP's State Plan for MWCs addresses only those parts of FDEP's Plan which affect large MWC units. Small units are not subject to the requirements of the Federal Rule and not part of this approval. Until EPA again promulgates emission guidelines for small MWC units, EPA has no authority under section 129(b)(2) of the Act to review and approve State Plans applying state rules to small MWC units.

The approval of FDEP's State Plan is based on finding that: (1) FDEP provided adequate public notice of public hearings for the proposed rulemaking which allows Florida to implement and enforce the EG for large MWCs, and (2) FDEP also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In Sections 2.1, 2.2, and 2.3 of the State Plan, FDEP cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards and limitations in Rules 62–204.800(8) and 62–296.416 are approved as being at least as protective as the Federal requirements contained in Subpart Cb for existing large MWC units.

Florida submitted compliance schedules and legally enforceable increments of progress and, where applicable, closure agreements for each large MWC. This portion of the State Plan (Section 5.0) has been reviewed and approved as being at least as protective as Federal requirements for existing large MWC units.

Florida's Plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to the State the nature and amount of emissions and any other information that may be necessary to enable the State to judge the compliance status of the facilities. Florida also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with emission standards that apply, available to the general public. Florida submitted Rule 62–204.800(8)(b) F.A.C. to support the requirements of monitoring, reporting, and compliance assurance. These State rules have been reviewed and approved as meeting Federal requirements for existing large MWC units.

As stated in Section 8.0 of the State Plan, Florida plans to provide progress reports of plan updates on an annual basis in conjunction with the required annual reports pursuant to 40 CFR section 51.321. This meets the minimum requirement for State reporting and is approved.

### *Final Action*

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse

comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the revision should significant, material, and adverse comments be filed. This action will be effective January 12, 1998 unless, by December 15, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 12, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

## III. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

### *B. Regulatory Flexibility Act*

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

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under Federal, State or local law, and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

### *C. Unfunded Mandates*

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

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### *E. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 12, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: October 14, 1997.

**A. Stanley Meiburg,**

*Acting Regional Administrator.*

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

## PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

## Subpart K—Florida

2. Part 62.2350 is amended by adding paragraphs (b)(5) and (c)(3) to read as follows:

### § 62.2350 Identification of plan.

* * * * *

(b) * * *

(5) Control of metals, acid gases, organic compounds and nitrogen oxide emissions from existing municipal waste combustors was submitted by the Florida Department of Environmental Protection on November 18, 1996.

(c) * * *

(3) Existing municipal waste combustors.

3. Subpart K is amended by adding a new § 62.2355 and a new undesignated center heading to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

### § 62.2355 Identification of sources.

The plan applies to existing facilities with a municipal waste combustor (MWC) unit capacity greater than 250 tons per day of municipal solid waste (MSW).

[FR Doc. 97–29860 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 970429101–7101–01; I.D. 103097A]**

## Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustment From Sisters Rocks to Mack Arch, OR

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

**ACTION:** Inseason adjustment; request for comments.

**SUMMARY:** NMFS announces that the commercial salmon fishery in the area from Sisters Rocks to Mack Arch, OR, opened for 7 days per week beginning August 13, 1997. This adjustment was intended to provide commercial fishermen with additional opportunity to harvest chinook salmon without exceeding the ocean share allocated to the commercial fishery in this area.

**DATES:** Effective 0001 hours local time, August 13, through 2400 hours local time, August 31, 1997. Comments will be accepted through November 28, 1997.

**ADDRESSES:** Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070. Information relevant to this action is available for public review during business hours at the office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** William Robinson, 206–526–6140.

**SUPPLEMENTARY INFORMATION:** In the annual management measures for ocean salmon fisheries (62 FR 24355, May 5, 1997), NMFS announced that the commercial fishery in the area from Sisters Rocks to Mack Arch, OR, would open August 1 and continue through the earlier of August 31 or attainment of the 3,000 chinook salmon quota. The season was scheduled to follow a cycle of 2 days open/2 days closed for the purpose of dampening catch rates and extending the fishing season.

The best available information on August 11 indicated that a sufficient number of chinook salmon remained in the quota to rescind the catch dampening measure. Hence, effective 0001 hours local time, August 13, the commercial salmon fishery in this area opened 7 days per week. This fishery operated through August 31.

Modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i). All other restrictions that applied to this fishery remained in effect as announced in the annual management measures.

The Regional Administrator consulted with representatives of the Pacific Fishery Management Council and the Oregon Department of Fish and Wildlife regarding this adjustment. The State of Oregon managed the commercial fishery in state waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to 0001 hours local time, August 13, 1997 by telephone hotline numbers (206) 526–6667 and (800) 662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to take advantage of the opportunity to harvest the available quota, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This action does not apply to other fisheries that may be operating in other areas.

### Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

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

Dated: November 6, 1997.

**Gary C. Matlock,**

*Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–29878 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 62, No. 219
Thursday, November 13, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

**RIN 3150–AF88**

### Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission is proposing to amend its Rules of Practice for the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository (HLW proceeding). The proposed amendments are intended to allow application of technological developments that have occurred since the original rule was adopted in 1989, while achieving the original goals of facilitating the Commission's ability to comply with the schedule for decision on the construction authorization for the repository contained in Section 114(d) of the Nuclear Waste Policy Act, and providing for a thorough technical review of the license application and equitable access to information for the parties to the hearing.

**DATES:** Submit comments by January 27, 1998. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Send comments by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

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

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1641, e-mail KLW@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The existing procedures for licenses to receive high-level radioactive waste at a geologic repository were developed to address the Nuclear Regulatory Commission's concern regarding how best to review the U.S. Department of Energy (DOE) license application for a first-of-a-kind high-level radioactive waste (HLW) repository during the 3-year time period dictated by Section 114(d) of the Nuclear Waste Policy Act. The Commission believed it necessary to reduce the time normally spent on the discovery process at the start of a licensing proceeding and the time-consuming service of documents during the proceeding if the Commission were to reach its decision within the allotted time. The Licensing Support System (LSS) concept, an electronic information management system, was created to achieve this time reduction by making the information and data supporting a DOE application available simultaneously in a centralized database to all interested parties before the application is submitted and formal NRC review begins. Emerging information management technologies for issue identification, electronic storage and retrieval, and electronic mail were recommended for these functions to help achieve the objectives of more effective and efficient review.

The Commission employed the technique of negotiated rulemaking to develop the regulations governing the development and use of the LSS. Negotiated rulemaking is the process by which the agency and the interests affected by a rulemaking meet to attempt to reach a consensus on a draft proposed rule. If a consensus is reached, the agency publishes the negotiated rule as the agency's proposed rule. The Commission selected the negotiated rulemaking approach to address the LSS issue for several reasons. In 1987, the idea of use of an electronic information management system in a Commission adjudicatory proceeding was novel, not only for the Commission, but in general. Therefore, the development of the rules for the use of such a system would benefit from discussion and joint problem solving by those who might ultimately use the system and had experience with the Commission's traditional adjudicatory process. Furthermore, the potential users of the LSS possessed unique information that would be important to the design of the system, such as their computer capability and the amount and types of relevant documents that they might generate. In addition, the potential for consensus was enhanced by the fact that the LSS rule focused on procedures for conducting the licensing process that might benefit all parties, rather than focusing on substantive technical criteria for a licensing process. Finally, the success of the LSS concept depended upon potential parties voluntarily complying with the licensing process for document identification and submission in the period before the DOE license application was submitted. Therefore, the involvement of interested parties in the development of the provisions to govern the use of the LSS was essential.

The Commission initiated the negotiated rulemaking in August 1987. The negotiating committee, composed of State, local, and tribal governments, industry representatives, NRC, DOE, and environmental groups, completed its work in July 1988. Except for the industry coalition, all the parties on the negotiating committee agreed on the text and supplementary information of a draft proposed rule. However, even the one dissenting party, the industry representative, had been a full and active participant in the drafting of the regulatory text and supporting information. Industry did not join the final consensus at the end of the process based on its belief that the use of a new technology in the licensing process

would not prove cost-beneficial. At that time, the cost of the LSS was estimated by DOE to be in the $200 million range. The Commission, recognizing the agreement among the other parties on the negotiating committee, decided to publish the negotiated draft proposed rule as the Commission's proposed rule in November 1988. Because of this effort, the final LSS rule (10 CFR part 2, subpart J), ''Procedures Applicable to Proceeding for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository'', was promulgated on April 24, 1989 (54 FR 14925).

The LSS rule assigned the LSS Administrator (LSSA) function to the NRC which would be responsible for the management, administration, operation, and maintenance of the LSS; pursuant to DOE's agreement, gave DOE responsibility for the design, development, and implementation of the LSS; and established the charter of the LSS Advisory Review Panel (LSSARP) to provide consensus guidance on the design and development of the LSS to both NRC and DOE. The LSS was intended to provide a central, shared, federally funded database of licensing information beginning in 1995, the year DOE was expected to submit its application for a construction permit for the repository. The Commission adopted minor amendments further clarifying these procedures in a final rule published on February 26, 1991 (56 FR 7787).

The Licensing Support System Administrator (LSSA) was appointed in January 1989. The LSSARP was formed, holding its first meeting in December 1989. Also in December 1989, well before any serious development work could be started on the LSS, the Department of Energy revised its repository program schedule to extend its anticipated license application date from 1995 to 2001. Consequently, the LSS development schedule was extended.

## II. Discussion

The development of the LSS that was devised in the original procedural rules in 10 CFR Part 2, Subpart J, has not been accomplished during the time that has passed since adoption of the rule. Many delays and changes in personnel and program structure have attended the Department of Energy's efforts to develop the LSS. Budgetary shortfalls and the unanticipated length of time that it has taken to develop the licensing application for the repository not only delayed the development of the LSS, but also resulted in several additional years' accumulation of potential licensing information.

Because of the length of time involved and the narrowing of the repository development program, much of the early material thought to be relevant at the time the rule was developed may no longer be relevant to the actual licensing proceeding that may not begin until about 2002. Also because of the extended period of time it has taken to develop the LSS for DOE's use as a document management system, it appears that all accumulated documents may not have been identified and maintained properly for tracking of important repository development decisions. In addition, because document capture may now involve much larger backlogs than originally contemplated, the risk of failing to capture all the material originally required to be placed in the LSS is substantially larger than originally assumed. In order for the current Subpart J rules to apply, the LSSA must certify that the DOE has complied with the requirement to enter all relevant documents in the LSS. Therefore, all of these factors combine to produce the high likelihood that the current rule cannot be implemented as originally envisioned. If not, then 10 CFR part 2, subpart J, will no longer apply. Instead, subpart G, the generally applicable procedures for licensing proceedings, will apply. This means that there would be no pre-license application access to documents.

Although the development of the LSS has remained stalled, the state of technology in document automation and retrieval has overtaken the 1986 technology on which the original LSS was to be based. The use of computers to generate and maintain the complex documents of a party in litigation is widespread and commonplace. The Internet is universally available to tie disparate and geographically dispersed systems together. Readily available commercial software applications can perform the document management functions of the LSS. Therefore, the centralized LSS envisioned at the time the LSS rule was developed has become obsolete. The enormous expense of designing and maintaining a stand-alone system required by the current rules appears to be an unjustified expense, especially when it appears unlikely that the rule will be able to be implemented successfully even if the LSS is created.

Consequently, the Commission is proposing to amend its rules to allow more flexibility to incorporate the advantages of new information management technologies in the procedural rules for the licensing of the geologic repository. This would eliminate the LSS as a uniquely designed stand-alone system, while still maintaining the following primary functions of the LSS as a mechanism for the:

(1) Discovery of documents before the license application is filed;

(2) Electronic transmission of filings by the parties during the proceeding;

(3) Electronic transmission of orders and decisions related to the proceeding; and

(4) Access to an electronic version of the docket.

The Commission believes that the proposed rule would continue to support the model schedule for conducting the licensing proceeding within the 3-year statutory period that was published in the Statement of Considerations for the original 10 CFR part 2, subpart J, rule published on April 14, 1989 (54 FR 14925, 14939).

The proposed rule would eliminate the current prescriptive requirement in 10 CFR part 2, subpart J, for a centralized ''Licensing Support System'' administered by the NRC and therefore also would eliminate the requirement for an LSS Administrator to ensure the viability of the central database. To replace these features of the existing rule, the proposed rule would require that all potential parties, including the NRC and DOE, make their documentary material available in electronic form to all other participants beginning in the pre-license application phase. This requirement is stated without unduly restrictive technological specifications, in order to accommodate flexible implementation consistent with current or future technological developments.

Documentary material would be defined as the material upon which a party intends to rely in support of its position in the licensing proceeding; any material which is relevant to, but does not support, that material or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. For the purposes of this rule, the pre-application phase would begin on the date that the President submits the site recommendation to Congress. This timing would allow access to the parties' documentary material enough before DOE submits the license application to allow advance preparation of contentions and discovery requests before the license

application, but late enough in the repository development process to provide meaningful information.

A Pre-License Application Presiding Officer would resolve any disputes over electronic access to documents during the pre-license application phase. Potential parties would be required to certify to the Pre-License Application Presiding Officer that they have complied with the requirement to provide electronic access to their documentary material. The requirements of the current rule for an electronic hearing docket would be retained, as well as the limitations on the permissible forms of discovery after the application is filed.

The Commission is considering two alternatives regarding the LSS Advisory Review Panel. In this proposed rule, because the concept of the LSS would be replaced, the requirement for an LSS Advisory Review Panel would be modified so the panel can advise the Secretary of the Commission regarding standards and procedures for electronic access to documents and for maintenance of the electronic docket. This would require renaming of the advisory committee and redrafting of the committee charter. However, the Commission is also considering the alternative of replacing the Advisory Review Panel with a more informal users group, and particularly requests comments from potential parties to the HLW repository licensing proceeding regarding these two alternative arrangements.

## III. Section-by-Section Description of Changes

In § 2.1000, the reference to § 2.709 would be removed because it would require compliance with § 2.708 that would not apply to this subpart.

In § 2.1001, the following definitions would be added, amended, or removed:

*ASCII File*

This definition would be removed and no longer used in the rule. Prescriptive references to specific technical standards would be removed to allow flexible implementation consistent with developing technology.

*Documentary Material*

The definition of documentary material would be revised to cover material upon which a party, potential party, or interested governmental participant intends to rely and/or cite in support of its position in the licensing proceeding; any material or other information which is relevant to, but does not support, that material or information or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. This definition would be used in the rule in § 2.1003 to define what material must be provided in electronic form for access beginning in the pre-license application phase. Therefore the term ''documentary material'' would be intended to describe the most important body of material and would be defined clearly to require that all parties include electronic access to any relevant material in their possession that does not support their position in the licensing proceeding, as well as providing access to the material that does support their position, and any reports and studies prepared by the party on issues described in the Topical Guidelines, regardless of whether or not they would be relied upon or cited by the party. The scope of the documentary material would still be governed by the topical guidelines.

*Electronic Docket*

A new definition would be added to describe NRC's electronic information system to receive, distribute, store, and maintain NRC adjudicatory docket materials in the licensing proceeding.

*Integrated Electronic Information*

A new definition would be added to describe material made available in electronic form to potential parties, parties, or interested governmental participants to the licensing proceeding for the high-level waste geologic repository, either as part of the NRC's pre-license application electronic docket or electronic docket or pursuant to electronic access to documentary material made available by individual potential parties, parties, and interested governmental participants. This is a term for the information access that would replace the LSS in this rule.

*LSS Administrator*

This term would be eliminated from the rule because the concept of the LSS would also be removed. The Pre-license Application Presiding Officer will resolve disputes about electronic access to documents in the pre-license application phase.

*Party*

This definition would be revised to add ''affected unit of local government'', as that term is defined in the Nuclear Waste Policy Act of 1982, as amended, and also to refer to that act for the definition of affected Indian tribe. In addition, any affected unit of local government, the host State, and any affected Indian Tribe would be required to file a list of contentions.

*Potential Party*

This definition would be revised to remove the reference to the LSS, and to substitute the term *integrated electronic information* to describe the material to which the potential party will be given access.

*Pre-license Application Electronic Docket*

A new definition would be added to describe NRC's electronic information system to receive, distribute, store, and maintain NRC pre-license application docket materials during the pre-license application phase.

*Pre-License Application Phase*

This definition is being specified for the purposes of this rule to begin on the date that the President submits the site recommendation to the Congress. This date has been chosen to allow access to the potential parties' documentary material enough before the license application to allow advance preparation of contentions and discovery requests before the application is filed, but late enough in the repository development process to provide meaningful information.

*Searchable Full Text*

This definition would be revised to remove references to ASCII and to the LSS.

*Topical Guidelines*

A new definition would be added to describe the set of topics set forth in Regulatory Guide 3.69 that are intended to guide the scope of documentary material under this subpart.

Section 2.1002 would be removed because the LSS would no longer be required. Access to integrated electronic information would provide the major functions which the LSS was designed to provide. Paragraphs (c) and (d), which state that participation by the host State in the pre-application phase will not affect its disapproval rights, and that this subpart shall not affect any participant's independent right to receive information, would be incorporated in the revised § 2.1003 as paragraphs (a)(2) and (3).

Section 2.1003 would be revised to describe information that would be required to be made available electronically by all potential parties, parties, and interested governmental

participants (including the NRC and DOE). This information would have to be made available to all other participants beginning in the pre-license application phase, which starts at the date of the President's submission of the site recommendation to the Congress. The requirements of the rule would be simplified to require only that access to an electronic file be provided. All references to specific formats would be removed to allow flexibility in implementation. The Commission intends that a potential party, party, or interested governmental participant might offer electronic access to its documentary material in a number of different ways, including by providing its documents in electronic form either to the NRC or to the DOE, to have the NRC or the DOE maintain the documents for electronic access.

Although the draft rule would require that documentary material be made available electronically beginning on the date of the President's site recommendation to the Congress, the Commission would encourage the earliest feasible availability of documentary material in order to enhance the future smooth operation of the licensing proceeding. The paragraphs relating to evaluations and certifications by the LSS Administrator would be removed because the LSS (and LSSA) concept would be removed. Section 2.1010 states that the Pre-License Application Presiding Officer will resolve any disputes relating to electronic access to documents in the pre-license application phase. Accordingly, the paragraphs which stated that the application would have to be docketed under Subpart G if the LSSA did not certify compliance would be removed, and Subpart J (including specifically referenced sections of Subpart G) would unconditionally embody the rules of procedure for the HLW licensing proceeding.

Section 2.1004 would be revised to provide procedures for providing access to a document that has not previously been provided in electronic form and to delete previous references to the LSS and the LSSA.

Section 2.1005 would be revised to delete reference to the LSS and to add an exclusion of readily available references, such as journal articles or proceedings, which may be subject to copyright.

Section 2.1006 would be revised to refer to providing a document in electronic form and to delete references to the LSS and the LSSA.

Section 2.1007 would be revised to refer to providing systems for access to integrated electronic information rather than providing terminals for access to the LSS. These systems must be maintained by DOE and NRC at the locations specified in the current version of the rule (except for the Uranium Recovery Field Office which no longer exists), beginning in the pre-license application phase.

Section 2.1008 would be revised to allow electronic access to the integrated electronic information to any person who complies with the requirements of Subpart J, including the requirement in § 2.1003 to make documentary material available, and who agrees to comply with the orders of the Pre-license Application Presiding Officer. The previous requirement to petition to the Pre-license Application Presiding Officer would be removed.

Section 2.1009 would be revised to delete references to the LSS and the LSSA, and to refer instead to the responsibility to provide electronic files. The responsible official for each potential party would be required to certify to the Pre-License Presiding Officer that procedures to comply with § 2.1003 have been implemented and that its documentary material has been made electronically available. A new requirement to update the certification at the request of the presiding officer would be added to replace a previous requirement to provide this certification at 6 month intervals.

Section 2.1010 would be revised to delete references to the LSS and the LSSA and to refer instead to electronic access. The reference to petitions for access would be removed to conform to removal of this requirement.

Section 2.1011 is being considered for revision in either of two alternative ways and the Commission requests specific comments on these alternatives. This proposed rule would revise § 2.1011 to reflect that the electronic availability of documentary material that is specified in this rule no longer requires special equipment. The name and functions of the LSS Advisory Review Panel would be amended to delete the reference to the LSS and substitute the purpose of arriving at standards and procedures to facilitate the electronic access to material and to the electronic docket. Because of the broad and non-prescriptive requirements regarding providing electronic files in this proposed rule, the Advisory Review Panel would be very useful in discussing standards and procedures to ensure that all participants are able to access the electronic information. Because the LSS concept would be replaced, and the requirement for an LSS Advisory Review Panel would be modified in the proposed rule to accommodate a new purpose, the advisory committee would have to be renamed and the committee charter would have to be redrafted.

However, the Commission is also considering the alternative of eliminating the requirement for an advisory committee chartered under the Federal Advisory Committee Act, and substituting a more informal voluntary users group to perform the functions of discussing electronic format standards, procedures, and other details. If this option were adopted, the final rule would be revised to refer to the users group. This group would be able to interact using Internet discussion areas (like LSSNet) as well as meetings, video conferences, or teleconferences. This users group would ideally make use of the current LSSARP members' knowledge and experience. The Commission is particularly requesting comment from potential parties to the HLW repository concerning their interest and support for the informal users group alternative.

Section 2.1012(a) would be revised to allow the Director of the NRC Office of Nuclear Material Safety and Safeguards (NMSS) to determine that the application would not be acceptable if it is not able to be accessed through the electronic docket. Section 2.1012(b)(1) would be revised to substitute *integrated electronic information* for *Licensing Support System* so that a person who has had access to the integrated electronic information would not be granted party status in the licensing proceeding if it cannot demonstrate compliance with the requirements of § 2.1003. Section 2.1012 (d) would be revised to substitute *pre-license application electronic docket or electronic docket* for *Licensing Support System* to indicate that access to either the pre-license application electronic docket or the electronic docket may be suspended or terminated for failure to comply with the orders of the Pre-License Application Presiding Officer or the Presiding Officer.

Section 2.1013 would be revised to delete references to the LSS and LSSA and would refer to the provision of information in electronic form. The requirement in § 2.1013(c)(5) to file one signed paper copy of each filing with the Secretary, NRC, would be removed because the electronic docket would not require signed paper copies.

Section 2.1014(c)(4) would delete a reference to the LSS and make the failure of a petitioner to participate in the pre-license application phase a criterion in considering whether to grant a petition to intervene.

Section 2.1017 would use the unavailability of the *electronic docket* instead of the LSS as a justification for extending the computation of time in the proceeding.

Sections 2.1018 and 2.1019 would be revised to delete references to the LSS and instead to refer to providing documents electronically.

In addition, minor editorial changes have been made throughout the proposed rule to improve readability.

**Environmental Impact: Categorical Exclusion**

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

**Paperwork Reduction Act Statement**

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Regulatory Analysis**

The history of the development of the existing rule, 10 CFR part 2, subpart J, and the current regulatory problem are described in the Background and Discussion sections of this notice. To address the regulatory problem, several alternative approaches to amending the regulations in subpart J of part 2 were considered.

*Option 1: Existing Rule*

This approach would not take advantage of current and future technology. It would require an enormously expensive custom designed system to be developed using old assumptions about technological standards and the universe of ''relevant'' material. At the time of the development of the existing rule, the cost of the LSS was estimated by DOE to be in the $200 million range. Furthermore, given the large backlog that contains a substantial amount of documents that may no longer be relevant because of the unanticipated delay in developing the LSS as initially designed in 1988, there is a substantial chance that it would be impossible for the DOE to achieve, and for the LSSA to certify, compliance with the provisions of the current rule. In this case, the proceeding would have to be conducted under 10 CFR part 2, subpart G, and could result in a protracted discovery phase. In addition to the very costly and ineffective system, the further costs of using this approach are difficult to quantify, however the lengthened discovery phase could prevent the Commission from meeting the statutory deadline for decision on the application. This delay could also result in possible increased spent fuel storage costs for the additional length of the licensing proceeding.

*Option 2: 10 CFR Part 2, Subpart G*

Because the NRC is developing a new system called the Agency-wide Documents Access and Management System (ADAMS), which will provide an agency-wide electronic docket, it would be possible to rely on existing adjudicatory procedure rules in 10 CFR part 2, subpart G (which will have to be updated to reflect the electronic docket) to conduct the licensing proceeding. However, this approach would not provide pre-license application access to documents and could result in a protracted discovery phase. The costs of using this approach are difficult to quantify. However the lengthened discovery phase could prevent the Commission from meeting the statutory deadline for decision on the application and result in possible increased spent fuel storage costs, as in Option 1.

*Option 3: Existing Rule Using a Distributed System*

This approach would allow using linked individual Internet sites to serve as the LSS. However, this approach does not solve the problem discussed in Option 1 concerning the requirement to capture a huge backlog of material that may not have been maintained in a manner that would ever permit compliance with the rule, and which may not all be relevant to the future license application. Therefore, the costs of this approach, as in Option 1, would include the possibility that the LSS rule compliance finding could not be made and the proceeding would have to be conducted under 10 CFR part 2, subpart G. A lengthened discovery phase could prevent the Commission from meeting the statutory deadline for decision on the application and result in possible increased spent fuel storage costs, as in Option 1.

*Option 4: Revised Rule With More Realistic Document Discovery Approach*

This approach would remove the requirement for a central LSS system and LSS Administrator, but would require each potential party to provide for the electronic availability of both the material it intends to rely upon to support its position, any material which does not support that material or that position, and any reports or studies prepared by or for the party, beginning in the pre-application phase (presided over by a Pre-License Application Presiding Officer). This definition of documentary material would provide pre-application access to a more focussed set of the materials most important to the licensing proceeding. It would not require electronic access to the entire backlog of DOE and other parties' material, some of which may no longer be relevant to the licensing proceeding. The electronic docket functionality of the LSS would be provided by the NRC agency-wide system with supervision of the Presiding Officer. Participation in the pre-license application phase would be one criterion for participating in the hearing. After the application is filed, in addition to the electronically available material, discovery would be limited to interrogatories and depositions as in the current rule. The specific method of providing electronic access to documentary would not be specified, which would allow flexibility to accommodate current and future technology advances. Individual parties may give their documents in electronic form to NRC or DOE in order to provide electronic access. Because this rule would unconditionally provide the procedural rules for the HLW licensing proceeding, there would be no last minute danger that the proceeding would have to be conducted under 10 CFR part 2, subpart G.

The Commission believes that Option 4 provides the most effective solution for maintaining the basic functionality of the LSS conceptual design, while most flexibly accommodating current and future technological developments. The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the Addresses heading.

**Regulatory Flexibility Certification**

The amendments would modify the Commission's rules of practice and procedures. The rule would be amended to allow more widely available electronic access to information before the license application is filed. Participants would be required to make their own documentary material available electronically. This proposed rule would not have a significant economic impact upon a substantial number of small entities. The license applicant for the HLW repository would be the Department of Energy . DOE would not fall within the definition of a ''small entity'' in the NRC's size standards (10 CFR 2.810). Although a few of the intervenors in the HLW

proceeding would likely qualify as small entities, the impact on intervenors or potential intervenors would not be significant. The requirement for participants to make their own documentary material available electronically is stated in a manner that would allow flexibility in implementation. Furthermore, it is consistent with current business practice to create documents electronically. Therefore, the exact additional costs involved in making the documentary materials available electronically are difficult to quantify. However, to avoid those costs, participants would have the option of providing their documents to NRC or DOE to maintain electronic availability. Thus, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC hereby certifies that this proposed rule would not have a significant economic impact upon a substantial number of small entities.

**Backfit Analysis**

The NRC has determined that the backfit rules in 10 CFR Chapter 1, §§ 50.109, 72.62, and 76.76, do not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in those rules.

**List of Subjects in 10 CFR Part 2**

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954; as amended, the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the Nuclear Regulatory Commission is proposing to adopt the following amendments to 10 CFR part 2.

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

**Authority:** Secs. l6l, l8l, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 890, as amended by Section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note.) Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. Section 2.1000 is revised to read as follows:

**§ 2.1000 Scope of subpart.**

The rules in this subpart govern the procedure for applications for a license to receive and possess high-level radioactive waste at a geologic repository operations area noticed pursuant to § 2.101(f)(8) or § 2.105(a)(5). The procedures in this subpart take precedence over the 10 CFR part 2, subpart G, rules of general applicability, except for the following provisions: §§ 2.702, 2.703, 2.704, 2.707, 2.711, 2.713, 2.715, 2.715a, 2.717, 2.718, 2.720, 2.721, 2.722, 2.732, 2.733, 2.734, 2.742, 2.743, 2.750, 2.751, 2.753, 2.754, 2.755, 2.756, 2.757, 2.758, 2.759, 2.760, 2.761, 2.763, 2.770, 2.771, 2.772, 2.780, 2.781, 2.786, 2.788, and 2.790.

3. Section 2.1001 is amended by removing the definitions of *ASCII File* and *LSS Administrator*; adding definitions of *Electronic docket, Integrated electronic information, Pre-license application electronic docket,* and *Topical Guidelines*; and revising the definitions of *Documentary material, Party, Potential party, Pre-license application phase, and Searchable full text,* to read as follows:

**§ 2.1001 Definitions.**

* * * * *

*Documentary material* means any material or other information upon which a party, potential party, or interested governmental participant intends to rely and/or to cite in support of its position in the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter; any material or other information that is relevant to, but does not support, that material or information or that party's position; and all reports and studies, prepared by or on behalf of the potential party, interested governmental participant, or party, including all related ''circulated drafts,'' relevant to the issues set forth in the Topical Guidelines in Regulatory Guide 3.69, regardless of whether they will be relied upon and/or cited by a party. The scope of documentary material shall be guided by the topical guidelines in the applicable NRC Regulatory Guide.

* * * * *

*Electronic docket* means the NRC information system that receives, distributes, stores, and retrieves the Commission's adjudicatory docket materials.

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*Integrated electronic information* means the material that is made available electronically to parties, potential parties, and interested governmental participants to the proceeding for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter, as part of the electronic docket or electronic access to documentary material, beginning in the pre-license application phase.

* * * * *

*Party* for the purpose of this subpart means the DOE, the NRC staff, the host State, any affected unit of local government as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), any affected Indian Tribe as defined in section 2 of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101), and a person admitted under

§ 2.1014 to the proceeding on an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter; provided that a host State, affected unit of local government, or affected Indian Tribe shall file a list of contentions in accordance with the provisions of §§ 2.1014(a)(2) (ii) and (iii).

* * * * *

*Potential party* means any person who, during the period before the issuance of the first pre-hearing conference order under § 2.1021(d), is given access to the integrated electronic information and who consents to comply with the regulations set forth in subpart J of this part, including the authority of the Pre-License Application Presiding Officer designated pursuant to § 2.1010.

*Pre-license application electronic docket* means the NRC's electronic information system that receives, distributes, stores, and maintains NRC pre-license application docket materials during the pre-license application phase.

*Pre-license application phase* means the time period before the license application to receive and possess high-level radioactive waste at a geologic repository operations area is docketed under § 2.101(f)(3). For the purpose of this subpart, this period begins on the date that the President submits the site recommendation to the Congress pursuant to section 114(a)(2)(A) of the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10134(a)(2)(A)). .

* * * * *

*Searchable full text* means the electronic indexed entry of a document that allows the identification of specific words or groups of words within a text file.

*Topical Guidelines* means the set of topics set forth in Regulatory Guide 3.69, Topical Guidelines for the Licensing Support System, which are intended to guide the scope of ''documentary material''.

**§ 2.1002 [Removed and reserved]**

4. Section 2.1002 is removed and reserved.

5. Section 2.1003 is revised to read as follows:

**§ 2.1003 Availability of material.**

(a) Beginning in the pre-license application phase, subject to the exclusions in § 2.1005 and paragraphs (b) and (c) of this section, each potential party, interested governmental participant or party, shall make available to other potential parties, interested government participants or parties—

(1) An electronic file for all documentary material (including circulated drafts but excluding preliminary drafts) generated by, or at the direction of, or acquired by, a potential party, interested governmental participant, or party. Concurrent with the production of the electronic file will be an authentication statement that indicates where an authenticated image copy of the document can be obtained.

(2) The participation of the host State in the pre-license application phase shall not affect the State's ability to exercise its disapproval rights under section 116(b)(2) of the Nuclear Waste Policy Act, as amended, 42 U.S.C. 10136(b)(2).

(3) This subpart shall not affect any independent right of a potential party, interested governmental participant or party to receive information.

(b)(1) Each potential party, interested governmental participant, or party shall make available in electronic image form, subject to the claims of privilege in § 2.1006, graphic-oriented documentary material that includes raw data, computer runs, computer programs and codes, field notes, laboratory notes, maps, diagrams and photographs which have been printed, scripted, or hand written. Text embedded within these documents need not be separately entered in searchable full text. Graphic-oriented documents may include—

Calibration procedures, logs, guidelines, data and discrepancies;

(ii) Gauge, meter and computer settings;

(iii) Probe locations;

(iv) Logging intervals and rates;

(v) Data logs in whatever form captured;

(vi) Text data sheets;

(vii) Equations and sampling rates;

(viii) Sensor data and procedures;

(ix) Data Descriptions;

(x) Field and laboratory notebooks;

(xi) Analog computer, meter or other device print-outs;

(xii) Digital computer print-outs;

(xiii) Photographs;

(xiv) Graphs, plots, strip charts, sketches;

(xv) Descriptive material related to the information identified in paragraph (b)(1) of this section.

(2) Each potential party, interested governmental participant, or party shall make available in an electronic file, subject to the claims of privilege in § 2.1006, only a bibliographic header for each item of documentary material that is not suitable for image or searchable full text.

(c) Each potential party, interested governmental participant, or party shall make available electronically a bibliographic header for each documentary material—

(1) For which a claim of privilege is asserted;

(2) Which constitutes confidential financial or commercial information; or

(3) Which constitutes safeguards information under § 73.21 of this chapter.

(d) Basic licensing documents generated by DOE, such as the Site Characterization Plan, the Environmental Impact Statement, and the license application, or by NRC, such as the Site Characterization Analysis, and the Safety Evaluation Report, shall be made available in electronic form by the respective agency that generated the document.

6. Section 2.1004 is revised to read as follows:

**§ 2.1004 Amendments and additions.**

Any document that has not been provided to other parties in electronic form must be identified in an electronic notice and made available for inspection and copying by the potential party, interested governmental participant, or party responsible for the submission of the document within two days after it has been requested unless some other time is approved by the Pre-License Application Presiding Officer or the Presiding Officer designated for the high-level waste proceeding. The time allowed under this paragraph will be stayed pending Officer action on a motion to extend the time.

7. Section 2.1005 is revised to read as follows:

**§ 2.1005 Exclusions.**

The following material is excluded from the requirement to provide electronic access, either pursuant to § 2.1003, or through derivative discovery pursuant to § 2.1019(i)—

(a) Official notice materials;

(b) Reference books and text books;

(c) Material pertaining exclusively to administration, such as material related to budgets, financial management, personnel, office space, general distribution memoranda, or procurement, except for the scope of work on a procurement related to repository siting, construction, or operation, or to the transportation of spent nuclear fuel or high-level waste;

(d) Press clippings and press releases;

(e) Junk mail;

(f) Preferences cited in contractor reports that are readily available;

(g) Classified material subject to subpart I of this part;

(h) Readily available references, such as journal articles and proceedings, which may be subject to copyright.

8. Section 2.1006 is revised to read as follows:

**§ 2.1006 Privilege.**

(a) Subject to the requirements in § 2.1003(c), the traditional discovery privileges recognized in NRC adjudicatory proceedings and the exceptions from disclosure in § 2.790 may be asserted by potential parties, interested governmental participants, and parties. In addition to Federal agencies, the deliberative process privilege may also be asserted by State and local government entities and Indian Tribes.

(b) Any document for which a claim of privilege is asserted, but is denied in whole or in part by the Pre-License Application Presiding Officer or the Presiding Officer, must be provided in electronic form by the party, interested governmental participant, or potential party that asserted the claim to—

(1) The other participants; or

(2) To the Pre-License Application Presiding Officer or to the Presiding Officer, for entry into a Protective Order file, if the Pre-License Application Presiding Officer or the Presiding Officer so directs under §§ 2.1010(b) or 2.1018(c).

(c) Notwithstanding any availability of the deliberative process privilege under paragraph (a) of this section, circulated drafts not otherwise privileged shall be provided for electronic access pursuant to § 2.1003(a).

9. Section 2.1007 is being revised to read as follows:

**§ 2.1007 Access.**

(a)(1) A system to provide electronic access to the integrated electronic information shall be provided at the headquarters of DOE, and at all DOE Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, beginning in the pre-license application phase.

(2) A system to provide electronic access to the integrated electronic information shall be provided at the headquarters Public Document Room of NRC, and at all NRC Local Public Document Rooms established in the vicinity of the likely candidate site for a geologic repository, and at the NRC Regional Offices beginning in the pre-license application phase.

(3) The systems for electronic access specified in paragraphs (a)(1) and (a)(2) of this section shall include locations at Las Vegas, Nevada; Reno, Nevada; Carson City, Nevada; Nye County, Nevada; and Lincoln County, Nevada.

(b) Public availability of paper and electronic copies of the records, as well as duplication fees, and fee waiver for those records, is governed by the Freedom of Information Act (FOIA) regulations of the respective agencies.

(c) Documents to which electronic access has been provided by other parties, potential parties, or interested governmental participants pursuant to this subpart shall not be considered as agency records of the Nuclear Regulatory Commission or the Department of Energy unless and until they have been entered into the docket of the proceeding pursuant to § 2.702 for purposes of the FOIA, 5 U.S.C. 552, if these documents remain under the custody and control of the agency or organization that identified the documents. Requests for access pursuant to the FOIA to documents submitted by a Federal agency shall be transmitted to that Federal agency.

10. Section 2.1008 is revised to read as follows:

**§ 2.1008 Potential parties.**

Any person who complies with the regulations in this subpart, including § 2.1003, and agrees to comply with the orders of the Pre-License Application Presiding Officer designated under § 2.1010, may have electronic access to the integrated electronic information made available pursuant to this subpart in the pre-license application phase.

11. Section 2.1009 is revised to read as follows:

**§ 2.1009 Procedures.**

(a) Each potential party, interested governmental participant, or party shall—

(1) Designate an official who will be responsible for administration of its responsibility to provide electronic files of documentary material ;

(2) Establish procedures to implement the requirements in § 2.1003;

(3) Provide training to its staff on the procedures for implementation of the responsibility to provide electronic files of documentary material;

(4) Ensure that all documents carry the submitter's unique identification number;

(5) Cooperate with the advisory review process established by the NRC under § 2.1011(c).

(b) The responsible official designated pursuant to paragraph (a)(1) of this section shall certify to the Pre-License Application Presiding Officer that the procedures specified in paragraph (a)(2) of this section have been implemented, and that to the best of his or her knowledge, the documentary material specified in § 2.1003 has been identified and made electronically available. Upon order of a duly appointed presiding officer, the responsible official shall update this certification.

12. Section 2.1010 is revised to read as follows:

**§ 2.1010 Pre-License Application Presiding Officer.**

(a)(1) The Commission may designate one or more members of the Commission, or an atomic safety and licensing board, or a named officer who has been delegated final authority on the matter (Pre-License Application Presiding Officer) to rule on disputes over the electronic availability of documents during the pre-license application phase, including disputes relating to privilege, and disputes relating to the implementation of the recommendations of the Advisory Review Panel established under § 2.1011(e).

(2) The Pre-License Application Presiding Officer shall be designated before the integrated electronic information is scheduled to be available.

(b) The Pre-License Application Presiding Officer shall rule on any claim of document withholding to determine—

(1) Whether it is documentary material within the scope of this subpart;

(2) Whether the material is excluded under § 2.1005;

(3) Whether the material is prvileged or otherwise excepted from disclosure under § 2.1006;

(4) If privileged, whether it is an absolute or qualified privilege;

(5) If qualified, whether the document should be disclosed because it is necessary to a proper decision in the proceeding;

(6) Whether the material should be disclosed under a protective order containing such protective terms and conditions (including affidavits of nondisclosure) as may be necessary and appropriate to limit the disclosure to potential participants, interested governmental participants and parties in the proceeding, or to their qualified witnesses and counsel. When Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, is received and possessed by a potential party, interested governmental participant, or party, other than the Commission staff, it shall also be protected according to the requirements of § 73.21 of this chapter. The Pre-License Application Presiding Officer may also prescribe such additional procedures as will effectively safeguard and prevent disclosure of Safeguards

Information to unauthorized persons with minimum impairment of the procedural rights which would be available if Safeguards Information were not involved. In addition to any other sanction that may be imposed by the Pre-License Application Presiding Officer for violation of an order pertaining to the disclosure of Safeguards Information protected from disclosure under section 147 of the Atomic Energy Act of 1954, as amended, the entity in violation may be subject to a civil penalty imposed pursuant to § 2.205. For the purpose of imposing the criminal penalties contained in section 223 of the Atomic Energy Act of 1954, as amended, any order issued pursuant to this paragraph with respect to Safeguards Information shall be deemed to be an order issued under section 161b of the Atomic Energy Act of 1954, as amended.

(c) Upon a final determination that the material is relevant, and not privileged, exempt from disclosure, or otherwise exempt from production under § 2.1005, the potential party, interested governmental participant, or party who asserted the claim of withholding must make the document available in accordance with the provisions of this subpart within two days.

(d) The service of all pleadings and answers, orders, and decisions during the pre-license application phase shall be made according to the procedures specified in § 2.1013(c) and entered into the pre-license application electronic docket.

(e) The Pre-License Application Presiding Officer shall possess all the general powers specified in §§ 2.721(c) and 2.718.

(f) The Commission, in designating the Pre-License Application Presiding Officer in accordance with paragraphs (a) (1) and (2) of this section, shall specify the jurisdiction of the Officer.

13. Section 2.1011 is revised to read as follows:

**§ 2.1011 Management of electronic information.**

(a) Electronic document production and the electronic docket are subject to the provisions of this subpart.

(b) The NRC, DOE, parties, and potential parties participating in accordance with the provisions of this subpart shall be responsible for obtaining the computer system necessary to comply with the requirements for electronic document production and service.

(c)(1) The Secretary of the Commission shall establish an Advisory Review Panel composed of the Advisory Committee members identified in paragraph (c)(2) of this section who wish to serve. The Secretary of the Commission shall have the authority to appoint additional representatives to the Advisory Review Panel consistent with the requirements of the Federal Advisory Committee Act, 5 U.S.C. app. I, giving particular consideration to potential parties, parties, and interested governmental participants who were not members of the NRC HLW Licensing Support System Advisory Committee.

(2) The Advisory Committee membership will initially include the State of Nevada, a coalition of affected units of local government in Nevada who were on the NRC High-Level Waste Licensing Support System Advisory Committee, DOE, NRC, the National Congress of American Indians, the coalition of national environmental groups who were on the NRC High-Level Waste Licensing Support System Advisory Committee and such other members as the Commission may from time to time designate to perform the responsibilities in paragraph (d) of this section.

(d)(1) The Advisory Review Panel shall provide advice to—

(i) NRC on the fundamental issues of the type of computer system necessary to access the integrated electronic information effectively under paragraph (b) of this section; and

(ii) The Secretary of the Commission on the operation and maintenance of the electronic docket under the Commission's Rules of Practice (10 CFR part 2).

(2) The responsibilities of the Advisory Review Panel shall include advice on—

(i) Format standards for providing electronic access to documentary material to the parties, interested governmental participants, or potential parties;

(ii) The procedures and standards for the electronic transmission of filings, orders, and decisions during both the pre-license application phase and the high-level waste licensing proceeding;

(iii) Other duties as specified in this subpart or as directed by the Secretary of the Commission.

14. In § 2.1012, paragraphs (a), (b)(1), and (d) are revised to read as follows:

**§ 2.1012 Compliance.**

(a) In addition to the requirements of § 2.101(f), the Director of the NRC's Office of Nuclear Materials Safety and Safeguards may determine that the tendered application is not acceptable for docketing under this subpart if the Secretary of the Commission determines that it cannot be effectively accessed through the Commission's electronic docket.

(b)(1) A person, including a potential party given access to the integrated electronic information under this subpart, shall not be granted party status under § 2.1014, or status as an interested governmental participant under § 2.715(c), if it cannot demonstrate substantial and timely compliance with the requirements of § 2.1003 at the time it requests participation in the high-level waste licensing proceeding under § 2.1014 or § 2.715(c).

* * * * *

(d) Access to the pre-license application electronic docket or electronic docket may be suspended or terminated by the Pre-License Application Presiding Officer or the Presiding Officer for any potential party, interested governmental participant or party who is in noncompliance with any applicable order of the Pre-License Application Presiding Officer or the Presiding Officer or the requirements of this subpart.

15. Section 2.1013 is revised to read as follows:

**§ 2.1013 Use of the electronic docket during the proceeding.**

(a)(1) Pursuant to § 2.702, the Secretary of the Commission will maintain the official docket of the proceeding on the application for a license to receive and possess waste at a geologic repository operations area.

(2) Commencing with the docketing in an electronic form of the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter, the Secretary of the Commission, upon determining that the application can be properly accessed under the Commission's electronic docket rules, will establish an electronic docket to contain the official record materials of the high-level radioactive waste licensing proceeding in searchable full text, or for material that is not suitable for entry in searchable full text, by header and image, as appropriate.

(b) Absent good cause, all exhibits tendered during the hearing must have been made available to the parties in electronic form before the commencement of that portion of the hearing in which the exhibit will be offered. The electronic docket contains a list of all exhibits, showing where in the transcript each was marked for identification and where it was received into evidence or rejected. Transcripts will be entered into the electronic docket on a daily basis in order to

provide next-day availability at the hearing.

(c)(1) All filings in the adjudicatory proceeding on the license application to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to part 60 of this chapter shall be transmitted electronically by the submitter to the Presiding Officer, parties, and the Secretary of the Commission, according to established format requirements. Parties and interested governmental participants will be required to use a password security code for the electronic transmission of these documents.

(2) Filings required to be served shall be served upon either the parties and interested governmental participants, or their designated representatives. When a party or interested governmental participant has appeared by attorney, service must be made upon the attorney of record.

(3) Service upon a party or interested governmental participant is completed when the sender receives electronic acknowledgment (''delivery receipt'') that the electronic submission has been placed in the recipient's electronic mailbox.

(4) Proof of service, stating the name and address of the person on whom served and the manner and date of service, shall be shown for each document filed, by—

(i) Electronic acknowledgment (''delivery receipt'');

(ii) The affidavit of the person making the service; or

(iii) The certificate of counsel.

(5) All Presiding Officer and Commission issuances and orders will be transmitted electronically to the parties and interested governmental participants.

(d) Online access to the electronic docket, including a Protective Order File if authorized by a Presiding Officer, shall be provided to the Presiding Officer, the representatives of the parties and interested governmental participants, and the witnesses while testifying, for use during the hearing. Use of paper copy and other images will also be permitted at the hearing.

16. In § 2.1014, paragraph (c)(4) is revised to read as follows:

**§ 2.1014 Intervention.**

* * * * *

(c) * * *

(4) The failure of the petitioner to participate as a potential party in the pre-license application phase.

* * * * *

17. Section 2.1017 is revised to read as follows:

**§ 2.1017 Computation of time.**

In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday. Whenever a party, potential party, or interested governmental participant, has the right or is required to do some act within a prescribed period after the service of a notice or other document upon it, one day shall be added to the prescribed period. If the electronic docket is unavailable for more than four access hours of any day that would be counted in the computation of time, that day will not be counted in the computation of time.

18. In § 2.1018, paragraph (a)(1) and the introductory text of paragraph (e) are revised to read as follows:

**§ 2.1018 Discovery.**

(a)(1) Parties, potential parties, and interested governmental participants in the high-level waste licensing proceeding may obtain discovery by one or more of the following methods:

(i) Access to the documentary material made available pursuant to § 2.1003 ;

(ii) Entry upon land for inspection, access to raw data, or other purposes pursuant to § 2.1020;

(iii) Access to, or the production of, copies of documentary material for which bibliographic headers only have been submitted pursuant to § 2.1003 (b) and (c);

(iv) Depositions upon oral examination pursuant to § 2.1019;

(v) Requests for admission pursuant to § 2.742;

(vi) Informal requests for information not made electronically available, such as the names of witnesses and the subjects they plan to address; and

(vii) Interrogatories and depositions upon written questions, as provided in paragraph (a)(2) of this section.

* * * * *

(e) A party, potential party, or interested governmental participant who has made available in electronic form all material relevant to any discovery request or who has responded to a request for discovery with a response that was complete when made is under no duty to supplement its response to include information thereafter acquired, except as follows:

* * * * *

19. In § 2.1019, paragraphs (d), (e), and (i) are revised to read as follows:

**§ 2.1019 Depositions.**

* * * * *

(d) When the testimony is fully transcribed, the deposition shall be submitted to the deponent for examination and signature unless the deponent is ill or cannot be found or refuses to sign. The officer shall certify the deposition or, if the deposition is not signed by the deponent, shall certify the reasons for the failure to sign, and shall promptly transmit an electronic copy of the deposition to the Secretary of the Commission for entry into the electronic docket.

(e) Where the deposition is to be taken on written questions as authorized under § 2.1018(a)(2), the party or interested governmental participant taking the deposition shall serve a copy of the questions, showing each question separately and consecutively numbered, on every other party and interested governmental participant with a notice stating the name and address of the person who is to answer them, and the name, description, title, and address of the officer before whom they are to be asked. Within ten days after service, any other party or interested governmental participant may serve cross-questions. The questions, cross-questions, and answers shall be recorded and signed, and the deposition certified, returned, and transmitted in electronic form to the Secretary of the Commission for entry into the electronic docket as in the case of a deposition on oral examination.

* * * * *

(i)(1) After receiving written notice of the deposition under paragraph (a) or paragraph (e) of this section, and ten days before the scheduled date of the deposition, the deponent shall submit an electronic index of all documents in his or her possession, relevant to the subject matter of the deposition, including the categories of documents set forth in paragraph (i)(2) of this section, to all parties and interested governmental participants. The index shall identify those records which have already been made available electronically. All documents that are not identical to documents already made available electronically , whether by reason of subsequent modification or by the addition of notations, shall be treated as separate documents.

(2) The following material is excluded from the initial requirements of § 2.1003 to be made available electronically, but is subject to derivative discovery under paragraph (i)(1) of this section—

(i) Personal records;

(ii) Travel vouchers;

(iii) Speeches;
(iv) Preliminary drafts;
(v) Marginalia.

(3) Subject to paragraph (i)(6) of this section, any party or interested governmental participant may request from the deponent a paper copy of any or all of the documents on the index that have not already been provided electronically.

(4) Subject to paragraph (i)(6) of this section, the deponent shall bring a paper copy of all documents on the index that the deposing party or interested governmental participant requests that have not already been provided electronically to an oral deposition conducted pursuant to paragraph (a) of this section, or in the case of a deposition taken on written questions pursuant to paragraph (e) of this section, shall submit such documents with the certified deposition.

(5) Subject to paragraph (i)(6) of this section, a party or interested governmental participant may request that any or all documents on the index that have not already been provided electronically, and on which it intends to rely at hearing, be made electronically available by the deponent.

(6) The deposing party or interested governmental participant shall assume the responsibility for the obligations set forth in paragraphs (i)(1), (i)(3), (i)(4), and (i)(5) of this section when deposing someone other than a party or interested governmental participant.

* * * * *

Dated at Rockville, MD, this 6th day of November, 1997.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Secretary of the Commission.*

[FR Doc. 97–29884 Filed 11–12–97; 8:45 am]

BILLING CODE 7590–01–P

## NATIONAL CREDIT UNION ADMINISTRATION

## 12 CFR Part 792

## The Freedom of Information Act and Privacy Act

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** NCUA proposes to revise its regulations governing the disclosure of information pursuant to the Freedom of Information Act (FOIA) to reflect recent changes to FOIA brought about by the enactment of the Electronic Freedom of Information Act Amendments of 1996 (E–FOIA). The proposed rule, among other things, sets forth new procedures NCUA will employ to implement provisions of E–FOIA, such as expedited treatment of requests and multi-track processing. The proposed rule also clarifies the information which must be included in FOIA requests so that NCUA can process them. Other proposed changes to the rule are designed to provide guidance to the public on how to obtain records contained in the files of the Office of Inspector General.

**DATES:** Comments must be submitted on or before January 12, 1998.

**ADDRESSES:** Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

**FOR FURTHER INFORMATION CONTACT:** Dianne Salva, Staff Attorney, or Sheila Albin, Associate General Counsel, (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

### Background

The Freedom of Information Act (FOIA) was enacted in 1966 to establish the right of any member of the public to obtain access to government information. FOIA was amended several times before 1996, when the Electronic Freedom of Information Act Amendments of 1996, Pub. L. 104–231, was enacted. E–FOIA has twin goals of making records contained in government files more easily accessible to the public and improving administration of FOIA programs in the agencies. In particular, Congress moved to amend the FOIA because it found that government agencies were increasingly using computers to conduct agency business and store valuable agency records and information. When the Senate passed FOIA in 1966, the government is reported to have had just 1,826 computers in use. By 1994, in addition to the proliferation of individual personal computers used by government employees, the number of government computers had climbed to almost 35,000. In recognition of the vast amount of information the government maintains in electronic format, E–FOIA was designed to ensure continued public access to government information, including that maintained in electronic format.

FOIA ensures that the public has access to government information by requiring agencies to disclose information in three ways. First, FOIA requires agencies to disclose basic information about agency structure and general rules of procedure within the agency by publication in the **Federal Register**. Second, FOIA requires agencies to make certain categories of records available for the public to inspect and copy. Many agencies have established public reading rooms to comply with this requirement. And, third, FOIA requires agencies to respond to individual requests for other specific agency records. Records must be released unless one or more of FOIA's nine statutory exemptions applies.

Under E–FOIA, public access to ''reading room'' records, which are those records that must be made available for inspection and copying, will be enhanced in two ways. The categories of records which fall within the ''reading room'' provision of FOIA have been expanded. Previously, three categories of records were required to be made available for inspection and copying: Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public. Under E–FOIA two new categories have been added: Records released under the FOIA after March 31, 1997, which the agency determines have become or are likely to become the subject of subsequent requests, and a general index of the new category of records.

Public access to reading room records will be further enhanced by the provision in E–FOIA which requires that agencies make their reading room records available electronically, if they are created by the agency on or after November 1, 1996. The ''electronic reading room'' can be implemented by placing records on the internet.

As for individual requests, E–FOIA clarifies that reasonable efforts must be made to search for records electronically. It also requires agencies to provide requesters with records in the form or format the requester chooses, if the agency can readily do so. Perhaps most fundamental to the new law is its provision that clarifies that records, if they meet other legal requirements, are subject to FOIA even though they are maintained in electronic format.

The other goal of E–FOIA was to improve the administration of FOIA programs in the agencies. Congress found that due to a lack of resources, some agencies suffered stubborn

backlogs. E–FOIA is designed to ensure timely responses to FOIA requests by requiring that specific types of requests be answered on an expedited basis and by encouraging a dialogue between the agency and the requester to frame more targeted requests. E–FOIA also enlarges the time for response to requests from 10 to 20 business days. Agencies are encouraged to employ multi-track processing systems, so that requesters who seek simple information are not made to wait while the agency processes more complex requests or requests for voluminous material.

**Proposal**

NCUA is proposing changes to 12 CFR part 792 to implement both expedited processing and multi-track processing. In addition, changes are proposed to incorporate the new processing deadlines, appeal rights and other disclosure procedures mandated by E–FOIA. NCUA is also proposing a change to reflect the delegation of authority from NCUA's Board to the Inspector General to grant or deny initial requests for records contained in Office of Inspector General files. Subpart A has been reorganized, streamlined and rewritten in question and answer format to improve its readability and simplify its use. A description of the more significant proposed changes is set forth below. Due to the fact that the regulation has been rewritten in question and answer format, the section numbers in the proposed rule in most cases do not correlate to the section numbers in the existing regulation.

Section 792.02 now reflects the additional category of records NCUA will make publicly available for inspection and copying: Records released under FOIA after March 31, 1997, which the agency determines have become or are likely to become the subject of subsequent requests.

Section 792.03 sets forth the indices of records made available for public inspection and copying and includes the additional index of popular FOIA responses.

Section 792.04 informs the public that certain records created by NCUA after November 1, 1996 are also available on the NCUA website.

Section 792.06 clarifies that records maintained in electronic format are subject to FOIA.

Section 792.07 identifies the places within NCUA where the public may write to request records. The Office of Inspector General has been added to reflect that the NCUA Board delegated authority to the Inspector General to respond to initial FOIA requests for records contained in Office of Inspector General files.

Sections 792.08 and 792.09 clarify administrative requirements and procedures for submitting FOIA requests. In order to improve communications between the agency and requesters, requesters are instructed to include their name, address and telephone number with their request. In recognition of the new requirement that agencies honor form or format requests, requesters are also asked to designate their form or format of choice, if other than paper copy, at the time they make their request.

Section 792.10 sets forth the procedures for the multi-track processing system comprised of a fast-track and regular-track. Fast-track processing will apply to records that are easily identifiable by NCUA staff and have been previously 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 NCUA to try to narrow the scope of the request so that it will qualify for fast-track processing.

Section 792.12 was added to inform requesters that, as long as it is technically feasible and would not harm an interest that a FOIA exemption is intended to protect, then NCUA will indicate where, why and how much information was withheld from its response.

Section 792.13 was added to advise requesters that they may obtain information in any readily reproducible form or format they request. It also clarifies that only one copy of a record will be produced.

Section 792.15 sets forth the new processing time limit of 20 working days. It also sets forth the two exceptions to the 20 working day time limit: the suspension of time for the payment of fees or if unusual circumstances exist.

Section 792.16 describes the criteria for determining whether unusual circumstances exist. The criteria have not changed. The proposed regulation contains a new provision on aggregating multiple requests which, together, cause unusual circumstances to exist. NCUA will now aggregate multiple requests from the same requester or group of requesters acting in concert, if it believes they constitute a single request, and if, taken together, the requests satisfy the unusual circumstances criteria. This section also contains a new provision advising requesters that, if NCUA sends them a notice extending the processing time due to unusual circumstances, it will also tell them that they may reduce the scope of their request so that it can be processed within the statutory time frame or agree to an alternative time frame.

Section 792.18 has been added to implement the expedited processing provision of E–FOIA. It sets forth the criteria for a requester seeking to establish a compelling need to support a request for expedited processing. E–FOIA permits two categories of requests involving compelling needs to be granted expedited treatment: Those which entail an imminent threat to the life or physical safety of an individual or those which are filed by persons primarily engaged in disseminating information and involve an urgency to inform the public concerning actual or alleged government activity. For ease of administration and consistency, the proposed rule uses the term ''representative of the news media'' to describe a person primarily engaged in disseminating information, because the term has been used for many years in other provisions of the regulation and is familiar to the public and agency staff. In keeping with Congress' express intent that the specified criteria for compelling need be narrowly applied, expedited processing will only be granted in those extraordinary cases meeting the specific requirements of the regulation. H.R. Rep. 795, 104th Cong., 2d Sess. 26 (1996). As the legislative history states, ''the expedited process procedure is intended to be limited to circumstances in which a delay in obtaining information can reasonably be foreseen to cause a significant adverse consequence to a recognized interest.'' *Id.* To meet the criterion of an urgency to inform the public concerning an actual or alleged Federal Government activity, the requester must show that a delay in the release of the information would compromise a significant recognized interest, and that the requested information pertains to a matter of current exigency to the American public. This section also informs the public of the right of appeal for denial of a request for expedited processing.

Section 792.19 has been amended to reflect that the current fee schedule is available on the NCUA website. The current regulation sets out that searches for records responsive to a FOIA request will be conducted by computer using existing programming. The proposal strikes the reference to existing programming and adds language to say

that no modification of existing programming or system will be made if it would significantly interfere with the operation of an NCUA automated information system.

Section 792.28 clarifies that appeals are permitted when NCUA denies a request for a fee waiver or reduction.

## Regulatory Procedures

*Regulatory Flexibility Act*

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions, meaning those under $1 million in assets. The NCUA Board has determined and certifies that the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. The proposal simplifies some of the procedures regarding the release of information and requires disclosure of information in certain instances in accordance with law. The disclosure requirements are imposed on the NCUA, therefore, they should not have a significant economic impact on a substantial number of small credit unions.

*Paperwork Reduction Act Analysis*

These regulations, if adopted, will impose no additional information collection, reporting or record keeping requirements subject to the approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

*Executive Order 12,612*

The NCUA Board certifies that the proposal will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.

## List of Subjects in 12 CFR Part 792

Administrative practice and procedure, Confidential business information, Credit unions, Freedom of Information Act, Privacy.

By the National Credit Union Administration Board on October 22, 1997.

**Hattie M. Ulan,**

*Acting Secretary of the Board.*

For the reasons set forth in the preamble, NCUA proposes to amend 12 CFR part 792 as follows:

## PART 792—[AMENDED]

1. The authority citation for part 792 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b; 12 U.S.C. 1752a(d), 1766, 1789, 1795f; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235; E.O. 12958, 60 FR 19825, 3 CFR, 1995 Comp., p.333.

### §§ 792.20–792.37 (Subpart B) [Redesignated as §§ 792.52–792.69 (Subpart E)]

2. Redesignate subpart B (§§ 792.20–792.37) as subpart E (§§ 792.52–792.69) and reserve subpart B.

3. Revise subpart A of part 792 to read as follows:

## Subpart A—The Freedom of Information Act

**General Purpose**

Sec.
792.01 What is the purpose of this subpart?

**Records Publicly Available**

792.02 What records does NCUA make available to the public for inspection and copying?
792.03 How will I know which records to request?
792.04 How can I obtain these records?
792.05 What is the significance of records made available and indexed?

**Records Available Upon Request**

792.06 Can I obtain other records?
792.07 Where do I send my request?
792.08 What must I include in my request?
792.09 What if my request does not meet the requirements of this section?
792.10 What will NCUA do with my request?
792.11 What kind of records are exempt from public disclosure?
792.12 How will I know what records were determined to be exempt?
792.13 Can I get the records in different forms or formats?
792.14 Who is responsible for responding to my request?
792.15 How long will it take to process my request?
792.16 What unusual circumstances can delay NCUA's response?
792.17 What can I do if the time limit passes and I still have not received a response?

**Expedited Processing**

792.18 What if my request is urgent and I cannot wait for the records?

**Fees**

792.19 How does NCUA calculate the fees for processing my request?
792.20 What are the charges for each fee category?
792.21 Will NCUA provide a fee estimate?
792.22 What will NCUA charge for other services?
792.23 Can I avoid charges by sending multiple, small requests?
792.24 Can NCUA charge me interest if I fail to pay my bill?
792.25 Will NCUA charge me if the records are not found or are determined to be exempt?
792.26 Will I be asked to pay the fees in advance?

**Fee Waiver or Reduction**

792.27 Can fees be reduced or waived?

**Appeals**

792.28 What if I am not satisfied with the response I receive?

**Submitter Notice**

792.29 If I send NCUA confidential commercial information, can it be disclosed under FOIA?

**Release of Exempt Records**

792.30 Is there a prohibition against disclosure of exempt records?

792.31 Can exempt records be disclosed to credit unions, financial institutions and state or federal agencies?
792.32 Can exempt records be disclosed to investigatory agencies?

## Subpart A—The Freedom of Information Act

### General Purpose

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

This subpart describes the procedures you must follow to obtain records from NCUA under the Freedom of Information Act (FOIA), (5 U.S.C. 552).

### Records Publicly Available

#### § 792.02 What records does NCUA make available to the public for inspection and copying?

Except for records that are exempt from public disclosure under FOIA as amended (5 U.S.C. 552) or are promptly published and copies are available for purchase, NCUA routinely makes the following five types of records available for you to inspect and copy:

(a) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(b) Statements of policy and interpretations which have been adopted by the agency but not published in the **Federal Register**;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Copies of all records, regardless of form or format, which have been released after March 31, 1997, in response to a FOIA request and which, because of the nature of their subject matter, NCUA determines have been or are likely to become the subject of subsequent requests; and

(e) Indices of the documents referred to in this paragraph.

#### § 792.03 How will I know which records to request?

NCUA maintains current indices providing identifying information for the public for any matter referred to in § 792.02, issued, adopted, or promulgated after July 4, 1967. The listing of material in an index is for the convenience of possible users and does not constitute a determination that all of the items listed will be disclosed. NCUA has determined that publication of the indices is unnecessary and impractical. You may obtain copies of indices by making a request to the Office of Administration, at NCUA, 1775 Duke Street, Alexandria, VA 22314–2387 or, as indicated, on the NCUA website. The indices are available for public inspection and copying and are provided at their duplication cost. The indices are:

(a) NCUA Publications List: Manuals relating to general and technical information, booklets published by NCUA, and the Credit Union Directory. The NCUA Publications list is available on the NCUA Website.

(b) Directives Control Index: A list of statements of policy, NCUA Instructions, Bulletins, Letters to Credit Unions, and certain internal manuals.

(c) Popular FOIA Index: Records released in response to a FOIA request, which NCUA determines are likely to be the subject of subsequent requests because of the nature of their subject matter. The Popular FOIA Index will be available on the NCUA website on or before December 31, 1999.

#### § 792.04 How can I obtain these records?

You may obtain these types of records or information in the following ways:

(a) You may obtain copies of the records referenced in § 792.02 by obtaining the index referred to in § 792.03 and following the ordering instructions it contains, or by making a request to the FOIA Officer, NCUA, Office of General Counsel at 1775 Duke Street, Alexandria, Virginia 22314–3428.

(b) If they were created by NCUA on or after November 1, 1996, records referenced in § 792.02 are available on the NCUA website, found at http://www.ncua.gov.

#### § 792.05 What is the significance of records made available and indexed?

The records referred to in § 792.02 may be relied on, used, or cited as precedent by NCUA against a party, provided:

(a) The materials have been indexed and either made available or published; or

(b) The party has actual and timely notice of the materials' contents.

### Records Available Upon Request

#### § 792.06 Can I obtain other records?

Except with respect to records routinely made available under § 792.02 or published in the **Federal Register**, or to the extent that records are exempt under the FOIA, if you make a request for records in accordance with this section, NCUA will make such records available to you, including records maintained in electronic format, as long as you agree to pay the actual, direct costs.

#### § 792.07 Where do I send my request?

(a) You must send your request to one of NCUA's Information Centers. The Central Office, Regional Offices, Office of Inspector General and the Asset Management and Assistance Center are designated as Information Centers for the NCUA. The Freedom of Information Officer of the Office of General Counsel is responsible for the operations of the Information Center maintained at the Central Office. The Regional Directors are responsible for the operation of the Information Centers in their Regional Offices. The Inspector General is responsible for the operation of the Office of Inspector General Information Center.

(b) If you think that the records are located at one of NCUA's Regional Offices, then you should send your request to the appropriate Regional Director, whose address can be found in § 790.2(c) of this chapter.

(c) If you think that the records are located at the Asset Management and Assistance Center, then you should send your request to the President, Asset Management and Assistance Center, 4807 Spicewood Springs Road, Suite 5100, Austin, Texas 78759–8490.

(d) If you think that the records you want are in the files of the Office of Inspector General, then you should send your request to the Inspector General, NCUA, 1775 Duke Street, Alexandria, Virginia 22314–3428.

(e) When you are not sure of the location of records, or if you think that the records you want are located in the Central Office, you should send your request to the Freedom of Information Officer at NCUA, Office of the General Counsel, 1775 Duke Street, Alexandria, Virginia 22314–3428.

#### § 792.08 What must I include in my request?

Your request must include the following:

(a) Your name, address and a telephone number where you can be reached during normal business hours.

(b) A reasonable description of the records you seek. A reasonable description is one which enables an NCUA employee, who is familiar with the subject area of the request, to locate the record with a reasonable amount of effort.

(c) A statement agreeing to pay all applicable fees or to pay fees up to a certain maximum amount, or requesting a fee reduction or waiver in accordance with § 792.27. If the actual fees are expected to exceed the maximum amount you indicate in your request, NCUA will contact you to see if you are willing to pay the estimated fees. If you do not want to pay the estimated fees, your request will be closed and no bill will be sent.

(d) If other than paper copy, you must identify the form and format of responsive information you are requesting.

**§ 792.09 What if my request does not meet the requirements of this subpart?**

NCUA need not accept or process your request if it does not comply with the requirements of this subpart. NCUA may return such a request to you with an explanation of the deficiency. You may then submit a corrected request, which will be treated as a new request.

**§ 792.10 What will NCUA do with my request?**

(a) On receipt of any request, the Information Center assigns it 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 NCUA by another agency, is the date the appropriate Information Center actually receives the request.

(b) NCUA has a multi-track processing system. Requests for records that are readily identifiable by the Information Center and have already been cleared for public release may qualify for fast-track processing. All other requests will be handled under normal processing procedures.

(c) The Information Center will make the determination whether a request qualifies for fast-track processing. You may contact the Information Center to learn whether your request has been assigned to fast-track processing. If your request has not qualified for fast-track processing, you will be given an opportunity to limit the scope of material requested in order to qualify for fast-track processing. Limitations of requests must be in writing.

(d) In accordance with sound administrative procedure, the Information Center will normally process requests in the order they are received in the separate processing tracks. However, in NCUA's discretion a particular request may be processed out of turn.

(e) Upon a determination by the appropriate Information Center to comply with your initial request for records, the records will be made promptly available to you. If we notify you of a denial of your request, we will include the names and titles or positions of each person responsible for the denial.

**§ 792.11 What kind of records are exempt from public disclosure?**

(a) All records of NCUA or any officer, employee, or agent thereof, are confidential, privileged and exempt from disclosure, except as otherwise provided in this part, if they are:

(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to an Executive Order.

(2) Records related solely to NCUA internal personnel rules and practices. This exemption applies to internal rules or instructions which must be kept confidential in order to assure effective performance of the functions and activities for which NCUA is responsible and which do not materially affect members of the public. This exemption also applies to manuals and instructions to the extent that release of the information contained therein would permit circumvention of laws or regulations.

(3) Specifically exempted from disclosure by statute, where the statute either makes nondisclosure mandatory or establishes particular criteria for withholding information.

(4) Records which contain trade secrets and commercial or financial information which relate to the business, personal or financial affairs of any person or organization, are furnished to NCUA, and are confidential or privileged. This exemption includes, but is not limited to, various types of confidential sales and cost statistics, trade secrets, and names of key customers and personnel. Assurances of confidentiality given by staff are not binding on NCUA.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NCUA. This exemption preserves the existing freedom of NCUA officials and employees to engage in full and frank written or taped communications with each other and with officials and employees of other agencies. It includes, but is not limited to, inter-agency and intra-agency reports, memoranda, letters, correspondence, work papers, and minutes of meetings, as well as staff papers prepared for use within NCUA or in concert with other governmental agencies.

(6) Personnel, medical, and similar files (including financial files), the disclosure of which without written permission would constitute a clearly unwarranted invasion of personal privacy. Files exempt from disclosure include, but are not limited to:

(i) The personnel records of the NCUA;

(ii) The personnel records voluntarily submitted by private parties in response to NCUA's requests for proposals; and

(iii) Files containing reports, records or other material pertaining to individual cases in which disciplinary or other administrative action has been or may be taken.

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation on or by an agency conducting a lawful national security intelligence investigation, information furnished by the confidential source;

(v) Would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual. This includes, but is not limited to, information relating to enforcement proceedings upon which NCUA has acted or will act in the future.

(8) Contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of NCUA or any agency responsible for the regulation or supervision of financial institutions. This includes all information, whether in formal or informal report form, the disclosure of which would harm the financial security of credit unions or would interfere with the relationship between NCUA and credit unions.

(b) We will provide any reasonably segregable portion of a record that is requested after deleting those portions that are exempt from disclosure under this section.

**§ 792.12 How will I know what records NCUA has determined to be exempt?**

As long as it is technically feasible and does not threaten an interest protected by the FOIA, we will:

(a) Mark the place where we redacted information from documents released to

you and note the exemption that protects the information from public disclosure; or

(b) Make reasonable efforts to include with our response to you an estimate of the volume of information withheld.

### § 792.13 Can I get the records in different forms or formats?

NCUA will provide a copy of the record in any form or format requested, such as computer disk, if the record is readily reproducible by us in that form or format, but we will not provide more than one copy of any record.

### § 792.14 Who is responsible for responding to my request?

The appropriate Regional Director, the Inspector General, the President of the Asset Management and Assistance Center, or the Freedom of Information Officer, or, in their absence, their designee, is responsible for making the initial determination on whether to grant or deny a request for information. This official may refer a request to an NCUA employee who is familiar with the subject area of the request. Other NCUA staff members may aid the official by providing information, advice, recommending a decision, or implementing a decision, but no NCUA employee other than an authorized official may make the initial determination. Referral of a request by the official to an employee will not affect the time limitation imposed in § 792.15 unless the request involves an unusual circumstance as provided in § 792.16.

### § 792.15 How long will it take to process my request?

NCUA will respond to requests within 20 working days, except:

(a) Where the running of such time is suspended for payment of fees pursuant to § 792.26;

(b) In unusual circumstances, as defined in 5 U.S.C. 552(a)(6)(B) and § 792.16, the time limit may be extended for:

(1) An additional 10 working days as provided by written notice to you, stating the reasons for the extension and the date on which a determination will be sent; or

(2) Such alternative time period as mutually agreed by you and the Information Office, when NCUA notifies you that the request cannot be processed in the specified time limit.

### § 792.16 What unusual circumstances can delay NCUA's response?

(a) In unusual circumstances, the time limits for responding to your request (or your appeal) may be extended by NCUA. If NCUA extends the time it will provide you with written notice, setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. Our notice will not specify a date that would result in an extension for more than 10 working days, except as set forth in paragraph (c) of this section. The unusual circumstances that can delay NCUA's response to your request are:

(1) The need to search for, and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of NCUA having substantial subject-matter interest therein.

(b) If you, or you and a group of others acting in concert, submit multiple requests which NCUA believes actually constitute a single request, which would otherwise satisfy the unusual circumstances criteria specified in this section, and the requests involve related matters, then NCUA may aggregate those requests and the provisions of § 792.15(b) will apply.

(c) If NCUA sends you an extension notice, it will also advise you that you can either limit the scope of your request so that it can be processed within the statutory time limit or agree to an alternative time frame for processing your request.

### § 792.17 What can I do if the time limit passes and I still have not received a response?

You can file suit against NCUA because you will be deemed to have exhausted your administrative remedies if NCUA fails to comply with the time limit provisions of this subpart. But if NCUA can show that exceptional circumstances exist and that it is exercising due diligence in responding to your request, the court may retain jurisdiction and allow NCUA to complete its review of the records. In determining whether exceptional circumstances exist, the court will consider your refusal to reasonably modify the scope of your request or arrange an alternative time frame for processing after being given the opportunity to do so by NCUA, when it notifies you of the existence of unusual circumstances as set forth in § 792.16.

## Expedited Processing

### § 792.18 What if my request is urgent and I cannot wait for the records?

You may request expedited processing of your request if you can show a compelling need for the records. In cases where your request for expedited processing is granted or if NCUA has determined to expedite the response, it will be processed as soon as practicable.

(a) To demonstrate a compelling need for expedited processing, you must provide a certified statement. The statement, certified by you to be true and correct to the best of your knowledge and belief, must demonstrate that:

(1) 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

(2) The requester is a representative of the news media, as defined in § 792.20, and there is urgency to inform the public concerning actual or alleged NCUA activity.

(b) In response to a request for expedited processing, the Information Center will notify you of the determination within ten days of receipt of the request. If the Information Center denies your request for expedited processing, you may file an appeal pursuant to the procedures set forth in § 792.28, and NCUA will expeditiously respond to the appeal.

(c) Priority of responses. The Information Center will normally process requests in the order they are received in the separate processing tracks. However, in NCUA's discretion, a particular request may be processed out of turn.

## Fees

### § 792.19 How does NCUA calculate the fees for processing my request?

We will charge fees that recoup the full allowable direct costs we incur, unless those costs are less than our cost of processing your remittance. Direct costs means those expenditures which NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request. Search means all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer. Search does not include modification of an existing program or system that would significantly interfere with the operation of an automated information system.

Review means examining documents to determine whether any portion should be withheld and preparing documents for disclosure. Fees are subject to change as costs increase. The current rate schedule is available on our website at http://www.ncua.gov.

We may contract with the private sector to locate, reproduce or disseminate records. In no case will NCUA contract out responsibilities which the FOIA requires us alone to discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. The following labor and duplication rate calculations apply:

(a) NCUA will charge fees at the following rates for manual searches for and review of records:

(1) If search/review is done by clerical staff, the hourly rate for CU–5, plus 16 percent of that rate to cover benefits;

(2) If search/review is done by professional staff, the hourly rate for CU–13, plus 16 percent of that rate to cover benefits.

(b) NCUA will charge fees at the hourly rate for CU–13, plus 16 percent of that rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(c) NCUA will charge the following duplication fees:

(1) The per-page fee for paper copy reproduction of a document is $.25;

(2) The fee for documents generated by computer is the hourly fee for the computer operator, plus the cost of materials (computer paper, tapes, labels, etc.);

(3) If any other method of duplication is used, NCUA will charge the actual direct cost of duplication.

**§ 792.20 What are the charges for each fee category?**

The fee category definitions are:

(a) *Commercial use request* means 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.

(b) *Educational institution* means a preschool, an elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education operating a program or programs of scholarly research.

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

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

Included within the meaning of public is the credit union community. The term news means information that is about current events or that would be of current interest to the public. You may consult the following chart to find the fees applicable to your request:

| If your fee category is | You'll receive | And you'll be charged |
|---|---|---|
| Commercial use | 0 hours free search | Search time. |
| | 0 hours free review | Review time. |
| | 0 free pages | Duplication. |
| Educational institution, noncommercial scientific institution, newsmedia. | Unlimited free search hours | |
| | Unlimited free review hours | |
| | 100 free pages | Duplication. |
| All others | 2 hours free search | Search time. |
| | Unlimited free review hours | |
| | 100 free pages | Duplication. |

**§ 792.21 Will NCUA provide a fee estimate?**

NCUA will notify you of the estimated amount if fees are likely to exceed $25, unless you have indicated in advance a willingness to pay fees as high as those anticipated. You will then have the opportunity to confer with NCUA personnel to reformulate the request to meet your needs at a lower cost.

**§ 792.22 What will NCUA charge for other services?**

Complying with requests for special services is entirely at the discretion of NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

**§ 792.23 Can I avoid charges by sending multiple, small requests?**

You may not file multiple requests, each seeking portions of a document or similar documents, solely in order to avoid payment of fees. If this is done, NCUA may aggregate any such requests and charge you accordingly.

**§ 792.24 Can NCUA charge me interest if I fail to pay my bill?**

NCUA can assess interest charges on an unpaid bill starting on the 31st day following the date of the bill. If you fail to pay your bill within 30 days, interest will be at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

**§ 792.25 Will NCUA charge me if the records are not found or are determined to be exempt?**

NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

**§ 792.26 Will I be asked to pay fees in advance?**

NCUA will require you to give an assurance of payment or an advance payment only when:

(a) NCUA estimates or determines that allowable charges that you may be required to pay are likely to exceed $250. NCUA will notify you of the likely cost and obtain satisfactory assurance of full payment where you have a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case where you have no history of payment; or

(b) You have previously failed to pay a fee charged in a timely fashion. NCUA may require you to pay the full amount owed, plus any applicable interest, or demonstrate that you have, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before we begin to process a new request or a pending request from you.

(c) If you are required to make an advance payment of fees, then the administrative time limits prescribed in § 792.16 will begin only after NCUA has received the fee payments described.

## Fee Waiver or Reduction

### § 792.27 Can fees be reduced or waived?

You may request that NCUA waive or reduce fees if disclosure of the information you request is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in your commercial interest.

(a) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

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

(2) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(3) Whether disclosure of the requested information will contribute to public understanding; and

(4) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities,

(b) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(1) Whether you have a commercial interest that would be furthered by the requested disclosure; and if so

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

(c) If the required public interest exists and your commercial interest is not primary in comparison, NCUA will waive or reduce fees.

(d) If you are not satisfied with our determination on your fee waiver or reduction request, you may submit an appeal to the General Counsel in accordance with § 792.28.

## Appeals

### § 792.28 What if I am not satisfied with the response I receive?

If you are not satisfied with NCUA's response to your request, you can file an administrative appeal. Your appeal must be in writing and must be filed within 30 days from receipt of the initial determination (in cases of denials of an entire request, or denial of a request for fee waiver or reduction), or from receipt of any records being made available pursuant to the initial determination (in cases of partial denials.) In its response to your initial request, the Freedom of Information Act Officer, Inspector General, President of the Asset Management and Assistance Center, or responsible Regional Director, (or designee,) will notify you that you may appeal any adverse determination to the Office of General Counsel. The General Counsel, or designee, as set forth in this paragraph, will:

(a) Make a determination with respect to any appeal within 20 days (except Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If, on appeal, the denial of the request for records is, in whole or in part, upheld, the Office of General Counsel will notify you of the provisions for judicial review of that determination under FOIA. Where you do not address your request or appeal to the proper official, the time limitations stated above will be computed from the receipt of the request or appeal by the proper official.

(b) The General Counsel is the official responsible for determining all appeals from initial determinations. In case of this person's absence, the appropriate officer acting in the General Counsel's stead will make the appellate determination, unless such officer was responsible for the initial determination, in which case the Vice-Chairman of the NCUA Board will make the appellate determination.

(c) All appeals should be addressed to the General Counsel in the Central Office and should be clearly identified as such on the envelope and in the letter of appeal by using the indicator ''FOIA-APPEAL.'' Failure to address an appeal properly may delay commencement of the time limitation stated in paragraph (a)(1) of this section, to take account of the time reasonably required to forward the appeal to the Office of General Counsel.

### § 792.29 If I send NCUA confidential commercial information can it be disclosed under FOIA?

(a) If you submit confidential commercial information to NCUA , it may be disclosed in response to a FOIA request in accordance with this section.

(b) For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information provided to NCUA by a submitter that arguably is protected from disclosure under § 792.11(a)(4) because disclosure could reasonably be expected to cause substantial competitive harm.

(2) *Submitter* means any person or entity who provides business information, directly or indirectly, to NCUA.

(c) Submitters of business information must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions deemed to be protected from disclosure under § 792.11(a)(4). Such a designation shall expire ten years after the date of submission.

(d) We will provide a submitter with written notice of a FOIA request or administrative appeal encompassing designated business information when:

(1) The information has been designated in good faith by the submitter as confidential commercial information deemed protected from disclosure under § 792.11(a)(4); or

(2) NCUA has reason to believe that the information may be protected from disclosure under § 792.11(a)(4).

(e) A copy of the notice to the submitter will also be provided to the FOIA requester.

(f) Through the notice described in paragraph (d) of this section, NCUA will afford the submitter a reasonable period of time within which to provide a detailed written statement of any objection to disclosure. The statement must describe why the information is confidential commercial information and why it should not be disclosed.

(g) Whenever we decide that we must disclose confidential commercial information over the objection of the submitter, we will send both the submitter and the FOIA requester, within a reasonable number of days prior to the specified disclosure date, a written notice which will include:

(1) A statement of the reasons for which the submitter's disclosure objection was not sustained; and

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(h) If a requester brings suit to compel disclosure of confidential commercial information, we will promptly notify the submitter.

(i) The notice requirements of paragraph (d) of this section do not apply if:

(1) We determine that the information should not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by law; or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that in such case, NCUA will provide the submitter with written notice of any final administrative decision to disclose the information within a reasonable number of days prior to the specified disclosure date.

**Release of Exempt Information:**

**§ 792.30 Is there a prohibition against disclosure of exempt records?**

Except as provided in §§ 792.31–792.32, and subpart C of this part, no officer, employee, or agent of NCUA or of any federally-insured credit union shall disclose or permit the disclosure of any exempt records of NCUA to any person other than those NCUA or credit union officers, employees, or agents properly entitled to such information for the performance of their official duties.

**§ 792.31 Can exempt records be disclosed to credit unions, financial institutions and state or federal agencies?**

The NCUA Board, in its sole discretion, or any person designated by it in writing, may make available to certain governmental agencies and insured financial institutions copies of reports of examination and other documents, papers or information for their use, when necessary, in the performance of their official duties or functions. All reports, documents and papers made available pursuant to this paragraph shall remain the property of NCUA. No person, agency or employee shall disclose the reports or exempt records without NCUA's express written authorization.

**§ 792.32 Can exempt records be disclosed to investigatory agencies?**

The NCUA Board, or any person designated by it in writing, in its discretion and in appropriate circumstances, may disclose to proper federal or state authorities copies of exempt records pertaining to irregularities discovered in credit unions which may constitute either unsafe or unsound practices or violations of federal or state, civil or criminal law.

[FR Doc. 97–28586 Filed 11–12–97; 8:45 am]
BILLING CODE 7535–01–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–NM–232–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 757–200 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes. This proposal would require modification of certain passenger doors. This proposal is prompted by reports that certain passenger doors could not be opened due to the escape slide shelf assembly and escape slide falling onto the girt bar lifting mechanism of the door. The actions specified by the proposed AD are intended to prevent the escape slide shelf assembly and escape slide from falling on the girt bar of a passenger door due to failed rivets of the escape slide shelf assembly, and consequent inability to open the passenger door and to use the escape slide at that door during an emergency evacuation of the airplane.

**DATES:** Comments must be received by December 29, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2780; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–232–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received reports indicating that various passenger doors (Number 1, 2, or 4) could not be opened. Investigation revealed that the escape slide shelf assembly and escape slide had fallen onto the girt bar lifting mechanism of the passenger door due to failure of four rivets of the shelf assembly. Such failure, if not corrected, could result in inability to open the Number 1, 2, or 4 passenger door, and consequent inability to use the escape slide at the door during an emergency evacuation of the airplane.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 757–25–0175, dated May 30, 1996, and Revision 1, dated March 6, 1997, which describes procedures for modifying the escape slide shelf assemblies of the Number 1, 2, and 4 passenger doors. The modification entails replacing the four existing rivets of the escape slide shelf assembly of the passenger doors with steel rivets. The modification will ensure that the escape slide shelf assembly and escape slide do not fall onto the girt bar lifting mechanism.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the escape slide shelf assemblies of the Numbers 1, 2,

and 4 passenger doors. The actions would be required to be accomplished in accordance with the service bulletin described previously.

### Cost Impact

There are approximately 673 Boeing Model 757–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 381 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $234 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $226,314, or $594 per airplane.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket 96–NM–232–AD.

*Applicability:* Model 757–200 series airplanes, as listed in Boeing Service Bulletin 757–25–0175, Revision 1, dated March 6, 1997, 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 inability to open the Number 1, 2, or 4 passenger door and to use the escape slide at that door during an emergency evacuation of the airplane, accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the escape slide shelf assemblies of the Numbers 1, 2, and 4 passenger doors in accordance with Boeing Service Bulletin 757–25–0175, dated May 30, 1996, or Revision 1, dated March 6, 1997.

(b) As of the effective date of this AD, no person shall install an escape slide shelf assembly having part number 416N2400–6 or 416N2400–7 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Issued in Renton, Washington, on November 6, 1997.

**Darrell M. Pederson,**

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

[FR Doc. 97–29822 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–157–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise an existing airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper on the rudder power control unit, and replacement of the valve with a valve having a different part number, if necessary. That AD was prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by that AD are intended to prevent sudden uncommanded yawing of the airplane due to potential failures within the yaw damper system, and consequent injury to passengers and crewmembers. This action would make certain editorial changes to clarify the requirements of the existing AD.

**DATES:** Comments must be received by December 29, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tin Truong, Aerospace Engineer, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2764; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–157–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

On April 24, 1997, the FAA issued AD 97–09–15, amendment 39–10011 (62 FR 24325, May 5, 1997), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, to require a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper, and replacement of the valve with a valve having a different part number, if necessary. That action was prompted by a review of the design of the flight control systems on Model 737 series airplanes. The requirements of that AD are intended to prevent sudden uncommanded yawing of the airplane due to potential failures within the yaw damper system, and consequent injury to passengers and crewmembers.

## Actions Since Issuance of Previous Rule

Since the issuance of AD 97–09–15, the FAA has re-reviewed the requirements of paragraph (a) and the information specified in ''Note 3'' of that AD.

The FAA finds that, as paragraph (a) of AD 97–09–15 is currently worded, operators could misinterpret exactly which engage solenoid value of the yaw damper must be inspected. Therefore, the FAA has revised the phrase ''engage solenoid valve of the yaw damper'' to read ''engage solenoid valve of the yaw damper on the rudder power control unit (PCU).''

The FAA also finds that paragraph (a) of AD 97–09–15 specifies only the Boeing part number (P/N) for some affected parts. For clarification purposes, the FAA has revised paragraph (a) of the existing AD to include both the Boeing P/N and the vendor P/N's for all affected parts.

The FAA also has revised paragraph (a) of the existing AD to reference Chapter 22–11–61 (for Model 737–100 and –200 series airplanes) and Chapter 22–12–21 (for Model 737–300, –400, and –500 series airplanes) of the Boeing Maintenance Manual as the appropriate sources of service information for accomplishment of the actions required by that paragraph.

Furthermore, the FAA finds that some engage solenoid valves may be labeled with only the name ''Bertea,'' rather than ''Parker'' or ''Parker-Bertea.'' Therefore, the FAA has revised ''Note 3'' of AD 97–09–15 to include such information regarding the labeling of the engage solenoid valves.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 97–09–15 to continue to require a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper on the rudder PCU, and replacement of the valve with a valve having a different part number, if necessary. The proposed AD would make certain editorial changes to clarify the requirements of the existing AD.

## Cost Impact

There are approximately 2,675 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,091 airplanes of U.S. registry would be affected by this proposed AD.

The FAA estimates that it would take approximately 1 work hour per airplane to accomplish the proposed one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $65,460, or $60 per airplane. The requirements of this AD will add no new costs to affected operators.

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

## Regulatory Impact

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

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part

39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10011 (62 FR 24325, May 5, 1997), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 97–NM–157–AD. Revises AD 97–09–15, Amendment 39–10011.

*Applicability:* All Model 737–100, –200, –300, –400, and –500 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 sudden uncommanded yawing of the airplane due to potential failures within the yaw damper system, and consequent injury to passengers and crewmembers, accomplish the following:

(a) Perform a one-time inspection of the engage solenoid valve of the yaw damper on the rudder power control unit (PCU) to determine the part number (P/N) of the valve. If any valve having Parker P/N 59600–5011 (Boeing P/N 10–60811–9), Parker P/N 59600–5007 (Boeing P/N 10–60811–3), or Parker P/N 59600–5003 (Boeing P/N 10–60811–1) is installed, prior to further flight, replace it with a valve having Parker P/N 881600–1001 (Boeing P/N 10–60811–13), Sterer P/N 45080–1 (Boeing P/N 10–60811–8), or Sterer P/N 45080 (Boeing P/N 10–60811–3). Accomplish the actions in accordance with procedures specified in Chapter 22–11–61 (for Model 737–100 and –200 series airplanes) or Chapter 22–12–21 (for Model 737–300, –400, and –500 series airplanes) of the Boeing Maintenance Manual, as applicable. Accomplish the inspection at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 5 years or 15,000 flight hours after June 9, 1997 (the effective date of AD 97–09–15, amendment 39–10011), whichever occurs first.

(2) At the next time the PCU is sent to a repair facility.

**Note 2:** Boeing In-Service Activities Report 95–03–2725–10, dated February 16, 1995 (for Model 737–100 and –200 series airplanes), or 95–04–2725–10, dated February 24, 1995 (for Model 737–300, –400, and –500 series airplanes), provides additional information concerning interchangeability of solenoid valve part numbers.

**Note 3:** Operators should note that, as specified in paragraph (a) of this AD, both the Parker and Sterer P/N's have the same Boeing P/N (10–60811–3). If, upon inspection, Boeing P/N 10–60811–3 is found to be installed, operators must ascertain the vendor P/N. Parts having Boeing P/N 10–60811–3 and Parker P/N 59600–5007 must be replaced and are not considered to be acceptable replacement parts. In addition, some engage solenoid valves may be labeled with only the name ''Bertea,'' rather than ''Parker'' or ''Parker-Bertea.''

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

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

Issued in Renton, Washington, on November 6, 1997.

**Darrell M. Pederson,**

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

[FR Doc. 97–29820 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 97–NM–238–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This proposal would require installation of a placard that warns the cabin crew not to put the selector valve for the forward lavatory water supply in the ''DRAIN'' position during flight. This proposal also would require installation of an isolation valve in the drain line downstream of the selector valve. This proposal is prompted by reports of damage to the horizontal stabilizer and engine flameout caused by ice formed from water drained inadvertently through a mispositioned selector valve. The actions specified by the proposed AD are intended to prevent damage to the engines, airframe, or horizontal stabilizer, and/or prevent a hazard to persons or property on the ground, as a result of ice that could dislodge from the airplane.

**DATES:** Comments must be received by December 29, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2788; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–238–AD.'' The postcard will be date stamped and returned to the commenter.

## Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

## Discussion

The FAA has received several reports that ice has formed on the skin of Boeing Model 737 series airplanes due to drainage of potable water through an incorrectly positioned selector valve for the forward lavatory water supply. Two of these incidents resulted in engine flameout and two other incidents resulted in damage to the horizontal stabilizer.

The selector valve is a three-position (''DRAIN,'' ''SUPPLY,'' and ''SHUTOFF'') selector valve for the forward lavatory water supply. It is possible to place the selector valve in the ''DRAIN'' position instead of the ''SHUTOFF'' position during flight, which results in the contents of the potable water supply tank draining onto the skin of the airplane. This condition, if not corrected, could result in the formation of ice that could dislodge from the airplane and, consequently, cause damage to the engines, airframe, or horizontal stabilizer and/or pose a hazard to persons or property on the ground.

## Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of a placard to warn the cabin crew not to put the selector valve for the forward lavatory water supply in the ''DRAIN'' position during flight. In addition, the proposed AD would require installation of an isolation valve in the drain line downstream of the selector valve. These actions would be required to be accomplished in accordance with a method approved by the FAA.

## Cost Impact

There are approximately 2,830 Boeing Model 737–100, –200, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,037 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed placard installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this installation proposed by this AD on U.S. operators is estimated to be $62,220, or $60 per airplane.

It would take approximately 6 work hours per airplane to accomplish the proposed installation of an isolation valve, and that the average labor rate is $60 per work hour. Required parts would cost approximately $300 per airplane. Based on these figures, the cost impact of this installation proposed by this AD on U.S. operators is estimated to be $684,420, or $660 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Boeing:** Docket 97–NM–238–AD.

*Applicability:* All Model 737–100, –200, –300, –400, and –500 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 (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 damage to the engines, airframe, or horizontal stabilizer, and/or a hazard to persons or property on the ground, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a placard (as shown in Figure 1 of this AD) on the door beneath the forward lavatory sink that warns the cabin crew not to put the selector valve for the forward lavatory water supply in the ''DRAIN'' position during flight. The installation shall be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Within 36 months after the effective date of this AD, install an isolation valve in the drain line downstream of the selector valve for the forward lavatory water supply, in accordance with a method approved by the Manager, Seattle ACO.

(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, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Seattle 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.

BILLING CODE 4910–13–U

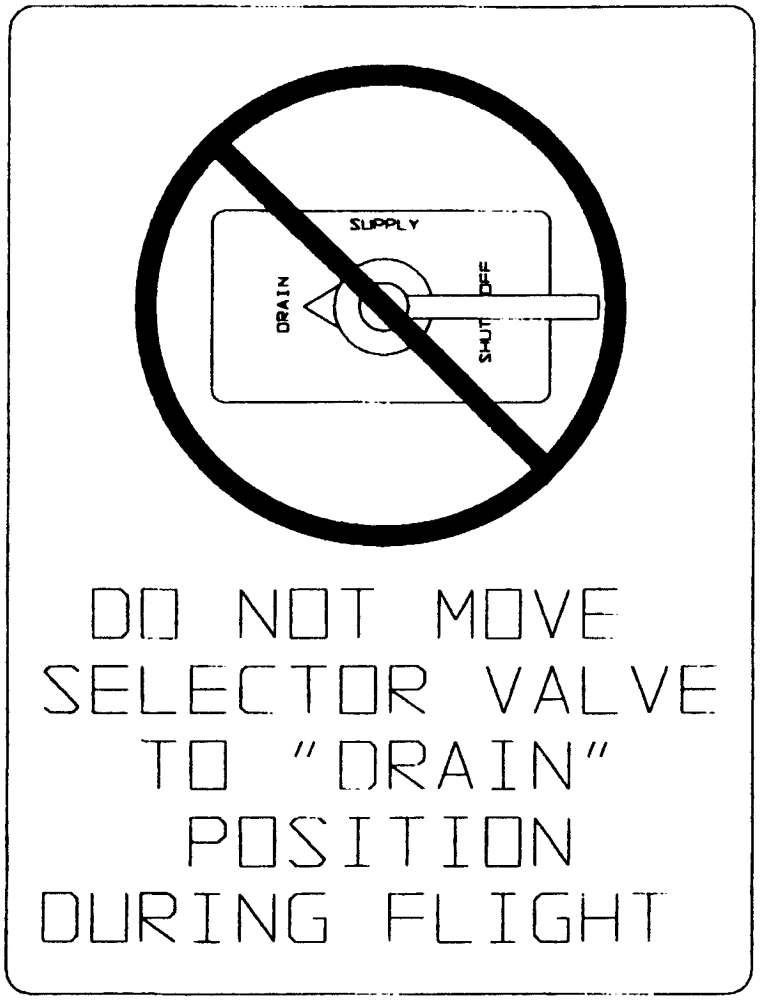


Figure 1

Issued in Renton, Washington, on November 6, 1997.

**Darrell M. Pederson,**

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

[FR Doc. 97–29819 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–C

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 97–NM–111–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Dornier Model 328–100 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require modification of a certain electrical panel and relay support. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent possible electrical short circuits, which could result in loss of certain electrical indicating and recording systems, and the possibility of a fire.

**DATES:** Comments must be received by December 15, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–111–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that it has received a report of loose relay terminals, caused by vibration, in certain electrical circuits. These loose relay terminals could result in an electrical short circuit at electrical panel 35VE, and relay support 36VE. This condition, if not corrected, could result in loss of certain electrical indicating and recording systems, and the possibility of a fire.

### Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–31–172, dated June 18, 1996, which describes procedures for modifications of electric panel 35VE and relay support 36VE by installing new terminal studs, spacers, and U-sections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 96–289, dated October 10, 1996, in order to assure the continued airworthiness of these airplanes in Germany.

### FAA's Conclusions

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

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

### Cost Impact

The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $39,360, or $960 per airplane.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**DORNIER:** Docket 97–NM–111–AD.

*Applicability:* Model 328–100 series airplanes, serial numbers 3005 through 3065 inclusive, 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 electrical short circuits, which could result in loss of certain electrical indicating and recording systems, and the possibility of a fire, accomplish the following:

(a) Within 90 days after the effective date of this AD, modify electrical panel 35VE and relay support 36VE in accordance with Dornier Service Bulletin SB–328–31–172, 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, International Branch, ANM–116, 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, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(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.

**Note 3:** The subject of this AD is addressed in German airworthiness directive 96–289, dated October 10, 1996.

Issued in Renton, Washington, on November 6, 1997.

**Darrell M. Pederson,**

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

[FR Doc. 97–29826 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 97–AEA–43]**

## Proposed Amendment to Class E Airspace; Somerset, PA

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area at Somerset, PA. The development of a new Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Somerset County Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport.

**DATES:** Comments must be received on or before December 15, 1997.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket No. 97–AEA–43, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AEA–43.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of

the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR Part 71 to amend the Class E airspace area at Somerset, PA. A GPS RWY 6 SIAP has been developed for the Somerset County Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at the airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in 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 would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 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 would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

## PART 71—[AMENDED]

1. The authority citation for 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 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Pants, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

**AEA PA E5 Somerset, PA [Revised]**

Somerset County Airport, PA
(lat. 40°02′20″N., long. 79°00′47″W.)
Stoystown NDB
(lat. 40°05′09″N., long. 78°55′00″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Somerset County Airport and within 3.1 miles each side of the 058° bearing from the Stoystown NDB extending from the 6.4-mile radius to 9.6 miles northeast of the NDB and 4 miles each side of the 236° bearing from the Somerset County Airport extending from the 6.4-mile radius to 9.5 miles southwest of the airport, excluding that portion that coincides with the Seven Springs, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York, on October 7, 1997.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 97–29835 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF THE INTERIOR

## National Park Service

## 36 CFR Part 7

**RIN 1024–AC62**

## Delaware Water Gap National Recreation Area; Designation of Bicycle Routes; Deletion of Climbing Registration Regulation

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

**ACTION:** Proposed rule.

**SUMMARY:** The National Park Service (NPS) is proposing to amend its special regulations to designate certain routes within a nondeveloped area as open for bicycle use and to regulate their use in this area and to delete the regulation concerning the mandatory registration of technical rock climbing activities at Delaware Water Gap National Recreation Area. Bicycle use has been determined by the Superintendent to be a desirable recreational use within the Blue Mountain Lakes area of the park because such use is consistent with the protection of the park's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources. The requirement to register for climbing activities was originally intended to promote climbing safety, provide information concerning the location and difficulty of routes and provide climbers with procedures to follow in the event of an emergency. However, the registration system has not been effective and the NPS believes that a better course of action will be to promote self-responsibility within the climbing community. Many NPS areas with significant rock climbing activities do not require technical climbing registration. The deletion of this regulation will also remove an unnecessary administrative burden for both the climbing community and the NPS.

**DATES:** Written comments will be accepted until January 12, 1998.

**ADDRESSES:** Comments should be addressed to: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, Pennsylvania, 18324.

**FOR FURTHER INFORMATION CONTACT:** Wayne Valentine, Kittatinny Subdistrict Ranger, Delaware Water Gap National Recreation Area. Telephone 908–841–9533.

**SUPPLEMENTARY INFORMATION:**

### Background

*Bicycle Routes*

This proposed rule will designate certain trails and former roads for bicycle use in the Blue Mountain Lakes area of the park. This area was originally intended for a housing development associated with the proposed Tocks Island Dam prior to the establishment of Delaware Water Gap National Recreation Area in 1965.

On April 2, 1987, the NPS published revised regulations in the **Federal Register** amending 36 CFR part 4 which, among other regulations, states that ''(T)he use of a bicycle is prohibited except on park roads, in parking areas and on routes designated for bicycle use'' (52 FR 10670). This regulation, found at 36 CFR 4.30, requires that such designation be made only after ''a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources'' (36 CFR 4.30(a)). This regulation further requires that, ''except for routes

designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations'' (36 CFR 4.30(b)).

The trails and former roads in the Blue Mountain Lakes area of the park are proposed for designation as open to bicycle use. These trails will not adversely impact other park users such as hikers and hunters, nor the park's natural and cultural resources. Currently, approximately eleven miles of trail and former road in the Blue Mountain Lakes area are recommended for bicycle trail use. All have suitable width and visibility and can be adequately maintained for multiple uses, including bicycling. This same trail network is also designated as a cross country ski trail during the winter months when snow covered.

Any additional trails, other than those in the Blue Mountain Lakes area, will be permitted on routes in developed areas and special use zones which have been designated by the Superintendent by the posting of signs and as designated on maps which will be available in the office of the superintendent and at other places convenient to the public. Further, the authority of the Superintendent to ''impose public use limits, or close all or a portion'' of a designated trail according to the criteria at 36 CFR 1.5 is not restricted by this rule.

*Climbing Registration*

The present regulation concerning mandatory registration for technical rock climbing at Delaware Water Gap National Recreation Area is codified at 36 CFR 7.71(c)(2). Mandatory registration of technical rock climbing activities was instituted at Delaware Water Gap in 1976. This regulation was intended to promote safety by educating climbers, especially novice or new climbers to the area about safety hazards, to provide climbers with the location and difficulty of climbing routes, and to provide climbers with procedures to follow in the event of an emergency. A check-in and check-out system that would activate a search and rescue effort for overdue climbers was also implemented.

Although many climbers register, just as many climbers do not, especially those climbing at locations not in the immediate vicinity of the Kittatinny Point Visitor Center where registration occurs. In most instances, climbers do not receive good practical information about the climbing area, because the rangers on duty at the visitor center are often not climbers and are often not familiar with the routes or with specific climbing hazards. Too often, the only information climbers receive at the visitor center is a climbing safety handout. The check-in and check-out portion of the registration system has failed to provide a timely method to insure that all climbers have safely completed their climbs. There have been no documented cases of lives saved as a result of the check-in and check-out registration system.

Many NPS areas with significant rock climbing activity such as Joshua Tree, Rocky Mountain and Yosemite National Parks do not require climbers to register and have not experienced any adverse results. Denali National Park revised its mandatory climbing registration regulation in 1996. With the deletion of this park specific regulation, it will be the climbing party's responsibility to insure that responsible friends or relatives are advised of where they will be climbing, what kind of equipment they will use, the experience level of the climbers and when they expect to complete the climb and return.

## Public Participation

It is the policy of the Department of Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. The NPS will review all comments and consider making changes to the rule based upon analysis of the comments.

## Drafting Information

The primary authors of this rule making are Wayne Valentine, Kittatinny Subdistrict Ranger, Robert Wilson, Law Enforcement Specialist, both of Delaware Water Gap National Recreation Area, and Dennis Burnett, Washington Office of Ranger Activities, National Park Service.

## Paperwork Reduction Act

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

## Compliance With Other Laws

This rule was not subject to Office of Management and Budget review under Executive Order 12866.

The Department of the Interior determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The economic effects of this rulemaking are negligible.

NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

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

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

(b) introduce incompatible uses which compromise the nature and characteristics of the area or cause physical damage to it;

(c) conflict with adjacent ownership or land uses; or

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

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

## List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

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

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

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

**Authority:** 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. code 40–721(1981).

2. Section 7.71 is amended by revising paragraph (c) to read as follows:

### § 7.71 Delaware Water Gap National Recreation Area.

* * * * *

(c) *Designated bicycle routes.* The use of a bicycle is permitted according to § 4.30 of this chapter and, in nondeveloped areas, as follows: Bicycle use is permitted on trails and former roads in the Blue Mountain Lakes area of the park which have been designated by the Superintendent as bicycle routes by the posting of signs, and as designated on maps which are available in the office of the Superintendent and other places convenient to the public.

* * * * *

Date: August 26, 1997.

**William Leary,**

*Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 97–29776 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 62

**[FL–70–9738b; FRL–5920–4]**

## Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Florida

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the Section 111(d)/129 State Plan submitted by Florida on November 18, 1996. The State Plan was submitted by Florida to satisfy certain Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, EPA is approving the State's Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

**DATES:** Comments on this proposed rule must be received in writing by December 15, 1997.

**ADDRESSES:** Written comments should be addressed to Joey LeVasseur at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Florida Department of Environmental Protection, Air Resources Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

**FOR FURTHER INFORMATION CONTACT:** Scott Davis at 404/562–9127 or Joey LeVasseur at 404/562–9035.

**SUPPLEMENTARY INFORMATION:** See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register** and incorporated by reference herein.

Dated: October 15, 1997.

**A. Stanley Meiburg,**

*Acting Regional Administrator.*

[FR Doc. 97–29859 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

## Federal Highway Administration

## 49 CFR Part 350

## Public Meeting To Discuss the Development of Functional Specifications for Performance-Based Brake Testers Used To Inspect Commercial Motor Vehicles

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The FHWA is announcing a public meeting to discuss the development of functional specifications for performance-based brake testing machines purchased with Federal funds through the FHWA's Motor Carrier Safety Assistance Program (MCSAP). The FHWA is nearing the completion of a multi-year research program to evaluate prototype performance-based brake testing technologies, including roller dynamometers, flat-plate brake testers, and breakaway torque brake testers. The agency has determined that certain performance-based brake testing machines are eligible for funding under MCSAP but only as screening and sorting devices in commercial vehicle inspections. The purpose of the public meeting is to discuss the establishment of generic functional specifications that would be applicable to a range of brake testing technologies. The functional specifications would serve as guidelines for the States to use in determining whether the purchase of a specific brake tester would be an eligible expense under the MCSAP.

**DATES:** The meeting will be held on December 8, 1997. The meeting will begin at 9:00 a.m. and end at 4:00 p.m. The meeting will include a presentation of the results to date from the brake tester evaluation program and a review of preliminary functional specifications.

**ADDRESSES:** The meeting will be held at the National Highway Traffic Safety Administration's (NHTSA) Vehicle Research and Test Center in East Liberty, Ohio.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry W. Minor, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366–4009; Mr. Steve Keppler, Intelligent Transportation Systems—Commercial Vehicle Operations Division, Office of Motor Carrier Safety and Technology, (202) 366–0950; or Mr. Paul Alexander, State Programs Division, Office of Motor Carrier Safety and Technology (202) 366–9579, Federal Highway Administration, 400 Seventh Street, SW., Washington, D. C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

In 1993, the FHWA initiated a research program to evaluate various performance-based brake testing technologies for use on commercial motor vehicles. The purpose of the program was to determine, through field-test data collection, if performance-based brake inspection technologies could improve or assist with the throughput and accuracy of the current inspection techniques which involve visual examination of components, measurement of push-rod travel on air-braked vehicles, and listening for air leaks. Following the completion of the first task of the program, in which various performance-based technologies were analyzed, several of the systems were selected for evaluation in a roadside field-test inspection program.

During the field tests, inspections were performed using both visual and performance-based methods to compare their ability to detect vehicle brake defects. In particular, a Commercial Vehicle Safety Alliance Level 4 inspection (consisting of the brake and tire portion of a Level 1 inspection) was conducted in addition to a performance-based brake test. The dual inspections were performed by State officials in each of eight States that volunteered to participate in the field test program.

The data collected from these dual inspections were tabulated and

correlations were sought between Federal Motor Carrier Safety Regulations (FMCSRs) violations, the North American Uniform Vehicle Out-of-Service Criteria used by officials in the United States, Canada, and Mexico, and various pass/fail criteria used by manufacturers of performance-based technology. In addition to the performance-based brake ''failure'' information, data relating to the operational characteristics of each prototype machine were also collected and evaluated. These data included setup and tear down times, vehicle inspection times, maintenance requirements, user friendliness, calibration procedures and results, operator skill-level requirements and information to generate a cost-benefit analysis. A key source of data was the interviews with State inspectors.

The preliminary findings from the first phase of the prototype brake testing program are documented in an interim report, ''Evaluation of Performance-Based Brake Testing Technologies,'' December 1995, FHWA–MC–96–004. A copy of this report may be obtained by contacting one of the individuals listed at the beginning of this notice. The interim report presents findings based upon approximately one year of data from roller dynamometers used in Colorado and Ohio, and a flat plate tester in Minnesota.

West Virginia is currently participating in the field test evaluation of a roller dynamometer, Wisconsin is collecting data on a flat-plate tester, and Maryland and Nevada are collecting data on breakaway torque testers. Connecticut participated in the testing of a roller dynamometer for several months but elected to discontinue its involvement in the research program. The final report on the research program will be published in 1998.

**Determination of Eligibility for MCSAP Funding**

On April 1, 1996, the FHWA issued a memorandum advising agency staff that two specific performance-based brake testing machines are eligible for funding under MCSAP. The memorandum indicated that the devices are prototypes, and are approved for screening and sorting purposes only. This means that States may request MCSAP funding to purchase one of the approved brake testers for use in screening or sorting vehicles at inspection cites. Vehicles that fail the performance test would be inspected to determine the reason for the poor test results. Generally, motor carriers cannot be cited for brake-related violations of the FMCSRs solely on the basis of the results from a performance-based brake tester. Citations are based upon the specific defects or deficiencies found during the in-depth inspection.

The FHWA is considering the development of pass/fail criteria for braking force that could be enforced by Federal and State officials using performance-based brake testing technologies. As inspection criteria or regulations are developed through the rulemaking process, the use of the performance-based brake testing machines could be expanded to include enforcement of the new Federal brake performance standards. The new standards would be an alternative to the stopping distances from 32.2 kilometers per hour (20 miles per hour) currently specified in 49 CFR 393.52 but rarely enforced by Federal and State officials because of difficulties in performing such tests at roadside. If brake force standards are developed through the rulemaking process, the States would be able to issue citations based upon the output from the brake testers.

The development of pass/fail criteria for braking force in commercial motor vehicles will be considered for rulemaking but will not be a topic of discussion at the meeting. The meeting will focus only on the development of functional specifications for the brake testing technologies to ensure that the equipment accepted as eligible expenses under the MCSAP are capable of accurately measuring brake forces.

**Meeting Information**

The meeting will be held on December 8, 1997, at the NHTSA's Vehicle Research and Test Center, located near the intersection of State Routes 33 and 347, East Liberty, Ohio. This location is approximately 55 miles northwest of Columbus, Ohio. The meeting is scheduled from 9:00 a.m. to 4:00 p.m. The NHTSA's Vehicle Research and Test Center is located on the grounds of the Transportation Research Center, a privately owned facility with controlled access. All visitors to the Transportation Research Center must be registered with the security office and wear a visitor's badge at all times while on the premises. Therefore, the FHWA requests that all interested parties contact one of the individuals listed at the beginning of this notice by December 1 to provide their name and company affiliation so that security personnel at TRC can be notified in advance. This will prevent delays in gaining access to the facility.

**List of Subjects in 49 CFR Part 350**

Highway safety, Motor carriers, motor vehicle safety.

**Authority:** 49 U.S.C. 31136, 31502; 49 CFR 1.48.

Issued on: November 5, 1997.

**George L. Reagle,**

*Associate Administrator for Motor Carriers.*

[FR Doc. 97–29832 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–22–P

# Notices

Federal Register
Vol. 62, No. 219
Thursday, November 13, 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

### Submission for OMB Review; Comment Request

November 7, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) May be obtained by calling (202) 720–6746.

An agency May not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

• Agricultural Marketing Service

*Title:* Regulations for the Donation of Foods for use in the United States, its Territories and Possessions and Areas Under its Jurisdiction (7 CFR Part 250).

*OMB Control Number:* 0581–New.

*Summary of Collection:* The State Option Contract is completed by cooperating State agencies. The States report contractual information to assure the correct billing between the Agency and the State agency.

*Need and Use of the Information:* The information is used to assure compliance with and administration of the SOC program.

*Description of Respondents:* State, Local or Tribal Government

*Number of Respondents:* 20.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 40.

• Food Safety and Inspection Service

*Title:* Processing Procedures and Quality Control Systems.

*OMB Control Number:* 0583–0089.

*Summary of Collection:* The information collection addresses processing procedures for meat and poultry products and quality control systems.

*Need and Use of the Information:* The information is necessary to ensure that meat and poultry products are wholesome, unadulterated, and properly labeled and packaged.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 6,186.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Daily.

*Total Burden Hours:* 743,906.

• Animal and Plant Health Inspection Service

*Title:* Importation of Tomatoes from France, Morocco and Western Sahara, Chile, and Spain.

*OMB Control Number:* 0579–New.

*Summary of Collection:* Each shipment of tomatoes must be accompanied by a phytosanitary certificate stating that the tomatoes were grown in registered greenhouses.

*Need and Use of the Information:* The information will provide importers and consumers in the U.S. with additional sources of tomatoes while continuing to provide protection against the introduction and dissemination of injurious plant pests.

*Description of Respondents:* Business or other for-profit; Individuals or households; Farms.

*Number of Respondents:* 6.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 220.

• Animal and Plant Health Inspection Service

*Title:* Export certification: Accreditation of non-Government Facilities.

*OMB Control Number:* 0579–New.

*Summary of Collection:* Non-government facilities wishing to become accredited laboratories must submit an application and provide information on equipment a quality manual, and personnel employed.

*Need and Use of the Information:* The information will be used to provide additional qualified personnel and laboratory facilities to conduct export certification activities.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 15.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 300.

**Donald Hulcher,**

*Departmental Clearance Officer.*

[FR Doc. 97–29800 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 94–116–7]**

### Agency Information Collection Activities; OMB Approval Received

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Office of Management and Budget's approval of a collection of information contained in the Animal and Plant Health Inspection Service's final rule that allows fresh Hass avocado fruit from Michoacan, Mexico, to be imported into certain areas of the United States under certain conditions.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cheryl Jenkins, APHIS Information

Collection Coordinator, AIM, APHIS, suite 2C42, 4700 River Road Unit 103, Riverdale, MD 20737–1235, (301) 734–5360.

**SUPPLEMENTARY INFORMATION:**

## Background

On February 5, 1997, we published a final rule in the **Federal Register** (62 FR 5293–5315, Docket No. 94–116–5) amending 7 CFR 319.56 to allow fresh Hass avocado fruit from Michoacan, Mexico, to be imported into certain areas of the United States under certain conditions. That rule contains information collection requirements. On October 23, 1997, the Office of Management and Budget (OMB) approved the collection of information requirements with respect to that final rule under OMB control number 0579–0129 (expires October 31, 2000).

Done in Washington, DC, this 6th day of November 1997.

**Charles P. Schwalbe,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–29870 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–34–P

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## DEPARTMENT OF AGRICULTURE

## Food and Consumer Service

## Agency Information Collection Activities: Proposed Collection; Comment Request Forms FCS–683, WIC Farmers' Market Nutrition Program Financial Report and FCS–203, WIC Farmers' Market Nutrition Program Recipient Report, and WIC Farmers' Market Nutrition Program Regulations.

**AGENCY:** Food and Consumer Service, USDA

**ACTION:** Notice

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Service's (FCS) intention to request revision and extension of a currently approved information collection pursuant to the WIC Farmers' Market Nutrition Program Regulations. The currently approved collection includes the WIC Farmers' Market Nutrition Program Financial Report, the WIC Farmers' Market Nutrition Program Recipient Report and WIC Farmers' Market Nutrition Program Regulations. The proposed revision and extension will include a reduction in overall burden under the regulations due to previous overestimation of costs for some reporting items and a reduction in burden for the Recipient Report based on the elimination of the monthly reporting requirement.

**DATES:** Comments on this notice must be postmarked by January 12, 1998.

**ADDRESSES:** Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Barbara Hallman, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of information collection forms and instructions should be directed to: Barbara Hallman or Debra Whitford, (703) 305–2730.

**SUPPLEMENTARY INFORMATION:**

*Title:* WIC Farmers' Market Nutrition Program Financial Report, WIC Farmers' Market Nutrition Program Recipient Report and WIC Farmers' Market Nutrition Program Regulations.

*OMB Number:* 0584–0447.

*Expiration Date:* June 30, 1998.

*Type of Request:* Revision and extension of a Currently Approved Collection Form.

*Abstract:* Pursuant to section 17(m)(8) of the Child Nutrition Act of 1966, 42 U.S.C. § 1786(m)(8), section 248.23 of the WIC Farmers' Market Nutrition Program (FMNP) regulations requires that certain Program-related information be compiled and submitted to FCS. Based on reassessment of our previous calculations for reporting and recordkeeping for the FMNP, we realized that we had overstated the time necessary to complete some reporting items. In addition, respondents' experience in implementing and administering the program has reduced the cost overall. The number of estimated hours per response for selection of farmers/farmers' markets has been reduced from 2 hours to 1 hour for a total of 1,248 burden hours. The number of estimated hours per response for completion of the State Plan has been reduced from 50 hours to 30 hours for a total of 900 burden hours. The overall burden for FMNP regulations has been reduced from 5,952 hours to 4,664 hours.

The burden hours for completion of the FMNP Recipient Report (FCS–203) have been decreased from 1.5 hours to 1 hour per response due to elimination of the requirement for monthly recipient counts. This revision allows States to report annual totals for each category of information indicated on the form rather than entering monthly totals. Due to the short, seasonal nature of the program, it is administratively more efficient for States to report data once for the entire program year rather than on a monthly basis.

*Affected Public:* State Directors of the FMNP, farmers and market managers.

*Estimated Number of Respondents:* 30.

*Estimated Number of Responses Per Respondent:* 39.

*Estimated Total Annual Burden:* Public reporting burden for this collection of information is estimated to average 3 hours per response for the Financial Report (FCS–683); 1 hour per response for the Recipient Report (FCS–203); and 76.5 hours per response for other program reporting requirements that do not require specific forms. Examples include, but are not limited to the submission of State Plans, monitoring requirements and authorization of farmers and markets. These requirements, together with the financial and recipient reporting requirements; give an overall total of 80.5 hours per response. These totals include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Dated: October 30, 1997.

**Yvette S. Jackson,**

*Acting Administrator, Food and Consumer Service.*

[FR Doc. 97–29871 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–30–U

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Environmental Statements; Availability, etc.: Eldorado National Forest, CA

**AGENCY:** Forest Service, USDA.

**ACTION:** Revision of notice of intent to prepare an environmental impact statement.

**SUMMARY:** On November 7, 1989, the Forest Service filed a notice of intent in the **Federal Register** to prepare an environmental impact statement (EIS) to analyze management of off-highway vehicle use in the Rock Creek area, Eldorado National Forest, Georgetown Ranger District, El Dorado County, California. An update was filed in the **Federal Register** on March 5, 1996 to update the expected date for release of the draft EIS (DEIS), provide a list of issues and alternatives considered, and to note that the scope was expanded to include non-motorized uses (hiking, equestrians, and mountain bikes) in response to public comments. Notice of availability of the Rock Creek Recreational Trails DEIS was filed in the **Federal Register** on April 26, 1996. Another update was filed in the **Federal Register** on August 4, 1997, to notify the public that changes were made to the alternatives in response to comments on the DEIS, and that a Revised Draft EIS (RDEIS) was being prepared. Since then, it was determined that five of the six alternatives under consideration would require nonsignificant amendments to the Eldorado National Forest Land and Resources Management Plan (LMRP). For this reason, the responsible official has been changed from the Georgetown District Ranger to the Eldorado National Forest Supervisor. This notice is filed to notify interested parties of the nonsignificant amendments under consideration, the change in responsible official, and the new expected release date.

**DATES:** The RDEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in November 1997. At that time EPA will publish a notice of availability in the **Federal Register**. The public comment period on the RDEIS would normally be 45 days from the date of EPA's notice of availability in the **Federal Register**; however, the comment period will be extended to 60 days.

**ADDRESSES:** John Phipps, Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, CA 95667.

**FOR FURTHER INFORMATION CONTACT:** Direct questions or requests for copies of the EIS to Linda Earley, Interdisciplinary Team Leader, Georgetown Ranger District, 7600 Wentworth Springs Road, Georgetown, California, 95634; phone (916) 333–4312.

**SUPPLEMENTARY INFORMATION:** Work on the EIS began in 1989 with a study of impacts to the Pacific Deer Herd. Since that time the deer study has been completed, issues identified, alternative management plans developed, and extensive data collection and analysis conducted. The draft Rock Creek Recreational Trails EIS was released for public comment in April 1996.

The draft EIS analyzed alternative management plans for all types of recreation uses on the trails: hiking, equestrians, mountain bikes, and OHVs. The need to look at all uses of the trails arose from concerns that other types of recreation use may have some of the same impacts as OHVs; as well as concerns about compatibility of uses. Another concern identified in the analysis is open road densities which exceed limits established in the *Eldorado National Forest Land and Resource Management Plan* (LRMP). Because the EIS analyzes road and trail densities, and because the EIS proposes designation of both open and closed roads for OHV use, it was decided that proposals for road closures to meet the LRMP management direction would also be analyzed in this EIS.

The following issues identified during scoping for this EIS were used to develop and compare alternative management plans.

1. *Erosion:* The bare soils on road and trail surfaces create a potential for erosion. The amount of erosion may be affected by total miles of roads and trails, soil type, trail location, design, maintenance, grade, vegetative cover, type and intensity of use, and use in excessively dry conditions. Use in excessively wet conditions may cause rutting which will accelerate erosion by channeling water.

2. *Water Quality:* Erosion of soils can impact water quality by adding sedimentation to streams. Sedimentation may be affected by erosion from trails, design of stream approaches and crossings, and proximity of trails to streams. Another potential impact to water quality from use of trails is the risk of oil or fuel spills at stream crossings.

3. *Wildlife Species:* Use of the trails has the potential to impact wildlife species primarily through disturbance by human presence or noise. Road and trail densities influence the potential disturbance by providing increased or decreased access into the area.

4. *Air Quality:* Air quality may be affected by emissions from motorized vehicles as well as dust from use of roads and trails.

5. *Noise:* The sound of OHVs is unacceptable to many people, and therefore may have a negative impact on adjacent landowners and the experience of other Forest users. The sound of OHVs may also contribute to disturbance of wildlife.

6. *Opportunity and Quality of the Recreation Experience:* The quality of the recreation experience may be affected by: the condition, variety, and level of challenge of the trails; the availability of staging areas and the level of development there; other uses allowed on the trails; and the aesthetics of the trail experience. Opportunity for recreation is determined by the trail mileage available and uses allowed on each; the number and size of recreation events allowed; and the frequency and duration of trail closures.

7. *Health and Safety:* Safety may be affected by a variety of factors. Width of trails may affect speeds traveled, and therefore risk of accidents. Intersections of roads and trails may pose increased risks of accidents. Combination of equestrian and mountain bike use on trails may pose a risk since bikes come up quietly and may startle horses. Two-way traffic poses a risk for OHVs since they cannot hear each other coming, which could result in a head-on collision. Chipsealing of road surfaces poses a risk to equestrians due to the slippery contact between the chipseal and the horseshoes. Trail structures such as gabions and cinderblocks may also pose a risk to horses. Health may be affected by availability of drinking water and sanitation facilities for recreationists.

8. *Risk of Fire:* Risk of fire is increased by human activity such as campfires and smoking that may be associated with use of trails. Internal combustion engines, such as OHVs also increase the risk, particularly if proper spark arresters are not in place.

9. *Funding:* Levels of funding available affects the ability to maintain trails properly, the number of trails that can be maintained, ability to construct trails, ability to effectively rehabilitate closed trails, the amount of monitoring that can be conducted, and the level of law enforcement that can be maintained. These, in turn, affect the ability to implement the chosen alternative and, therefore, to protect the environment and the quality of the recreation experience.

The following alternatives are analyzed in the revised draft EIS:

**Alternative 1—No Action**

This alternative would continue the current management of the Rock Creek Trails. Most trails in the area are multiple use, open to all four use types: hiking, equestrians, mountain bikes, and OHVs. There are approximately 136 miles of multiple use routes (roads and trails) and 5 miles of routes restricted to non-motorized uses. The current management plan includes closure of the critical deer winter range to OHVs and mountain bikes from generally November 1 to May 1 each year. Trails are also closed to OHVs during wet weather conditions. This alternative would require a nonsignificant LRMP amendment to increase the open road density limit in the Rock Creek area to 3.25 miles per square mile.

**Alternative 2—No OHV Use**

OHV use would be eliminated in this alternative. There would be approximately 46 miles of non-motorized routes available. Approximately 33 miles of roads would be closed. Trails would be closed to equestrians and mountain bikes during wet weather conditions, and staging areas in the critical deer winter range would be closed from February 1 to May 1. Up to two large recreation events, with up to 300 participants, would be allowed each year for each non-motorized use type.

**Alternative 3—Increased Multiple Use Recreation**

This alternative reduces trail closures and allows the maximum trail density. Approximately 130 miles of multiple use routes would be available, and 15 miles of non-motorized routes. Approximately 30 miles of roads would be closed. There would be no closure of the critical deer winter range. Wet weather closures would apply to OHVs, equestrians, and mountain bikes. Up to two large recreation events per year, with up to 500 participants each, would be allowed for each use type. This Alternative would require a nonsignificant LRMP amendment to designate the staging areas as developed recreation sites, and to establish a vegetation buffer along the trails. These amendments would apply to the Rock Creek area only.

**Alternative 4—Separated Multiple Use Recreation**

This alternative addresses concerns about shared use of trails by different types of uses. The system would include approximately 86 miles of multiple use routes, 17 miles of non-motorized routes, 5 miles of hiking only routes, and 11 miles of hiking and equestrian routes. Approximately 28 miles of roads would be closed. Staging areas in the critical deer winter range would be closed from February 1 to May 1. Trails would be closed to OHVs, equestrians, and mountain bikes during wet weather conditions. One large recreation event would be allowed per year for each use type, with up to 300 participants in each. This Alternative would require a nonsignificant LRMP amendment to designate the staging areas as developed recreation sites, to close staging areas in the critical deer winter range from February 1 to May 1, and to prohibit OHV use on trails when the Sale Activity Level is 4 or 5. These amendments would apply to the Rock Creek area only.

**Alternative 5—Reduced Multiple Use Recreation**

This alternative includes approximately 71 miles of multiple use routes and 28 miles of non-motorized routes. Approximately 34 miles of roads would be closed. Routes in the critical deer winter range would be closed to all uses from November 10 to May 1 of each year. Roads and trails would be closed to OHVs, equestrians, and mountain bikes during the Forest seasonal road closures (generally November through March). Trails would be closed to OHVs during Forest fire restrictions (generally August and September). Large recreation events with over 75 people involved would be prohibited. This Alternative would require a nonsignificant LRMP amendment to designate the staging areas as developed recreation sites, to close staging areas in the critical deer winter range from November 10 to May 1, to close trails to OHVs during Forestwide fire restrictions, to close trails in the critical deer winter range to all uses from November 10 to May 1, to prohibit large recreation events, and to limit OHV sound levels to 94 dB using 20-inch SAE J1287 test methods. These amendments would apply to the Rock Creek area only.

**Alternative 6—"Carrying Capacity" Alternative**

This alternative was developed based on a review of effects of other alternatives. The goal of the alternative is to maximize recreation opportunity while providing protection of the natural resources. The system would include approximately 111 miles of multiple use routes, and 14 miles of non-motorized routes. Approximately 34 miles of roads would be closed. Routes would be closed to OHVs, equestrians, and mountain bikes during wet weather conditions. Vegetation treatments, including mastication of brush and understory burning, would be implemented on the critical deer winter range to improve the quantity and quality of forage for the wintering deer. The critical deer winter range would be divided into two zones: north and south. Routes in the south would be closed to OHVs and mountain bikes from November 10 to May 1 each year. Deer use would be monitored and the seasonal deer closure reevaluated in five years. Up to two recreation events, with up to 300 participants, would be allowed each year for each type of use. This Alternative would require a nonsignificant LRMP amendment to designate the staging areas as developed recreation sites, and to close the Crossier Loop Staging Area from November 10 to May 1. These amendments would apply to the Rock Creek area only.

John Phipps, Forest Supervisor, Eldorado National Forest, Eldorado National Forest, is the responsible official.

The revised draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in November 1997. At that time the EPA will publish a notice of availability of the revised draft EIS in the **Federal Register**.

The comment period on the draft EIS would normally be 45 days from the date EPA's notice of availability appears in the **Federal Register**; however, the comment period will be extended to 60 days. It is very important that reviewers participate at that time. To be the most helpful, comments on the revised draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.*v. *NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel*, 803F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the

Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. Comments received, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, the confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the Agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within five days.

After the comment period ends on the revised draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. the final EIS is scheduled to be completed in March 1998. The Forest Service is required to respond in the final EIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal.

Dated: November 3, 1997.

**Raymond E. Laboa,**

*Acting Forest Supervisor, Eldorado National Forest.*

[FR Doc. 97–29791 Filed 11–12–97; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Announcement of a Meeting To Discuss an Opportunity To Join a Cooperative Research and Development Consortium on Brachytherapy Manufacturing Technology

**AGENCY:** National Institute of Standards and Technology.

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Institute of Standards and Technology (NIST) invites interested parties to attend a meeting on December 9, 1997 to discuss the possibility of setting up a cooperative research consortium on Brachytherapy Manufacturing Technology. The goal of the consortium is to identify critical industrial needs for NIST to be involved in source dosimety modeling, developing necessary standards and standard reference materials, and developing and disseminating systems for performing automated high accuracy dosimety measurements and calculations.

**DATES:** The meeting will take place on December 9, 1997 at 10:00 a.m. Interested parties should contact NIST to confirm their interest at the address, telephone number or FAX number shown below.

**ADDRESSES:** The meeting will take place and inquiries should be sent to Room C301, Building 245, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

**FOR FURTHER INFORMATION:** Christopher Soares, 301–975–5589; FAX 301–869–7682

**SUPPLEMENTARY INFORMATION:** Any program undertaken will be within the scope and confines of The Federal Technology Transfer Act of 1986 (Public Law 99–502, 15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may provide ''personnel, service, facilities, equipment, or other resources with or without reimbursement (but not funds to non-federal parties)''—to the cooperative research program.

Members will be expected to make a contribution to the consortium's efforts in the form of personnel, data, and/or funds. This is not a grant program.

The R&D staff of each industrial partner in the Consortium will be able to interact with NIST researchers on generic measurement needs in the industry for specific brachytherapy source designs. The industrial partners will also be able to schedule at NIST collaborative projects in which they could participate. All partners will receive a copy of all non-proprietary data on all materials measured. All partners will have a certain amount of NIST measurements made on materials they request. All partners have some influence as to the type and accuracy of the measurements and calculations pursued by the consortium. Development of standard reference materials suitable for use for the range of activities and radioisotopes and photon energies appropriate for use in brachytherapy in accordance with U.S. regulatory protocols and accepted standard protocols is an integral part of the mission of the NIST Brachytherapy Manufacturing Technology Consortium.

Dated: November 6, 1997.

**Elaine Bunten-Mines,**

*Director, Program Office.*

[FR Doc. 97–29883 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–13–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 970828208–7262–02; I.D. 072997C]**

### Scup and Black Sea Bass; Interstate Fishery Management Plans; Cancellation of Moratorium

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

**ACTION:** Notice of determination of compliance; cancellation of moratorium.

**SUMMARY:** In accordance with the Atlantic Coastal Fisheries Cooperative Management Act of 1993 (Act), the Federal moratorium on fishing for scup and black sea bass in the coastal waters of the State of Maryland and the Commonwealth of Massachusetts that would have been effective on November 15, 1997, is cancelled. The Secretary was notified by the Atlantic States Marine Fisheries Commission (Commission) that because Maryland and Massachusetts are now in compliance with the provisions of the Commission's Interstate Fishery Management Plans (FMPs) for scup and black sea bass, that it was withdrawing its findings and determinations of noncompliance. The Secretary concurs. Accordingly, the moratorium is cancelled.

**DATES:** Effective November 14, 1997.

**FOR FURTHER INFORMATION CONTACT:** Richard H. Schaefer, Chief, Staff Office for Intergovernmental and Recreational Fisheries, NMFS, 301–427–2014.

**SUPPLEMENTARY INFORMATION:**

## Background

On September 12, 1997, NMFS published a document in the **Federal Register** (FR) (62 FR 48060) announcing the Secretary's determination that the State of Maryland and the Commonwealth of Massachusetts were not in compliance with the Commission's FMPs for scup and black sea bass. In the document a moratorium was declared on fishing for these two species in Maryland and Massachusetts state waters, effective November 15, 1997, if Maryland and Massachusetts were not in compliance by November 1, 1997. Details were provided in the September 12, 1997, FR document and are not repeated here.

The Act specifies that, if, after a moratorium is declared with respect to a State, the Secretary is notified by the Commission that it is withdrawing the determination of noncompliance, the Secretary shall immediately determine whether the State is in compliance with the applicable plan(s). If the State is determined to be in compliance, the moratorium shall be terminated.

## Activities Pursuant to the Act

On October 31, 1997, the Secretary received letters from the Commission prepared pursuant to the Act. The Commission's letters stated that the State of Maryland and the Commonwealth of Massachusetts had now in effect regulations on scup and black sea bass implementing the provisions of the Commission's FMPs, and, therefore, the Commission was withdrawing its determinations of noncompliance. In addition, upon further evaluation of the noncompliance status of the Commonwealth of Massachusetts, the Secretary has determined that Massachusetts had in place the proper permit and reporting requirements for scup, and, therefore, was not out of compliance on these measures.

## Cancellation of the moratorium

Based on the Commission's October 31, 1997, letter, and information received from the State of Maryland, the Commonwealth of Massachusetts, and the Department of Interior's U.S. Fish and Wildlife Service, the Secretary has determined that Maryland and Massachusetts are now in compliance with the Commission's FMPs for scup and black sea bass. Therefore, the moratorium on fishing for these species in Maryland and Massachusetts state waters is canceled.

Dated: November 6, 1997.

**David L. Evans,**

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

[FR Doc. 97–29877 Filed 11–7–97; 4:04 pm]

BILLING CODE 3510–22–F

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# COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Bahrain

November 6, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** November 13, 1997.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limit for Categories 338/339 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68241, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 6, 1997.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Bahrain and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 13, 1997, you are directed to increase the limit for Categories 338/339 to 581,866 dozen [1], as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.97–29879 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

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# COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Burma (Myanmar)

November 6, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota

[1] The limit has not been adjusted to account for any imports exported after December 31, 1996.

Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Burma (Myanmar) and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the availability of the 1998 CORRELATION will be published in the **Federal Register** at a later date.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 6, 1997.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Burma (Myanmar) and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 340/640 | 97,791 dozen. |
| 342/642 | 26,414 dozen. |
| 347/348 | 137,005 dozen. |
| 351/651 | 41,513 dozen. |
| 448 | 2,410 dozen. |
| 647/648/847 | 25,548 dozen. |

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 97–29875 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

November 6, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Colombia and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 6, 1997.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following restraint limits:

| Category | Twelve-month limit |
|---|---|
| 315 | 23.696,384 square meters. |
| 443 | 127,799 numbers. |

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.97–29876 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Extension of Suspension of Group II Restriction for Certain Man-Made Fiber Textile Products Produced or Manufactured in India

November 6, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs extending suspension of the Group II restriction for certain products from India.

**EFFECTIVE DATE:** January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Lori Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

A document published in the **Federal Register** on March 31, 1997 (62 FR 15159) announces suspension of the Group II restriction for rayon filament yarn in HTS number 5403.31.0040 in Category 606 from India for the period March 31, 1997 through December 31, 1997.

The Committee for the Implementation of Textile Agreements has decided to extend the suspension for the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998. A visa is still required for this product.

Anyone wishing to comment or provide data or information regarding the treatment of imports in HTS number 5403.31.0040 from India or to comment on domestic production or availability of products included in HTS number 5403.31.0040 is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996).

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 6, 1997.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Effective on January 1, 1998, man-made fiber textile products in HTS 5403.31.0040 in Category 606, in Group II, produced or manufactured in India and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, shall not be subject to the Group II quota established for the 1998 period. A visa is still required for this product.

For U.S. Customs' administrative purposes, the remaining HTS numbers in Category 606 shall be designated Category 606(1) [1].

To facilitate implementation of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing (ATC), I request that, effective on January 1, 1998, entry/entry summary procedures be required, and that you continue to count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2) [2], produced or manufactured in India and exported during the period March 31, 1997 through December 31, 1997.

Also effective on January 1, 1998, I request that entry/entry summary procedures be required, and that you count imports for consumption and withdrawals from warehouse for consumption of textile products in HTS number 5403.31.0040 in Category 606(2), produced or manufactured in India and exported during the period January 1, 1998 through December 31, 1998.

Inasmuch as these imports may later be charged against the Group II level, it is important that an accurate count be taken.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 97–29896 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 606(1): all HTS numbers except 5403.31.0040 (Category 606(2)).

[2] Category 606(2): only HTS number 5403.31.0040.

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 6, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** November 13, 1997.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68143, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 6, 1997.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on November 13, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month level [1] |
|---|---|
| 218 | 11,140,199 square meters. |
| 219 | 63,803,082 square meters. |
| 314 | 7,163,193 square meters. |
| 315 | 12,236,009 square meters. |
| 334/634 | 143,977 dozen. |
| 335/635 | 507,735 dozen. |
| 336/636 | 900,539 dozen. |
| 338/339 | 3,899,054 dozen. |
| 340/640 | 1,996,493 dozen. |
| 342/642 | 1,210,095 dozen. |
| 351/651 | 265,272 dozen. |
| 363 | 42,398,013 numbers. |
| 369–D [2] | 1,250,947 kilograms. |
| 369–S [3] | 510,233 kilograms. |
| 641 | 1,321,069 dozen. |
| 647/648 | 462,706 dozen. |
| Group II 200, 201, 220–229, 237, 239, 300, 301, 330–333, 349, 350, 352, 359–362, 600–607, 611–629, 630–633, 638, 639, 643–646, 649, 650, 652, 659, 665–O [4], 666, 669, 670, and 831–859, as a group. | 110,796,693 square meters equivalent. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2020, 5702.92.0010 and 5703.20.1000 (rugs).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 97–29898 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kuwait

November 6, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kuwait and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period. The 1998 level for Category 361 is zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 6, 1997.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kuwait and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 340/640 | 272,125 dozen. |
| 341/641 | 149,669 dozen. |
| 361 | –0– |

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 4, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such

products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 97–29899 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 6, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, and Memoranda of Understanding (MOUs) dated November 6, 1996 and June 20, 1997, between the Governments of the United States and Nepal establish limits for the period January 1, 1998 through December 31, 1998.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 6, 1997.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended; and Memoranda of Understanding dated November 6, 1996 and June 20, 1997 between the Governments of the United States and Nepal, you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 336/636 | 234,214 dozen. |
| 340 | 338,279 dozen. |
| 341 | 1,086,589 dozen. |
| 342/642 | 295,242 dozen. |
| 347/348 | 761,956 dozen. |
| 363 | 6,890,000 numbers. |
| 369–S [1] | 927,000 kilograms. |
| 640 | 170,254 dozen. |
| 641 | 383,880 dozen. |

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 5, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 97–29874 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Qatar

November 6, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing limits.

**EFFECTIVE DATE:** January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Qatar and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1998 period.

A description of the textile and apparel categories in terms of HTS

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 6, 1997.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Qatar and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

| Category | Twelve-month restraint limit |
|---|---|
| 340/640 | 436,033 dozen. |
| 341/641 | 201,246 dozen. |
| 347/348 | 496,407 dozen. |

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated November 7, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 97–29897 Filed 11–12–97; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Consolidation and Amendment of Export Visa Requirements to Include the Electronic Visa Information System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

November 6, 1997.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs consolidating and amending visa requirements.

**EFFECTIVE DATE:** January 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

In exchange of notes, the Governments of the United States and Thailand agreed to amend the existing visa arrangement for textile products, produced or manufactured in Thailand and exported on and after January 1, 1998. The amended arrangement consolidates existing and new provisions of the export visa arrangement, including provisions for the Electronic Visa Information System (ELVIS). In addition to the ELVIS requirements, shipments will continue to be accompanied by an original visa stamped on the front of the original commercial invoice issued by the Government of Thailand. Goods which currently require an exempt certificate shall not require an ELVIS transmission, but will continue to require the exempt certificate.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the existing visa requirements for textile products produced or manufactured in Thailand and exported on and after January 1, 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 42 Fr 5994, published on February 1, 1977; and 57 FR 2713, published on January 23, 1992.

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, will meet the visa requirements set forth in the letter published below to the Commissioner of Customs.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

November 6, 1997.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 16, 1992, by the Chairman, Committee for the Implementation of Textile Agreements, that directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand for which the Government of Thailand has not issued an appropriate export visa or exempt certification.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and pursuant to the Uruguay Round Agreements Act, the Uruguay Round Agreement on Textiles and Clothing (ATC) and the Export Visa Arrangement, effected by exchange of notes between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1998, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200–239, 300–369, 400–469, 600–670 and 800–899, including part categories and merged categories (see Annex A), produced or manufactured in Thailand and exported on and after January 1, 1998 for which the Government of Thailand has not issued an appropriate export visa and Electronic Visa Information System (ELVIS) transmission or exempt certification fully described below. Should additional categories, part categories or merged categories become subject to import quota the entire category(s), part category(s) or merged category(s) shall be included in the coverage of this arrangement.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice or its successor document. The original visa shall not be

stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Thailand is ''TH''), and a six digit numeric serial number identifying the shipment; e.g., 8TH123456. Typewritten letters and numbers may be used in the visa seal instead of handwritten letters and numbers.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued, which could be the year after the actual date the merchandise leaves the country of exportation. However, the date of export and the year of the visa must agree. For example, if the date of export is 1997, the visa number must begin with ''7TH,'' even though the date of issuance is 1998.

3. The original signature of the issuing official of the Royal Thai Government.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment in the unit(s) of quantity provided for in the bilateral agreement shall be reported in the spaces provided within the visa stamp (e.g., ''Cat. 434–210 DZ'').

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., quota Category 359–H/659–H may be visaed as 359–H/659–H or if the shipment consists solely of Category 359–H merchandise, the shipment may be visaed as ''Category 359–H,'' but not as ''Category 659–H''). If, however, a merged quota category such as 625/626/627/628/629 has a quota sublimit on Category 625, then there must be a ''Cat. 625'' visa for the shipment if it includes Category 625.

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

If the visa is not acceptable then a new visa must be obtained from the Government of Thailand or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Embassy of Thailand in Washington, DC., and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. Visa waivers will only be issued for classification purposes or for one time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, the U.S. Customs Service will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If a shipment from Thailand has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, the shipment will be charged to the correct category limit whether or not a replacement visa or waiver is provided.

ELVIS Requirements:

An ELVIS transmission as well as an export visa is required for each non-exempt entry subject to this directive.

A. Each ELVIS message will include the following information:

I. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for Thailand is ''TH''), and a six digit numeric serial number identifying the shipment; e.g., 8TH123456.

II. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued, which could be the year after the actual date the merchandise leaves the country of exportation. However, the date of export and the year of the visa number must agree. For example, if the date of export is 1997, the visa number must begin with ''7TH,'' even though the date of issuance is 1998.

III. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, annotated or successor documents.

IV. The quantity of the shipment in the correct units of quantity.

V. The manufacturer ID number (MID). The MID shall begin with ''TH,'' followed by the first three characters from each of the first two words of the name of the manufacturer, followed by the largest number on the address line up to the first four digits, followed by three letters from the city name. However, due to the absence of an official English language address conversion in Thailand, the Government of Thailand shall provide the most accurate MID number possible to the U.S. Customs Service. The U.S. Government understands and acknowledges that the MID number is highly sensitive and should be kept confidential for official use only. The MID number is not to be released to third parties without prior written consent by the Government of Thailand.

B. Entry of a shipment shall not be permitted:

I. if an ELVIS transmission has not been received for the shipment from Thailand;

II. if the ELVIS transmission for that shipment is missing any of the following:

a. visa number

b. category, part category or merged category

c. quantity

d. unit of measure

e. date of issuance

f. manufacturer ID number

III. if the ELVIS transmission for the shipment does not match the information supplied by the importer or the Customs Broker acting as an agent on behalf of the importer, with regard to any of the following:

a. visa number

b. category, part category or merged category

c. unit of measure

d. manufacturer ID number

IV. if the quantity being entered is greater than the quantity transmitted.

V. if the visa number has previously been used, or canceled, except in the case of a split shipment or if any entry has already been made using the visa number.

C. A new, correct ELVIS transmission from the country of origin is required before a shipment that has been denied entry for one of the circumstances mentioned in paragraph B.I–V will be released.

D. Visa waivers will only be considered for circumstances described in paragraph B.I, if the shipment qualifies as a one time special purpose shipment that is not part of an ongoing commercial enterprise or for legitimate classification disputes.

E. Shipments will not be released for forty-eight hours in the event of a system failure. If system failure exceeds forty-eight hours, for the remaining period of the system failure the U.S. Customs Service will release shipments on the basis of the paper visaed document.

If a shipment from Thailand has been allowed entry into the commerce of the United States with an incorrect visa, no visa, an incorrect ELVIS transmission, or no ELVIS transmission, and redelivery is requested but cannot be made, and if the Government of Thailand does not issue a visa or ELVIS transmission or request a visa waiver (if applicable), the shipment will be charged to the correct category limit whether or not a replacement visa or visa waiver is provided or a new ELVIS tansmission is transmitted.

Exempt certification requirements:

A. The exempt certification system established in a directive dated January 26, 1977, as amended, which exempts handmade cottage industry products of handloomed fabric, and an agreed list of Thai traditional folklore products, shall be continued unchanged, except for the following:

1. The exemption for all items valued at U.S.$250 or less shall not be continued.

2. Handloomed fabrics produced in Thailand may be certified as exempt.

3. The exemption for handknotted/tufted carpets shall be clarified to be for ''handmade carpets,'' (i.e., carpets in which the pile was inserted/knotted by hand in HTS numbers 5701.10.1600 (Category 465), 5701.10.4000 (Category 465), 5702.42.2020 (Category 665), 5702.49.1020 (Category 369); and 5703.20.1000 (Category 665)).

B. Textiles and textile articles provided for in the exempt certification system ae exempt

from the levels of restraint (quotas), and visa and ELVIS requirements if they are properly certified, prior to the shipment leaving Thailand.

Other Provisions:

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa or ELVIS transmission for entry and shall not be charged to agreement levels.

Any shipment which is not accompanied by a valid and correct visa with an ELVIS transmission or exempt certification in accordance with the foregoing provisions shall be denied entry by the Government of the United States unless the Government of Thailand authorizes the entry and any charges to the agreement levels.

The actions taken concerning the Government of Thailand with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the **Federal Register**.

Sincerely,

Troy H. Cribb,

*Chairman, Committee for the Implementation of Textile Agreements.*

## Annex A

Part Categories (Descriptions below are for general reference only.)

| | |
|---|---|
| 301–P | Chief weight cotton combed yarn, less than 85 percent cotton: only HTS numbers 5206.21.0000, 5206.22.0000, 5206.23.0000, 5206.24.0000, 5206.25.0000, 5206.41.0000, 5206.42.0000, 5206.43.0000, 5206.44.0000 and 5206.45.0000. |

## Annex A—Continued

| | |
|---|---|
| 301–O | Chief weight cotton combed yarn, 85 percent or more cotton: only HTS numbers 5205.21.0020, 5205.21.0090, 5205.22.0020, 5205.22.0090, 5205.23.0020, 5205.23.0090, 5205.24.0020, 5205.24.0090, 5205.26.0020, 5205.26.0090, 5205.27.0020, 5205.27.0090, 5205.28.0020, 5205.28.0090, 5205.41.0020, 5205.41.0090, 5205.42.0020, 5205.42.0090, 5205.43.0020, 5205.43.0090, 5205.44.0020, 5205.44.0090, 5205.46.0020, 5205.46.0090, 5205.47.0020, 5205.47.0090, 5205.48.0020 and 5205.48.0090. |
| 359–H | Cotton headwear: only HTS numbers 6505.90.1540 and 6505.90.2060. |
| 359–O | Other cotton apparel, not elsewhere specified: all HTS numbers except those in Category 359–H. |
| 369–D | Cotton dish towels: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045. |
| 369–S | Cotton shop towels: only HTS number 6307.10.2005. |
| 369–O | Other cotton made-ups, not elsewhere specified: all HTS numbers except those in Category 369–D and Category 369–S. |
| 604–A | Piled acrylic spun yarn: only HTS number 5509.32.0000. |
| 604–O | Other staple fiber yarn, 85 percent or more synthetic: all HTS numbers except those in Category 604–A. |
| 659–H | Man-made fiber headwear: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090. |

## Annex A—Continued

| | |
|---|---|
| 659–O | Other man-made fiber apparel, not elsewhere specified: all HTS numbers except those in Category 659–H. |
| 669–P | Man-made fiber bags: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000. |
| 669–O | Other man-made fiber manufactures, NSPF: all HTS numbers except those in Category 669–P. |

Merged Categories and Subcategories

317/326
331/631
334/634
335/635/835
336/636
338/339
341/641
342/642
347/348/847
351/651
359–H/659–H
613/614/615 (Subcategories 614 and 613/615)
625/626/627/628/629 (Subcategory 625)
638/639
645/646
647/648

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## COMMODITY FUTURES TRADING COMMISSION

### Chicago Board of Trade Futures Contracts in Corn and Soybeans; Order To Change and To Supplement Delivery Specifications

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final order to Chicago Board of Trade to change and to supplement delivery specifications.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is issuing an Order to the Board of Trade of the City of Chicago (CBT), under Section 5a(a)(10) of the Commodity Exchange Act (Act), 7 U.S.C. 7a(a)(10), to change and to supplement the delivery terms of the CBT corn and soybean futures contracts. The CBT submitted proposed changes to the delivery specifications of its corn and soybean futures contracts in response to a December 19, 1996, notification to the CBT by the Commission that the CBT corn and soybean futures contracts no longer accomplish the objectives of that section of the Act. The Commission in

its Order changes and supplements the CBT proposal for its soybean futures contract by making all changes to such CBT rules as required to effect the following: (i) retaining the Toledo, Ohio switching district as a delivery location; (ii) retaining St. Louis-East St. Louis-Alton as a delivery location for shipping stations; and (iii) making soybeans from the Toledo delivery location deliverable at contract price and from all other locations at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price.

The Commission changes and supplements the CBT proposal for its corn futures contracts by making corn from shipping locations on the northern Illinois River deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price. With respect to both the CBT corn and soybean futures contracts, the Commission also is ordering that the proposed CBT contingency plan for alternative delivery procedures when traffic on the northern Illinois River is obstructed be changed and supplemented and is ordering that the $40 million minimum net worth eligibility requirement for issuers of shipping certificates be eliminated. Finally, the Commission is disapproving the proposed terms for the March, July and December 1999 corn futures contracts and the January, July and November 1999 soybean futures contracts. Such contract months and any other 1999 contract months are hereby authorized to trade under the existing contract terms. The terms of the corn and soybean futures contracts proposed by the CBT as changed and supplemented herein will apply beginning with the January 2000 soybean futures contract and the March 2000 corn futures contract.

The Commission has determined that publication of the Order is in the public interest, will provide the public with notice of its action, and is consistent with the purposes of the Commodity Exchange Act.

**DATES:** This Order became effective on November 7, 1997.

**ADDRESSES:** Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

**FOR FURTHER INFORMATION CONTACT:** John Mielke, Acting Director, or Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, Mr. Architzel at [PArchitzel@cftc.gov].

**SUPPLEMENTARY INFORMATION:** Section 5a(a)(10) of the Act provides that, as a condition of contract market designation, boards of trade are required to:

> Permit the delivery of any commodity, on contracts of sale thereof for future delivery, of such grade or grades, at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. If the Commission after investigation finds that the rules and regulations adopted by a contract market permitting delivery of any commodity on contracts of sale thereof for future delivery, do not accomplish the objectives of this subsection, then the Commission shall notify the contract market of its finding and afford the contract market an opportunity to make appropriate changes in such rules and regulations. If the contact market within seventy-five days fails to make the changes which in the opinion of the Commission are necessary to accomplish the objectives of this subsection, then the Commission after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *.

The Commission, on November 7, 1997, issued an Order under section 5a(a)(10) of the Act to change and to supplement the delivery specifications proposed by the CBT for its corn and soybean futures contracts. That proposal was submitted in response to prior Commission notification to the CBT that its futures contracts for corn and soybeans no longer were in compliance with the requirements of section 5a(a)(10) of the Act. The text of the Order is set forth below.

In the Matter of the Section 5a(a)(10) Notification to the Board of Trade of the City of Chicago Dated December 19, 1996, Regarding Delivery Point Specifications of the Corn and Soybean Futures Contracts

Dated: November 7, 1997.

Order of the Commodity Futures Trading Commission to Change and to Supplement Proposed Rules of the Board of Trade of the City of Chicago Submitted for Commission Approval in Response to a Section 5a(a)(10) Notice Relating to Futures Contracts in Corn and Soybeans.

The Commodity Futures Trading Commission (CFTC or Commission) hereby orders changes and supplements to the Board of Trade of the City of Chicago (CBT) proposed rules relating to its futures contracts in corn and soybeans as shown in attachment 1 to this Order. Under this Order, the Commission takes the following actions:

(1) changes and supplements under section 5a(a)(10) of the Commodity Exchange Act (Act) the proposed delivery specifications of the CBT's soybean futures contract by making all changes to such rules as required to effect the following:

i. retaining the Toledo, Ohio switching district as a delivery location;

ii. retaining St. Louis-East St. Louis-Alton as a delivery location for shipping stations; and

iii. making soybeans from the Toledo delivery location deliverable at contract price and making soybeans from shipping locations within the St. Louis-East St. Louis-Alton and the northern Illinois River delivery locations deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price;

(2) changes and supplements under section 5a(a)(10) of the Act the proposed delivery specifications of CBT's corn futures contract by making all changes to such rules as required to make corn from shipping locations on the northern Illinois River deliverable at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois, with Chicago at contract price;

(3) changes and supplements under section 5a(a)(10) of the Act the proposed CBT contingency plan for alternative delivery when river traffic is obstructed by reducing the continuous period of such an obstruction which triggers application of the plan's special procedures from the 45 days proposed to 15 days, by eliminating the condition which triggers the contingency plan that notice of the obstruction must have been given six-months prior to such an obstruction, by making the contingency plan applicable whenever a majority of shipping stations within the northern Illinois River delivery area is affected by an obstruction and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent;

(4) changes and supplements under sections 5a(a)(10) and 15 of the Act the proposed CBT corn and soybean futures contracts by eliminating the $40 million minimum net worth eligibility requirement for issuers of shipping certificates;

(5) disapproves under sections 5a(a)(10), 5a(a)(12), and 15 of the Act and Commission rule 1.41(b) CBT's proposed terms for the March, July, and December 1999 corn futures contracts and the January, July, and November 1999 soybean futures contracts. Such contract months and any other 1999 contract months are hereby authorized to trade under the existing contract terms or, if the CBT so elects, under the contract terms proposed by the CBT as changed and supplemented by this Order;

(6) orders that the terms of the corn and soybean futures contracts proposed by the CBT as changed and supplemented by this Order shall apply to contract months beginning with and subsequent to the January 2000 soybean futures contract month and the March 2000 corn futures contract month, whenever such contract months are listed for trading.

Nothing in this Order precludes the CBT from submitting for Commission review and approval under sections 5a(a)(10) and 5a(a)(12) of the Act any alternative proposed delivery specifications for its corn or soybean futures contracts.

The Commission, as discussed below, bases these actions on its finding that the CBT proposal in response to the Commission's section 5a(a)(10) notification relating to the CBT's corn and soybean futures contracts does not meet the requirements, or accomplish the statutory objectives, of that section and also violates sections 8a(7) and 15 of the Act. The Commission's determination is based upon: (1) the inadequate amount of deliverable supplies of soybeans available under the proposed contract terms in the delivery area as proposed by the CBT; (2) the failure of the CBT's proposed corn and soybean contracts to include required locational differentials; (3) the failure of the CBT's proposed corn and soybean contracts to provide an adequate rule for alternative deliveries if river transportation is obstructed; and (4) the substantial impediment to eligibility for issuing corn and soybean shipping certificates imposed by the CBT's proposed $40 million net worth requirement.

Specifically, under the CBT proposal, the amount of deliverable supplies of soybeans during the critical summer delivery months of July, August, and September fails to meet the level that, in the opinion of the Commission, is necessary to tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of soybeans in interstate commerce. The gross amount of potentially deliverable supplies historically has failed to reach an adequate level on a significant number of occasions during the past 11 years which the Commission has examined. Moreover, on those occasions when the gross amount of potentially deliverable supplies did reach that level, it frequently did so only because of supplies available at the Chicago/Burns Harbor (Chicago) delivery point, the continuing decline of which precipitated the section 5a(a)(10) notification in the first instance. This inadequacy is further demonstrated when required downward adjustments are made to reflect only that portion of gross deliverable supplies which would likely be available for futures deliveries. Thus, gross deliverable supplies would be diminished by the effects of the proposed three-day barge queuing rule, prior commercial commitments of available stocks, the lack of locational price differentials, and the unjustifiably high financial eligibility requirements. The frequent interruptions in barge transportation on the northern Illinois River due to lock closings and weather conditions also create foreseeable disruptions to deliverable supplies under the CBT proposal. The inadequacy of deliverable supplies of soybeans under the CBT proposal requires the retention of the CBT's current delivery points at Toledo and St. Louis, where additional deliverable supplies would be available.

The Commission does not find that available deliverable supplies of corn under the CBT's proposal are so inadequate under section 5a(a)(10) as to require additional delivery points. However, changes and supplements to other aspects of the CBT's proposal as to its corn contracts are required to meet the objectives of section 5a(a)(10), as discussed below. Moreover, the adequacy of corn supplies cannot be accurately and fully ascertained until after there is a history of deliveries occurring under the CBT's proposal, as changed and supplemented by this Order. If in operation the proposal results in inadequate deliverable supplies of corn, the Commission will reconsider the need to require additional delivery points for the corn contract. To that end, the Commission directs the CBT to report on the experience with deliveries and expiration performance in the corn futures contract on an annual basis for a five-year period after contract expirations begin under the revised contract terms.

Neither the CBT proposal for soybeans nor its proposal for corn provides for locational price differentials among spatially separated delivery points, as section 5a(a)(10) of the Act requires. In addition to tending to reduce deliverable supplies, the lack of locational price differentials reflecting the differentials in the underlying cash markets for corn and soybeans would render the futures contracts susceptible to price manipulation, market congestion, and the abnormal movement of the commodities in interstate commerce.[1]

In addition, the proposed contingency plan providing for alternative delivery procedures when river traffic is obstructed does not meet the objectives of section 5a(a)(10). By requiring lengthy advance notice of a river traffic obstruction before the contingency plan applies, by limiting the contingency plan only to instances of river traffic obstructions south of the delivery area, by limiting the relevant river traffic obstructions to lock closures, by requiring unduly lengthy obstructions, and by specifying a differential that does not conform to the locational differentials found to be appropriate by the Commission, the CBT's proposed plan fails to diminish the potential for price manipulation, market congestion, or the abnormal movement of the commodities in interstate commerce arising from foreseeable river traffic obstructions.

Finally, in addition to its likely detrimental effect on the amount of available deliverable supplies on the contracts, the proposed $40 million net worth eligibility requirement for issuers of shipping certificates poses a significant, unnecessary, and unjustified barrier to entry to those wishing to participate as issuers of shipping certificates on the contracts in violation of section 15 of the Act. This proposed $40 million net worth requirement is in addition to other minimum financial requirements that shipping certificate issuers must meet, including minimum working capital of $2 million, a bond or other financial guarantee equal to the full market value of all outstanding shipping certificates, and a limitation on the value of outstanding certificates an issuer may issue to 25 percent of the issuer's net worth. These requirements are fully adequate to ensure the financial ability of issuers to perform their responsibilities under the contracts. The burden imposed by the

[1] The lack of locational price differentials not only violates section 5a(a)(10) of the Act, but also is contrary to Commission Guideline No. 1 and the Commission's policy on differentials. *See*, CFTC Guideline No. 1, 17 CFR part 5, appendix A; and Memorandum from Mark Powers, Chief Economist to the Commission, dated March 22, 1977, adopted by the Commission at its meeting of May 3, 1977 (Powers Memorandum).

additional $40 million net worth requirement on those otherwise eligible to participate in the contract as shipping certificate issuers would not only be unnecessary, but would act as a significant barrier to participation as an issuer and would create and tend to preserve a high level of concentration among issuers.

The Commission's conclusions, as discussed in greater detail below, are supported by factual analyses made by the CFTC staff and by a large number of well-informed written comments submitted to the Commission by commercial users of the corn and soybean futures contracts and by other interested persons both prior to and in response to the Commission's issuance of the proposed order. The Commission also analyzed the documentary evidence submitted by the CBT and other commenters in support of the CBT proposal. In addition, the CBT and other interested members of the public presented oral and written comments to the Commission during an open meeting of the Commission prior to its issuance of the proposed order. The CBT was also heard by the Commission at a public hearing convened subsequent to issuance of the proposed order. The written and oral comments of the CBT received in connection with that hearing, along with comments filed by the public on the proposed order and written exceptions filed by the CBT, were reviewed by the Commission and were considered by it in arriving at its conclusions and in adopting this final Order.

The CBT and a number of commenters raised objections to the Commission's proposed order. In response to some of these points, the Commission has made a number of changes from the order as proposed in adopting this Order as final. These changes include revisions to the calculation of some of the data in the Order. These revisions were made in response to suggestions and questions raised by the CBT at its hearing and in its various filings and in informal discussions with the CBT staff. They reflect corrections of calculations and of the formatting of certain data submitted to the Commission by the CBT. In addition, at the suggestion of the CBT in its oral and written statements filed at the hearing and in its written exceptions filed thereafter, the Commission has modified its estimate of September corn and soybean production.

The final Order clarifies two provisions in attachment 1 by deleting several references to ''warehouse receipts'' which appeared in attachment 1 to the proposed order because they are surplusage.

In addition, as explained in greater detail below, the Commission has determined to authorize for trading the 1999 contract months in the CBT's corn and soybean futures contracts under the current terms of those contracts, while disapproving the CBT's proposed terms for those contracts. In doing so, the Commission is responding to many commenters who requested that the Commission authorize the listing of these trading months in order to permit trading without delays or interruption. The Commission recognizes the urgent need to have certainty with respect to the terms of those contracts and the legality of their listing.

This action by the Commission permits the continuation of trading in the corn and soybean contracts under the current terms, which are familiar to the CBT, its members, and the agricultural users of these contracts, until contract months for the year 2000, which would be governed by the new terms of the contracts as contained in this Order. In the interim the CBT will continue to be free to propose revisions of the new terms to the Commission for its consideration under sections 5a(a)(10) and 5a(a)(12) or to submit a petition to the Commission to reconsider or to amend this Order. If the CBT believes that an alternative to the new terms and to its original proposal would better serve its business interests and would also meet the statutory requirements, the CBT should submit such a proposed rule revision or petition.

**I. The Section 5a(a)(10) Proceeding**

The Commission, by letter dated December 19, 1996, commenced this proceeding by issuing to the CBT a notification under section 5a(a)(10) of the Act finding that the delivery specifications of its corn and soybean futures contracts no longer accomplish the statutory objectives of ''permit[ting] the delivery of any commodity * * * at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.'' Letter of December 19, 1996, to Patrick Arbor from the Commission, 61 FR 67998 (December 26, 1996) (section 5a(a)(10) notification). The section 5a(a)(10) notification detailed long-term trends in the storage, transportation and processing of corn and soybeans, related those trends to changes in cash market conditions at the CBT delivery locations, and analyzed the lack of consistency between the cash market for these commodities and the delivery provisions of the contracts. Id. at 68000–68004.

The section 5a(a)(10) notification also recounted the CBT's failure over the last 25 years adequately to address these structural problems with the contracts. As noted in the section 5a(a)(10) notification, section 5a(a)(10) was itself expressly added to the Act in 1974 after a number of apparent manipulations and problem liquidations involving the CBT grain contracts. *Id.* at 68005. In July 1989 an emergency action was required relating to CBT's soybean contract because of a commercial trader's holding of futures positions which substantially exceeded the total amount of soybeans that could be delivered at the contract's delivery points. By 1991 several major studies had been completed demonstrating the inadequacy of the CBT's delivery points. Nevertheless, the CBT's response to these problems was limited. *Id.* at 68006. As the Commission noted in the section 5a(a)(10) notification, when the Commission approved certain changes proposed by the CBT to address these problems in 1992, it cautioned that the CBT's response was merely a short-term palliative and urged the CBT actively to consider more significant contract changes. *Id.* at 68007.

Only three years later, three of the existing six Chicago warehouses regular for delivery under the futures contracts ceased operations, a symptom of the serious, fundamental problems with the contracts' delivery specifications. At the urging of the Commission, the CBT formed a special task force to address the delivery problems. That task force spent a year developing proposed changes to the contracts' specifications which were modified by the CBT's board of directors. The modified proposal was then defeated by a vote of the CBT membership on October 17, 1996.

Subsequently, after an additional Chicago delivery warehouse stopped accepting soybeans and corn in late October 1996, the Commission formally commenced this proceeding under section 5a(a)(10) of the Act on December 19, 1996. The section 5a(a)(10) notification found that the CBT corn and soybean futures contracts no longer met the requirements of that section of the Act and notified the CBT that it had until March 4, 1997, the statutory period of 75 days, to submit for Commission approval proposed amendments to the contracts' delivery specifications to bring them into compliance with the Act.

The CBT, on April 16, 1997, submitted its response to the section 5a(a)(10) notification in the form of proposed exchange rule amendments.[2] Previously, the Commission had published the substance of the CBT's proposed amendments in the **Federal Register** for a 15-day comment period.[3] 62 FR 12156 (March 14, 1997). In response to requests for additional time to comment on the proposal, the Commission on April 24, 1997, extended the comment period until June 16, 1997. 62 FR 1992.[4]

The CBT requested the opportunity to appear before the Commission ''to address issues that have been generated during the comment period.''[5] The Commission granted the CBT's request (62 F.R. 29107 (May 29, 1997)), holding a public meeting on June 12, 1997, to accept oral and written statements by the CBT and interested members of the public. The participants represented a cross-section of views, both favoring and opposing the CBT proposal.[6]

On September 15, 1997, the Commission issued a proposed order, publishing its text in the **Federal Register** with a request for public comment.[7] 62 FR 49474 (September 22, 1997). It should be noted that problems under the current corn and soybean contracts have continued to the present. For example, the September 1997 soybean contract experienced significant price distortions during September apparently due in part to shortness of available deliverable supplies.

The comment period on the proposed order expired on October 22, 1997. Over 230 commenters submitted comments to the Commission on the proposed order.[8] In addition, the Commission held a public hearing on October 15, 1997, at which the CBT was afforded the opportunity mandated under section 5a(a)(10) of the Act to appear before the Commission and to be heard. In addition to its oral presentations, the CBT submitted written statements and documentary evidence. A transcript of the hearing and all attendant written statements and documents have been included in the public comment file of this proceeding.[9] The CBT was also provided with an opportunity to file exceptions to the proposed order by October 22, 1997, and the CBT did so.

## II. The CBT Proposal Responding to the Section 5a(a)(10) Notification

In correspondence dated April 16, 1997, the CBT responded to the section 5a(a)(10) notification by submitting proposed amendments to the terms and conditions of its corn and soybean futures contracts for Commission review. The data submitted by the CBT to justify its proposal were inadequate to permit a determination of whether the proposal met the requirements of section 5a(a)(10) of the Act and contained certain flaws.[10] Therefore, the Commission was required independently to collect and to analyze the data necessary for a proper analysis of the CBT's proposal. The CBT supplemented its original submission on more than one occasion—most recently on August 25, 1997. It also modified and supplemented its analysis supporting its proposal during the meeting of June 12, 1997, during the hearing of October 15, 1997, and in its various written submissions and comments.

The CBT's proposal would replace the existing delivery system involving delivery of warehouse receipts representing stocks of grain stored at terminal elevators in Chicago, Toledo, and St. Louis with delivery of shipping certificates.[11] A shipping certificate

[2] While the CBT labeled its submission of the proposed rule amendments as having been made pursuant to section 5a(a)(12) of the Act as well as section 5a(a)(10), the Commission is applying its authority and procedures set forth in section 5a(a)(10) with regard to its consideration of the CBT's submission.

Section 5a(a)(12) of the Act provides that ''the Commission shall disapprove after appropriate notice and opportunity for hearing any such [exchange] rule which the Commission determines at any time to be in violation of the provisions of this Act or the regulations of the Commission.'' In addition, section 8a(7) of the Act empowers the Commission to alter or to supplement exchange rules as necessary or appropriate ''to insure fair dealing in commodities traded for future delivery on such contract market.'' Such changes or alterations may address contract terms or conditions, among other matters.

The Commission is exercising its authority under section 5a(a)(10) of the Act to change and to supplement the CBT proposal. Nevertheless, the Commission, for the reasons discussed in this Order, necessarily also finds that the CBT proposal must be disapproved under section 5a(a)(12) of the Act as being inconsistent with the requirements of sections 5a(a)(10), 8a(7) and 15 of the Act and must be altered and supplemented under section 8a(7) of the Act.

[3] On March 4, 1997, the CBT notified the Commission that its Board had authorized the submission of the proposed amendments to the CBT membership for a formal vote. On April 15, 1997, the CBT membership voted in favor of the proposed amendments, and the CBT formally submitted them for Commission review the next day.

[4] Also on April 24, 1997, the CBT informed the Commission by letter that it would the next day list, or relist, for trading the July and December 1999 corn futures contract months and the July and November 1999 soybean futures contract months. By letter dated May 2, 1997, the Commission notified the CBT that the listing or relisting of these contract months ''is not legally authorized at the present time,'' that the Commission ''reserves all of its authority under sections 5a(a)(10), 5a(a)(12) and 8a(7) of the Act to approve, disapprove, supplement, or modify the proposed delivery specifications of the CBT corn and soybeans futures contract and to apply that determination to the[se] . . . trading months,'' and that the CBT ''must notify all market participants that the Commission has not approved the listing of these contract months.''

[5] The Commission received almost 700 comments on the CBT's proposal, the largest number of comments ever received by the Commission on any issue before it. The vast majority of the comments were opposed to the CBT proposal for a variety of reasons. Many of the comments were well reasoned and contained valuable factual information and data which were important supplements to the information provided by the CBT in its submission.

[6] Written statements in connection with the meeting were submitted to the Commission for inclusion in the record and, along with a transcript of the meeting, have been entered into the Commission's comment file. Participants included a United States Senator, a United States Representative and a state government representative from the state of Ohio, (transcript at 69–75, 29–35, 19–26); a United States Representative and a state government representative from the state of Michigan, (transcript at 9–14, 14–19); representatives of six commercial users of the contracts (transcript at 116–168); and representatives of three producer associations (transcript at 169–183). The CBT presented its views through the statements of six persons (transcript at 27–29, 36–69).

[7] Subsequently, the Commission also published for public comment notice that it was proposing to disapprove application of the terms proposed by the CBT to the January 1999 soybean futures contract and the March 1999 corn futures contract. 62 FR 5108 (September 30, 1997). The CBT purportedly listed those futures contracts for trading after issuance of the September 15, 1997, proposed order. The comment period on that notice also ended on October 22, 1997.

[8] Comments were received by the Commission offering a wide range of opinion. Many took issue with the philosophy underlying the section 5a(a)(10) statutory authority which permits the Commission to order an exchange to change or to supplement contract terms that in its opinion do not accomplish the objectives of providing for delivery at such point or points and at such price differentials as will tend to prevent or to diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce. Others took issue with the Commission's proposed order for not going far enough, particularly with respect to its failure to order the retention of Toledo and St. Louis as delivery points for the CBT corn contract. As discussed above, the Commission has considered carefully all of the comments submitted and has made several changes or modifications to the final Order in response to them.

[9] Testimony given by CBT spokespersons during the October 15, 1997, public hearing, as reflected in the hearing transcript, is cited hereinafter by using the abbreviation ''tr.'' followed by the relevant page number(s). Citations to the CBT letter of exceptions dated October 22, 1997, use the abbreviation ''October 22, 1997 exceptions'' followed by the relevant page number(s).

[10] In this regard, the Act, Guideline No. 1, and Commission rule 1.41 provide that an exchange must demonstrate that its proposed rule amendments meet the requirements of the law. When exchange submissions fail to provide sufficient information to permit the Commission to make a determination, the Commission can refuse to consider a proposed amendment and can remit the proposed rule for further justification. *See*, 17 CFR 1.41(b). However, in this case the Commission chose to supplement the CBT submission with its own research and to act on the CBT proposal.

[11] A shipping certificate is a negotiable instrument that represents a commitment by the

Continued

would provide for corn or soybeans to be loaded into a barge at one of the shipping stations located along a 153-mile segment of the Illinois River from Chicago (including Burns Harbor, Indiana) to Pekin, Illinois. (See map below.) Delivery in Chicago would also be permitted by rail or vessel. Delivery at all eligible locations would be at par. The CBT's proposal would eliminate the current delivery points on its corn and soybean futures contracts at Toledo, Ohio, and St. Louis, Missouri.

In addition to having a shipping station located along the specified segment of the Illinois River capable of loading barges, firms eligible to issue shipping certificates would be required to meet a minimum net worth standard of $40 million. This minimum net worth standard is not applicable to the CBT's other agricultural futures contracts and would be in addition to the CBT's existing requirement of $2 million working capital required of firms regular for delivery under all of its futures contracts for agricultural products. The CBT proposal also would require the issuer to have a letter of credit or other guaranteed credit instrument collateralizing the full market value of the issued certificates and would establish limits on the amount of outstanding shipping certificates issued by an issuer. These limitations would be: (a) for northern Illinois River locations, 30 times the registered daily barge loading rate of each shipping station; (b) a value no greater than 25% of the issuer's net worth; and (c) for Chicago locations only, the registered storage capacity of the facility.

In addition, the proposal would impose requirements regarding an issuer's rate of loading barges.[12] Once a shipping certificate was surrendered to the issuer, the issuer would have to begin loading product within three business days of surrender and receipt of loading orders or one business day after placement of the certificate holder's barge, whichever were later. This loading would be required to take precedence over all other barge loadings for eight hours per day at the issuer's loading facility.

Shipping certificate holders would be required to pay shipping certificate issuers a daily premium charge until the certificate were surrendered.[13] The last trading day for expiring corn and soybean futures months would be the business day preceding the 15th calendar day of the delivery month, with all deliveries of shipping certificates required to be completed by the second business day following the last trading day. (Currently, the last trading day is the eighth-to-last business day of the delivery month, with futures delivery of warehouse receipts continuing through the end of the month.)

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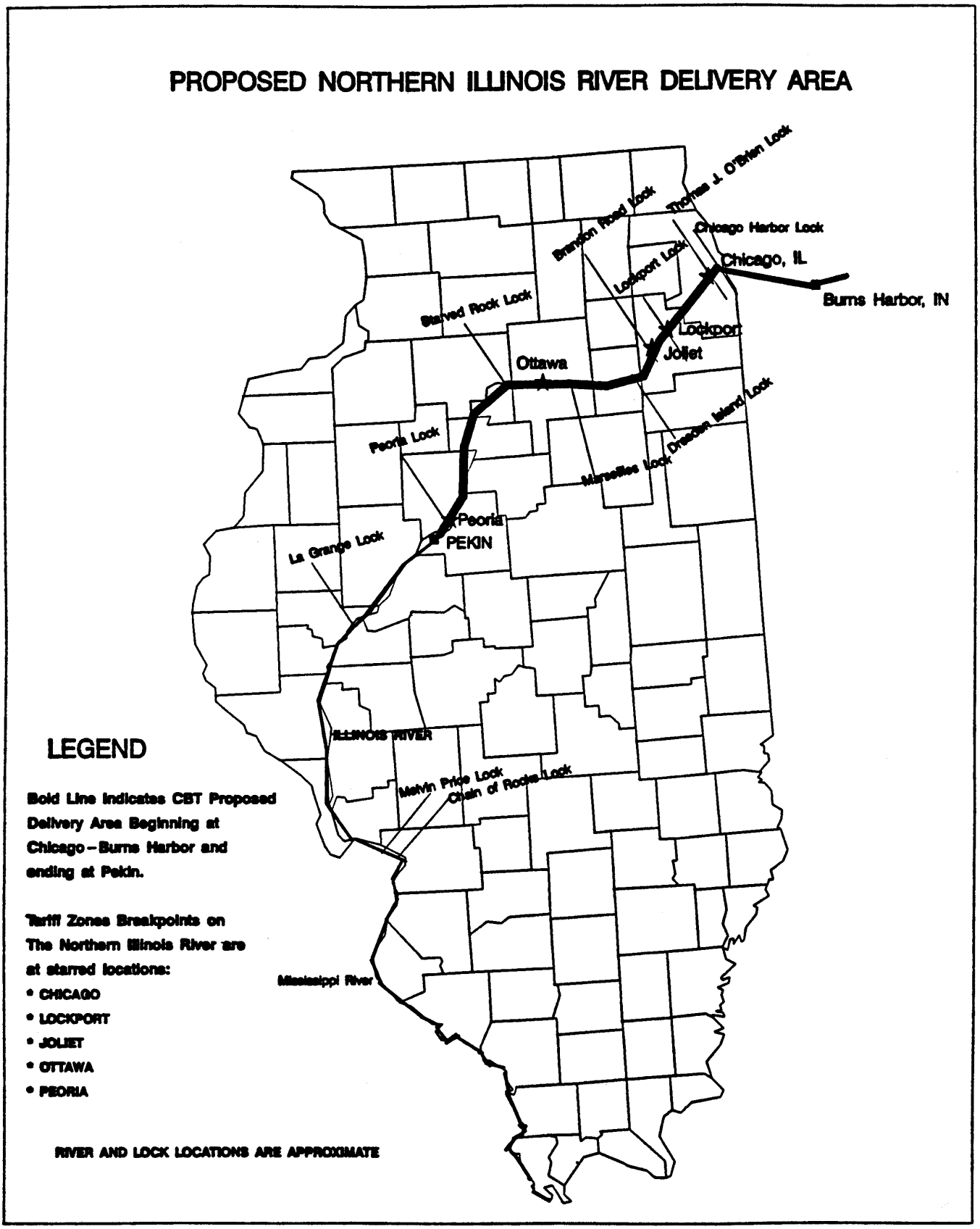
issuer to deliver (e.g., load into a barge) corn or soybeans to the certificate holder, pursuant to terms specified by the CBT, whenever the holder decides to surrender the certificate to the issuer. Unlike an issuer of a corn or soybean warehouse receipt, which must have the product in storage to back the receipt, an issuer of a shipping certificate would be able to honor its delivery obligation not only from inventories, but also from anticipated receipts or purchases of corn or soybeans after the holder surrenders the certificate.

[12] The issuer's registered daily rate of loading would be not less than (a) for northern Illinois River locations, one barge per day per shipping station and (b) for Chicago locations, three barges per day per shipping station.

[13] This charge would be 12/100 of one cent per bushel for Chicago and 10/100 of one cent per bushel for issuers along the northern Illinois River.

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## III. Deliverable Supplies of Soybeans Are Inadequate Under Section 5a(a)(10)

### *A. The Standard for Measuring Adequacy of Deliverable Supplies*

Pursuant to section 5a(a)(10), the Commission must assess whether the CBT proposal meets the standard set by that section to ''permit the delivery * * * at such point or points and at such * * * locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.''

One criterion for whether a delivery proposal meets the standards of section 5a(a)(10) is whether the available deliverable supplies of the commodity at the delivery points specified are adequate to tend to prevent or to diminish price manipulation, market congestion, and the abnormal movement of the commodity in interstate commerce. As discussed below, other aspects of a proposed futures contract may violate section 5a(a)(10) by tending to cause the prohibited results, but adequate deliverable supplies are a sine qua non for any contract under section 5a(a)(10).

The Commission believes that, to meet the statutory requirement of tending to prevent or to diminish price manipulation, market congestion, or the abnormal movement of a commodity in interstate commerce, a futures contract should have a deliverable supply that, for all delivery months on the contract, is sufficiently large and available to market participants that futures deliveries, or the credible threat thereof, can assure an appropriate convergence of cash and futures prices. To prevent unwarranted distortion of futures prices in relation to the cash market, the futures contract's delivery terms must reflect a product—in quality, form, location, mode of transportation, etc.—that is readily saleable in the cash market.

Commission Guideline No. 1 (17 CFR part 5, appendix A) provides some guidance with respect to the adequacy of the delivery terms of a futures contract. Guideline No. 1 requires that exchanges provide justification concerning significant contract terms—particularly delivery provisions—for new or amended futures contracts. This justification should provide evidence that the proposed contract terms and conditions are in conformity with practices in the underlying cash market, that those terms and conditions will provide for deliverable supplies that will not be conducive to price manipulation or distortion, and that such supplies reasonably can be expected to be available to the short trader and saleable by the long trader at their market value in normal cash market channels.[14]

Judging the adequacy of deliverable supply in the context of a section 5a(a)(10) proceeding is more important than and significantly different from determining adequacy in the routine review of applications for new contract market designations. This section 5a(a)(10) proceeding involves contracts that are known to have very large and well-established markets, a history of large trader positions, and a decades-long history of surveillance problems. Indeed, the Commission has already made an affirmative finding that the delivery provisions of the current contracts do not meet the standards of section 5a(a)(10) of the Act, and the Commission must decide whether the CBT's proposal goes far enough to cure that failure.

To determine an appropriate standard for measuring the adequacy of deliverable supplies under the CBT proposal, the Commission has examined separately for corn and soybeans the relationship between the level of deliverable stocks and the presence of a price premium for the expiring futures month over the next futures month (a price inverse). The presence of such a premium is an indication of tight deliverable supplies, potentially creating a price distortion. In situations where limited supplies lead to such a price inverse, futures contracts are significantly vulnerable to price manipulation, market congestion, and the abnormal movement of the commodity in interstate commerce under the terms of section 5a(a)(10), particularly when traders hold large positions.[15]

For soybeans, the Commission's staff analysis demonstrated a positive relationship between price inverses and deliverable supplies of less than 12 million bushels (2,400 contracts). Price inversions occurred in 12 of the 17 expirations of the CBT's soybean futures contracts when deliverable supplies were less than 12 million bushels or 2,400 contracts. Furthermore, such inversions occurred in 10 of the 11 such expirations when a trader's position exceeded 600 contracts, a relatively common occurrence in the soybean futures market. In contrast, when deliverable supplies exceeded 2,400 contracts, regardless of the size of large traders' positions, there was only a single instance of price inversion. The 2,400-contract level of deliverable supplies constitutes four times the speculative position limit for the contract, a benchmark historically used by the Commission's staff in analyzing the adequacy of deliverable supplies for new contracts.

The analysis for the corn market found a comparable relationship between price inverses and deliverable supplies at the level of 15 million bushels or 3,000 contracts. Price inverses occurred in seven of the ten corn expirations when deliverable supplies were less than 3,000 contracts.[16] This analysis supports using as a measure of an inadequate level of deliverable supplies under section 5a(a)(10) a level below 2,400 contracts for soybeans and a level below 3,000 contracts for corn.

However, the history of these contracts demonstrates that a higher level of deliverable supplies may, in fact, be necessary to protect against price manipulation. Therefore, the Commission also has decided to consider an additional measure based on historic experience with manipulation and price distortion in these contracts. During the July 1989 soybean futures contract expiration, the Commission exercised its surveillance powers to force the reduction of the long futures position of the Ferruzzi group of

[14] This Commission standard addresses concerns over manipulation from both the long and short side. Availability of adequate deliverable supplies tends to prevent price manipulation by the longs on a futures contract by ensuring that the shorts on the futures contract can obtain the commodity to make delivery on the futures contract without artificial constraints at a price reflecting fundamental demand and supply conditions in the cash market. The ready saleability in the cash market of the commodity received through delivery on the futures contract by contract longs tends to prevent price manipulation by the shorts on the futures contract. The Commission has considered both short-side and long-side manipulations in making its determinations in this Order.

The CBT has attempted to justify its proposal by arguing that restricting available deliverable supplies through contract delivery terms is an appropriate method of reducing the likelihood of short-side price manipulation. The Commission disagrees with this argument. Such restrictions in supplies render a contract highly vulnerable to price manipulation by the longs and are unnecessary if the contract is designed so as to permit the saleability of the commodity received by the takers of delivery at the normal cash market price.

[15] Of course, price inverses in futures contracts can occur as a normal result of short supplies in the cash market and can thus accurately reflect the cash market. However, when the available deliverable supplies under a futures contract have been so limited by the contract terms as to create such a shortage artificially, then the resultant susceptibility to price manipulation and price distortion are exactly the results forbidden by section 5a(a)(10). The CBT proposal's contract terms would cause such a limitation in available deliverable supplies, as discussed below.

[16] In all seven expirations the largest long position exceeded 600 contracts.

companies, and the CBT declared a market emergency and ordered the phased reduction of all positions above a specified size. Both the Commission and the CBT believed that the position of the Ferruzzi group posed a significant threat of manipulation and acted on that belief.[17] Just prior to the CBT emergency action, Ferruzzi's long position in the July 1989 soybean future was about 20 million bushels or 4,000 contracts. To avoid a repetition of such a situation, deliverable supplies of at least 4,000 contracts would be necessary.

In its analysis of the adequacy of the deliverable supplies under the CBT proposal, the Commission has considered both of these measures, as well as other relevant information.

*B. The CBT Submission Does Not Demonstrate That Its Proposal Meets the Statutory Standard of Adequate Deliverable Supplies*

The CBT has failed to provide data that demonstrates the adequacy of available deliverable supplies under its proposal. It supports its proposal by general statements about production and transactions in the cash markets in the vicinity of the delivery area, contending, for example, that its proposed delivery area

> * * * is located along more than 150 miles of the northern Illinois River, which is one of the world's largest and most active cash grain markets, handling over 500 million bushels of corn and soybeans per year. It substantially increases the supply of grain eligible for delivery on our futures contracts over the current delivery system, thereby minimizing the potential for price distortions and manipulation.

CBT July 1, 1997, submission, p. 2–2.

Data concerning total corn and soybean production and handling in the areas near the delivery points are not an adequate measure of deliverable supplies under the proposed contracts in light of the CBT proposal's heavy reliance on barge delivery along the northern Illinois River, which involves product primarily destined for the export market. Most production and handling of corn and soybeans in the vicinity of the proposed delivery points historically have involved product destined for the domestic market, and only a portion of that product has traditionally been loaded on barges as required in the CBT proposal. Therefore, the proper measure of available supplies must be based on historical barge shipment data. Such data are the best measure of that portion of the stocks in the vicinity of the northern Illinois River delivery points which is realistically available for delivery onto barges on the river as required by the CBT proposal.[18]

To rely on additional supplies destined for domestic processing and other uses would be to assume that the futures contract would divert those supplies to the export market which barge delivery largely constitutes, thus causing an abnormal movement in interstate commerce forbidden by section 5a(a)(10). The CBT has suggested that an appropriate measure of deliverable supplies is the amount of commodity that would be made available for futures deliveries in response to price increases on the futures markets resulting from manipulation attempts and other causes—its ''elasticity of supply'' argument. CBT October 22, 1997 exceptions at p. 19. However, diversions of a commodity from its normal movement and uses in the cash market in response to rising prices on futures markets which are not reflective of price increases in the cash market are precisely the prohibited effects which section 5a(a)(10) seeks to prevent.

The CBT also argued that deliverable supplies are adequate based on the delivery capacity of firms along the river. The CBT states that there are seven firms with a cumulative daily barge loading capacity of 5.5 million bushels of grain and a 30-day loading capacity of 171.8 million bushels of grain.[19] (CBT April 16, 1997, submission, attachment 4.) However, the CBT's reliance on the loading capacity of firms in the delivery area as an indicator of adequacy of deliverable supplies is misplaced. As the unused delivery capacity in Chicago clearly demonstrates, delivery capacity bears little relation to the amount of deliverable supplies actually available at a particular location. The CBT's loading capacity measure, which is based on its proposed maximum limits on the shipping station's ability to issue shipping certificates (30 times a station's 8-hour loading capacity), far exceeds the highest observed level of actual combined monthly corn and soybean barge shipments at the delivery points during the 11-year period studied, 1986 through 1996.

Moreover, the CBT overstated the loading capacity related to the contracts by including the capacity of three firms that would not meet the CBT's proposed $40 million minimum net worth requirement to qualify as shipping certificate issuers under the contracts. In doing so, the CBT also significantly understated the level of concentration of the proposed delivery system and ignored the exclusionary effect of its $40 million net worth requirement.

The CBT, in its initial submission, also provided inflated data on barge shipments. These data significantly overstated the amount of barge shipments by including shipments from part of the Illinois River outside of the CBT's proposed delivery area of the contracts. The CBT's data also included barge shipments by all shippers, including three shippers not meeting the eligibility requirements to be issuers of certificates under the contracts, and thus overstated the deliverable supplies available in that respect as well.

*C. The CBT Proposal Fails to Provide Adequate Deliverable Supplies For Soybeans*

1. Methodology

The Commission staff compiled an extensive amount of data from which the Commission could estimate deliverable supplies. These data were assembled from information supplied by the United States Department of Agriculture (USDA), the U.S. Army Corps of Engineers, the Coast Guard, grain merchants, and the CBT.

The CBT proposal provides for delivery from Chicago by rail, vessel, and barge and along the northern Illinois River by barge. The contracts are

[17] Although this incident involved soybean futures, it was recognized to have broader implications for the CBT's grain contracts and led to a reappraisal of the adequacy of the CBT's delivery terms for its wheat, corn, and soybean futures contracts and to revisions of all three contracts.

[18] At the October 15, 1997 hearing (tr. at pp. 34–35) and in its October 22, 1997 exceptions at pp. 29–30, the CBT introduced new arguments relating to corn and soybean stocks based upon data provided to the CBT by the Commission. Those data consisted of a survey of data for one year estimating September stocks within the vicinity of the northern Illinois River and extrapolations from that data for additional years. The Commission placed little weight on these data not only because they rely upon only one year's actual observation, but more importantly because they provide no guidance in determining the proportion of such stocks which form part of the proposed contracts' deliverable supplies.

The CBT argued that *all* stocks of soybeans within twenty-five miles (or more) of the northern Illinois River should be included in deliverable supplies. However, only that relatively small portion of the stocks available for barge shipment is properly considered as available for delivery under the terms of the contract proposed by the CBT. Stocks destined for other uses, such as the larger domestic processing market, cannot be considered to be available.

[19] According to the CBT, the firms and their percentage share of loading capacity are: Archer Daniels Midland Co., 41 percent; Continental Grain Company, 23 percent; Cargill, Inc., 12 percent; Consolidated Grain and Barge, ten percent; Sours Grain Company, six percent; American Milling Company, six percent; and Garvey International, two percent. (CBT April 16, 1997, submission, attachment 14.)

essentially designed to reflect the export market price for corn and soybeans, since the vast majority of corn and soybeans loaded on vessels and barges at Chicago and on barges along the northern Illinois River is destined for export markets. While Chicago rail shipments play some role in the domestic market, that role has diminished so as to be very small.

The potentially available gross deliverable stocks along the northern Illinois River delivery area for each delivery month were estimated by summing barge shipments from the CBT's proposed delivery points on the northern Illinois River for that month and all subsequent months of the same crop year to and including September, which was assumed to be the end of the crop year.[20] Since the amount shipped during a given month and in each succeeding month of the crop year must have been in transit or in storage in some location near the river at the beginning of the month, this summing procedure provides an estimate of the gross corn and soybean supplies potentially available for delivery from the proposed delivery points during each delivery month.[21]

Because these stocks reflect the quantity of soybeans and corn actually shipped via the northern Illinois River, they represent a reasonable and accurate historical estimate reflecting the quantity of these commodities that was potentially available to the proposed northern Illinois River delivery points at prevailing cash market supply and demand conditions. While other supplies of corn and soybeans are in the vicinity, they historically moved to other demand centers rather than moving into the flow of product via barge shipment down the northern Illinois River primarily destined for the export market. If the CBT contracts under the proposed delivery terms were to draw these supplies from their usual destinations in the domestic market to futures deliveries, an abnormal movement in interstate commerce would occur. Therefore, such other supplies should not be considered in determining the adequacy of potentially available deliverable supplies.

For Chicago, potentially available gross deliverable supplies were estimated as the sum of stocks available at the beginning of each delivery month plus receipts of corn or soybeans during that month. Receipts were included because shipping certificates do not require the commodity to be in store at the delivery point. Thus, Chicago warehouse operators potentially could issue shipping certificates against stocks in store at the beginning of a delivery month and against actual and/or anticipated receipts of corn or soybeans as well.

These estimates of potentially available gross deliverable supplies were adjusted to reflect the effect of the CBT's proposed minimum net worth requirement on the number of firms that would be eligible to make delivery and, for Chicago, the proposed limits on the number of shipping certificates that could be issued by those firms. The CBT proposal restricts eligibility of issuers of shipping certificates to firms meeting a $40 million minimum net worth requirement. This eligibility

[20] Corn and soybeans are both harvested beginning in mid-September or October, the start of a new crop year. All deliveries of corn and soybeans throughout the year subsequent to harvest are made from stored supplies. These supplies are consumed over time, reaching their lowest level during the summer, until the next harvest replenishes the supply.

[21] The amount of barge shipments for September was reduced by 50% prior to its inclusion in the sum for earlier old crop months. This 50% reduction is an amount suggested by trade sources to reflect the likelihood that September barge shipments consisted, in part, of new crop supplies which were not available for shipment during the old crop year. The full amount of September shipments was included, however, in determining September supplies. This calculation has been adjusted in response to the CBT's suggestions. Generally, September new crop production occurs late in the month.

requirement would eliminate barge shipments made by ineligible firms among those firms which currently operate loading facilities along the northern Illinois River delivery area and likely would reduce deliverable supplies originating from the proposed northern Illinois River delivery area by an average of about five percent. However, it is possible that some portion of the supplies that normally are shipped by the firms not meeting that eligibility requirement—although certainly not all those supplies—would become available for futures delivery by diversion of the supplies to the four eligible firms. Accordingly, the Commission calculated two separate estimates of potentially available gross deliverable supplies: one excluding shipments by firms not eligible to issue shipping certificates under the CBT's proposal and the second including such ineligible firms' shipments.

Another adjustment was made to reflect current capacity restraints. Because of the recent closure of four of the six elevators in Chicago, prior years' data for Chicago were adjusted to reflect current maximum capacity levels in that area.[22]

Through this analysis, the Commission arrived at potentially available gross deliverable supplies, as discussed below. As is also described in more detail below, those gross amounts do not constitute a basis for determining whether deliverable supplies under the CBT proposal are adequate to meet the requirements of section 5a(a)(10). Instead, those amounts are only the beginning point for an analysis of deliverable supplies and must be reduced because of various additional factors limiting the available deliverable supplies, as discussed below.

2. Potentially Available Gross Deliverable Soybean Supplies

Delivery months under the CBT proposed soybean futures contract include July, August, and September, *inter alia.* These months are at the end of the crop year and therefore historically reflect the lowest available supplies. As shown in the following charts for soybean supplies attributable to the four firms which would be eligible to issue shipping certificates, potentially available gross deliverable supplies under the CBT proposal for July, August, and September do not meet an adequate level considered by the Commission to be required by section 5a(a)(10) of the Act. Specifically, for July, the gross deliverable supplies of soybeans were less than the 2,400-contract level in three of the 11 years covered by the analysis, while the 4,000-contract level was not reached in eight of the 11 years. For August, gross deliverable soybean supplies fell below 2,400 contracts in four years, and the 4,000-contract level was not reached in any of the 11 years. Gross deliverable supplies in September were less than the 2,400-contract level in seven of the 11 years and did not reach the 4,000-contract level on any occasion.[23] As demonstrated in the following charts, Chicago supplies played a critically important role in almost all instances in which the 2,400-contract level was reached or exceeded.

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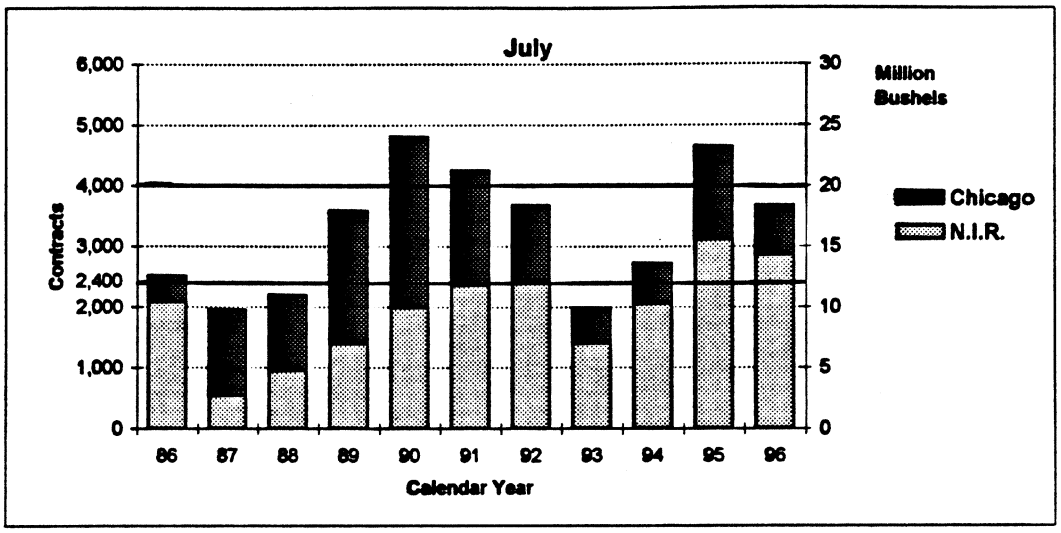
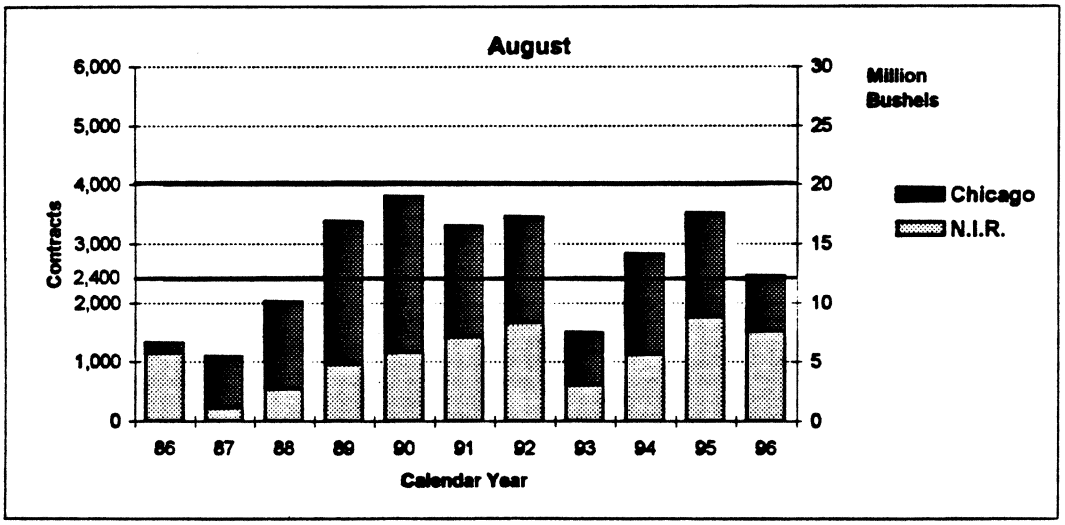
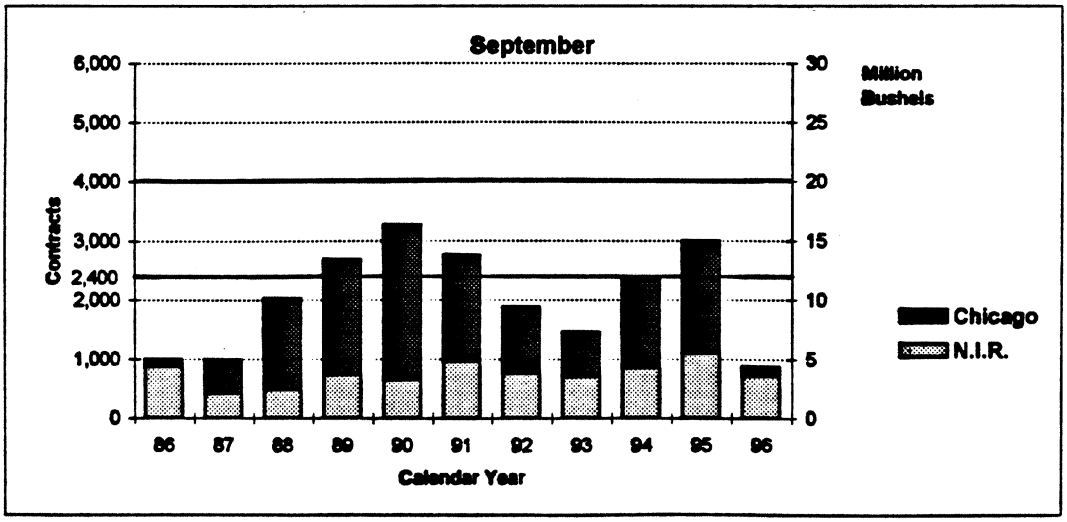
[22] The procedure to determine the amount of this adjustment was to sum the observed stocks and receipts of corn and soybeans in Chicago plus stocks of wheat. Whenever such a sum would have exceeded current total registered storage capacity, the estimated supplies of corn and soybeans were reduced proportionately by share of stocks. The result clearly overstates potential gross deliverable supplies of corn and soybeans in Chicago because it assumes that the facilities eligible for delivery of such commodities would be operating at full capacity, while Chicago facilities have historically operated at a fraction of capacity and continue to do so, as shown on a chart below. The numbers in the final Order are adjusted from those in the proposed order to reflect corrections in computation and in the CBT data on stocks of grain and soybeans in Chicago.

[23] As shown in the charts for shipments by all firms, including those firms that would be ineligible to issue certificates under the CBT proposal, the proposal improved marginally in that gross deliverable supplies for all firms were less than 2,400 contracts in six rather than seven years for September.

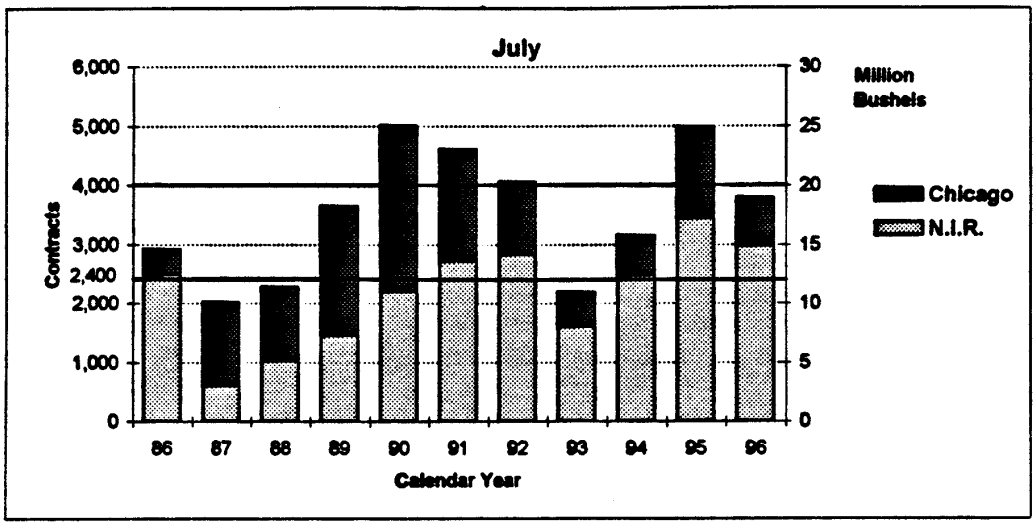
**Soybeans -- Gross Deliverable Supplies for July, August and September for the Eligible Four Firms**

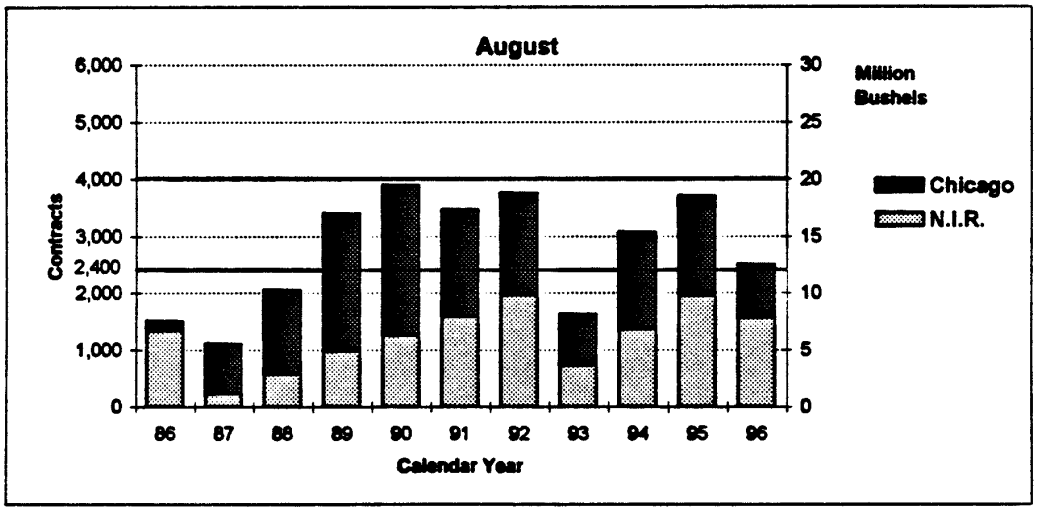


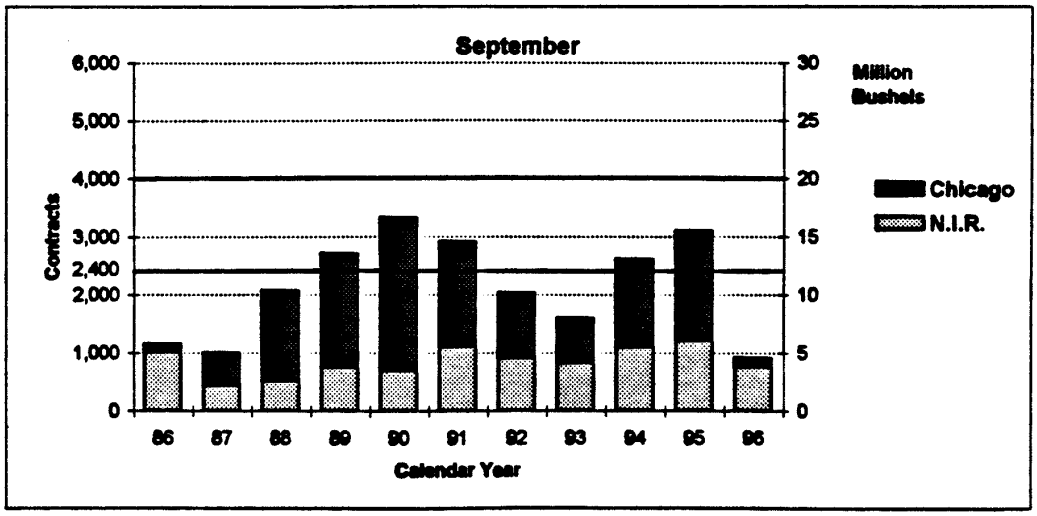



**Soybeans -- Gross Deliverable Supplies for July, August and September for All Firms**

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3. Potentially Available Gross Deliverable Corn Supplies

The CBT's proposed corn contract would include the contract months of July and September, *inter alia*.[24] In the case of corn, the potentially available estimated gross deliverable supplies for July attributable to the four eligible firms reached or exceeded the 3,000 and 4,000 contract levels in all years. However, gross deliverable supplies of corn for the four eligible firms in September fell below the 3,000-contract level in seven of the 11 years analyzed and were less than 4,000 contracts in nine years. The gross deliverable supply estimates for all existing firms differed only slightly from the results for the four eligible firms.

[24] Unlike the soybean futures contract, there is no August contract month listed for corn.

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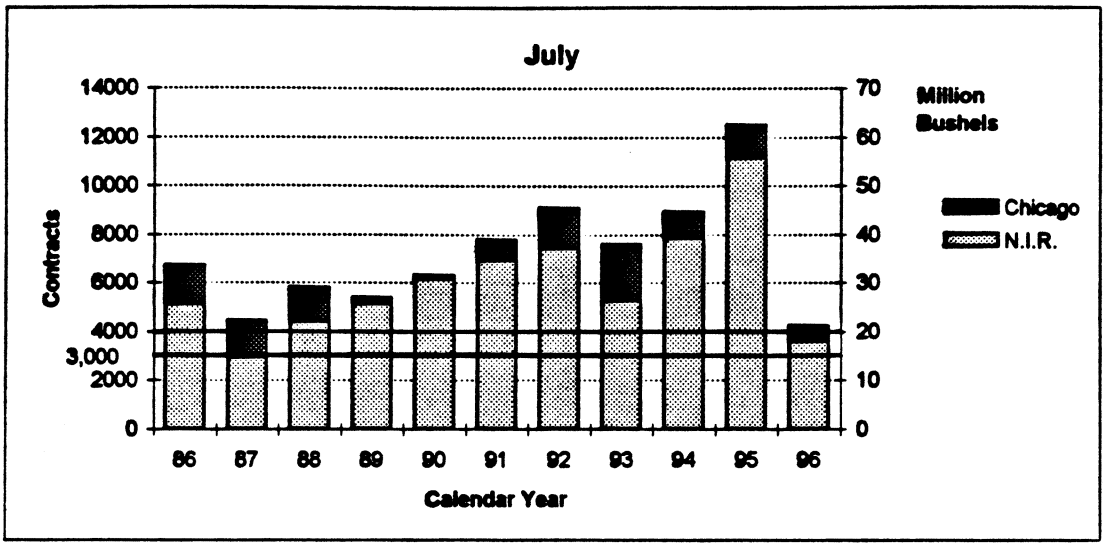
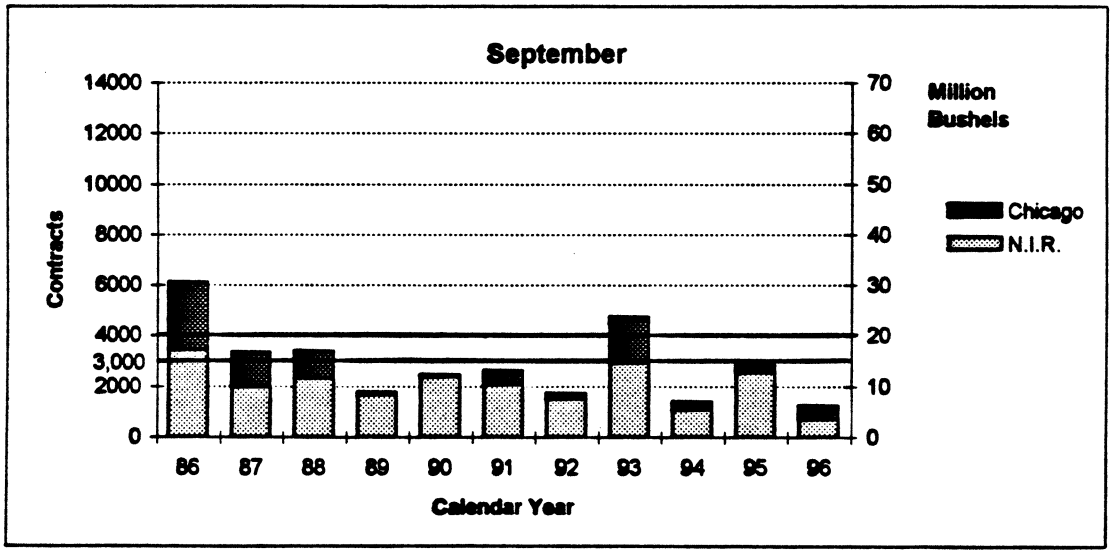
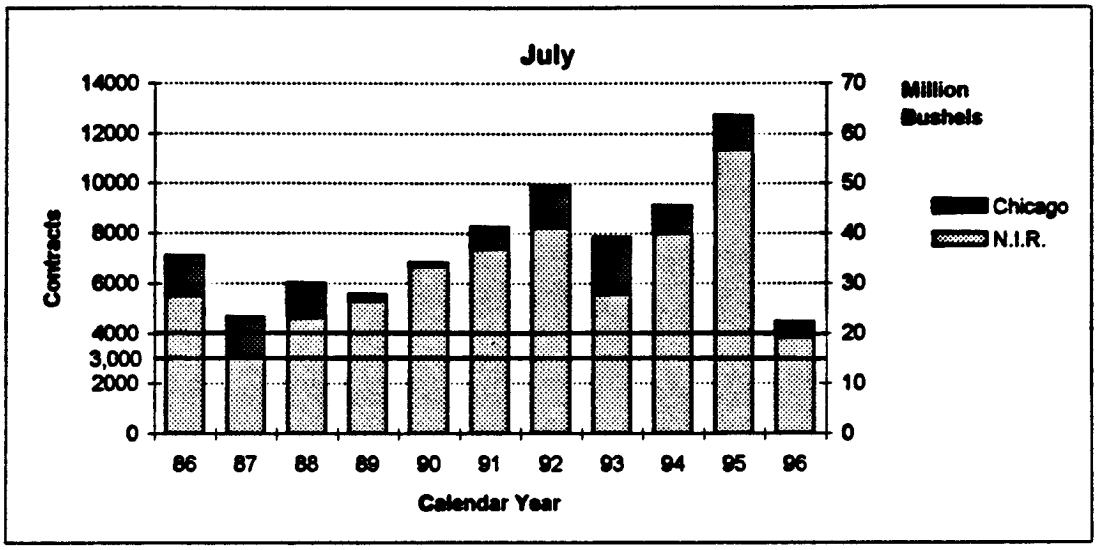
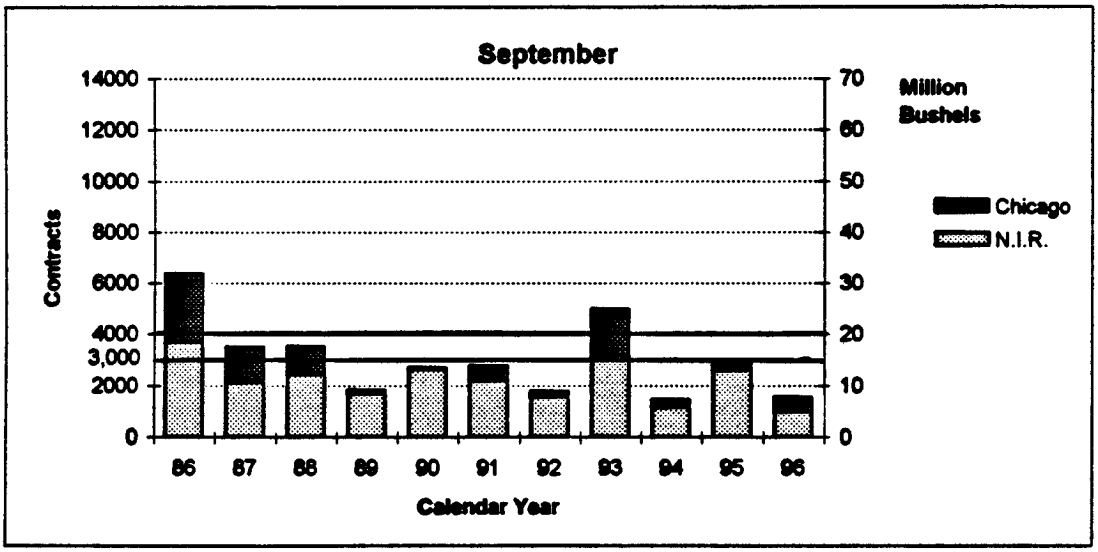
**Corn -- Gross Deliverable Supplies for July and September for the Eligible Four Firms**



**Corn -- Gross Deliverable Supplies for July and September for All Firms**

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4. September New Crop Production

Neither corn nor soybeans reached adequate levels of potentially available gross deliverable supplies for September. However, because September is a transition month between the old crop and the new crop, deliverable supplies estimates based upon barge shipments data for September may understate September potentially available gross deliverable supplies. The harvest of the new crops of corn and soybeans generally begins sometime in mid to late September, and thus, new crop production may be available for delivery on the September contracts. Accordingly, the Commission also calculated estimates of new crop production of corn and soybeans that may have become available during the month of September. Those estimates, however, are less reliable than the barge shipment data discussed above.

The following table shows estimated September new crop production within 25 miles (trucking distance) of the proposed delivery points for corn and soybeans derived from U.S. Department of Agriculture data submitted to the Commission by the CBT.[25] Some portion of this new crop production might have been available for delivery during September. However, the Commission has already assumed that half of the September northern Illinois River shipment data shown above constitutes new crop supplies, based on discussions with trade sources. Furthermore, a substantial portion of the new crop production historically has been destined for uses other than barge shipments, such as domestic processing.

A significant amount of corn was produced during September and possibly might augment to some extent the potentially available gross deliverable supplies discussed above. September soybean production has generally been considerably smaller than September corn production. Moreover, September soybean production does not overcome the inadequate potentially available gross deliverable supplies of soybeans in July and August.

The likelihood of price manipulation in September may be somewhat less than in July or August because it is a transitional month between old and new crop years. The end of the crop year generally is a period of low supplies and relatively high prices. However, the harvest of the new crop replenishes supplies and frequently leads to lower prices. Significant new crop supplies usually become available in areas tributary to the northern Illinois River by mid October. The incentive to manipulate prices of the September futures contracts by attempting to corner the remaining old crop supplies might be reduced by the potential losses that a manipulator might incur in reselling the shipping certificates or product obtained through September deliveries at lower prices after the arrival of new crop supplies.

Nonetheless, it should be noted that a significant price distortion was experienced in connection with the expiration of the September 1997 soybean futures contract. Under the CBT proposal, the use of shipping certificates rather than warehouse receipts to effect delivery might permit expanded deliveries of new crop production under the September contract. Rather than requiring movement of new crop supplies into a warehouse at a terminal market before delivery, as is necessary under current warehouse receipt delivery, the CBT proposal would allow the issuance of shipping certificates for locations closer to the production area and for up to 30 days of loading capacity and thus would give issuers more opportunity to deliver some new crop production. Issuers might issue some shipping certificates on the basis that new crop supplies which were not immediately in hand might be available by the time loading was required under the shipping certificates.

The Commission considers the low level of potentially available gross deliverable supplies of corn, which is limited to September, to be of less regulatory concern than the low levels of such supplies of soybeans which extend throughout the three summer months. The shortage of corn supplies is apparently of brief duration, and the expectation of abundant supplies of new crop production of corn by October reduces the likelihood that the corn shortage in September would lead to the prohibited effects under section 5a(a)(10).

ESTIMATED CORN AND SOYBEAN PRODUCTION LOCATED NEAR PROPOSED DELIVERY POINTS DURING SEPTEMBER

[5,000-Bushel Contract Units]

| Crop year | Estimated September production* | |
|---|---|---|
| | Corn | Soybeans |
| 1986 | 15,218 | 3,109 |
| 1987 | 26,784 | 6,056 |
| 1988 | 12,955 | 5,749 |
| 1989 | 10,169 | 6,143 |

ESTIMATED CORN AND SOYBEAN PRODUCTION LOCATED NEAR PROPOSED DELIVERY POINTS DURING SEPTEMBER—Continued

[5,000-Bushel Contract Units]

| Crop year | Estimated September production* | |
|---|---|---|
| | Corn | Soybeans |
| 1990 | 9,305 | 2,491 |
| 1991 | 41,663 | 8,729 |
| 1992 | 2,884 | 3,536 |
| 1993 | 6,513 | 1,670 |
| 1994 | 13,299 | 10,417 |
| 1995 | 12,359 | 5,646 |
| 1996 | 5,271 | 1,013 |

*The estimated production by September 30 of each year was calculated by multiplying U.S. Department of Agriculture harvesting progress estimates for the Illinois and Indiana crop reporting districts adjacent to the revised delivery points by U.S. Department of Agriculture production data for counties located within about 25 miles of the proposed delivery points.

5. The CBT's Objections on Gross Deliverable Supplies

At the October 15, 1997 hearing and in its October 22, 1997 letter of exceptions, the CBT raised various objections to the Commission's evaluation of potentially available gross deliverable supplies of soybeans. In doing so, the CBT failed to recognize that the estimate of such supplies is merely the starting point for the Commission's analysis of available deliverable supplies, which can be arrived at only after taking into consideration various factors reducing the availability of supplies, as is discussed below. Furthermore, the CBT focused solely on the 2,400 contract measure for soybeans and virtually ignores the other important measure of 4,000 contracts.

The CBT objected to the Commission's consideration of 1987 and 1993 river shipment data because floods and lock closings occurred during those years. For example, the CBT objected that the gross deliverable supplies for 1993 obtained from barge shipment data should be augmented because in that year the upper Midwest experienced severe floods. CBT October 22, 1997 exceptions at p. 38, tr. at pp. 22–28. The CBT argued that the Commission should assume that the CBT would have responded by declaring a market emergency and requiring use of alternate delivery areas with additional deliverable supplies. However, U.S. Army Corps of Engineer data show that barge shipments continued to move down the Illinois River throughout this period despite the flooding and the area

[25] The table has been modified to reflect corrections to the CBT-supplied data noted by the CBT at the October 15, 1997, hearing.

from which the CBT argued it would have required deliveries may have experienced even greater flooding than the regular delivery area. Whether the CBT would have taken any action under such circumstances and, if so, what action it would have taken are in the realm of pure speculation. Similarly, the CBT argued that the deliverable supplies for 1987 should be augmented because certain locks were closed, which arguably would have triggered the CBT's contingency plan.[26] While the CBT's argument does underscore the need for an effective contingency plan because of foreseeable periods of river traffic obstruction, it does not justify ignoring historical data concerning gross deliverable supplies.

The CBT also sought to bolster the potentially available gross deliverable supplies for the August and September soybean futures contracts by relying on new crop production. *See*, tr. at pp. 17–22 and October 22, 1997 exceptions at pp. 29–30. As noted above, the Commission has considered the availability of some new crop production for the September futures contract. Although the ability to issue shipping certificates would give issuers some flexibility to effect deliveries from potential new crop production during September, new crop production would not realistically be available for delivery on the August futures contract, and the CBT has grossly overstated the amount of new crop production available for delivery on the September futures contract.

It is not realistic to assume that issuers would issue certificates representing their full 30-day capacity and would choose to load out at least one barge per day over a six-week period. Shipments on the northern Illinois River in the August-September period have never approached such a large volume during the eleven years studied. Shipments from any one shipping station on the northern Illinois River at a rate as high as one barge per day per month have been observed only once in July and once in September and only three times in August during the entire eleven year period analyzed. Moreover, shipments from a shipping station at a daily rate of one barge for one month would have exceeded by five times the monthly average number of barges of soybeans shipped from individual shipping stations during July, August, and September over that period.

Furthermore, it is extremely unlikely that an issuer would undertake the risk involved in the CBT's hypothetical scenario. An issuer would have to have a very large amount of old crop supplies available to deliver until significant supplies from the harvest became available, and the timing of the harvest is extremely variable and difficult to predict.

6. Necessary Reductions From Gross Deliverable Supplies

Additional factors must be considered which necessarily reduce the above estimates of potentially available gross deliverable supplies. These factors include: (a) the CBT proposal's reliance on Chicago as a source of deliverable supplies; (b) the CBT's proposed three-day barge queuing and priority load-out requirements; and (c) prior commercial commitments of available supplies.

In addition, further reductions must be made from gross deliverable supplies resulting from the CBT proposal's lack of locational price differentials and foreseeable disruptions in barge transportation on the Illinois River. As discussed above, the CBT's proposed $40 million minimum net worth requirement for issuers of shipping certificates also reduces gross deliverable supplies. These additional factors are analyzed separately in later sections of this Order.

*a. Reliance on Chicago.* To the extent that potentially available gross deliverable supplies of soybeans in some years have been at or above the 2,400 and 4,000 contract levels, they have generally depended on Chicago supplies to do so. For July, under the CBT proposal gross deliverable supplies of soybeans originating solely from the northern Illinois River delivery area reached or exceeded the 2,400-contract level in only three of the 11 years. In August and September, under the CBT proposal gross deliverable supplies of soybeans originating from the northern Illinois River alone did not exceed the 2,400-contract level on any occasion. The 4,000-contract level was not exceeded by northern Illinois River gross deliverable supplies of soybeans under the CBT proposal in any year in the July, August, or September delivery months. Thus, to the very limited extent that potentially available gross deliverable supplies in the past would have reached an adequate level before consideration of necessary reductions, they would have done so because of supplies in Chicago.

Cash market activity in Chicago is likely to continue its historical decline. While the estimation procedure for gross deliverable supplies used in this analysis tried to correct for the precipitous decline of the cash market in Chicago by using 100 percent of the current capacity as a constraint on past supplies, that method certainly overstates the actual deliverable supplies that may originate from Chicago in the future. Chicago elevators for many years have held stocks well below their maximum capacity levels, particularly in the critical summer months. The following chart demonstrates that significant underutilization of the remaining capacity in Chicago is continuing despite the dramatic contraction in available capacity and is highly likely to continue to do so in the future. Indeed, stocks in Chicago in the recent past have been at less than half of capacity. Thus, Chicago supplies will most likely be reduced significantly in the future and would not be available in significant quantities under the CBT proposal.[27]

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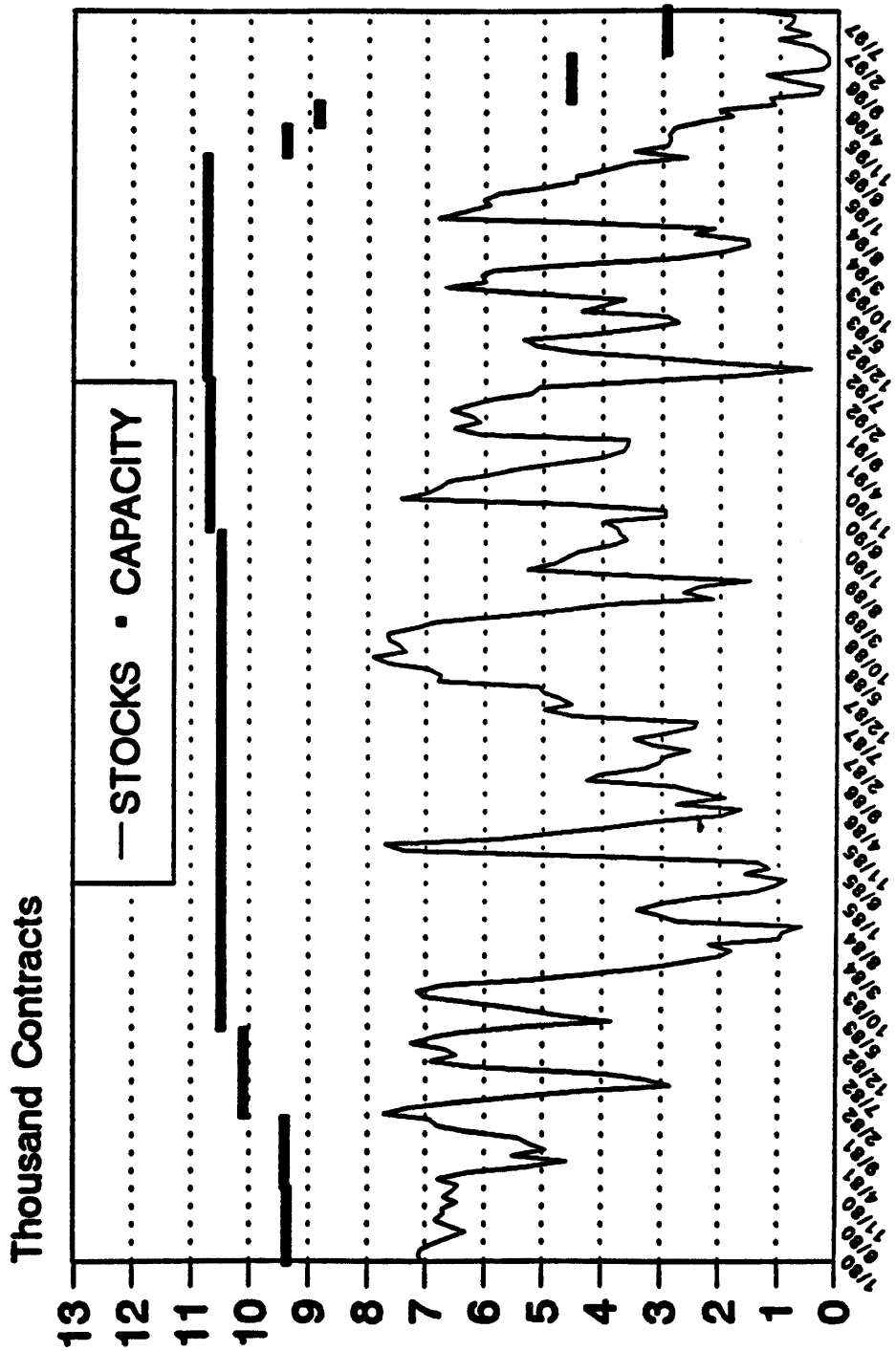
[26] In addition to being speculative, the CBT's approach improperly over-counts gross deliverable supplies during this period. The CBT apparently uses as a base amount the deliverable supplies shown by the Commission's analysis for those months and then adds to that base an additional amount based on shipments for those same months from areas eligible for delivery under the proposed contingency rule. However, the contingency plan would be triggered only during such period as shipment on the northern Illinois River was obstructed. Hence, even if the Commission were to accept the CBT's assumptions, the shipments shown in the Commission's analysis should not be included in the CBT's calculation.

[27] Moreover, there is no reason to believe, as the CBT argued in its October 22, 1997 exceptions at p. 39, that any significant amount, much less 20%, of the soybeans that previously flowed to Chicago would be redirected to flow down the northern Illinois River on barges to the Gulf. There has not been a notable increase in barge shipments from the shipping stations on the northern Illinois River closest to Chicago during the recent closures of elevators in Chicago, demonstrating that such a redirection has probably not occurred and is not likely in the future.




Source: CBOT Stocks of Grain
Month-End Fridays. October 1997 is as of 10/24/97.

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*b. The Three-Day Barge Queuing and Priority Load-Out Requirements.* The CBT proposal includes a provision requiring a shipping certificate issuer to begin loading onto the certificate holder's barges within three business days after it receives loading instructions and the holder's barges are at the delivery facility ready to load. Most significantly, the issuer would be required to give preference to shipping certificate holders relative to any other customer and proprietary business for eight hours of load-out capacity per day. This requirement is contrary to the current contracts' delivery terms and to cash market practice, where customers are generally accommodated on a first-come, first-served basis. Concerns have been expressed by some commenters that, by requiring issuers to cease loading corn and soybeans in barges for their cash market business in order to meet the requirements of the shipping certificates and by requiring that only limited advance notice would have to be given to issuers, the CBT proposal would discourage potential issuers from issuing shipping certificates for futures delivery.

The CBT, on the other hand, has argued that the impact of the proposed preferential load-out requirement for futures deliveries on an issuer's willingness to issue shipping certificates would be limited because the rules would require the issuer to load out only eight hours per day, leaving the remaining 16 hours of each day to load other barges. CBT's position assumes, without providing supporting data, that issuers would be able and willing to obtain labor for a 24-hour day, to procure additional transportation and supplies quickly, and to move the supplies to the waiting barges efficiently.

While the effect of the proposed loading requirements on the willingness of issuers to issue shipping certificates for futures delivery is difficult to measure in advance, it represents a significant departure from cash market practice and most likely would reduce the amount of gross deliverable supplies.

*c. Prior Commercial Commitments of Stocks for Shipment.* An additional factor which would reduce the above estimates of gross deliverable supplies is prior commitment of stocks for shipment. Determining deliverable supplies on the basis of shipment information does not make necessary deductions for that amount of the shipments which would be unavailable for futures delivery because they were otherwise committed and because no substitution was possible at an equivalent market price. While a number of commenters indicated that much of the corn and soybeans shipped on the northern Illinois River is not irrevocably committed at the time of the shipment's origination, the ability of firms economically to obtain supplies to meet existing commitments for shipment from alternative sources would certainly be limited at times. This situation would be more likely to occur in those periods when supplies are limited, such as during the critical summer months of July, August, and September. The commitment of supplies of corn and soybeans under forward contracts or other marketing arrangements would at times make them unavailable to the futures delivery process until futures prices were significantly distorted relative to cash prices, a result that section 5a(a)(10) is intended to prevent. Thus, it is likely that the actual available deliverable supplies for the futures contracts would be significantly less than indicated by the above gross estimates.

7. Conclusion

In summary, the proposed delivery provisions of the soybean contract clearly fail to meet the statutory requirement for adequate levels of deliverable supplies throughout the summer months of July, August, and September even before the above reductions (plus those discussed below) have been made, and the additional adjustments required by such factors would further reduce the available deliverable supplies. For these reasons, price distortions and manipulation, market congestion, and abnormal movements of soybeans in interstate commerce would be likely to occur. Additional delivery points to increase the available deliverable supplies of soybeans, as well as other adjustments to the CBT's proposal discussed below, are necessary to achieve the objectives of section 5a(a)(10).

As to the CBT proposal for corn, gross deliverable supplies throughout the year appear to be adequate except for September. Gross deliverable supplies for September as estimated by the Commission may be further supplemented to some extent by new crop production in September, and the September corn contract would be somewhat less likely to be subject to manipulation than other months with similar low levels because of the expectation of abundant supplies of new crop production in the immediate future. The Commission's action in changing and supplementing the CBT's proposed corn contract to add locational differentials, to eliminate the $40 million minimum net worth eligibility requirement, and to broaden the contingency plan for river disruptions, discussed below, will have the effect of alleviating some limitations on deliverable supplies of corn under CBT's proposal. In light of those changes and supplements, the Commission does not find that the available deliverable supplies of corn under the revised CBT proposal are so inadequate under section 5a(a)(10) that additional delivery points are necessary. Actual trading experience will reveal whether the level of deliverable supplies meets the requirements of section 5a(a)(10). Accordingly, the Commission directs the CBT to report on the actual delivery and contract expiration experience on an annual basis for the first five years after contract expirations begin under the revised contract terms.

## IV. The Lack of Locational Price Differentials Violates Section 5a(a)(10)

Section 5a(a)(10) requires that, where more than one delivery point or commodity grade is specified, a futures contract must specify quality and locational price differentials to the extent necessary to prevent price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce. Guideline No. 1 and the Commission's policy on price differentials are based on section 5a(a)(10) requirements. As discussed above, Guideline No. 1 requires that futures contract terms and conditions provide for deliverable supplies that will not be conducive to price manipulation or distortion and that such supplies reasonably can be expected to be available to the short trader and saleable by the long trader at their market value in normal cash market channels. 17 CFR Part 5, Appendix A(a)(2)(i). In addition, the Commission's policy on price differentials requires that, where cash market locational or quality differentials are stable, the futures contract should reflect ''normal commercial price differences as represented by cash price differences * * *'' Powers Memorandum, *supra* note 1, at p.15. When cash market price differences are unstable or where the product flow in the cash market is not relevant to the futures delivery points, the Commission's policy requires that differentials must be set at levels which fall within the range of values that are commonly observed.

The CBT's failure to specify locational price differentials violates section 5a(a)(10) as well as the requirements of Guideline No. 1 and the Commission's

policy on locational price differentials. The cash market on the northern Illinois River clearly reflects a unidirectional flow of corn and soybeans and exhibits significant locational price differences at the proposed delivery points which have a stable relationship with one another. The failure of the CBT proposal to provide for locational price differentials reflecting the cash market not only would reduce available deliverable supplies on the contracts, but would result in price distortions and susceptibility to price manipulation, market congestion, and the abnormal movement of corn and soybeans.

Although the CBT describes its delivery system as a simple single delivery area, in fact it is a multiple delivery point system without differentials. This multiple delivery point system is comprised of spatially-separated points along the northern Illinois River, which are affected by a unidirectional demand from the Gulf market across five different barge freight zones, including Chicago. Chicago may also be affected, at times, by a number of competing cash market demand pulls.

The value of corn and soybeans loaded into barges generally is greater at barge-loading facilities located down river relative to the value of grain loaded in barges at upriver locations, including Chicago. As indicated above, the CBT proposal essentially would price corn and soybeans when they are loaded on barges along the northern Illinois River destined for the export market centered in New Orleans. The futures contracts would be priced FOB barge at the loading facilities.[28] Currently, the cash market for such products prices them at the CIF New Orleans price, which is uniform and widely known.[29] The cost of barge freight to New Orleans included in that price varies based on established barge freight costs that are higher at Chicago and lower as one descends the northern Illinois River and thus is closer to New Orleans. Those freight rates are transparent and widely reported publicly. While they vary to some extent, they are expressed as a varying percentage of the fixed amounts found in the Waterways Freight Bureau Tariff No. 7. By backing out the freight amounts from the CIF price, one can calculate the differences in the value of the commodities FOB various Illinois River points.

During the critical summer months the price differential based on the freight rate between Chicago (the most northerly Illinois River delivery point) and Pekin (the most southerly Illinois River delivery point) has ranged in recent years between 4.1 and 5.3 cents per bushel of corn and between 4.4 and 5.7 cents per bushel of soybeans. These differences are very significant and are sufficient to distort prices, to limit deliverable supplies, and to divert supplies from one delivery point to another.[30]

Where as here, futures contracts provide for multiple delivery points and significant normal commercial price differences exist in the cash market between those locations, section 5a(a)(10) requires that the terms of the futures contracts include locational price differentials. The failure to set locational price differentials reflecting normal cash market price differences has the economic effect of excluding the disadvantaged delivery point from being used for delivery. Such an exclusion may result in abnormal movement of the commodity away from the disadvantaged delivery point and to the advantaged delivery point. In order for a disadvantaged delivery point to function, the futures price has to increase above the commodity's underlying cash market value at the disadvantaged delivery point to overcome this built-in penalty. This opens the door to price distortion and price manipulation in the amount of the ''differential penalty.'' Alternatively, market congestion at the advantaged delivery point may result. These are precisely the types of market abuse that section 5a(a)(10) sought to avoid by requiring exchanges to ''permit delivery * * * at such * * * locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.'' For these reasons, the Commission finds that the lack of locational price differentials violates section 5a(a)(10).

The CBT argued that section 5a(a)(10) is not violated by its proposal's lack of differentials because ''locational differentials for corn and soybeans at par fall well within the expected values of cash market differentials between the delivery points.'' CBT June 16, 1997 submission, at 40. However, this is not the appropriate standard because the relative value of these commodities among the northern Illinois River delivery points is constant, quite transparent and based on established barge freight differences, as discussed above. Furthermore, even if it were the appropriate standard, we find that a lack of price differentials is not commonly observed in the cash market, for the reasons discussed above.

The CBT's argument erroneously relies on bid prices to farmers at various delivery points rather than prices FOB barge, the prices that the CBT's proposed contracts are designed to reflect. The CBT also relies on information that suggests that the cash market value of corn and soybeans loaded onto vessels and rail cars at Chicago may at times equal or exceed the value of corn or soybeans loaded onto barges at locations on the northern Illinois River delivery area. However, with the precipitous decline in the available deliverable supplies in Chicago, such occasional variances from the prices loaded on barges at Chicago and along the northern Illinois River play a small role in the cash market and should not be a significant factor in setting locational differentials under the CBT's proposal. The prices for barges loaded on the northern Illinois River at Chicago and at delivery points south of Chicago reflect the differences in freight costs on which the Commission bases it price differentials for those delivery points.

## V. The Failure Adequately To Address Foreseeable Interruptions to Deliveries Violates Section 5a(a)(10)

An additional concern regarding the operation of the CBT proposal applicable to both the corn and soybean contracts is its reliance chiefly upon a single mode of transportation to effect delivery—Illinois River barge transportation. A large number of commenters questioned the reliability of barge transportation on the Illinois River from the standpoint of assuring that takers of futures delivery would be able to receive and to transport their grain promptly in the event of a disruption of barge transportation on the river due to weather or lock maintenance.

[28] The acronym FOB, free on board, means that, under the terms of the sale of a commodity, the price agreed between the buyer and seller includes the cost of loading the product into transportation equipment (barge, rail car, vessel, etc.) at a designated location.

[29] CIF New Orleans means that, under the terms of the sale, the price agreed upon between the buyer and the seller includes the freight and insurance to transport the products to New Orleans and to deliver them there. This market, which calls for the products to be shipped at the cost of the seller to export points in New Orleans, is very liquid, with corn and soybeans being actively traded throughout the year.

[30] The CBT implicitly recognized these cash market value relationships and the importance of barge-freight differences in valuing the commodities in its proposed contingency plan to allow deliveries at alternative delivery locations during transportation disruptions on the Illinois River. As described below, that proposal provides that deliveries at alternative locations must be priced CIF New Orleans with the delivery taker reimbursing the issuer for the cost of freight to New Orleans from the original delivery location.

There has been a history of repeated, significant interruptions in transportation along the northern Illinois River. In three of the last 13 years, one or more of the locks on this portion of the river have been closed for repair by the U.S. Army Corps of Engineers for 60 or more consecutive days during the critical summer months, with the result that no barge traffic could pass through that point on the river on its way south to New Orleans.[31] In addition, traffic on the Illinois River is frequently impacted by weather conditions, including wind, high water during the spring and summer, and icing during the winter. The Coast Guard, an agency of the U.S. Department of Transportation, is responsible for maintaining safe passage along the nation's waterways and, when conditions warrant, issues compulsory safety zones restricting transportation on certain segments of the river. Between January 1991 and June 1997 the Coast Guard issued compulsory safety zones on segments of the northern Illinois River on 21 separate occasions. The delivery area on the northern Illinois River was affected by such a safety zone for substantial portions of the river south of the delivery area from early June through the middle of August in 1993.[32]

The CBT proposal's heavy reliance on barge delivery would disadvantage delivery takers during those periods when barge traffic is negatively impacted by weather conditions or lock maintenance and repair. Prolonged obstruction of transportation on the river would increase the susceptibility of the futures contract to manipulation by issuers, who could issue large numbers of certificates during periods when those taking delivery would be unable to transport and to sell the product at an economic value in relation to the CIF New Orleans market.

The Commission is of the view that it is not an appropriate use of exchange emergency authority to address such foreseeable disruptions to the operation of contract terms.[33] In response to repeated requests by the Commission staff, the CBT, by submission dated August 22, 1997, sought to cure this defect in its proposal by proposing a plan to be followed in the case of transportation disruptions. This proposed contingency plan provides that, in the event that either the Peoria or LaGrange lock on the Illinois River (the two most southerly locks without an auxiliary lock allowing river movement) is scheduled, with six-months prior notice, to be closed for a period of 45 days or more, then the delivery maker and taker may mutually agree to alternative terms or, failing such agreement, the deliverer is obligated to provide loaded barges to the taker at a point between the lowest closed lock and St. Louis or on the mid-Mississippi River between St. Louis and Dubuque, inclusive. The loaded barges would be valued CIF New Orleans, with the delivery taker responsible for paying to the delivery maker the transportation cost between the original shipping station and New Orleans. The reimbursement in transportation cost would be computed based upon 100 percent of the Waterways Freight Bureau Tariff No. 7 barge freight rate.

This proposal falls short of achieving its apparent objective of addressing the susceptibility of the corn and soybean futures contracts to price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce resulting from disruptions to river traffic. First, the proposed rule only addresses sustained blockages due to lock closures south of the delivery area. However, similar problems could be caused by closure of one or a number of locks within the delivery area sufficient to disrupt traffic at a majority of shipping stations. Repairs are often made to more than one lock at a time, having the potential to increase the impact of the disruption within the delivery area from such projects. Thus, although the same foreseeable situation rendering the contracts vulnerable to price manipulation and market congestion exists when the disruption is within the delivery area as when it is south of the delivery area, the contingency plan fails to address that situation. Furthermore, obstructions and disruptions to river traffic other than lock closures—such as those caused by flooding—are foreseeable, would render the proposed contracts vulnerable to price manipulation and market congestion and should be addressed in the contingency plan.

Secondly, when a sustained river traffic obstruction of less than 45 days is announced, vulnerability to price manipulation and market congestion is foreseeable. This is also true when there has been less than the six-month advance notice which the CBT has proposed as a condition for triggering the contingency procedures. This vulnerability arises from the ability of shipping certificate issuers under the CBT proposal to issue certificates representing up to 30 days of their capacity. Thus, an announced river traffic obstruction of between 30 and 45 days, for example, would enable eligible issuers to deliver into the market the maximum number of shipping certificates permitted, secure in the knowledge that the holders of those certificates could not accept delivery of the corn or soybeans while the river was obstructed and that, once the obstruction to river movement was ended, the issuer could only be required to deliver on the certificates over an entire-month period.

In this connection, it should be noted that closures for lock repairs generally are scheduled for the summer months, the time when deliverable supplies are lowest and futures contracts are most susceptible to manipulation. (Indeed, a prolonged closure extending to the arrival of the new crop could allow futures deliverers to depress the price of an old crop futures month to levels reflecting new crop values at a time when the broader cash market was reflecting the usual old crop/new crop price differences based on supply and demand conditions.)

In addition, the proposal to value alternate delivery locations using 100 percent of the Waterways Freight Bureau Tariff No. 7 rate is inconsistent with the locational price differential found to be applicable by the

[31] Specifically, in 1984 the Lockport and Brandon Road locks were closed for 60 days in July, August, and September; in 1987 the Peoria lock was closed for 60 days in July, August, and September; and in 1995 the Lockport, Brandon Road, Dresden Island, and Marseilles locks each were closed for between 64 days and 77 days in July, August, and September. The CBT, in its October 22, 1997 exceptions at p. 38, agrees that these disruptions have in the past (in 1987, for example) been severe and prolonged enough to curtail the ability to take delivery within the northern Illinois River delivery area. *See also*, tr. at 22–24.

[32] In addition to weather actions taken by the Coast Guard, the U.S. Army Corps of Engineers, which has operational control over river locks, may close a lock when it determines that icing conditions so require.

[33] The CBT proposed a separate rule, regulation 1081.01(12)(G)(8), to address possible disruptions to shipping traffic within the delivery area. That proposed rule provides that, if it becomes impossible to load at a designated shipping station ''because of an Act of God, fire, * * * an act of government, labor difficulties, or unavoidable mechanical breakdown, the shipper will arrange for water conveyance to be loaded at another regular shipping station * * *'' and will compensate the taker for resulting transportation costs, if any. It further provides, however, that if the impossibility of delivery exists at a majority of shipping stations within the delivery area, then delivery may be delayed. Although this proposed rule addresses conditions impeding delivery at one or some locations within the delivery area, it does not offer an acceptable solution to the contingency that all or most deliveries may be rendered impossible due to disruptions of river traffic south of the delivery area or at points affecting a majority of shipping stations within the delivery area. Because of the increased likelihood of price manipulation and market congestion arising from delayed delivery in such circumstances, a different and more effective contingency plan is required under section 5a(a)(10).

Commission, as discussed below. The application of different differentials to the contracts, depending upon whether deliveries were subject to the contingency rule or to normal delivery procedures, could also contribute to price manipulation, market congestion, or the abnormal movement of commodities in interstate commerce.[34]

## VI. The Minimum Net Worth Eligibility Requirement for Issuers Violates Section 15

In addition to the CBT's existing requirement of $2 million working capital required of firms regular for delivery under all its agricultural futures contracts, the CBT has proposed to require that firms eligible to issue shipping certificates under its soybean and corn contracts must also meet a minimum net worth standard of $40 million. As discussed above, this requirement has the effect of reducing the amount of deliverable supplies by making ineligible for delivery certain existing loading facilities in the delivery areas owned by otherwise eligible firms. In addition, the requirement constitutes a barrier to entry of firms wishing to establish facilities and to become eligible to issue shipping certificates. The Commission has analyzed this requirement under the provisions of section 15 of the Act and finds that it constitutes an unjustifiable barrier to entry and leads to undue market concentration when considered in the context of the other requirements issuing firms must meet.

Section 15 of the Act requires the Commission, when considering exchange rule proposals or amendments, to consider the public interest to be protected by the antitrust laws and to endeavor to take the least anticompetitive means of achieving the objectives of the Act.[35] Therefore, the CBT proposal's possible anticompetitive effects must be evaluated against its potential effectiveness in achieving the policies and purposes of the Act.

All existing futures contracts that provide for delivery using shipping certificate delivery specify certain financial requirements for certificate issuers. Consistent with this approach, the CBT proposal requires that issuers of certificates have through-loading facilities on the northern Illinois River, obtain an irrevocable letter of credit in an amount equal to the value of their delivery commitments, and maintain a minimum of two million dollars in working capital. These requirements are comparable to those imposed on shipping certificate issuers in other futures markets, including the CBT's own soybean meal, diammonium phosphate and anhydrous ammonia futures contracts, the New York Cotton Exchange's frozen concentrated orange juice futures contract and the Minneapolis Grain Exchange's white wheat futures contract. Moreover, issuers of a shipping certificate under the CBT proposal would also be limited to issuing certificates of a value no greater than 25 percent of the issuer's net worth. However, in addition to all these requirements, the CBT's proposed corn and soybean contracts would require shipping certificate issuers to have a minimum net worth of $40 million, a requirement that is not imposed in any other futures contract involving shipping certificates.

The effect of the proposed $40 million minimum net worth requirement would be to limit issuance of shipping certificates to four large grain firms among the seven firms with shipping stations along the northern Illinois River delivery area. At least three firms which currently operate shipping stations on the designated segment of the northern Illinois River and have participated in the cash market by loading barges of corn and soybeans would be excluded from issuing shipping certificates for delivery on the CBT's proposed futures contracts. The Commission does not believe that the CBT has presented a reasonable justification for this requirement.

Although the CBT's objective of protecting the financial integrity of the delivery process is reasonable, it is adequately achieved through the working capital and letter of credit requirements, as it has been for all other shipping certificate contracts, and through the limit on the value of certificates issued to 25 percent of an issuer's net worth. Forty million dollars is a high level of net worth that excludes three of the seven existing firms with loading facilities along the northern Illinois River and would act as a barrier to new entrants. The resulting extremely high level of concentration of the market restricted to four issuers is demonstrated by the fact that the Herfindahl-Hirschman Index (HHI) for the proposed market would be approximately 3,300.[36] This increase in concentration as compared with the current delivery system—530 points in the HHI—would likely create or enhance market power or facilitate its exercise in an already highly concentrated market.

The CBT has failed to demonstrate a need for this particular requirement. Accordingly, the Commission finds that the $40 million minimum net worth requirement would be an unjustified barrier to entry into a highly concentrated market and its approval by the Commission would be contrary to section 15 of the Act.[37]

## VII. Proposed Changes and Supplements to Comply With Sections 5a(a)(10) and 15

Under the provisions of section 5a(a)(10) of the Act, the Commission, having found that the response of the CBT to the notification relating to its corn and soybean futures contracts does not accomplish the statutory objectives of that section and ''after granting the contract market an opportunity to be heard, may change or supplement such rules and regulations of the contract market to achieve the above objectives * * *.'' The Commission has determined that the following changes and supplements to the CBT's proposal are necessary to achieve the objectives of section 5a(a)(10) and compliance with section 15 of the Act.

The Commission has determined that deliverable supplies of soybeans under the CBT's proposal should be increased through the retention of those delivery points under the CBT's current contracts which the CBT has proposed to eliminate and that appropriate locational differentials should be

[34] Even if such differing differentials would not have such adverse results, it would be nonetheless ''necessary or appropriate * * * to insure fair dealing * * *'' in such futures contracts to apply the same differential in both instances under section 8a(7) of the Act.

[35] *British American Commodity Options Corp.* v. *Bagley,* [1975–1977 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,245 at 21,334 (S.D.N.Y. 1976) *aff'd in part and rev'd in part on other grounds,* 552 F. 2d. 282 (2d. Cir. 1977, *cert. denied,* 98 S. Ct. 427 (1977).

[36] The HHI is calculated by summing the squares of the individual market share of each of a market's participants. The 3,300 figure is obtained using rated delivery capacity of the four firms currently meeting the proposed capital requirements to measure market share. Those firms and their respective market shares are Archer Daniels Midland Co. (49 percent), Continental Grain Company (22 percent), Cargill, Incorporated (19 percent), and Consolidated Grain and Barge (10 percent). Adding in the three firms (American Milling Company, Garvey International, and Sours Grain Company) which, absent the proposal's $40 million net worth requirement, also would be eligible to issue delivery certificates in the proposed markets would lower the HHI to 2,511, still a high level of concentration but substantially less than that under the CBT proposal (and indeed less than under the current delivery system).

[37] Concerns about concentration among those firms eligible to issue shipping certificates under the CBT's proposal are compounded by the sizeable ownership interests some of the firms have in barge fleets operating on the northern Illinois River and in Gulf export and processing facilities. Several commenters expressed concern that this vertical integration increases their opportunity for price manipulation.

applied to such delivery points. In addition, the Commission has determined for both the corn and soybean contracts to revise the CBT's proposal to impose appropriate locational differentials for northern Illinois River delivery points. The Commission has determined to revise the proposed eligibility requirements for issuers of corn and soybean shipping certificates by eliminating the minimum net worth requirement of $40 million, which is an unnecessary barrier to entry. The Commission also has determined to revise the river traffic obstruction contingency rule by reducing the continuous period of obstruction from 45 days as proposed to 15 days, by making it applicable whenever a majority of shipping stations within the northern Illinois River delivery area are affected by obstruction of river traffic, by making it applicable to all announced obstructions with no minimum notification period specified and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent.

*A. Delivery Points*

In determining how to remedy the inadequacy of deliverable supplies under the CBT soybean proposal, the Commission accepts the delivery points in the proposal itself as a starting point and believes that the most reasonable and feasible way to enhance deliverable supplies is by adding additional delivery points. To do so, the Commission has decided to retain the delivery points under which the CBT's existing contract has been operating for years. Thus, the Commission had determined to retain Toledo and St. Louis as delivery points for soybeans.

In this regard, many commenters supported retaining the delivery point at Toledo, pointing out that Toledo's effectiveness as a delivery point is proven. They also maintained that Toledo brings with it the advantage of having transportation ties to both the export market via vessels on the Great Lakes and the expanding livestock feed demand in the southeastern U.S. via rail transportation. Although St. Louis has not been an important delivery point under the current contract, it likely would become one under the contract's revised shipping certificate format.[38]

These two delivery points have the strong advantage of having been chosen by the CBT as appropriate delivery points for its soybean contract and having been used as delivery points for the contract for a number of years. Toledo has been a delivery point on the CBT soybean contract since 1979; St. Louis has been a delivery point since 1993. The resulting experience and familiarity with these delivery points of the CBT, its members and commercial users of the soybean contract are strong indicators that the delivery points are feasible, workable and acceptable.[39]

The retention of Toledo and St. Louis as delivery points provides a substantial increase in the available deliverable supplies of soybeans and in the number of potential shipping certificate issuers on the contract. When Toledo and St. Louis are included as delivery points on the soybean futures contract, the number of entities eligible as issuers increases by three, significantly reducing the degree of concentration among potential shipping certificate issuers. The following chart shows the increases in gross deliverable supplies of soybeans which result from the retention of Toledo and St. Louis as delivery points and from the elimination of the $40 million minimum net worth requirement for eligibility as shipping certificate issuers, as discussed in section D, below. Pursuant to these changes ordered by the Commission, potentially available gross deliverable supplies of soybeans are at or above the 2,400-contract level in both July and August during each of the past 11 years and in September during all but one of the 11 years. Indeed, the gross deliverable supplies are also at or above the 4,000-contract level for 25 of the 33 months examined.

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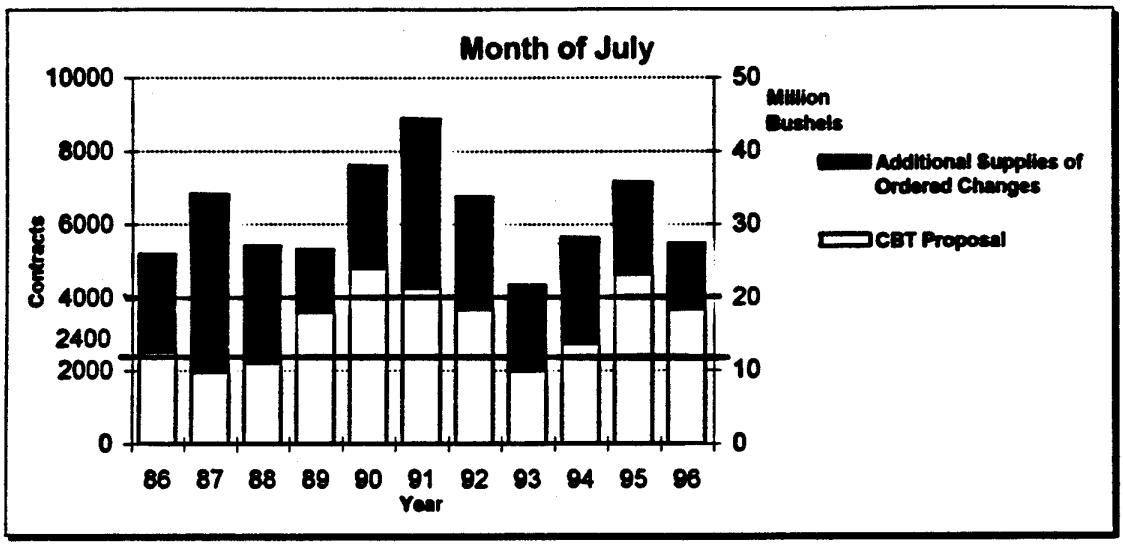
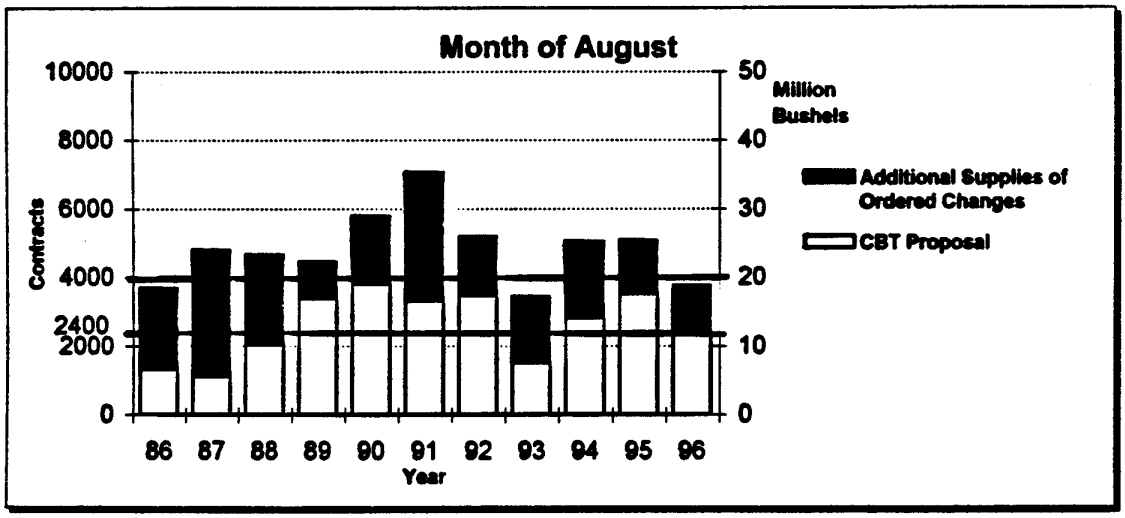
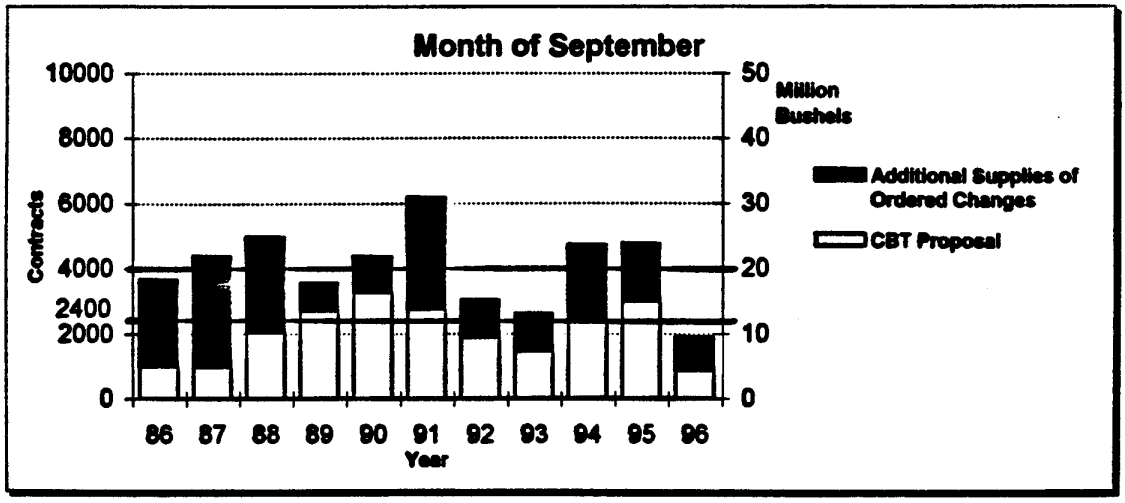
[38] Some commenters advocated the addition of new and completely untried delivery points, such as locations in the interior of Iowa, or delivery points that have been used for other contracts, such as Minneapolis, Minnesota. Although those suggestions may have merit, the Commission has decided that the experience with the current delivery points is entitled to significant weight.

[39] The CBT argues that the Commission should not determine to order the CBT to retain Toledo and St. Louis as delivery points because their retention would permit multiple delivery locations on the soybean futures contracts and because selection of delivery points is the responsibility of the contract market alone. However, the current contract has included Toledo and St. Louis as delivery points for many years with no apparent ill effects. Moreover, section 5a(a)(10) directs the Commission to act when the contract market's proposed contract terms fail to accomplish the objectives of that section of the Act, and additional delivery points are necessary to assure adequate deliverable supplies under section 5a(a)(10) in this instance. By beginning its analysis with the CBT's proposed delivery specifications and next considering delivery points already chosen and used by the exchange as existing delivery points, the Commission has sought to achieve the most conservative means of reaching the required levels of deliverable supplies. Of course, the CBT continues to be free to indicate by proposed rule or petition that its business preference for delivery locations is otherwise, and the Commission would consider such a new proposal under the standards for review provided under the Act.

**Soybeans: Comparison of Gross Deliverable Supplies under the CBT Proposal and the Ordered Changes**

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Accordingly, the retention of Toledo and St. Louis as delivery points is appropriate to provide adequate levels of gross deliverable supplies of soybeans for the July and August futures contracts. Although the retention of Toledo and St. Louis does not yield gross deliverable supplies which meet the 2,400-contract level in one of the last 11 years in September, September is a transition month between the old and new crop year, as discussed above. New crop production is in the offing. Thus, even if September gross deliverable supplies might on rare occasion fall below the 2,400-contract level, the incentive to manipulate prices based on a shortfall of old crop supplies is reduced because of the likelihood of rapidly falling prices as significant amounts of new crop supplies become available in the near future. In light of the reduced threat of price manipulation due to the imminence of new crop production, the Commission is not ordering that additional delivery points be added to the contract beyond retention of Toledo and St. Louis. If September deliverable supplies of soybeans appear to be inadequate once trading under the revised soybean contract begins, the Commission would take appropriate steps to provide for additional delivery locations.[40]

Accordingly, the Commission finds that retention of Toledo and St. Louis is appropriate to provide an adequate level of available deliverable supplies as required by section 5a(a)(10).

*B. Differentials*

Section 5a(a)(10) requires that, where more than one delivery point is specified in a futures contract, the contract terms must provide for locational differentials to the extent necessary to prevent price manipulation, market congestion, or the abnormal movement of the commodity in interstate commerce. As discussed above, in light of the significant locational price differentials in the cash market among the proposed delivery locations, the CBT's par delivery proposal for all proposed corn and soybean delivery locations would reduce the level of economically available deliverable supplies and would increase the susceptibility of the contracts to the prohibited effects under section 5a(a)(10). Accordingly, to meet the objectives of section 5a(a)(10), locational differentials must be set for the delivery locations on the corn and soybean contracts.

In setting those differentials, the Commission has been guided by commonly observed cash market price differences among the delivery points. The cash market differences in the prices of corn and soybeans for delivery points on the northern Illinois River are based primarily upon the cost of barge freight—the price of the product increases as one goes down the river and the cost of freight to New Orleans decreases. These differences in freight prices are transparent, readily available, and commonly accepted as the best measure of cash price values. An analysis of barge freight rate data indicates that 150 percent of the Waterways Freight Bureau Rate Tariff No. 7 rate provides an appropriate basis for the differential. The difference between that rate as applicable to the delivery location and that rate as applicable to Chicago, Illinois, constitutes an appropriate differential reflecting cash market price differences.

Barge freight rate data for the years 1990 through 1996 indicate that 150 percent of tariff is well within the range of commonly observed freight rates and closely approximates the average percent of tariff quoted by barge companies for Illinois River shipment during this period. These data also indicate that 150 percent of tariff approximates the average percent of tariff quoted for July, August, and September, the months when deliverable supply concerns and the need to maximize available deliverable supplies are the greatest. A majority of those commenting on the issue agreed that it was appropriate to base price differentials on barge freight cost differences, and several of the commenters that suggested a fixed rate recommended 150 percent of tariff.

St. Louis is being retained as a delivery point for soybeans. The relative price of soybeans in the cash market among the various delivery points on the northern Illinois River and St. Louis is consistently determined based on the difference in freight costs to New Orleans, and therefore the Commission has decided to base the differential for St. Louis on 150 percent of the freight tariff as well. Most commenters agreed that this approach is the appropriate measure of such cash market price differences.

The differential applicable to Toledo, which is also retained as a delivery point for soybeans, cannot be set based on the differentials relating to barge freight since Toledo is not located on the Illinois River and does not tend to deliver soybeans CIF New Orleans. The Commission's policy on locational differentials provides that such differentials must fall within the range of commonly observed cash market price differences. Available data indicate that cash price differentials between Chicago and Toledo commonly range from Chicago's being at a premium to its being at a discount to Toledo. Therefore, establishing Toledo deliveries at par with Chicago is well within the range of commonly observed cash market price differences and provides an adequate approximation of the cash market price relationship between the two delivery points. Most commenters expressing an opinion on this issue agreed that soybeans should be deliverable in Toledo at par with Chicago.

Accordingly, the Commission has determined that for soybeans Chicago and Toledo should be at contract price with all other delivery locations at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois. For corn, Chicago should be at contract price with all other delivery locations at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate applicable to that location and the rate applicable to Chicago, Illinois.

*C. Disruptions to River Traffic*

The CBT proposal's heavy reliance on a single mode of transportation to effect delivery renders the contract susceptible to significant disruption of the delivery process, increasing the possibility of price manipulation, market congestion, or the abnormal movement of corn and soybeans in interstate commerce. Although the CBT submitted a contingency plan for alternate delivery procedures to address disruptions to river traffic, that plan only addressed long-term disruption to river traffic resulting from closure of locks south of the delivery area announced six months in advance. As the Commission discussed above, however, the threat of manipulation of prices arises from the possible inability of long position holders to take delivery from all, or a significant number, of shipping stations due to the closures of a lock or locks or other river traffic obstructions located either within or south of the delivery area. The longer the period of the delay before alternate delivery procedures can be invoked, the greater the potential for manipulation. Moreover, this threat also exists when an obstruction to river

[40] Should actual trading experience reveal that September supplies must be supplemented, one means of accomplishing that objective would be to expand the delivery area to include a greater segment of the northern Illinois River. With the specification of appropriate locational differentials, such a change could probably be made at a later time with little disruption to the contract.

traffic has occurred with less than six-months notice. Accordingly, section 5a(a)(10) of the Act requires that this threat be diminished by reducing the period during which delivery may be delayed by eliminating the six-month notice requirement and by applying the contingency delivery provision to all obstructions to movement on the river arising either inside or outside of the delivery area.

In determining the length of an announced obstruction which should give rise to a contingency plan, the Commission analyzed information on past lock closures by the U.S. Army Corps of Engineers and on the issuance of river advisories or safety zones by the Coast Guard. During the last 17 years for which this information could be ascertained, it appears that there have been no unplanned and unannounced river obstructions of greater than two weeks duration. Accordingly, obstructions lasting at least 15 days after they are announced are appropriately addressed by application of the contingency plan.

In addition, as discussed above, the application of different differentials to the futures contracts depending upon whether the delivery is subject to the contingency rule might also contribute to price manipulation or market congestion. Since the Commission has determined that a differential based on 150 percent of the Waterways Freight Bureau Tariff No. 7 rate should be applied to the corn and soybean futures contracts, the Commission believes that the provision in the contingency plan should be conformed to that differential, which will be applicable to all deliveries made on the contracts at non-par locations.

Accordingly, the Commission under section 5a(a)(10) of the Act changes and supplements the provisions of this part of the CBT proposal by reducing the continuous period of river traffic obstruction from 45 days as proposed to 15 days, by making the rule applicable to any obstruction which affects shipments from a majority of shipping stations within the northern Illinois River delivery area, by making the rule applicable to all announced obstructions with no minimum notification period specified and by changing the differential from 100 percent of the Waterways Freight Bureau Tariff No. 7 rate as proposed to 150 percent.

*D. Net Worth*

The $40 million minimum net worth requirement for eligibility of shipping certificate issuers restricts deliverable supplies of corn and soybeans by eliminating several firms and potentially barring new entrants. As the Commission found above, although the CBT's objective of protecting the financial integrity of the delivery process is reasonable, it would be adequately achieved through the CBT's proposed requirements on working capital, letters of credit, and the ceiling on issuance of shipping certificates to 25 percent of net worth. Contrary to the policies underlying the federal antitrust laws, the $40 million minimum net worth requirement would operate as a significant bar to entry for entities that would be eligible in all other respects, and the resulting market concentration would be very high. The CBT has failed to demonstrate a regulatory need for the requirement. Accordingly, the Commission eliminates the requirement under sections 5a(a)(10) and 15 of the Act.

*E. 1999 Contract Months*

The Commission's section 5a(a)(10) notification advised the CBT that the terms of its corn and soybean futures contracts did not meet the objectives of that provision of the Act. In light of that determination, the Commission advised the CBT that ''the CBT should refrain from listing additional months of trading in those contracts during the pendency of these proceedings.'' 61 FR at 67999. Nevertheless, by letter dated April 24, 1997, to the Chairperson of the Commission, the CBT advised the Commission that it had determined to list or to relist for trading the July 1999 and November 1999 soybean contracts and the July 1999 and December 1999 corn contracts, respectively, prior to Commission review and approval of the proposed changes to the delivery specifications.[41]

By letter dated May 2, 1997, the Commission responded that it ''will consider whether to approve the listing of these contract months as part of its ongoing proceeding pursuant to section 5a(a)(10) of the Act * * *.'' The Commission found that the ''listing of these trading months is not consistent with Commission rule 1.41(l) and that * * * their listing for trading by the CBT is not legally authorized at the present time.'' On September 15, 1997, the Commission issued its proposed Order which, in part, proposed to disapprove the application of the CBT's proposed delivery terms to the July 1999 and November 1999 soybean contracts and the July 1999 and December 1999 corn contracts. Four days later, the CBT notified its members of its intent to list for trading the January 1999 soybean futures contract and the December 1999 corn futures contract under the same proposed terms as the Commission had proposed to disapprove. The Commission then notified the CBT that it proposed to disapprove the listing for trading of these two contract months and to disapprove, to change and to supplement the terms proposed by the CBT for these two trading months on the same basis and for the same reasons as it previously determined in its proposed order to disapprove, to change and to supplement the terms of the July 1999 and November 1999 soybean contracts and the July 1999 and December 1999 corn contracts. 62 FR 51087 (Sept. 30, 1997).

A number of commenters on the proposed order requested that the Commission authorize the listing of these trading months. They suggested that having these trading months available to them without delay or interruption was important for their ability to use the markets for hedging purposes. Other commenters suggested that authorizing the trading of these contract months under the current contract terms rather than the CBT's proposed contract terms would provide the CBT with a period of time in which to propose alternative amendments to the delivery specifications of the corn and soybean futures contracts terms. The Commission, in response to these comments, hereby authorizes the listing of the January, July and November 1999 soybean futures contract and the March, July and December 1999 corn futures contracts under their current terms, while disapproving the application of the terms contained in the CBT's proposal to these contract months.[42] The

[41] In doing so, the CBT indicated that it would:

list the aforementioned contracts with a special indicator * * * denot[ing] that the Exchange's Board of Directors and Membership have approved the terms of the listed contracts; however, the terms are subject to CFTC approval.

[42] The CBT in the October 15, 1997, hearing and in its October 22, 1997 letter of exceptions argued that these trading months were approved for listing subject to previously approved listing procedures. The Commission rejects these arguments. The four contract months cited in the proposed Order were listed initially (December and July 1999 corn futures contracts)—or relisted after having been previously delisted (July and November 1999 soybean futures contracts)—at a time and in a manner other than specified in a previously approved rule, thus requiring the prior approval of the Commission, which was never granted. Moreover, all of the futures contract months at issue, including the January 1999 soybean futures contract and the March 1999 corn futures, were not eligible for automatic listing procedures. A condition in such automatic listing procedures is that the contract terms or their listing not violate legal requirements. *See, e.g.*, 1.41(l). The Commission's finding in the December section 5a(a)(10) notification that the corn and soybean futures contracts are not in compliance with section

Continued

Commission also authorizes the listing of other 1999 corn and soybean futures contracts under their current terms. However, the CBT may propose to list the 1999 corn and soybean contracts incorporating the changes and supplements contained in this Order, and the Commission would approve such listing.

In approving the 1999 contract months for trading under their current terms, the Commission is responding to the views of numerous agricultural interests that there is a need for certainty and clarity about the legality and terms of these contracts and for their immediate availability for trading for hedging purposes. It also responds to arguments of the CBT urging that the Commission allow listing of the 1999 contract months pursuant to the current contract terms in the event that the Commission disapproves the CBT's proposal, as it has done in this Order. The Commission's action in this regard obviates the need to address a difficult legal issue of the interpretation of section 5a(a)(10) as to contracts which have been illegally listed by an exchange but have nonetheless been trading. Finally, the Commission's action permits all 1999 contract months to trade on identical terms and establishes a clear point at which the new terms ordered by the Commission will be applicable.

For the reasons discussed herein, the Commission in this Order is changing and supplementing the amendments to the CBT corn and soybean futures contracts which the CBT has proposed and is directing that they be made effective for all contract months, whenever listed for trading, beginning with and subsequent to the January 2000 soybean futures contract and the March 2000 corn futures contract. In so ordering, the Commission finds that the amendments proposed by the CBT to its corn and soybean futures contract are not consistent with section 5a(a)(10) and that their approval by the Commission would violate section 15 of the Act. Accordingly, the Commission under sections 5a(a)(10), 5a(a)(12), 8a(7), and 15 of the Act is disapproving application of those proposed terms to the CBT's corn and soybean contracts, including the 1999 contracts.

Dated: November 7, 1997.

By the Commission (Chairperson Born, Commissioner Dial, Commissioner Spears; Commissioners Tull and Holum Concurring in Part and Dissenting in Part with Opinion)

**Edward W. Colbert,**

*Deputy Secretary of the Commission.*

*Order of the Commodity Futures Trading Commission to Change and to Supplement Proposed Rules of the Board of Trade of the City of Chicago Submitted for Commission Approval in Response to a Section 5a(a)(10) Notice Relating to Futures Contracts in Corn and Soybeans,* Opinion of Commissioner John E. Tull, Jr., Concurring in Part and Dissenting in Part, Joined by Commissioner Barbara Pedersen Holum.

I concur in that part of the order which provides that the CBOT may continue to trade the 1999 contracts under the existing contract terms. I also concur in that part of the order which provides that the CBOT may submit alternative proposed delivery specifications for those two contracts.

I strongly disagree with the majority's decision to issue this order which changes and supplements the CBOT's proposed amendments to the delivery specifications to their corn and soybean contracts.

As I noted in my earlier dissent, Section 5a(a)(10) of the Commodity Exchange Act requires us to determine whether the delivery terms proposed by the CBOT ''will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce.'' We must also ''take into consideration the public interest to be protected by the antitrust laws in requiring or approving any rule of a contract market.'' Based on my review of the data available at the time of the Commission's proposed order and as supplemented by the CBOT on October 15, 1997, I remain convinced that the proposed terms for both contracts as submitted by the CBOT meet these statutory requirements.

In conclusion, both of these contracts will have a tremendous effect on the world marketplace. For both markets, the price discovery process and the published prices determine the price, through basis, to every soybean and corn farmer in the United States; actually every oil seed and corn farmer and end user throughout the world. While it is my serious hope that the contracts designed by the Commission will work, I believe we could have had better contracts and I sincerely hope that the Exchange will take advantage of the opportunity to resubmit proposed terms for both contracts and that the majority will approve such resubmission if it satisfies the requirements of the Act.

**Attachment 1**

For the reasons explained in the ''Order of the Commodity Futures Trading Commission to Change and to Supplement Proposed Rules of the Board of Trade of the City of Chicago Submitted For Commission Approval in Response to a Section 5a(a)(10) Notice Relating to Futures Contracts in Corn and Soybeans,'' the Commission is changing and supplementing under section 5a(a)(10) of the Commodity Exchange Act proposed rules of the Board of Trade of the City of Chicago. The Commission hereby makes the following changes:[43]

1. To change and to supplement the paragraph of Rule 1036.00 immediately following the paragraph beginning with the words ''Corn Differentials,'' to read as follows:

In accordance with the provisions of Rule 1041.00A, corn for shipment from regular warehouses or shipping stations located within the Chicago Switching District or the Burns Harbor, Indiana Switching District may be delivered in satisfaction of corn futures contracts at contract price, subject to the differentials for class and grade outlined above. Corn for shipment from shipping stations located on the northern Illinois River may be delivered at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

* The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 35.714 bushels per ton.

2. To change and to supplement the paragraph of Rule 1036.00 immediately following the paragraph beginning with the words ''Soybean Differentials,'' to read as follows:

In accordance with the provisions of Rule 1041.00D, soybeans for shipment from regular warehouses or shipping stations located within the Chicago Switching District, the Burns Harbor, Indiana Switching District, or the Toledo, Ohio Switching District may be delivered in satisfaction of soybean futures contracts at contract price, subject to the differentials for class and grade outlined above.

In accordance with the provisions of Rule 1041.00D, soybeans for shipment from shipping stations located on the northern Illinois River or from shipping stations within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) may be delivered in satisfaction of soybean futures contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

* The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 33.333 bushels per ton.

3. To change and to supplement Rule 1041.00A to read as follows:

Corn. Corn for shipment from regular warehouses or shipping stations located within the Chicago Switching District or the Burns Harbor, Indiana, Switching District may be delivered in satisfaction of corn futures contracts at contract price. Corn for shipment from shipping stations located within the northern Illinois River may be delivered in satisfaction of corn futures

5a(a)(10) of the Act rendered further automatic listings unavailable, as did the Commission's explicit direction to the CBT to refrain from any such further listings.

[43] Bold-face type denotes the Commission's proposed changes or supplements to the CBT proposal. Underlinings denote changes proposed by the CBT. Deletions to proposed CBT language are not shown.

contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

* The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 35.714 bushels per ton.

4. To change and to supplement Rule 1041.00D to read as follows:

Soybeans. Soybeans for shipment from regular warehouses or shipping stations located within the Chicago Switching District, the Burns Harbor, Indiana, Switching District or the Toledo, Ohio, Switching District may be delivered in satisfaction of soybean futures contracts at contract price. Soybeans for shipment from shipping stations located on the northern Illinois River or from shipping stations within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) may be delivered in satisfaction of soybean futures contracts at a premium over contract price of 150 percent of the difference between the Waterways Freight Bureau Tariff No. 7 rate* applicable to that location and the rate applicable to Chicago, Illinois, subject to the differentials for class and grade outlined above.

The factor for converting the tariff rate quoted in tonnage to a bushel basis shall be 33.333 bushels per ton.

5. To change and to supplement Regulation 1044.01 following the list of delivery locations and immediately prior to the issuer's signature block by adding, as follows:

soybeans only:

____St. Louis, MO, river mile marker _____

____Toledo, OH, Switching District

6. To change and to supplement Regulation 1056.01 by adding after the last paragraph the following:

The premium charges on soybeans for delivery from regular shippers within the Toledo, Ohio, Switching District shall not exceed 12/100 of one cent per bushel per day.

The premium charges on soybeans for delivery from regular shippers within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205) shall not exceed 10/100 of one cent per bushel per day.

7. To change and to supplement the second paragraph of Regulation 1081.01(1) to read as follows:

(c) and in the case of Chicago, Illinois, Burns Harbor, Indiana, and Toledo, Ohio, Switching Districts only, his registered storage capacity.

8. To change and to supplement the third paragraph of Regulation 1081.01(1)(a) to read as follows:

(a) one barge per day at each shipping station on the northern Illinois River and within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205); and

9. To change and to supplement Regulation 1081.01(2) to read as follows:

Except for shippers located on the northern Illinois River and within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205), such warehouse shall be connected by railroad tracks with one or more railway lines.

10. To change and to supplement the first sentence of Regulation 1081.01(12)A to read as follows:

A. Load-Out Procedures for Wheat and Oats and Rail and Vessel Load-Out Procedures for Corn and Soybeans from Chicago, Illinois, Burns Harbor, Indiana, and Toledo, Ohio, Switching Districts Only * * *.

11. To change and to supplement the first sentence of Regulation 1081.01(12)B to read as follows:

B. Load-Out Rates for Wheat and Oats and Rail and Vessel Load-Out Rates for Corn and Soybeans from Chicago, Illinois, Burns Harbor, Indiana, and Toledo, Ohio, Switching Districts Only * * *.

12. To change and to supplement Regulation 1081.01(12)G(7) to eliminate the words ''on the Illinois Waterway,'' to read as follows:

Any expense for making the grain available for loading will be borne by the party making delivery, provided that the taker of delivery presents barge equipment clean and ready to load within ten calendar days following the scheduled loading date of the barge. If the taker's barges are not made available within ten calendar days following the scheduled loading date, the taker shall reimburse the shipper for any expenses for making the grain available. Taker and maker of delivery have three days to agree to these expenses.

13. To change and to supplement the last sentence of Regulation 1081.10(12)(G)(8) to read as follows:

(8) * * * If the aforementioned condition of impossibility prevails at a majority of regular shipping stations, then shipment shall be made under the provisions of rule 1081.(12)(G)(9).

14. To change and to supplement the first paragraph and paragraph 9(b)(iii) and add a new paragraph at the end of Regulation 1081.01(12)(G)(9) to read as follows:

(9). In the event that it has been announced that river traffic will be obstructed for a period of fifteen days or longer as a result of one of the conditions of impossibility listed in regulation 1081.10(12)(G)(8) and in the event that the obstruction will affect a majority of regular shipping stations located on the northern Illinois River, then the following barge load-out procedures for corn and soybeans shall apply:

(b) * * *

(iii) The taker of delivery shall pay the maker 150% of the Waterways Freight Bureau Tariff Number 7 barge benchmark rate from the original delivery point stated on the Shipping Certificate to NOLA.

(c) In the event that the obstruction or condition of impossibility listed in regulation 1081.10(12)(G)(8) will affect a majority of regular shipping stations located on the northern Illinois River, but no announcement of the anticipated period of obstruction is made, then shipment may be delayed for the number of days that such impossibility prevails.

15. To change and to supplement the first paragraph of Regulation 1081.01(13)A by eliminating the words ''and soybeans'' in both instances in which they appear.

16. To change and to supplement Regulation 1081.01(13)D by retaining it and changing it to read as follows:

Soybeans. For the delivery of soybeans, regular warehouses or shipping stations may be located within the Chicago Switching District, within the Burns Harbor, Indiana, Switching District (subject to the provisions of paragraph A above), within the Toledo, Ohio, Switching District, or shipping stations may be located on the northern Illinois River (subject to the provisions of paragraph A above), or within the St. Louis-East St. Louis and Alton Switching Districts (i.e., the upper Mississippi River between river miles 170 and 205).

Delivery in Toledo must be made at regular warehouses or shipping stations providing water loading facilities and maintaining water depth equal to normal seaway draft of 27 feet. However, deliveries of soybeans may be made in off-water elevators within the Toledo, Ohio, Switching District PROVIDED that the party making delivery makes the soybeans available upon call within five calendar days to load into water equipment at one water location within the Toledo, Ohio, Switching District. The party making delivery must declare within one business day after receiving shipping certificates and loading orders the water location at which soybeans will be made available. Any additional expense incurred to move delivery soybeans from an off-water elevator into water facilities shall be borne by the party making delivery PROVIDED that the party taking delivery presents water equipment clean and ready to load within 15 calendar days from the time the soybeans have been made available. Official weights and official grades as loaded into the water equipment shall govern for delivery purposes. Delivery in the greater St. Louis river-loading area must be made at regular warehouses or shipping stations providing water loading facilities and maintaining water depth equal to the average draft of the current barge loadings in this delivery area. Official weights and official grades as loaded into the water equipment shall govern for delivery purposes.

17. To change and to supplement Regulation 1081.01(14)E by retaining it and changing it to read as follows:

Soybeans. The warehouseman or shipper is not required to furnish transit billing on soybeans represented by shipping certificate delivery in Toledo, Ohio. Delivery shall be flat.

18. To change and to supplement the first paragraph of the applicant's declaration contained in Regulation 1085.01 to read as follows:

We, the _____ (hereinafter called the Warehouseman/Shipper) owner or lessee of the warehouse located at _____ or shipping station located at mile marker _____ of the _____ River, having a storage capacity * * *.

19. To change and to supplement appendix 4E, paragraph 2, by eliminating the sentence

which reads, ''The net worth of a firm regular to deliver corn or soybeans must be greater than or equal to $40,000,000.''

The Commission has determined that publication of the Order will provide notice to interested members of the public of its action, is consistent with the Commodity Exchange Act and is in the public interest.

Issued in Washington, D.C., this 7th day of November 1997, by the Commodity Futures Trading Commission.

**Edward W. Colbert,**

*Deputy Secretary of the Commission.*

[FR Doc. 97–29895 Filed 11–12–97; 8:45 am]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Mercantile Exchange Petition for Exemptions From the Dual Trading Prohibition Set Forth in Section 4j(a) of the Commodity Exchange Act and Commission Regulation 155.5

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of intent to condition and proposed order granting conditional exemptions from the prohibition on dual trading in seven affected contract markets.

**SUMMARY:** For the reasons set forth in the Proposed Order Granting Conditional Dual Trading Exemptions (''proposed Order''), the Commodity Futures Trading Commission (''Commission'') intends to grant, subject to a stated condition, the petition of the Chicago Mercantile Exchange (''CME'' or ''Exchange'') for exemptions from the dual trading prohibition in Section 4j(a) of the Commodity Exchange Act (''Act'') and Commission Regulation 155.5 for its Live Cattle, Deutsche Mark, Japanese Yen, Swiss Franc and Eurodollar futures contracts and the option contracts on Eurodollar and S&P 500 futures.[1] Pursuant to the Act and Commission Regulation 155.5(d)(8)(C)(iii), CME may submit written supplemental data, views or arguments and will have the opportunity to make an oral presentation to the Commission before the Commission makes its final determination.

**DATES:** If CME intends to make an oral presentation, it must submit its request in writing no later than ten days after receipt of this proposed Order. CME must submit any written supplemental data, views or arguments within 30 days of receipt of this proposed Order.

**ADDRESSES:** CME's requests for oral presentation and submission of written supplements are to be sent to the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

**FOR FURTHER INFORMATION CONTACT:** Duane C. Andresen, Special Counsel, or Rachel Fanaroff Berdansky, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone: (202) 418–5490.

**SUPPLEMENTARY INFORMATION:** A floor broker engages in dual trading when he or she executes a customer's order during the same trading session in which he or she executes, directly or indirectly, a trade in the same contract for his or her own account or an account in which he or she has an interest. Dual trading can afford floor brokers the opportunity to abuse customer orders if audit trail information and surveillance are insufficient to permit the detection of such abuses. Specifically, a dual trading floor broker can directly commit abuses of customer orders such as trading ahead or against those orders and also has an informational advantage for his or her personal trading.[2] Section 4j(a) of the Act and Regulation 155.5 prohibit dual trading and establish trade monitoring standards that must be met in order for contract markets to be exempted from the prohibition.

The Commission intends to issue the following proposed Order granting CME conditional dual trading exemptions pursuant to Section 4j(a) of the Act and Commission Regulation 155.5. In accordance with Regulation 155.5(d)(8), CME may submit to the Commission in writing any supplemental data, views or arguments within 30 days of receipt of this Notice and proposed Order. In addition, CME may request, in writing within ten days of receipt of this Notice and proposed Order, an opportunity to make an oral presentation to the Commission. If CME submits a request for an oral presentation, the Exchange will be notified by the Commission of the date and the terms under which CME may make such presentation. Public notice of such an oral presentation also will be provided in accordance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b (Supp. I 1995).

### Proposed Order Granting Conditional Dual Trading Exemptions

On October 20, 1993, CME submitted a Petition for Exemption from the Dual Trading Prohibition contained in Section 4j of the Act and Commission Regulation 155.5 in CME's Live Cattle, Deutsche Mark, Japanese Yen, Swiss Franc, British Pound, Eurodollar and S&P 500 futures contracts and the option contracts on the Deutsche Mark, Eurodollar and S&P 500 futures. The Exchange corrected that petition on December 1, 1993. Subsequently, the Exchange amended its petition on January 21, 1994. CME updated its petition on January 21, 1997, with respect to eight affected contract markets.[3] Notice of the public availability of the CME's updated exemption petition was published in the **Federal Register** on February 20, 1997.[4]

Upon consideration of CME's petition, as supplemented, and other data and analysis, including, but not limited to:

Exchange audit trail test results reconciling imputed times to

[1] The Commission is granting CME an unconditional exemption from the dual trading prohibition for its S&P 500 futures contract. An Order granting such exemption is being submitted for publication together with this Notice.

[2] The Commission has previously discussed in several instances, including its November 28, 1994 *Report to Congress on Futures Exchange Audit Trails,* the possible abuses attendant to dual trading. *See also* the Commission's Proposed Regulation Prohibiting Dual Trading by Floor Brokers, 56 FR 13025 (March 9, 1993).

[3] *Affected contract market* means a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). *See* Section 4j(a)(4) of the Act. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading a screen-based trading system. The Commission further stated that, while not excluding electronic trading from the dual trading prohibition, the Commission was retaining the flexibility to consider the matter further. *See* 58 FR 40335 (July 28, 1993). The Commission is not addressing screen-based trading in this proposed Order.

Two contract markets included in the original petition, British Pound futures and options on Deutsche Mark futures, no longer are affected contract markets as defined in the Act and regulations. This proposed Order is not applicable to those two contract markets. As previously noted, this proposed Order also is not applicable to the S&P 500 futures contract market.

[4] 62 FR 7755 (February 20, 1997). The Commission did not address the Exchange's dual trading exemption petition in 1994 in large part because of the Exchange's prior representation that it intended to automate the entry of trade execution times by developing a handheld electronic trading terminal. In June 1994, the Commission was informed that the proposed handheld terminal would not be in place by the October 1995 deadline for compliance with the heightened audit trail standards set forth in Section 5a(b)(3) of the Act. Because CME had not sufficiently demonstrated that its existing audit trail system met current and future standards, the Commission required the Exchange to demonstrate its ability to meet the audit trail requirements using Commission-designed tests and, thus, deferred consideration of the Exchange's petition. Subsequent to evaluating the results of the tests, the Commission offered CME the opportunity to supplement its petition.

underlying trade documentation and verifying data on ''window sizes'';

actions taken in response to the Commission's November 1994 *Report to Congress on Futures Exchange Audit Trails,* June 1995 *Report on Audit Trail Accuracy and Sequencing Tests* (''Audit Trail Report''), and August 12, 1996 *Report on Audit Trail Status and Re-Test* (''Audit Trail Re-Test Report'');

Commission trade practice investigations and compliance reviews conducted in conjunction with rule enforcement reviews or other investigatory or surveillance activities;[5]

the Exchange's existing dual trading and top step trading restrictions;[6]

the Division of Trading and Markets Memorandum dated October 28, 1997;

and upon review of each element of CME's trade monitoring system and of CME's trade monitoring system as a whole, the Commission finds that the Exchange's trade monitoring system does not fully satisfy the requirements of Sections 5a(b) and 4j(a)(3) of the Act and Regulation 155.5 in that the audit trail component is deficient. The Commission finds that corrective actions are sufficient and appropriate to meet those standards. In addition, the Commission finds that, based on an analysis of the composition of trading (by transaction size and volume) of certain distant contract expirations and option markets, there is a substantial likelihood that the broad scope of the dual trading prohibition specified under Section 4j of the Act and Regulation 155.5, which applies to a contract market as a whole, would harm the public interest in hedging or price basing in less liquid months of the affected contract markets. Therefore, the Commission has determined to grant CME conditional exemptions from the dual trading prohibition of Section 4j of the Act and Regulation 155.5 in the seven affected contract markets.

The Commission is granting the Exchange's petition subject to the Exchange taking the corrective action specified below and implementing and enforcing the dual trading restriction described in the Appendix to this proposed Order. The Commission has concluded that the proposed dual trading restriction, which imposes a prohibition on dual trading in actively traded months but has no impact on less actively traded back months, is appropriate as a method to deter dual trading-related abuses and other customer abuses. The Commission's limited restriction, as opposed to the statutory dual trading ban, strikes a balance between the need to preserve liquidity in certain low volume months and the need to protect customers from the potential abuses that are associated with dual trading.

The Commission Hereby finds as follows:

## Components of Exchange's Trade Monitoring System

### *Audit Trail System*

#### One-Minute Execution Time Accuracy

The Exchange's audit trail system fails to record ''reliably accurate'' trade times in increments of no more than one minute in length as required by Section 5a(b)(2) of the Act, Regulation 1.35(g), and Appendix A to Regulation 155.5.[7] Specifically, the Exchange has not established for the seven affected contract markets that 90 percent or more of imputed trade times, as assigned by the Exchange's trade timing system, are reliable, precise, and verifiable as demonstrated by being imputed within a timing window of two minutes or less (''90 percent performance standard''). Thus, an impermissible amount of trade timing data, an integral part of an exchange's trade monitoring system, is not reliably accurate in accordance with that standard and thus negatively impacts the Exchange's surveillance systems and investigatory and disciplinary action programs.

The Commission has made clear that a reliably accurate imputed trade execution time only can be demonstrated by a timing window that narrows the time assigned to the trade to a two-minute period within which the trade is most likely to have occurred. Even where an exchange can demonstrate a trade timing window of two minutes or less, it is not possible to determine where within that window, the trade occurred. This underscores the critical need for compliance with the 90 percent performance standard.

CME's Regulatory Trade Timing System (''RTT'') imputes an execution time for every trade.[8] Trade times are imputed based upon entry and exit timestamps on order tickets; time and sales reports; times that the trades were submitted for clearing; trading card numbers and sequence of trades on trading cards; 15-minute bracket codes; manual execution times for certain types of trades; calculated differentials for spread trades; identification of spread legs and types of spread trades; and any available times resulting from electronic order entry or trading systems. Based on these data, RTT determines various time spans within which a trade is likely to have been executed and ultimately assigns an imputed execution time for the trade.

The audit trail tests designed and reviewed by the Commission and conducted by the Exchange in response to a November 23, 1994 Commission letter involved a determination of the consistency of imputed trade execution times with all underlying audit trail records and data. Based upon that process, trade timing accuracy and sequencing rates for CME's imputed system were computed.[9] In reviewing

[5] A list of the specific documents considered in connection with this proposed Order will be made available to the Exchange upon request. Copies of any documents not originally furnished by CME also will be made available upon request.

[6] Under CME Rule 552, adopted in 1991, dual trading is, with certain exceptions, prohibited in any contract month which is mature and liquid, *i.e.,* a contract month by position in relation to the front month contract at any given point in time that has had during the prior six calendar months an average daily pit-traded volume of 10,000 or more contracts. In any such contract months, members may trade only for their personal accounts until they have executed a customer order and then may no longer execute personal trades in that contract month during that trading session. Under CME Rule 555, effective July 1993, a member may not, with certain exceptions, while standing on the top step, execute a trade or place an order for his personal account in any contract months subject to the CME Rule 552 dual trading restriction which are traded in the contract month where the member stands.

[7] Commission Regulation 1.35(g) requires that ''[a]ctual times of execution shall be stated in increments of no more than one minute in length.'' Section 5a(b)(2) of the Act, among other things, codified that timing requirement by stating that an exchange's audit trail system shall, ''consistent with Commission regulation, accurately record the times of trades in increments of no more than one minute in length.'' Section II of Appendix A to Commission Regulation 155.5 requires that a contract market, in describing its audit trail system in a petition for exemption from the dual trading prohibition, ''[d]emonstrate the highest degree of accuracy practicable (but in no event less than 90% accuracy) of trade execution times required under regulation 1.35(g) (within one minute, plus or minus, of execution) * * *.'' In addition, the contract market must ''[d]emonstrate the effective integration of such trade timing data into the contract market's surveillance system with respect to dual trading-related abuses.'' For contract markets that impute trade execution times, Appendix A requires that the contract market provide a description of the trade imputation algorithm, ''including how and why it reliably establishes the accuracy of the imputed trade execution times.''

[8] An imputed timing system does not capture the actual trade execution time but derives a time from other timing and trade data.

[9] To the extent that the time imputed by a computer algorithm was consistent with required trade documentation, time and sequence data and time and sales information for the subject trade and surrounding trades, that time was deemed accurate. If that imputed time fell within a two-minute level of precision as measured by the size of the final time window determined by such algorithm, that imputed time was considered to be verifiable, reliable and precise. Thus, the Commission stated in its Audit Trail Report, ''[a]lthough 90 percent of CME trade times satisfied the standards [of consistency with underlying data] for Test I, available data do not permit sufficiently precise

Continued

the results of the test designed to evaluate trade timing accuracy, Commission staff determined that, although 90.4 percent of CME's trade times satisfied the standard for consistency with the underlying data, only 72 percent of those trade times had timing windows of two minutes or less and thus could be verified.[10] In March 1996, the Commission conducted a re-test of CME's audit trail system. Although 94.2 percent of CME's trades times satisfied the standard for consistency with the underlying data, only 79.5 percent of those trade times had timing windows of two minutes or less and thus could be verified.

Subsequent to the re-test, the Exchange provided windows data for all affected contract markets (including the S&P 500 futures market) in response to Commission requests. For December 10, 1996, the overall percentage of trades with timing windows of two minutes or less was 82 percent. The percentage of trades with timing windows of two minutes or less computed separately for each of the seven affected contract market ranged from 37 percent to 89 percent. For March 12, 1997, the overall percentage of trades with timing windows of two minutes or less was 83 percent and the percentages for the seven affected contract markets ranged from 62 percent to 87 percent.

On June 30, 1997, the Exchange provided windows data for three additional trade dates selected at random by the Commission which showed that the overall percentage of trades with timing windows of two minutes or less ranged from 82 percent to 85 percent. The percentage of trades with timing windows of two minutes or less computed separately for each of the seven affected contract market ranged from 65 to 92 percent on May 28, 1997; 66 to 86 percent on June 5, 1997; and 60 to 88 percent on June 10, 1997. Thus, the Exchange has not demonstrated that its imputed trade execution times are sufficiently reliable, precise, and verifiable in that it has not established that 90 percent or more of such times are imputed within timing windows of two minutes or less.[11]

The negative impact on the components of the Exchange's trade monitoring system resulting from its failure to satisfy the 90 percent performance standard is exacerbated because CME does not require the recordation of a member's personal and customer trades in sequence.[12] Given the absence of such a recordation requirement, reliably accurate trade times are essential for effective determination of the sequence of trades. Where the sequence of customer and personal trades is not determined, possible dual trading-related abuses, such as trading ahead of customer orders and trading against customer orders, could go undetected.

Other Components of CME's Audit Trail System

With regard to the requirement that trade data be provided continually to the Exchange in accordance with Section 5a(b)(3)(A)(ii) of the Act, exchange audit trail systems must provide trade data, including trade timing information, on a periodic, but not necessarily real-time, basis.[13] Such information also must be obtained in a timely manner. The Exchange requires that clearing members submit trade data for clearing no later than 60 minutes after the end of the last time bracket on the trading card or floor order ticket. CME's trade data, therefore, are provided periodically to the Exchange at no more than hourly intervals, which is continual.

With regard to unalterability, as mandated by Section 5a(b)(3)(A)(i) of the Act, the Exchange's trade records are unalterable, since they are recorded on trading cards and order tickets in nonerasable ink. Trade corrections also are not permitted to obscure original data.[14]

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verification of the accuracy of all of these trade times.'' Audit Trail Report at 11.

Under the 90 percent performance standard, only trade times assigned by the Exchange's imputed timing system within timing windows of two minutes or less are reliably accurate. As noted above, Commission staff deems accurate those trades for which the imputed trade times are consistent with all underlying audit trail records and data, as determined by manual review. When comparing windows data for accurate trades and all trades, the Division has found that a higher percentage of accurate trades are assigned imputed times that fall within windows of two minutes or less and thus meet the 90 percent performance standard. However, the resulting percentage difference between accurate and all trades generally has not exceeded one percent. In addition, since the use of all trades data facilitates exchange submission of timing windows percentages because such data do not have to be generated in conjunction with an accuracy test, which requires an analysis of extensive trade documentation, the Commission finds that the use of all trades data provides an acceptable basis for determining windows performance.

[10] In response to recommendations made in the Audit Trail Report, the Exchange modified its trading card procedures such that only six trades can be recorded on a card, trade data can be entered only on one side of the card, and a new card must be used with the change of each time bracket. The Exchange modified its reporting and enforcement procedures to supply members more promptly with information on audit trail inconsistencies and to require corrections that reflect actual events, to enforce more aggressively data recordation and submission requirements, including spread quote reporting and timing data, and to enforce more aggressively timestamping procedures for flashed orders.

The Exchange also made a number of improvements to its trade timing system. Since 1995, the CME has required a trade submission indicator for executions of orders flashed upon receipt, used seconds in the imputed timing system, including seconds from order ticket timestamps, added exit timestamps to the imputed timing system, used order type information to time trades, and used the clearing receipt time in its timing system. The Exchange also made a number of programming improvements to its timing algorithm.

CME declined to implement two Commission recommendations: that members record and use manual execution times for at least the first and sixth trades on trading cards and that the Exchange synchronize timestamp clocks across the floor and upgrade the clocks to record times to the second.

[11] The windows data percentages indicated for the trade dates December 10, 1996, through June 10, 1997, do not include windows data for the S&P futures contract market. As noted above, the Commission is issuing a separate order granting CME an unconditional dual trading exemption for the S&P 500 futures contract market.

The Exchange submitted data indicating that 90 percent or more of the imputed trade times in its S&P 500 futures contract had timing windows of two minutes or less on all three dates selected by Commission staff using a random sampling method, as well as two prior dates selected by the Exchange based upon Commission timeframes. The Commission believes that, while timing windows data for all dates provided should be considered, the dates selected randomly by persons other than those affiliated with the Exchange should be accorded greater weight in determining whether an affected contract market attains the 90 percent performance standard. The windows data for the S&P 500 futures contract market demonstrates consistent compliance with the 90 percent performance standard. None of the Exchange's other affected contract markets demonstrated consistent compliance.

[12] Notably, although there are differences in various systems among the exchanges, the three other exchanges for which the Commission has granted unconditional exemptions from the dual trading prohibition require that customer and personal trades be recorded sequentially on a single trading document. Similar to CME, one of those exchanges, the Coffee, Sugar and Cocoa Exchange, Inc., also uses an imputed timing system to assign trade execution times. Such sequencing also can be achieved by recording personal and customer trades in sequence on one set of sequentially numbered trading documents. As the Commission noted in discussing the results of CME's first audit trail test, ''recordation of a member's personal and customer trades in sequence should be the Exchange's objective.'' Audit Trail Report at 14–15. Section 5a(b)(3) of the Act provides, among other things, that an exchange's audit trail system must record accurately and promptly essential data on all trades, including execution time, through a means that is adequately precise to determine the sequence of customer and personal trades, to the extent practicable as determined by the Commission by rule or order.

[13] *See* Audit Trail Re-Test Report at 39.

[14] The Commission requires retention of a record of any cancellations, changes, or corrections to trades. Commission Regulation 1.35(d) and the Outtrade Interpretation, 54 FR 37004 (September 6, 1989). The Commission amended Regulation 1.35(d)(7), effective October 21, 1996, to require that the correction of erroneous information on trading records be accomplished in such a manner that the originally recorded information must not be obliterated or otherwise made illegible. 61 FR 42999 (August 20, 1996). In November 1996, CME amended its CME Rule 536 to comport with the Commission's amendment to Regulation 1.35(d)(7).

CME's imputed timing system, which uses data from sources other than the trader, as well as data provided by the trader, to derive times, also meets the Section 5a(b)(3)(A)(iii) standards for independence, to the extent practicable.[15] The Exchange's existing system uses, among other things, data generated by both buyers and sellers for personal trades, including trading card numbers and sequence of trades on trading cards, certain execution times required to be entered manually, entry and exit timestamps on order tickets, time and sales data and 15-minute bracket codes to impute trade execution times.

The Exchange requires that personal trades be recorded in sequence, consistent with Commission regulations, by requiring that members record such trades in sequence on pre-numbered trading cards.[16] The Exchange adopted a single-sided trading card on which all personal buy and sell trades are required to be recorded sequentially in response to an Audit Trail Report recommendation. However, as noted elsewhere, the Exchange does not require the recordation of a member's personal and customer trades in sequence. Given the absence of such a recordation requirement, reliably accurate trade times are essential for effective determination of the sequence of trades.

CME enforces its audit trail requirements and integrates audit trail data into its surveillance system for dual trading-related abuses. However, because the Exchange's trade surveillance system incorporates into its data, including exception reports, an impermissible amount of imputed trade execution times that are not reliably accurate, the effectiveness of the Exchange's integration of audit trail data is diminished.

As required by Section 5a(b)(1)(B) of the Act, CME's trade entry and outtrade resolution programs capture certain essential data on cleared trades, unmatched trades, and outtrades.

Finally, with regard to broker receipt times, the Commission finds that it is not practicable at this time for CME to record the time that each order is received by a floor broker for execution. Immediately executable flashed orders, however, are in substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act, as stated previously by the Commission in its Order on flashed orders and broker receipt times.[17]

*Physical Observation of Trading Areas*

CME's trade monitoring system satisfies the requirements of Section 5a(b)(1)(A) of the Act in that CME maintains and executes an adequate program for physical observation of Exchange trading areas and integrates the information obtained from such observation into its compliance programs. The Exchange conducts daily floor surveillance during the open and close on all affected contract markets and at random times during each trading day. CME also performs floor surveillance when warranted by special market conditions, such as exceptional volatility or contract expirations. Finally, the Exchange employs a video camera logging system in the interest rate quadrant on the upper trading floor.[18]

*Recordkeeping System*

CME's recordkeeping system captures certain essential data on trades and uses information from the records and violations of recordkeeping requirements to bring appropriate disciplinary actions. However, the Exchange needs to improve member compliance with Regulation 1.35(j), in that only 83 percent of the trading cards selected for review by Division staff were submitted to the clearing member within 15 minutes following 30-minute trading intervals and timestamped promptly to the nearest minute following collection.

In addition, because CME does not meet the 90 percent performance standard, the system captures an impermissible amount of trade timing data that is not reliably accurate. This circumstance is compounded by the fact that CME does not require the recordation of personal and customer trades in sequence. As a result, the Exchange's recordkeeping system is limited in its capability to capture essential data on the sequence of customer trades.

CME generally conducts back office audits of trading cards and order tickets at each clearing member firm at least once a year for a representative sample of customer orders and personal trades. CME also uses a computerized tracking system to monitor member compliance daily with certain trade timing and sequencing requirements, regularly examines trading records during the course of investigations for possible recordkeeping violations, and uses information from these audits to generate investigations. The Exchange requires that the account identifier reflected on the floor order ticket relate back to the ultimate customer account.

*Surveillance Systems and Disciplinary Actions*

The inclusion of an impermissible amount of trade timing data that is not reliably accurate in the Exchange's trade monitoring system diminishes the capability of the Exchange's trade surveillance system to review trade data effectively, and as a result, possible dual trading-related abuses could go undetected. Further, the lack of reliably accurate trade timing data diminishes the capability of the Exchange's disciplinary program to bring appropriate disciplinary actions against violators. In other respects, the Exchange's trade surveillance system may be capable of reviewing and is used to review trading data on a regular basis to detect possible dual trading-related abuses and other customer order abuses. In addition, CME did bring disciplinary actions against offenders and issued meaningful penalties against violators. Therefore, CME has demonstrated the capability to use information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders as required by Sections 5a(b)(1)(C), (D) and (F) of the Act. Further, CME refers appropriate cases to the Commission.

On a daily basis, CME reviews computerized surveillance reports generated by the Exchange's Automated Trade Surveillance system to detect possible instances of dual trading-related abuses and other trading abuses. All relevant trade data, including account numbers, are included in these reviews. Among the computerized exception reports generated by the Exchange and reviewed daily are those designed to identify such suspicious trading activity as trading ahead of a customer, trading against a customer, wash trading, and trading against a customer with a collaborator, as well as those designed to provide data on personal profit and loss, member dual trading and outtrade resolution. Once an investigation has been opened, the Exchange's Compliance Department can use video cameras, on a for cause basis,

[15] *See* Audit Trail Re-Test Report at 40.

[16] Commission Regulation 1.35(d)(2) requires that each member of a contract market recording purchases and sales on trading cards must record such purchases and sales in exact chronological order of execution on sequential lines of the trading card.

[17] 60 FR 58049 (November 24, 1995).

[18] Although primarily employed for dispute resolution, the 38 cameras run continuously throughout the trading day and may enable investigators to view virtually all activity in the quadrant to resolve irregularities detected by the Exchange's computerized surveillance system or to follow up on tips from members, clerks or floor surveillance staff.

to assist in the conduct of the investigation.[19]

During 1996, the Exchange initiated 429 investigations and/or inquiries into all types of trading-related abuses. Approximately 80 percent of the investigations opened and closed during 1996 were closed within the four-month standard set forth in Regulation 8.06. During that same period, the Exchange initiated 98 dual trading-related investigations and referred three of these investigations to a disciplinary action committee. During the period of January 1994 through December 1996, CME assessed substantial penalties in 14 disciplinary actions involving dual trading-related abuses.

*Commitment of Resources*

The Commission finds that CME meets the requirements of Section 5a(b)(1)(E) of the Act by committing sufficient resources for its trade monitoring system to be effective in detecting and deterring violations and by maintaining an adequate staff to investigate and to prosecute disciplinary actions. For fiscal year 1996, CME committed 99 personnel to the Exchange's Compliance, Market Surveillance and Audits Departments and reported its total self-regulatory costs to be $15,388,000. CME's reported volume for this period was 177,027,583 contracts, and the number of trades exceeded 16,000,000.

Accordingly, the Commission Hereby Orders that:

The Exchange must implement the following corrective action: achieve compliance with the 90 percent performance standard.

The Commission further orders that:

Until such time as the Exchange demonstrates that its trade monitoring system satisfies the relevant standards, the Exchange shall be subject to the following condition: Within 60 days from the effective date of a final Order, the Exchange must implement and enforce the limited dual trading restriction described in the Appendix to this proposed Order, which is less restrictive than the dual trading prohibition of Section 4j of the Act and Regulation 155.5. Such dual trading restriction currently would apply to the following affected contract markets: Live Cattle, Deutsche Mark, Japanese Yen, Swiss Franc and Eurodollar futures contracts and the option contracts on Eurodollar and S&P 500 futures.

*Accordingly,* the Commission proposes to grant CME's Petition for Exemption, subject to the stated condition, from the dual trading prohibition for trading in its Live Cattle, Deutsche Mark, Japanese Yen, Swiss Franc and Eurodollar futures contracts and the option contracts on Eurodollar and S&P 500 futures.

If, at any time, CME believes that it can demonstrate to the Commission's satisfaction that it meets, for an affected contract market subject to this Order, all of the standards set forth in this Order, including, but not limited to, those in Section 5a(b) and Regulation 155.5, the Exchange may petition for an unconditional exemption to the dual trading prohibition for that affected contract market.

Unless otherwise specified, the provisions of this proposed Order shall be effective on the date on which it is issued as a final Order by the Commission, and the condition shall become effective as stated herein and shall remain in effect unless and until removed, as provided above, or revoked in accordance with Section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). Failure of CME to abide by the condition of a limited dual trading restriction will automatically cause the dual trading prohibition set forth in Section 4j of the Act and Regulation 155.5 to go into effect.

If other CME contract markets become affected contract markets after the date this Order becomes final, the Exchange would be required, absent submission of a dual trading exemption petition, to restrict dual trading in those affected contract markets in accordance with the dual trading prohibition set forth in Section 4j of the Act and Regulation 155.5. Further, if CME demonstrates to the Commission's satisfaction that an affected contract market subject to this Order has ceased to meet the Regulation 155.5(a)(9) affected contract market threshold, that contract market no longer would be subject to this Order.

Dated: November 7, 1997.

By the Commission.

**Edward W. Colbert,**

*Deputy Secretary.*

**Appendix—Dual Trading Restriction**

*a. Restriction*

A floor broker is prohibited from executing customer orders in an affected contract market month, as defined below, during the same pit trading session in which the floor broker executes directly, or initiates and passes to another member for execution, a transaction in any such affected contract market month for (1) the floor broker's own account, (2) any account in which the floor broker's ownership interest or share of trading profits is ten percent or more, (3) any account for which the floor broker has trading discretion, or (4) any other account controlled by a person with whom such floor broker is subject to trading restrictions under Section 4j(d) of the Act to the extent such section is applied by Commission regulation or order.

*b. Affected Contract Market Month (Volume)*

Affected contract market month means: (1) For each affected non-agricultural contract market, any contract market month with an average daily trading volume of 10,000 contracts or more as determined by, at the election of the Exchange, either (i) CME Rule 552 with respect to a contract month position or (ii) trading in the previous calendar month; and (2) For each affected agricultural contract market, any contract market month with an average daily trading volume of 10,000 contracts or more as determined by trading in the previous calendar month. For this purpose, daily trading volume means the total number of contracts sold (or bought) in any contract month of an affected contract market during a trading day, with the average computed as set forth above and excluding ex-pit transactions as permitted under contract market rules that have been made effective under the Act. There will be a two business day allowance at the beginning of each calendar month for computation and member notification purposes.

*c. Affected Contract Market Month (Front Month)*

Front month means, for each affected contract market, the month which is either the expiration or delivery month which is nearest to expiration or, at the Exchange's discretion, the expiration or delivery month which is next nearest to expiration when the contract month nearest to expiration is five business days or less from the first notice day or last trading day for cash settled contracts for futures contracts or the expiration date for futures options contracts. If a front month is not subject to a prohibition pursuant to paragraph b. above, then it shall, nonetheless, be an affected contract market month and be subject to a prohibition unless, on the basis of historical data, that front month reasonably can be expected to have an average daily trading volume of less than 500 contracts.

*d. Exceptions*

Dual trading shall be permitted under exceptions contained in CME Rule 552 or other exceptions consistent with Commission Regulation 155.5(c)(4) in accordance with Exchange rules which the Commission has permitted to go into effect pursuant to Section 5a(a)(12)(A) of the Act and Regulation 1.41.

**Dissenting Opinion of Commissioner Barbara Pedersen Holum on the Disposition of the Chicago Mercantile Exchange's Dual Trading Petition**

Section 4j(a)(3) of the Commodity Exchange Act requires the Commission to exempt a contract market unconditionally from the dual trading prohibition of Section

[19] During 1996, the CME significantly expanded its video surveillance capability. The two cameras on the upper trading floor were replaced with ten cameras, and the single camera on the lower trading floor was replaced with seven cameras. All 17 are state-of-the-art ''pan, tilt and zoom'' professional grade cameras.

4j(a) of the Act upon finding that the trade monitoring system satisfies the requirements of Section 5a(b) of the Act by effectively detecting and deterring dual trading-related abuses. I dissent from the Commission's proposed Order granting the CME a conditional exemption in seven affected markets.

Based on information provided to the Commission, I find that the CME's trade monitoring system as a whole effectively detects and deters dual trading abuses and therefore accomplishes the intended objectives of the Act. Additionally, in 1991 the CME implemented a dual trading restriction as part of its trade monitoring system which the Commission approved. The Commission has reviewed the CME's enforcement of that restriction over the past six years and found it to be effective.

Therefore, I find that CME's trade monitoring system, including its dual trading restriction, meets the standards for an unconditional exemption from the dual trading prohibition.

[FR Doc. 97–29892 Filed 11–12–97; 8:45 am]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Board of Trade Petition for Exemptions From the Dual Trading Prohibition Set Forth in Section 4j(a) of the Commodity Exchange Act and Commission Regulation 155.5

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of intent to condition and proposed order granting conditional exemptions from the prohibition on dual trading in 13 affected contract markets.

**SUMMARY:** For the reasons set forth in the Proposed Order Granting Conditional Dual Trading Exemptions (''proposed Order''), the Commodity Futures Trading Commission (''Commission'') intends to grant, subject to the stated conditions, the petition of the Chicago Board of Trade (''CBT'' or ''Exchange'') for exemptions from the dual trading prohibition in Section 4j(a) of the Commodity Exchange Act (''Act'') and Commission Regulation 155.5 for its Wheat, Corn, Soybean, Soybean Meal, Soybean Oil, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures contracts and the option contracts on the Corn, Soybean, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures. Pursuant to the Act and Commission Regulation 155.5(d)(8)(C)(iii), CBT may submit written supplemental data, views or arguments and will have an opportunity to make an oral presentation to the Commission before the Commission makes its final determination.

**DATES:** If CBT intends to make an oral presentation, it must submit its request in writing no later than ten days after receipt of this proposed Order. CBT must submit any written supplemental data, views or arguments within 30 days of receipt of this proposed Order.

**ADDRESSES:** CBT's request for oral presentation and submission of written supplements are to be sent to the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

**FOR FURTHER INFORMATION CONTACT:** Rachel Fanaroff Berdansky, Special Counsel, or Duane C. Andresen, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581; telephone: (202) 418–5490.

**SUPPLEMENTARY INFORMATION:** A floor broker engages in dual trading when he or she executes a customer's order during the same trading session in which he or she executes, directly or indirectly, a trade in the same contract for his or her own account or an account in which he or she has an interest. Dual trading can afford floor brokers the opportunity to abuse customer orders if audit trail information and surveillance are insufficient to permit the detection of such abuses. Specifically, a dual trading floor broker can directly commit abuses of customer orders such as trading ahead or against those orders and also has an informational advantage for his or her personal trading.[1] Section 4j(a) of the Act and Regulation 155.5 prohibit dual trading and establish trade monitoring standards that must be met in order for contract markets to be exempted from the prohibition.

The Commission intends to issue the following proposed Order granting CBT conditional dual trading exemptions pursuant to Section 4j(a) of the Act and Commission Regulation 155.5. In accordance with Regulation 155.5(d)(8), CBT may submit to the Commission in writing any supplemental data, views or arguments within 30 days of receipt of this Notice and proposed Order. In addition, CBT may request, in writing within ten days of receipt of this Notice and proposed Order, an opportunity to make an oral presentation to the Commission. If CBT submits a request for an oral presentation, the Exchange will be notified by the Commission of the date and the terms under which CBT may make such presentation. Public notice of such an oral presentation also will be provided in accordance with the requirements of the Government in the Sunshine Act, 5 U.S.C. 552b (Supp. I 1995).

### Proposed Order Granting Conditional Dual Trading Exemptions

On October 25, 1993, CBT submitted a Petition for Exemption from the Dual Trading Prohibition contained in Section 4j of the Act and Commission Regulation 155.5 for its Wheat, Corn, Soybean, Soybean Meal, Soybean Oil, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures contracts and the option contracts on the U.S. Treasury Bond and 10-Year Treasury Note futures. The Exchange corrected that petition on December 2, 1993. Subsequently, by letters dated March 25 and May 14, 1994, CBT supplemented its petition to include the option contracts on its Corn, Soybean and 5-Year Treasury Note futures since such contract markets had reached average daily volumes of 8,000 contracts and, thus, had become affected contract markets (''affected contract markets'') as defined in the Act and regulations thereunder.[2] CBT updated its petition on January 17, 1997, with respect to all 13 of its affected contract markets. Notice of the public availability of the CBT's updated exemption petition was published in the **Federal Register** on February 20, 1997.[3]

[1] The Commission has previously discussed in several instances, including its November 28, 1994 *Report to Congress on Futures Exchange Audit Trails*, the possible abuses attendant to dual trading. *See also* the Commission's Proposed Regulation Prohibiting Dual Trading by Floor Brokers, 56 FR 13025 (March 9, 1993).

[2] *Affected contract market* means a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). *See* Section 4j(a)(4) of the Act. As noted by the Commission in promulgating Regulation 155.5, a contract market trading on an exchange floor will be considered separate from a contract market in the same commodity trading a screen-based trading system. The Commission further stated that, while not excluding electronic trading from the dual trading prohibition, the Commission was retaining the flexibility to consider the matter further. *See* 58 FR 40335 (July 28, 1993). The Commission is not addressing screen-based trading in this proposed Order.

[3] 62 FR 7754 (February 20, 1997). The Commission did not address the Exchange's dual trading exemption petition in 1994 in large part because of the Exchange's prior representation that it intended to automate the entry of trade execution times by developing a handheld electronic trading terminal. By letter dated June 22, 1994, CBT informed the Commission that the proposed handheld terminal would not be in place by the October 1995 deadline for compliance with the heightened audit trail standards set forth in Section 5a(b)(3) of the Act. Because CBT had not sufficiently demonstrated that its existing audit trail system met current and future standards, the Commission required the Exchange to demonstrate

Continued

Upon consideration of CBT's petition, as supplemented, and other data and analysis, including, but not limited to:

Exchange audit trail test results reconciling imputed times to underlying trade documentation and verifying data on ''window sizes'';

actions taken in response to the Commission's November 1994 *Report to Congress on Futures Exchange Audit Trails*, June 1995 *Report on Audit Trail Accuracy and Sequencing Tests* (''Audit Trail Report''), and August 12, 1996 *Report on Audit Trail Status and Re-Test* (''Audit Trail Re-Test Report'');

Commission trade practice investigations and compliance reviews conducted in conjunction with rule enforcement reviews or other investigatory or surveillance activities;[4]

the Division of Trading and Markets Memorandum dated October 28, 1997;

and upon review of each element of CBT's trade monitoring system and of CBT's trade monitoring system as a whole, the Commission finds that the Exchange's trade monitoring system does not fully satisfy the requirements of Sections 5a(b) and 4j(a)(3) of the Act and Regulation 155.5 in that the audit trail, recordkeeping, and physical observation of trading areas components are deficient. The Commission finds that corrective actions are sufficient and appropriate to meet those standards. In addition, the Commission finds that, based on an analysis of the composition of trading (by transaction size and volume) of certain distant contract expirations and option markets, there is a substantial likelihood that the broad scope of the dual trading prohibition specified under Section 4j of the Act and Regulation 155.5, which applies to a contract market as a whole, would harm the public interest in hedging or price basing in less liquid months of the affected contract markets. Therefore, the Commission has determined to grant CBT conditional exemptions from the dual trading prohibition of Section 4j of the Act and Regulation 155.5 in its 13 affected contract markets.

The Commission is granting the Exchange's petition subject to the Exchange taking the corrective actions specified below and implementing and enforcing the dual trading restriction described in the Appendix to this proposed Order. The Commission has concluded that the proposed dual trading restriction, which imposes a prohibition on dual trading in actively traded months but has no impact on less actively traded back months, is appropriate as a method to deter dual trading-related abuses and other customer abuses. The Commission's limited restriction, as opposed to the statutory dual trading ban, strikes a balance between the need to preserve liquidity in certain low volume months and the need to protect customers from the potential abuses that are associated with dual trading.

The Commission *Hereby Finds* as follows:

## Components of Exchange's Trade Monitoring System

### *Audit Trail System*

#### One-Minute Execution Time Accuracy

The Exchange's audit trail system fails to record ''reliably accurate'' trade times in increments of no more than one minute in length as required by Section 5a(b)(2) of the Act, Regulation 1.35(g), and Appendix A to Regulation 155.5.[5] Specifically, the Exchange has not established for any of its 13 affected contract markets that 90 percent or more of imputed trade times, as assigned by the Exchange's trade timing system, are reliable, precise, and verifiable as demonstrated by being imputed within a timing window of two minutes or less (''90 percent performance standard''). Thus, an impermissible amount of the trade timing data, an integral part of an exchange's trade monitoring system, is not reliably accurate in accordance with that standard and thus negatively impacts the Exchange's surveillance systems and investigatory and disciplinary action programs.

The Commission has made clear that a reliably accurate imputed trade execution time only can be demonstrated by a timing window that narrows the time assigned to the trade to a two-minute period within which the trade is most likely to have occurred. Even where an exchange can demonstrate a trade timing window of two minutes or less, it is not possible to determine where within that window the trade occurred. This underscores the critical need for compliance with the 90 percent performance standard.

CBT's Advanced Computerized Trade Reconstruction (''Advanced CTR'') system imputes an execution time for every trade.[6] Trade times are imputed based upon entry and exit timestamps on order tickets; time and sales reports; trading card numbers and sequence of trades on trading cards; certain handwritten execution times; times that trades were submitted for clearing; 15-minute bracket codes; calculated differentials for spread trades; identification of spread legs and types of spread trades; and any available times resulting from electronic order entry or trading systems. Based on these data, Advanced CTR determines various time spans within which a trade is likely to have been executed and ultimately assigns an imputed execution time for the trade.

The audit trail tests designed and reviewed by the Commission and conducted by the Exchange in response to a November 23, 1994 Commission letter involved a determination of the consistency of imputed trade execution times with all underlying audit trail records and data. Based upon that process, trade timing accuracy and sequencing rates for CBT's imputed system were computed.[7] In reviewing

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its ability to meet the audit trail requirements using Commission-designed tests and, thus, deferred consideration of the Exchange's petition. Subsequent to evaluating the results of the tests, the Commission offered CBT the opportunity to supplement its petition.

[4] A list of the specific documents considered in connection with this proposed Order will be made available to the Exchange upon request. Copies of any documents not originally furnished by CBT also will be made available upon request.

[5] Commission Regulation 1.35(g) requires that ''[a]ctual times of execution shall be stated in increments of no more than one minute in length.'' Section 5a(b)(2) of the Act, among other things, codified that timing requirement by stating that an exchange's audit trail system shall, ''consistent with Commission regulation, accurately record the times of trades in increments of no more than one minute in length.'' Section II of Appendix A to Commission Regulation 155.5 requires that a contract market, in describing its audit trail system in a petition for exemption from the dual trading prohibition, ''[d]emonstrate the highest degree of accuracy practicable (but in no event less than 90% accuracy) of trade execution times required under regulation 1.35(g) (within one minute, plus or minus, of execution) * * *.'' In addition, the contract market must ''[d]emonstrate the effective integration of such trade timing data into the contract market's surveillance system with respect to dual trading-related abuses.'' For contract markets that impute trade execution times, Appendix A requires that the contract market provide a description of the trade imputation algorithm, ''including how and why it reliably establishes the accuracy of the imputed trade execution times.''

[6] An imputed timing system does not capture the actual trade execution time but derives a time from other timing and trade data.

[7] To the extent that the time imputed by a computer algorithm was consistent with required trade documentation, time and sequence data and time and sales information for the subject trade and surrounding trades, that time was deemed accurate. If that imputed time fell within a two-minute level of precision as measured by the size of the final time window determined by such algorithm, that imputed time was considered to be verifiable, reliable and precise. Thus, the Commission stated in its Audit Trail Report, ''90 percent of CBT trade times satisfied the standards [of consistency with underlying data] for Test I. However, for 59 percent of the trade times deemed accurate, available data are not sufficiently precise to verify that the one-minute audit trail time chosen was actually within the minute of execution.'' Audit Trail Report at 17.

Under the 90 percent performance standard, only trade times assigned by the Exchange's imputed timing system within timing windows of two

the results of the test designed to evaluate trade timing accuracy, Commission staff determined that, although 91 percent of CBT's trade times satisfied the standard for consistency with the underlying data, only 41 percent of those trade times had timing windows of two minutes or less and thus could be verified.[8] In March 1996, the Commission conducted a re-test of CBT's audit trail system. Although 92.7 percent of CBT's trade times satisfied the standard for consistency with the underlying data, only 69.2 percent of the trade times had timing windows of two minutes or less and thus could be verified.

Subsequent to the re-test, the Exchange provided windows data for all affected contract markets in response to Commission requests. For December 19, 1996, the overall percentage of trades with timing windows of two minutes or less was 67 percent. For subsequent dates, the Exchange computed windows data separately for each affected contract market in addition to computing overall windows data. The overall percentage of trades with timing windows of two minutes or less was 84 percent on March 26, 1997, and 85 percent on May 28, 1997; June 5, 1997; and June 10, 1997. For those same dates, the percentage of trades with timing windows of two minutes or less computed separately for each affected contract market ranged from 58 to 89 percent on March 26, 1997; 74 to 89 percent on May 28, 1997; 69 to 91 percent on June 5, 1997; and 70 to 90 percent on June 10, 1997.[9] Thus, the Exchange has not demonstrated that its imputed trade execution times are sufficiently reliable, precise, and verifiable in that it has not established that 90 percent or more of such times are imputed within timing windows of two minutes or less.

The negative impact on the components of the Exchange's trade monitoring system resulting from its failure to satisfy the 90 percent performance standard is exacerbated because CBT does not require the recordation of a member's personal and customer trades in sequence.[10] Given the absence of such a recordation requirement, reliably accurate trade times are essential for effective determination of the sequence of trades. Where the sequence of customer and personal trades is not determined, possible dual trading-related abuses, such as trading ahead of customer orders and trading against customer orders, could go undetected.

Other Components of CBT's Audit Trail System

With regard to the requirement that trade data be provided continually to the Exchange in accordance with Section 5a(b)(3)(A)(ii) of the Act, exchange audit trail systems must provide trade data, including trade timing information, on a periodic, but not necessarily real-time, basis.[11] Such information also must be obtained in a timely manner. The Exchange requires that clearing members submit trade data for clearing within one hour after the end of each hour on the half-hour. However, as explained below, the Exchange fails to enforce the requirement that trading cards be collected and timestamped in a timely manner. This failure calls into question the Exchange's ability to assure that trade data are provided continually to clearing.

With regard to unalterability, as mandated by Section 5a(b)(3)(A)(i) of the Act, the Exchange's trade records are unalterable, since they are recorded on trading cards and order tickets in nonerasable ink. Trade corrections also are not permitted to obscure original data.[12]

CBT's imputed timing system, which uses data from sources other than the trader, as well as data provided by the trader, to derive times, also meets the Section 5a(b)(3)(A)(iii) standards for independence, to the extent

minutes or less are reliably accurate. As noted above, Commission staff deems accurate those trades for which the imputed trade times are consistent with all underlying audit trail records and data, as determined by manual review. When comparing windows data for accurate trades and all trades, the Division has found that a higher percentage of accurate trades are assigned imputed times that fall within windows of two minutes or less and thus meet the 90 percent performance standard. However, the resulting percentage difference between accurate and all trades generally has not exceeded one percent. In addition, since the use of all trades data facilitates exchange submission of timing windows percentages because such data do not have to be generated in conjunction with an accuracy test, which requires an analysis of extensive trade documentation, the Commission finds that the use of all trades data provides an acceptable basis for determining windows performance.

[8] In response to recommendations made in the Audit Trail Report, the Exchange modified its trading card procedures such that a member can record only one time bracket per trading card, record no more than six trades per trading card, and use only one-sided trading cards to record for each trader all personal buy and sell trades in sequence. Additionally, the Exchange implemented recommendations that it enforce certain data recordation and submission requirements, requirements to record correct customer type indicator codes, and timestamping procedures for flashed orders.

The Exchange also made a number of improvements to its trade timing system. CBT now requires a trade submission indicator for flashed orders, uses seconds in the imputed timing system, when available, including seconds from order ticket timestamps, requires member firms to input the seconds from order entry and order confirmation timestamps into the trade entry system, reprogrammed CTR to impute proper execution times for trades executed during the close, and upgraded synchronized timestamp clocks to record times to the nearest second. The Exchange also made programming improvements to its timing algorithm.

CBT declined to implement two Commission recommendations: that members record and use manual execution times for at least the first and sixth trades on trading cards, and that the Exchange include the identity of traders in the spread time and sales.

[9] May 28, 1997; June 5, 1997; and June 10, 1997 were selected by Commission staff using a random sampling method. The Exchange also provided similar percentage data for three days of its own choosing. The overall percentage of trades with timing windows of two minutes or less was 87 percent on May 13 and May 20, 1997 and 88 percent on May 15, 1997. For those same dates, the percentage of trades with timing windows of two minutes or less computed separately for each affected contract market ranged from 74 to 90 percent on May 13, 1997; 72 to 91 percent on May 15, 1997; and 68 to 90 percent on May 20, 1997.

The Exchange submitted data indicating that 90 percent or more of the imputed trade times in its Soybean futures contract had timing windows of two minutes or less on one of the three dates selected at random by Commission staff and on all three dates selected by the Exchange. Although the Commission considers timing windows data for all dates provided, the dates selected by persons other those affiliated with the Exchange are accorded greater weight in determining whether an affected contract market attains the 90 percent performance standard. Overall, the windows data for the Soybean futures contract market does not demonstrate consistent compliance with the 90 percent performance standard.

[10] Notably, although there are differences in various systems among the exchanges, the three other exchanges for which the Commission has granted unconditional exemptions from the dual trading prohibition require that customer and personal trades be recorded sequentially on a single trading document. Similar to CBT, one of those exchanges, the Coffee, Sugar and Cocoa Exchange, Inc., also uses an imputed timing system to assign trade execution times. Such sequencing also can be achieved by recording personal and customer trades in sequence on one set of sequentially numbered trading documents. As the Commission noted in discussing the results of CBT's first audit trail test, ''recordation of a member's personal and customer trades in sequence should be the Exchange's objective.'' Audit Trail Report at 20. Section 5a(b)(3) of the Act provides, among other things, that an exchange's audit trail system must record accurately and promptly essential data on all trades, including execution time, through a means that is adequately precise to determine the sequence of customer and personal trades, to the extent practicable as determined by the Commission by rule or order.

[11] See Audit Trail Re-Test Report at 39.

[12] The Commission requires retention of a record of any cancellations, changes, or corrections to trades. Commission Regulation 1.35(d) and the Outtrade Interpretation, 54 FR 37004 (September 6, 1989). The Commission amended Regulation 1.35(d)(7), effective October 21, 1996, to require that the correction of erroneous information on trading records be accomplished in such a manner that the originally recorded information must not be obliterated or otherwise made illegible. 61 FR 42999 (August 20, 1996). In December 1996, CBT amended its Floor Practices Rule 332.05 and 332.07 to comport with the Commission's amendment to Regulation 1.35(d)(7).

practicable.[13] The Exchange's existing system uses, among other things, data generated by both buyers and sellers for personal trades, including trading card numbers and sequence of trades on trading cards, certain execution times required to be entered manually, entry and exit timestamps on order tickets, time and sales data and 15-minute bracket codes to impute trade execution times.

The Exchange requires that personal trades be recorded in sequence, consistent with Commission regulations, by requiring that members record such trades in sequence on pre-numbered trading cards.[14] The Exchange adopted a single-sided trading card on which all personal buy and sell trades are required to be recorded sequentially in response to an Audit Trail Report recommendation. However, as noted elsewhere, the Exchange does not require the recordation of a member's personal and customer trades in sequence. Given the absence of such a recordation requirement, reliably accurate trade times are essential for effective determination of the sequence of trades.

CBT enforces its audit trail requirements and integrates audit trail data into its surveillance system for dual trading-related abuses. However, because the Exchange's trade surveillance system incorporates into its data, including exception reports, an impermissible amount of imputed execution times that are not reliably accurate, the effectiveness of the Exchange's integration of audit trail data is diminished.

As required by Section 5a(b)(1)(B) of the Act, CBT's trade entry and outtrade resolution programs capture certain essential data on cleared trades, unmatched trades, and outtrades.

Finally, with regard to broker receipt times, the Commission finds that it is not practicable at this time for CBT to record the time that each order is received by a floor broker for execution. Immediately executable flashed orders, however, are in substantial compliance with the objectives of Section 5a(b)(3)(B) of the Act, as stated previously by the Commission in its Order on flashed orders and broker receipt times.[15]

*Physical Observation of Trading Areas*

CBT's trade monitoring system does not provide for physical observation of trading areas in accordance with Section 5a(b)(1)(A) of the Act in that the Exchange does not conduct daily floor surveillance on the open and close to the extent practicable in each affected contract market as required by Appendix A to Regulation 155.5. As part of the Exchange's Market Open/Close Floor Surveillance Program, CBT currently conducts floor surveillance on the open for only half of the affected contract markets and on the close for the remaining half. The Exchange conducts some additional open/close floor surveillance as part of other specialized surveillance programs. The Exchange does conduct floor surveillance at random times and when special market conditions warrant. Information obtained during floor surveillance is integrated into the Exchange's other compliance activities. During 1996, the Exchange initiated two investigations based upon floor surveillance observations.

*Recordkeeping System*

The recordkeeping component of CBT's trade monitoring system fails to comply with Section 5a(b)(1)(B) of the Act because it does not satisfy the trading record collection and timestamping requirements of Regulation 1.35(j). These requirements are essential to maintaining the basic integrity of trading records used in the Exchange's system to capture essential data on the sequence of transactions in that they ensure the removal of such records from the member's possession in a timely manner and thereby limit the opportunity to alter records, to fabricate trades, or otherwise to use trading records to disadvantage customer accounts. Only approximately 67 percent of the trading cards selected for review by Commission staff were submitted to the clearing member within 15 minutes of the 30-minute trading interval and timestamped promptly to the nearest minute following collection as required by Regulation 1.35(j). The Exchange, however, does use information from the records and violations of recordkeeping requirements to bring disciplinary actions.

In addition, because CBT does not meet the 90 percent performance standard, the system captures an impermissible amount of trade timing data that is not reliably accurate. This circumstance is compounded by the fact that CBT does not require the recordation of personal and customer trades in sequence. As a result, the Exchange's recordkeeping system is limited in its capability to capture essential data on the sequence of customer trades.

CBT generally conducts back office audits of trading cards and order tickets at each clearing member firm twice a year for a representative sample of customer orders and personal trades. CBT also uses a computerized tracking system to monitor member compliance daily with certain trade timing and sequencing requirements, regularly examines trading records during the course of investigations for possible recordkeeping violations, and uses information from these audits to generate investigations. The Exchange requires that the account identifier reflected on the floor order ticket relate back to the ultimate customer account.

*Surveillance Systems and Disciplinary Actions*

The inclusion of an impermissible amount of trade timing data that is not reliably accurate in the Exchange's trade monitoring system diminishes the capability of the Exchange's trade surveillance system to review trade data effectively, and as a result, possible dual trading-related abuses could go undetected. Further, the lack of reliably accurate trade timing data diminishes the capability of the Exchange's disciplinary program to bring appropriate disciplinary actions against violators. In other respects, the Exchange's trade surveillance system may be capable of reviewing and is used to review trading data on a regular basis to detect possible dual trading-related abuses and other customer order abuses. In addition, CBT did bring disciplinary actions against offenders and issued meaningful penalties against violators.[16] Therefore, CBT has demonstrated the capability to use information generated by its trade monitoring and audit trail systems on a consistent basis to bring appropriate disciplinary action for violations relating to the making of trades and execution of customer orders as required by Sections 5a(b)(1)(C), (D) and (F) of the Act. Further, CBT refers appropriate cases to the Commission.

On a daily basis, CBT reviews Trade Practice Investigation Reports and uses its Sophisticated Market Analysis Research Technology system, a framework for reviewing such data, to detect possible instances of dual trading-related abuses and other trading abuses. All relevant trade data, including account numbers, are

[13] *See* Audit Trail Re-Test Report at 40.

[14] Commission Regulation 1.35(d)(2) requires that each member of a contract market recording purchases and sales on trading cards must record such purchases and sales in exact chronological order of execution on sequential lines of the trading card.

[15] 60 FR 58049 (November 24, 1995).

[16] This proposed Order does not address certain disciplinary actions taken by the Exchange regarding the March 1996 Wheat futures contract expiration. Those matters are before the Commission in a separate proceeding.

included in these reviews. Among the computerized exception reports generated by the Exchange and reviewed daily are those designed to identify such suspicious trading activity as trading ahead of a customer, trading against a customer, preferential trading and wash trading and to review outtrade resolution and U.S. Treasury Bond futures contract broker association top step trading.[17]

During 1996, CBT initiated 309 investigations into all types of trading related abuses. Of the 86 investigations opened and closed during this period, 34 percent were closed within the four-month objective set forth in Commission Regulation 8.06, and an additional 28 percent were closed within four to six months. Thus, approximately 62 percent of the investigations opened and closed during 1996 were closed in six months or less. CBT should improve the timeliness of its investigations or provide the reasons that such investigations require more than four months to complete. During that same period, the Exchange opened and closed 45 dual trading-related investigations, and referred nine of those investigations to a disciplinary committee. CBT assessed substantial penalties in 13 disciplinary actions involving dual trading-related abuses.

*Commitment of Resources*

The Commission finds that CBT commits sufficient monetary resources to its trade monitoring system to be effective in detecting and deterring violations attributable to dual trading. The Exchange maintains an adequate staff to conduct investigations and to develop and prosecute disciplinary actions. For calendar year 1996, the Exchange reported that it committed 141 personnel to the Exchange's various self-regulatory activities and reported its total self-regulatory costs to be $15,456,317. CBT's reported volume for this period was 222,438,505 contracts, and the number of trades was 17,675,749. However, CBT should allocate its resources as appropriate to improve its trade monitoring system, as discussed above.

[17] Broker association members trading on the top step of the U.S. Treasury Bond pit are subject to trading restrictions. These restrictions limit the amount of customer and personal trades members can execute opposite each other in the most active contract month. Members cannot trade more than 20% of their monthly volume (brokerage and personal trades) opposite members of their broker association. The members also cannot trade more than 20% of their monthly volume against members of a contiguous broker association. In total, the members cannot trade more than 30% of their monthly volume against members of their own and a contiguous broker association.

Accordingly, the Commission *Hereby orders* that:

The Exchange must implement the following corrective actions:

(1) achieve compliance with the 90 percent performance standard,
(2) significantly improve compliance with the requirement that trading records be collected and timestamped in accordance with Commission regulations, and
(3) conduct floor surveillance daily on the open and close for each affected contract market.

The Commission *Further orders* that:

Until such time as the Exchange demonstrates that its trade monitoring system satisfies the relevant standards, the Exchange shall be subject to the following condition: Within 60 days from the effective date of a final Order, the Exchange must implement and enforce the limited dual trading restriction described in the Appendix to this proposed Order, which is less restrictive than the dual trading prohibition of Section 4j of the Act and Regulation 155.5. Such dual trading restriction currently would apply to the following affected contract markets: Wheat, Corn, Soybean, Soybean Meal, Soybean Oil, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures contracts and the option contracts on the Corn, Soybean, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures.

*Accordingly*, the Commission proposes to grant CBT'S Petition for Exemption, subject to the stated conditions, from the dual trading prohibition for trading in its Wheat, Corn, Soybean, Soybean Meal, Soybean Oil, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures contracts and the option contracts on the Corn, Soybean, U.S. Treasury Bond, 10-Year Treasury Note, and 5-Year Treasury Note futures.

If, at any time, CBT believes that it can demonstrate to the Commission's satisfaction that it meets, for an affected contract market subject to this Order, all of the standards set forth in this Order, including, but not limited to, those in Section 5a(b) and Regulation 155.5, the Exchange may petition for an unconditional exemption to the dual trading prohibition for that affected contract market.

Unless otherwise specified, the provisions of this proposed Order shall be effective on the date on which it is issued as a final Order by the Commission, and the condition shall become effective as stated herein and shall remain in effect unless and until removed, as provided above, or revoked in accordance with Section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. 12e(b)(3)(B). Failure of CBT to abide by the condition of a limited dual trading restriction will automatically cause the dual trading prohibition set forth in Section 4j of the Act and Regulation 155.5 to go into effect.

If other CBT contract markets become affected contract markets after the date this Order becomes final, the Exchange would be required, absent submission of a dual trading exemption petition, to restrict dual trading in those affected contract markets in accordance with the dual trading prohibition set forth in Section 4j of the Act and Regulation 155.5. Further, if CBT demonstrates to the Commission's satisfaction that an affected contract market subject to this Order has ceased to meet the Regulation 155.5(a)(9) affected contract market threshold, that contract market no longer would be subject to this Order.

Dated: November 7, 1997.

By the Commission:

**Edward W. Colbert,**

*Deputy Secretary.*

**Appendix—Dual Trading Restriction**

*a. Restriction*

A floor broker is prohibited from executing customer orders in an affected contract market month, as defined below, during the same pit trading session in which the floor broker executes directly, or initiates and passes to another member for execution, a transaction in any such affected contract market month for (1) the floor broker's own account, (2) any account in which the floor broker's ownership interest or share of trading profits is ten percent or more, (3) any account for which the floor broker has trading discretion, or (4) any other account controlled by a person with whom such floor broker is subject to trading restrictions under Section 4j(d) of the Act to the extent such section is applied by Commission regulation or order.

*b. Affected Contract Market Month (Volume)*

Affected contract market month means: (1) For each affected non-agricultural contract market, any contract market month with an average daily trading volume of 10,000 contracts or more as determined by, at the election of the Exchange, either (i) trading in a contract month by position in relation to the front month contract, as defined below, during the prior six calendar months or (ii) trading in the previous calendar month; and (2) For each affected agricultural contract market, any contract market month with an average daily trading volume of 10,000 contracts or more as determined by trading in the previous calendar month. For this purpose, daily trading volume means the total number of contracts sold (or bought) in any contract month of an affected contract market during a trading day, with the average computed as set forth above and excluding ex-pit transactions as permitted under

contract market rules that have been made effective under the Act. There will be a two business day allowance at the beginning of each calendar month for computation and member notification purposes.

*c. Affected Contract Market Month (Front Month)*

Front month means, for each affected contract market, the month which is either the expiration or delivery month which is nearest to expiration or at the Exchange's discretion the expiration or delivery month which is next nearest to expiration when the contract month nearest to expiration is five business days or less from the first notice day or last trading day for cash settled contracts for futures contracts or the expiration date for futures options contracts. If a front month is not subject to a prohibition pursuant paragraph b. above, then it shall, nonetheless, be an affected contract market month and be subject to a prohibition unless, on the basis of historical data, that front month reasonably can be expected to have an average daily trading volume of less than 500 contracts.

*d. Exceptions*

Dual trading shall be permitted under exceptions consistent with Commission Regulation 155.5(c)(4) in accordance with Exchange rules which the Commission has permitted to go into effect pursuant to Section 5a(a)(12)(A) of the Act and Regulation 1.41.

**Notice of Intent To Condition and Proposed Order Granting Conditional Dual Trading Exemptions to the Chicago Board of Trade, Supplemental Statement of Commissioner John E. Tull, Jr.**

I am happy to support the Commission's action proposing to grant the CBOT conditional dual trading exemptions for its affected markets. I am troubled, however, by that part of the Commission's Proposed Order which orders the CBOT to conduct floor surveillance daily on the open and close for each affected market when such surveillance is not required by the Act or the Commission's Regulations. Appendix A to Regulation 155.5 states that such surveillance should be conducted to the extent practicable. In my opinion, the Commission should not attempt to instruct an exchange regarding the allocation of its resources with such specificity. Such management decisions are better left to the exchange leadership, which has hands-on, daily contact with the markets at issue. Management should have the discretion to assign exchange personnel as needed to monitor ''hot'' markets or pits with trading activity of concern.

**Opinion of Commissioner Barbara Pedersen Holum, Concurring in Part and Dissenting in Part, on the Disposition of the Chicago Board of Trade's Dual Trading Petition**

For the reasons set out below, I concur with the findings of the proposed Order but I dissent from the proposed Order's imposition of a Commission-designed dual trading restriction.

Section 4j(a)(3) of the Commodity Exchange Act requires the Commission to exempt a contract market conditionally from the dual trading prohibition of Section 4j(a) of the Act upon finding that: (1) There is a substantial likelihood that a dual trading suspension would harm the public interest in hedging or price basing at the contract market, and (2) other corrective actions are sufficient and appropriate to bring the contract market into compliance with the standards of Section 5a(b) of the Act by effectively detecting and deterring dual trading-related abuses. The Commission has determined that the Chicago Board of Trade's trade monitoring system fails to satisfy the standards necessary for an unconditional exemption, but that it meets the criteria for granting a conditional exemption. In addition, the Commission has determined to impose a dual trading restriction on the CBT a as condition to the exemption. Given these findings, I agree with the majority's view that the CBT should be granted a conditional exemption. However, I dissent from the proposed Order because it would impose a Commission-designed dual trading restriction on the CBT as a condition to the exemption.

Consistent with the statutory framework of self-regulation, I believe that the CBT should adopt its own rules to detect and deter dual trading abuses. When the CBT's trade monitoring system as a whole is determined by the Commission to meet the objectives of the Act by detecting and deterring dual trading abuses, the CBT would be granted an unconditional exemption.

[FR Doc. 97–29893 Filed 11–12–97; 8:45 am]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Mercantile Exchange Petition for Exemption From the Dual Trading Prohibition Set Forth in Section 4j(a) of the Commodity Exchange Act and Commission Regulation 155.5

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'') is granting the petition of the Chicago Mercantile Exchange (''CME'' or ''Exchange'') for exemption from the prohibition against dual trading in its S&P 500 futures contract.

**DATES:** This Order is to be effective November 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Duane C. Andresen, Special Counsel, or Rachel Fanaroff Berdansky, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., N.W., Washington, DC 20581; telephone (202) 418–5490.

**SUPPLEMENTARY INFORMATION:** On October 20, 1993, CME submitted a Petition for Exemption from the Dual Trading Prohibition contained in Section 4j of the Commodity Exchange Act (''Act'') and Regulation 155.5 for its affected contract markets, including the S&P 500 futures contract market.[1] The Exchange corrected that petition on December 1, 1993. Subsequently, the Exchange amended its petition on January 21, 1994. CME updated its petition on January 21, 1997. Notice of the public availability of the CME's updated exemption petition was published in the **Federal Register** on February 20, 1997.[2]

Upon consideration of CME's petition, as supplemented, and other data and analysis, including, but not limited to:

Exchange audit trail test results reconciling imputed times to underlying trade documentation and verifying data on ''window sizes''; actions taken in response to the Commission's November 1994 *Report to Congress on Futures Exchange Audit Trails*, June 1995 *Report on Audit Trail Accuracy and Sequencing Tests* (''Audit Trail Report''), and August 12, 1996 *Report on Audit Trail Status and Re-Test* (''Audit Trail Re-Test Report''); Commission trade practice investigations and compliance reviews conducted in conjunction with rule enforcement reviews or other investigatory or surveillance activities.

The Exchange's S&P 500 futures contract trading restrictions.[3]

[1] *Affected contract market* means a contract market with an average daily volume equal to or in excess of 8,000 contracts for each of four quarters during the most recent volume year. Commission Regulation 155.5(a)(9). See Section 4j(a)(4). The Commission is granting CME conditional exemptions from the dual trading prohibition for its remaining seven affected contract markets. A Notice of Intent to Condition and proposed Order granting such conditional exemptions is being submitted for publication together with this Order.

[2] 62 FR 7755 (February 20, 1997). The Commission did not address the Exchange's dual trading exemption petition in 1994 in large part because of the Exchange's prior representation that it intended to automate the entry of trade execution times by developing a handheld electronic trading terminal. In June 1994, the Commission was informed that the proposed handheld terminal would not be in place by the October 1995 deadline for compliance with the heightened audit trail standards set forth in Section 5a(b)(3) of the Act. Because CME had not sufficiently demonstrated that its existing audit trail system met current and future standards, the Commission required the Exchange to demonstrate its ability to meet the audit trail requirements using Commission-designed tests and, thus, deferred consideration of the Exchange's petition. Subsequent to evaluating the results of the tests, the Commission offered CME the opportunity to supplement its petition.

[3] Under CME Rule 541 (S&P 500 Top Step rule), a member cannot trade an S&P futures contract for his or her own account while on the top step of the S&P 500 futures pit, except to liquidate a position that resulted from an error. Further, a member who has executed a customer order for an S&P 500 futures contract while on the top step of the S&P 500 futures pit may not on the same day trade such contracts for his or her own account.

The Division of Trading and Markets Memorandum dated October 28, 1997; and upon review of each element of CME'S trade monitoring system and of CME's trade monitoring system as a whole, the Commission hereby finds that CME meets the standards for granting a dual trading exemption contained in Section 4j(a) of the Act as interpreted in Regulation 155.5 for its S&P 500 futures contract market.

Subject to CME's continuing ability to demonstrate that it meets applicable requirements, the Commission specifically finds with respect to the S&P 500 futures contract market that CME maintains a trade monitoring system which is capable of detecting and deterring, and is used on a regular basis to detect and to deter, all types of violations attributable to dual trading and, to the full extent feasible, other violations involving the making of trades and execution of customer orders, as required by Section 5a(b) of the Act and Regulation 155.5.2[4] The Commission further finds that CME's trade monitoring system includes audit trail and recordkeeping systems that satisfy the Act and regulations.

With regard to the S&P 500 futures contract market, each required component of CME's trade monitoring system, with the exception of one-minute execution time accuracy, is described in the Commission's Notice of Intent to Condition and proposed Order being submitted for publication together with this Order. With respect to one-minute execution time accuracy, the Commission finds as follows:

One-Minute Execution Time Accuracy

CME's Regulatory Trade Timing system (''RTT'') imputes an execution time for every trade.[5] Trade times are imputed based upon entry and exit timestamps on order tickets; time and sales reports; times that the trades were submitted for clearing; trading card numbers and sequence of trades on trading cards; 15-minute bracket codes; manual execution times for certain types of trades; calculated differentials for spread trades; identification of spread legs and types of spread trades; and available times resulting from electronic order entry or trading systems, if any.

The Commission has made clear that a ''reliably accurate'' imputed trade execution time can be demonstrated only by a timing window that narrows the time assigned to the trade to a two-minute period within which the trade is most likely to have occurred. For the S&P 500 futures contract, CME's audit trail system records reliably accurate trade times in increments of no more than one minute in length as required by Section 5a(b)(2) of the Act, Regulation 1.35(g), and Appendix A to Regulation 155.5.[6] Specifically, the Exchange has established for the S&P 500 futures contract market that 90 percent or more of imputed trade times, as assigned by RTT, are reliable, precise, and verifiable as demonstrated by being imputed within a timing window of two minutes or less (''90 percent performance standard'').

In order to demonstrate attainment of the 90 percent performance standard, the Exchange has provided windows data for the S&P 500 futures contract market in response to Commission requests. For both December 10, 1996, and March 12, 1997, the percentage of trades with timing windows of two minutes or less was 90 percent. On June 30, 1997, the Exchange provided windows data for three specific trade dates selected by the Commission using a random sampling method. The windows data revealed that the percentage of trades with timing windows of two minutes or less was 91 percent on May 28, 1997, and June 5, 1997, and 92 percent on June 10, 1997. Thus, the Exchange has demonstrated consistent compliance with the 90 percent performance standard for the S&P 500 futures contract.

*Accordingly*, on this date, the Commission HEREBY GRANTS CME's Petition for Exemption from the dual trading prohibition for trading in its S&P 500 futures contract.

For this exemption to remain in effect, CME must demonstrate on a continuing basis that it meets the relevant statutory and regulatory requirements. The Commission will monitor continued compliance through its rule enforcement review program and any other information it may obtain about CME's program.

Unless otherwise specified, the provisions of this Order shall be effective on the date on which it is issued and shall remain in effect unless and until it is revoked in accordance with Section 8e(b)(3)(B) of the Commodity Exchange Act, 7 U.S.C. § 12e(b)(3)(B).

*It is so ordered.*

Dated: November 7, 1997.

**Edward W. Colbert,**

*Deputy Secretary to the Commission.*

[FR Doc. 97–29894 Filed 11–12–97; 8:45 am]

BILLING CODE 6351–01–P

[4] The Commission considers CME Rule 541 to be an integral part of the Exchange's trade monitoring system. In the event of any material change in such system, the Commission may revisit its determination to grant this exemption for the S&P 500 futures contract.

[5] An imputed timing system does not capture the actual trade execution time but derives a time from other timing and trade data.

[6] Commission Regulation 1.35(g) requires that ''[a]ctual times of execution shall be stated in increments of no more than one minute in length.'' Section 5a(b)(2) of the Act, among other things, codified that timing requirement by stating that an exchange's audit trail system shall, ''consistent with Commission regulation, accurately record the times of trades in increments of no more than one minute in length.'' Section II of Appendix A to Commission Regulation 155.5 requires that a contract market, in describing its audit trail system in a petition for exemption from the dual trading prohibition, ''[d]emonstrate the highest degree of accuracy practicable (but in no event less than 90% accuracy) of trade execution times required under regulation 1.35(g) (within one minute, plus or minus, of execution) * * *. ..'' In addition, the contract market must ''[d]emonstrate the effective integration of such trade timing data into the contract market's surveillance system with respect to dual trading-related abuses.'' For contract markets that impute trade execution times, Appendix A requires that the contract market provide a description of the trade imputation algorithm, ''including how and why it reliably establishes the accuracy of the imputed trade execution times.''

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**AGENCY:** U.S. Consumer Product Safety Commission, Washington, DC 20207.

**TIME AND DATE:** Friday, November 21, 1997, 10:00 a.m.

**LOCATION:** Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTER TO BE CONSIDERED:**

*Compliance Status Report*

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: November 10, 1997.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 97–30037 Filed 11–10–97; 2:38 pm]

BILLING CODE 6355–01–M

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Submission for OMB Review; Comment Request

November 5, 1997.

The Corporation for National and Community Service (CNCS), 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). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Levon Buller, (202) 606–5000, Extension 383. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call 1–(800) 833–3722 between the hours of 9:00 am and 5:00 pm Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, D.C., 20503. (202) 395–7316, by December 15, 1997. *The OMB is particularly interested in comments which:* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*Type of Review:* Renewal

*Agency:* Corporation for National and Community Service.

*Title:* Voucher and Payment Request Form

*OMB Number:* 3045–0014

*Frequency:* The form will be used an estimated average of 40,000 times per year

*Affected Public:* AmeriCorps participants and the loan holders or schools to which they wish to make payments.

*Number of Respondents:* 40,000.

*Estimated Time Per Respondent:* Three minutes (1/4 minute for AmeriCorps participants and 2 3/4 minute for school/loan holder)

*Total Burden Hours:* 2,000 hours

*Total Annualized capital/startup costs:* none

*Total Annual Cost (operating/maintaining systems or purchasing services):* $250,000

*Description:* The Corporation for National and Community Service proposes to revise a form that is currently being used by former AmeriCorps members to make payments from their accounts in the National Service Trust Fund. The National and Community Service Trust Act of 1993 states that individuals who complete a term of community service in an approved national service position be given an ''educational award''. These awards represent amounts of money kept in the National Service Trust, which is an account in the U.S. Treasury. The education awards may be used by the individuals who earn them— AmeriCorps members—to pay costs of attending educational institutions and to repay student loans. The Act requires the Corporation for National Service to establish procedures that will allow AmeriCorps members to make payments to qualified institutions of higher education and to holders of their qualified student loans.

The form under consideration here, the Voucher and Payment Request Form (OMB No. 3045–0014), has been used since the summer of 1994 to meet the payment requirements of the Act. This form has three purposes. It is the vehicle by which an AmeriCorps member authorizes and requests that a payment be made from his or her account. It serves as the document by which the school or loan company indicates the amount for which the individual is eligible. And the school or loan company uses it to certify that the payment meets various legislative and regulatory requirements.

This application is to renew the form but in a somewhat revised format. The revisions are to (1) eliminate one unnecessary response contained on the current form, (2) clarify instructions for completing the form, (3) simplify technical language on the original form, and (4) put onto one document space for signatures and the statements for which the signatories indicate affirmation. Regarding this last point, the current form refers those who complete the form to certain statements contained in a separate document. It is assumed that, by signing the form, the signatories are verifying agreement with those statements. On the proposed revised form, the statements and the signatures will be on one document. This will clearly bind the statements to the affirming signatures.

Dated: November 5, 1997.

**David N. Spevacek,**

*Director, Financial Operations.*

[FR Doc. 97–29779 Filed 11–12–97; 8:45 am]

BILLING CODE 6050–28–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 97–29]**

### 36(b)(1) Arms Sales Notification; Republication

**Editorial Note:** FR Doc. 97–28687 which was originally published in the issue of Thursday, October 30, 1997 on page 58709 is being republished in its entirety because of editorial errors.

**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 P.L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–29, with attached transmittal, policy justification, and sensitivity of technology.

Dated: October 24, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 1505–01–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

24 JUL 1997

In reply refer to:
I-50619/97

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. 97-29, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $27 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
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. 97-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 20 million |
| Other | $ 7 million |
| TOTAL | $ 27 million |

(iii) Description of Articles or Services Offered: Seventy-two RIM-7M (F1 Build) SEASPARROW missiles with one training missile, containers, spare and repair parts, supply support, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (AAK)

(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: 24 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### United Arab Emirates - RIM-7M (F1 Build) SEASPARROW Missiles

The Government of the United Arab Emirates has requested the purchase of 72 RIM-7M (F1 Build) SEASPARROW missiles with one training missile, containers, spare and repair parts, supply support, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $27 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. The platform for these surfaced-launched, anti-aircraft missiles will be the two Kortenaer class frigates being obtained by the UAE from the Netherlands.

The United Arab Emirates will have no difficulty absorbing these missiles into its inventory for use in the defense of its coastline and surrounding islands.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Company, Lowell, Massachusetts and Hughes Missile System Company, Tucson, Arizona. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale may require the assignment of three to five contractor representatives to support this program for two years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The external view of the RIM-7M (F1 Build) SEASPARROW missile is Unclassified and not sensitive. The SEASPARROW missile does have the following classified components, including applicable technical equipment, documentation, and manuals:

| | | |
|---|---|---|
| a. | Guidance and Control Section: | Confidential |
| b. | Rocket Motor: | Confidential |
| c. | Safety and Arming Device: | Confidential |
| d. | Fuzing hardware: | Confidential |
| e. | Fuzing frequency/characteristics: | Secret |
| f. | Exportable parametric threat data programmed into ECM/ECCM software packet: | Secret |
| g. | Documentation*: | Confidential |

* Manuals and technical documents are those necessary for Organizational and Intermediate level maintenance.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. 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 sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

**Editorial Note:** FR Doc. 97–28687 which was originally published in the issue of Thursday, October 30, 1997 at page 58709 is being republished in its entirety because of editorial errors.

[FR Doc. 97–28687 Filed 10–29–97; 8:45 am]

BILLING CODE 1505–01–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 97–28]**

### 36(b)(1) Arms Sales Notification; Republication

**Editorial Note:** FR Doc. 97–28688 which was originally published in the issue of Thursday, October 30, 1997, on page 58709 is being republished in its entirety because of editorial errors.

**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 P.L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–28, with attached transmittal, policy justification, and sensitivity of technology.

Dated: October 24, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 1505–01–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

24 JUL 1997

In reply refer to:
I-50620/97

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. 97-28, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $90 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
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. 97-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 36 million |
| Other | $ 54 million |
| TOTAL | $ 90 million |

(iii) Description of Articles or Services Offered: Twenty-four RGM-84G-4 HARPOON missiles with containers, maintenance training and equipment, spare and repair parts, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Navy (AAH)

(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: 24 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

## POLICY JUSTIFICATION

### United Arab Emirates - HARPOON Missiles

The Government of the United Arab Emirates (UAE) has requested the purchase of 24 RGM-84G-4 HARPOON missiles with containers, maintenance training and equipment, spare and repair parts, training, shipboard equipment, support and test equipment, publications, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $90 million.

This sale is consistent with the stated U.S. policy of assisting friendly nations to provide for their own defense by allowing the transfer of reasonable amounts of defense articles and services. The platform for these anti-ship missiles will be the two Kortenaer class frigates being obtained by the UAE from the Netherlands.

The United Arab Emirates will have no difficulty absorbing these missiles into its inventory for use in the defense of its coastline and surrounding islands.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be McDonnell Douglas Aerospace, Saint Louis, Missouri. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale may require the assignment of three to five contractor representatives to support this program for two years.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-28

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The RGM-84G-4 HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Radar seeker
b. Missile characteristics and performance data

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. 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 sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

**Editorial Note:** FR Doc. 97–28688 which was originally published in the issue of Thursday, October 30, 1997, on page 58709 is being republished in its entirety because of editorial errors.

[FR Doc. 97–28688 Filed 10–29–97; 8:45 am]
BILLING CODE 1505–01–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 97–26]**

### 36(b)(1) Arms Sales Notification; Republication

**Editorial Note:** FR Doc. 97–28689 which was originally published in the issue of Thursday, October 30, 1997, at page 58710 is being republished in its entirety because of editorial errors.

**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 P.L. 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Mrs. J. Hurd, DSAA/COMPT/CPD, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 97–26, with attached transmittal, policy justification, and sensitivity of technology.

Dated: October 24, 1997.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**BILLING CODE 1505–01–M**

**Editorial Note:** FR Doc. 97–28689 which was originally published in the issue of Thursday, October 30, 1997, at page 58710 is being republished in its entirety because of editorial errors.

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

24 JUL 1997

In reply refer to:
I-50410/97

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. 97-26, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States for defense articles and services estimated to cost $479 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Thomas G. Rhame
Lieutenant General, USA
Director

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

Attachments

Transmittal No. 97-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office in the United States (TECRO)

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $341 million |
| Other | $138 million |
| TOTAL | $479 million |

(iii) Description of Articles or Services Offered: Twenty-one AH-1W Super Cobra helicopters, spare and repair parts, engineering technical assistance, support and test equipment, training, publications, contractor engineering technical and logistics support services, and other related elements of logistics support.

(iv) Military Department: Navy (SCP, Amendment 6)

(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: 24 JUL 1997

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office (TECRO) in the United States - AH-1W Super Cobra Helicopters

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested the purchase of 21 AH-1W Super Cobra helicopters, spare and repair parts, engineering technical assistance, support and test equipment, training, publications, contractor engineering technical and logistics support services, and other related elements of logistics support. The estimated cost is $479 million.

This sale is consistent with United States law and policy, as expressed in Public Law 96-8.

The recipient will use these helicopters primarily to conduct military exercises for purpose of self-defense and military preparedness. The recipient will have no difficulty absorbing these additional helicopters into its armed forces.

The sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Bell Helicopter, Fort Worth, Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives in-country.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 97-26

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AH-1W Super Cobra Helicopter and associated systems, including operations manuals and maintenance publications, are unclassified. The following components are classified:

a. The AN/APR-44(V)1 radar warning system hardware is unclassified. After software (parametric threat data) is incorporated into the system, it is then classified Secret. Publications and personnel training related to this equipment are classified Confidential.

b. The AN/APR-39 Radar Signal Detecting Set is Confidential when it is loaded with classified threat warning parameters.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. 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 sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

**Editorial Note:** FR Doc. 97–28689 which was originally published in the issue of Thursday, October 30, 1997, at page 58710 is being republished in its entirety because of editorial errors.

[FR Doc. 97–28689 Filed 10–29–97; 8:45 am]

BILLING CODE 1505–01–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### National Defense Panel Meeting

**AGENCY:** DoD, National Defense Panel.

**ACTION:** Notice.

**SUMMARY:** This notice sets forth the schedule and summary agenda for the meeting of the National Defense Panel on November 12, 1997. In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this National Defense Panel meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public from 0900–1700, November 12, 1997 in order for the Panel to discuss classified material.

**DATES:** November 12, 1997.

**ADDRESSES:** Suite 532, 1931 Jefferson Davis Hwy., Arlington, VA.

**SUPPLEMENTARY INFORMATION:** The National Defense Panel was established on January 14, 1997 in accordance with the Military Force Structure Review Act of 1996, Pub. L. 104–201. The mission of the National Defense Panel is to provide the Secretary of Defense and Congress with an independent, non-partisan assessment of the Secretary's Quadrennial Defense Review and an Alternative Force Structure Analysis. This analysis will explore innovative ways to meet the national security challenges of the twenty-first century.

### Proposed Schedule and Agenda

The National Defense Panel will meet in closed session from 0900–1700 on November 12. During the closed session on November 12th from 0900–1700 the Panel will discuss the NDP staff presentations on various future strategies, desired capabilities, and developing force elements at the Crystal Mall 3 office.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

This notification also is written verification that the Panel was unable to provide notice of this meeting 15 days prior to the date of the meeting, due to the fact that this particular (additional) meeting wasn't added to the schedule by the Panel until 3 November.

**FOR FURTHER INFORMATION CONTACT:** Please contact the National Defense Panel at (703) 602–4175/6.

Dated: November 6, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–29784 Filed 11–12–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

### Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on December 2, 1997; December 9, 1997; December 16, 1997; December 23, 1997; and December 30, 1997, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: November 6, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–29783 Filed 11–12–97; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Community College of the Air Force (CCAF) Board of Visitors Meeting

The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting on December 17, 1997, at 8:00 a.m. on the first floor Conference Room, Community College of the Air Force, Building 836, 130 West Maxwell Air Force Base, Alabama. The meeting will be open to the public.

The purpose of the meeting is to review and discuss academic policies and issues relative to the operation of the CCAF. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council.

Members of the public who wish to make oral or written statements at the meeting should contact Major David Rogers, Designated Federal Officer for the Board, at the address below no later than 4:00 p.m. on December 8, 1997. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of the presentation materials must be given to Major David Rogers no later than the time of the meeting for distribution to the board and interested members of the public. Visual aids must be submitted to Major David Rogers on a 3½″ computer disc in Microsoft PowerPoint format no later than 4:00 p.m. on December 8, 1997 to allow sufficient time for virus scanning and formatting of the slides.

For further information, contact Major David Rogers or Lieutenant Cornel Taite, (334) 953–7937, Community College of the Air Force, Maxwell Air Force Base, Alabama, 36112–6613, or through electronic mail at drogers@max1.au.af.mil or ctaite@max1.au.af.mil.

**Barbara A. Carmichael,**

*Alternate Air Force Federal Register Liaison Officer.*

[FR Doc. 97–29790 Filed 11–12–97; 8:45 am]

BILLING CODE 3910–10–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Prepare a Legislative Environmental Impact Statement (LEIS) for the Continued Withdrawal of Lands at Bravo 20 Bombing Range (B–20), Fallon, Nevada as Identified in the Military Land Withdrawal Act of 1986

**SUMMARY:** The Department of the Navy announces its intent to prepare a Legislative Environmental Impact Statement (LEIS) pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by Council on Environmental Quality regulations (40 CFR parts 1500–1508). The LEIS will analyze the proposed continued withdrawal of lands supporting B–20 at Naval Air Station (NAS) Fallon, Nevada. Section 5 of the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606) directs the Navy to prepare an LEIS to evaluate the environmental effects of continued naval operations on the checkerboard pattern of withdrawn public lands that make up the B–20 training range. The LEIS will evaluate the cumulative effects of all NAS Fallon land withdrawals and serve as a Navy recommendation to Congress for consideration in determining the continued withdrawal of B–20 lands. In order to maintain the military mission, the Navy is proposing the continued use of the B–20 as defined by the Military Lands Withdrawal Act, Section 1(a). The actions considered in the LEIS would not result in the withdrawal of additional lands. The LEIS will analyze the potential environmental effects of the proposed action, public scoping alternatives, if applicable, and a ''no action'' alternative. Under the ''no action'' alternative, withdrawn lands listed in Section 1(a) of the Military Lands Withdrawal Act would not be renewed for continued military purposes.

**ADDRESSES:** The Navy is initiating a public scoping process for the purpose of determining public concerns and issues to be analyzed and addressed for this action. The Navy will hold public scoping meetings on December 9, 1997, from 7:00 p.m. to 10:00 p.m., at the Fallon Convention Center, 100 Campus Way, Fallon, Nevada; on December 10, 1997, from 7:00 p.m. to 10:00 p.m., at Pershing County District Office, 1150 Elmhurst Avenue, Lovelock, Nevada; and on December 11, 1997, from 7:00 p.m. to 10:00 p.m., at Reno Sparks Convention Center, 4590 S. Virginia Street, Reno, Nevada. A Navy public open house will occur at each site from 3:00 p.m. to 5:30 p.m. prior to each scoping meeting.

A brief presentation will precede a request for public information and comments. Navy representatives will be available at these meetings to receive information and comments from agencies and the public regarding issues of concern. It is important that federal, state and local agencies, and interested individuals take this opportunity to provide information or identify environmental concerns that should be addressed during the analysis and preparation of the LEIS. In the interest of the available time, each speaker will be asked to limit oral comments to three minutes. Comment forms will also be available to submit written comments at these meetings.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public scoping meetings. To be most helpful, scoping comments should clearly describe specific information, data, issues or topics which the commenter believes the LEIS should address. Written comments or questions regarding the scoping process and/or LEIS should be postmarked no later than Friday, February 13, 1998 and sent to the following address.

**FOR FURTHER INFORMATION CONTACT:** Written statements and or questions regarding the scoping process should be mailed to: Commanding Officer, Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, CA 94066–5006 (Attn: Mr. Sam Dennis, Code 7031), telephone (650) 244–3007, fax (650) 244–3206, e-mail at: *sldennis@efawest.nav-fac.navy.mil.*

Dated: November 19, 1997.

**Darse E. Crandall,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 97–29904 Filed 11–12–97; 8:45 am]

BILLING CODE 3810–FF–P

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive License; Edge Technologies, Inc.

**SUMMARY:** The Department of the Navy hereby gives notice of its intent to grant to Edge Technologies, Inc., a revocable, nonassignable, exclusive license in the United States to practice the Government-owned inventions described in: U.S. Patent Number 4,906,879 entitled *Terbium-Dysprosium Magnetostrictive High Power Transducers*

Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Blvd., West Bethesda, Maryland 20817–5700.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dick Bloomquist, Director, Technology Transfer, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd., West Bethesda, Maryland 20817–5700, telephone (301) 227–4299.

Dated: November 4, 1997.

**Darse E. Crandall,**

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 97–29793 Filed 11–12–97; 8:45 am]

BILLING CODE 3810–FF–P

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## DELAWARE RIVER BASIN COMMISSION

### Notice of Commission Meeting

Notice is hereby given that the Delaware River Basin Commission will hold a regular business meeting on Wednesday, November 19, 1997. The meeting is open to the public and scheduled to begin at 1:30 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The subjects of the meeting will be as follows:

A. Minutes of the October 22, 1997 business meeting.

B. Announcements.

C. Report on Hydrologic Conditions in the Delaware River Basin. The report will include an update on the Basin's current drought warning status.

D. General Counsel's Report.

E. Jefferson Township Sewer Authority Docket No. D–97–6 CP. The Commission conducted public hearings on this project application on June 25 and July 28, 1997.

F. A Resolution to Adopt the Commission's Annual Budgets for the Fiscal Year Ending June 30, 1999 and to Apportion Among the Signatory Parties the Amounts Required for the Support of the Current Expense and Capital Budgets. A public hearing on this budget was held on October 22, 1997.

G. A Resolution to Amend the Administrative Manual—Rules of Practice and Procedure. The Commission conducted a public hearing on the proposed amendments to its

Rules of Practice and Procedure on October 22, 1997.

H. Public Dialogue.

Dated: November 3, 1997.

**Susan M. Weisman,**

*Secretary.*

[FR Doc. 97–29868 Filed 11–12–97; 8:45 am]

BILLING CODE 6360–01–P

## DEPARTMENT OF ENERGY

### Notice of Intent To Prepare an Environmental Impact Statement and Notice of Floodplain and Wetlands Involvement for the Proposed Jacksonville Electric Authority Circulating Fluidized Bed Combustor Project

**AGENCY:** Department of Energy.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement (EIS), and notice of floodplain and wetlands involvement.

**SUMMARY:** The Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021), to assess the potential environmental and human health impacts of the construction and operation of a project proposed by the Jacksonville Electric Authority (JEA) that has been selected by DOE to demonstrate circulating fluidized bed (CFB) technology under the Clean Coal Technology (CCT) Program. The proposed project would involve construction and operation of a CFB combustor fueled by coal and petroleum coke to repower an existing steam turbine at JEA's Northside Generating Station in Jacksonville, Florida, to generate nearly 300 megawatts of electricity (MWe). This EIS will support a DOE decision regarding whether DOE will provide approximately $75 million in cost-shared funding (about 24% of the total cost of approximately $309 million) for the proposed project.

The purpose of this Notice of Intent is to inform the public about the proposed action; present the schedule for the action; announce the plans for a public scoping meeting; invite public participation in the scoping process; and solicit public comments for consideration in establishing the scope and content of the EIS. The EIS will evaluate the potential impacts of the proposed action and reasonable alternatives. Because the proposed project may involve an action in floodplains and wetlands, the EIS will include a floodplain and wetlands assessment and a statement of findings in accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022).

**DATES:** To ensure that the full range of issues related to this proposal is addressed, DOE invites comments on the scope and content of the EIS from all interested parties. All comments must be received by December 31, 1997, to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone, DOE will conduct a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The scoping meeting will be held at the Northside Generating Station, In-Plant Conference Room, 4377 Heckscher Drive, Jacksonville, Florida, on Wednesday, December 3, 1997, at 7 p.m.

**ADDRESSES:** Written comments and requests to participate in the public scoping process should be addressed to: Dr. Jan Wachter, NEPA Document Manager for the JEA Project, Federal Energy Technology Center, U.S. Department of Energy, 3610 Collins Ferry Road, Morgantown, WV 26507–0880. Individuals who would like to verbally or electronically provide comments should contact Dr. Wachter at direct telephone 304–285–4607; toll free number 1–800–432–8330 (ext. 4607); fax 304–285–4469; or E-mail JWACHT@FETC.DOE.GOV.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information about this project or to receive a copy of the draft EIS when it is issued, contact Dr. Jan Wachter at the address provided above. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0119; telephone 202–586–4600; or leave a message at 1–800–472–2756.

**SUPPLEMENTARY INFORMATION:**

#### Background and Need for the Proposed Action

Under Public Law 99–190, Congress provided authorization and funds to DOE to support the construction and operation of demonstration facilities selected for cost-shared financial assistance as part of DOE's CCT Program. In December 1985, Congress made funds available to DOE for conducting the first round of the CCT Program. Congress directed that this first solicitation for federal cost-sharing (1) be open to all market applications of clean coal technologies, (2) apply to any segment of the U.S. coal resource base, and (3) encompass both new and retrofit applications. In response to the solicitation, proposals were received and projects were selected by DOE for negotiation. In addition, a list of alternate candidates was established from which replacement selection could be made should any of the original selections not proceed. JEA's proposed CFB combustor project has evolved through a series of site changes from a project that was selected from the alternate list for demonstration.

The demonstration of JEA's CFB combustor project under the CCT Program would fulfill an existing DOE programmatic need. Coal has the potential to address critical energy supply issues because of its abundant reserves; however, barriers to increased use of coal include concerns about environmental issues, such as acid deposition, global climate change, polyaromatic hydrocarbon emissions, and solid waste. Since the early 1970's, DOE and its predecessor agencies have sponsored long-term programs to develop innovative coal technologies through the proof-of-concept stage to overcome these environmental barriers while improving combustion efficiency and reducing costs.

However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure its continued development and subsequent commercialization. Before any technology can seriously be considered for commercialization, it must be demonstrated at a large enough scale to prove its reliability and to show economically competitive performance. The financial risk associated with such large-scale demonstration is, in general, too high for the private sector to assume in the absence of strong incentives. The congressionally-directed CCT Program provides a mechanism to accelerate the commercialization of innovative technologies to meet the nation's near-term energy and environmental goals, to

reduce technological risk to industry to an acceptable level, and to provide private sector incentives required for continued research and development aimed at finding solutions to long-range energy supply problems.

**Proposed Action**

The proposed action is for DOE to provide, through a cooperative agreement with JEA, cost-shared financial assistance to JEA for the design, construction, and operation of the proposed project, as described below. JEA plans to form an alliance with Foster Wheeler Corporation through its subsidiary, Foster Wheeler Power Systems, Inc., to jointly own and operate the project. Together with other Foster Wheeler affiliates, Foster Wheeler Power Systems, Inc. will provide the CFB combustor and perform the project engineering, procurement, and construction. The demonstration project would last 24 months and cost approximately $309 million, with DOE's share being nearly $75 million (24%). The proposed project would be located at JEA's existing Northside Generating Station in Jacksonville, Florida, which currently consists of 3 heavy oil- and natural gas-fired steam generation units and 4 diesel oil-fired combustion turbine units.

The Northside Generating Station is approximately 10 miles north of downtown Jacksonville, Florida. The Northside Generating Station is an industrial site encompassing approximately 400 acres, with 200 acres devoted to existing steam generation units, combustion turbine units, and associated infrastructure. New construction associated with JEA's proposed CFB combustor project would occupy approximately 60 acres of previously disturbed land. The Northside Generating Station contains a number of wetland areas, especially in the perimeter areas. Preliminary analysis indicates that the site may be in a hurricane storm surge area, in addition to the 100-year floodplain of the St. Johns River. The most significant environmental feature associated with the Northside Generating Station is the nearby presence of estuarine salt marsh backwaters of the St. Johns River. St. Johns River Power Park, an industrial site which consists of two 624 MWe coal- and petroleum coke-burning power plants on 1,656 acres, is adjacent to the Northside Generating Station.

The overall objective of the project is to demonstrate the feasibility of CFB technology at a size that will be attractive for large-scale utility operation. The new CFB combustor would use coal and petroleum coke to generate nearly 300 MWe by repowering the existing Unit 2 steam turbine, a 297.5-MWe unit that has been out of service since 1983. The project is expected to provide JEA with a low-cost, efficient, and environmentally-sound generating resource. In addition, JEA plans to repower the currently operating Unit 1 steam turbine without cost-shared funding from DOE. The Unit 1 steam turbine will be essentially identical to the turbine for Unit 2, and is scheduled to be repowered about 6 to 12 months after the Unit 2 repowering. While the proposed project only consists of the Unit 2 repowering (because DOE would provide no funding for the Unit 1 repowering), the EIS will evaluate the Unit 1 repowering as a related action.

In a CFB combustor, coal and coal/fuel blends, air, and limestone are introduced into the lower portion of the combustor, where initial combustion occurs. As the fuel is reduced in size through combustion and breakage, it is transported higher in the combustor where additional air is introduced. Ash and unburned fuel and limestone pass out of the combustor, collect in a particle separator, and recirculate to the lower portion of the combustor. Sulfur reacts with limestone added in the furnace to form ash that can be marketed as a useful byproduct such as roadbed material.

For the proposed project, the combined installation of the CFB combustor and a flue gas scrubber is expected to remove over 97% of the sulfur dioxide emitted from burning coal that contains up to 4.5% sulfur. The relatively low furnace operating temperature of about 1650°F would result in appreciably lower nitrogen oxide emissions compared to conventional coal-fired power plants.

The project would also include a new selective non-catalytic reduction system to further reduce emissions of nitrogen oxides. Over 99.8% of particulate emissions would be removed by a new baghouse or a new electrostatic precipitator.

In addition to the CFB combustor itself and the air pollution control systems, new equipment for the project would include a new stack and new fuel, limestone, and ash handling systems. The height of the proposed new stack is expected to be approximately 450 feet compared to 300 feet for the existing stack at Unit 2. The project would also require overhaul and/or modifications to existing systems such as the steam turbine, condensate and feedwater systems, circulating water systems, water treatment systems, plant electrical distribution systems, the switchyard, and the control systems.

Options being considered for transport of coal include (1) an extension of conveyors from the nearby St. Johns River Power Park, and (2) construction of new receiving, handling, and storage facilities for solid fuel. Limestone and ash storage and handling facilities also would be required. Wherever possible, existing facilities and infrastructure located at the Northside Generating Station would be used for the proposed project. These include the discharge system for cooling water to the St. Johns River, the wastewater treatment system, and the electric transmission lines and towers.

Because Unit 2 has not operated since 1983, the baseline emissions from that unit are zero. Units 1 and 3 have been operating at annual capacity factors of less than 40%, firing either heavy oil or natural gas. Unit 3 would continue as a 563.7-MWe oil/gas-fired unit. With the exception of low-$NO_X$ (nitrogen oxide) burners on Unit 3, Units 1 and 3 are not currently equipped with emission control systems.

The area is in attainment of the National Ambient Air Quality Standards. However, as part of JEA's commitment to the local community in the implementation of this project, JEA has committed to a 10% reduction in the annual stack emissions for criteria pollutants (i.e., sulfur dioxide, nitrogen oxides, and particulate matter) from the Northside Generating Station (as compared to recent annual emissions). In achieving this objective, the combined emissions from the repowered Units 1 and 2 operating at annual capacity factors of 100% are projected to be less than recent typical annual emissions from Unit 1 alone.

Another part of JEA's community commitment is that groundwater consumption will be reduced by at least 10% from recent levels. This would be accomplished by increased recycling of the treated wastewater produced at the station. Plant wastewater is presently treated with lime, followed by clarification in settling basins. While some recycled water is currently utilized, most of the treated wastewater is discharged to percolation ponds. Should the proposed project be implemented, the discharge of treated wastewater to the ponds would be reduced.

Project activities would include engineering and design, permitting, equipment procurement, construction, startup, and a 24-month demonstration of the commercial feasibility of the technology. DOE plans to complete the EIS and issue a Record of Decision

within 15 months of publication of this Notice of Intent, assuming timely delivery of environmental information from JEA for use in developing the EIS. Upon completing its NEPA review, if DOE decides to implement the proposed action, construction would commence in early 1999 and finish in late 2001, startup would occur in early 2002, and demonstration of the technology would begin in April 2002. During the demonstration, Unit 2 would be operated on several different types of coal and coal/fuel blends to demonstrate the flexibility of the technology. Upon completion of the demonstration phase, the facility would continue its commercial operation.

**Alternatives**

NEPA requires that agencies discuss the reasonable alternatives to the proposed action in an EIS. The purpose for agency action determines the range of reasonable alternatives. Congress established the CCT Program with a specific purpose: to demonstrate the commercial viability of technologies that use coal in more environmentally benign ways than conventional coal technologies. Congress also directed DOE to pursue the goals of the CCT Program by means of partial funding (cost-sharing) of projects owned and controlled by non-federal government sponsors. This statutory requirement places DOE in a much more limited role than if the federal government were the owner and operator of the project. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives. However, in dealing with an applicant, the scope of alternatives is necessarily more restricted. It is appropriate in such cases for DOE to give substantial weight to the applicant's needs in establishing a project's reasonable alternatives.

An overall strategy for compliance with NEPA was developed for the CCT Program that includes consideration of both programmatic and project-specific environmental impacts during and after the process of selecting a project. As part of the NEPA strategy, the EIS for JEA's proposed CFB combustor project will tier off the program's final Programmatic Environmental Impact Statement (PEIS) that was issued by DOE in November 1989 (DOE/EIS–0146). Two alternatives were evaluated in the PEIS: (1) the no action alternative, which assumed that the CCT Program was not continued and that conventional coal-fired technologies, with flue gas desulfurization and nitrogen oxide controls to meet New Source Performance Standards, would continue to be used; and (2) the proposed action, which assumed that the clean coal projects would be selected and funded, and that successfully demonstrated technologies would undergo widespread commercialization by the year 2010.

For JEA's proposed CFB combustor project, the range of reasonable alternatives to be considered in the EIS is also narrowed in accordance with the overall NEPA strategy. The no action alternative will be analyzed in the EIS as a reasonable alternative to the proposed action of providing cost-shared funding support for the proposed project. DOE will consider any other reasonable alternatives that may be suggested during the public scoping period.

Under no action, DOE would not provide partial funding for the design, construction, and operation of the project. In the absence of DOE funding, there are three options that JEA could reasonably pursue. These options will be analyzed under the no action alternative. JEA could construct the proposed project without DOE cost-shared funding. Under this scenario, the potential environmental impacts or benefits at Northside Generating Station are expected to be identical to those of the proposed project. A second option is that JEA could construct a new gas-fired combined cycle facility at Northside Generating Station or at another location. Under this scenario, potential environmental impacts or benefits at Northside Generating Station would vary from those of the proposed project. A third option is that JEA could purchase electricity from other utilities to meet JEA's projected demand. Under this scenario, potential environmental impacts or benefits at Northside Generating Station related to demonstration of the proposed project would not be realized. In addition, the second and third options would not contribute to the objective of the CCT Program, which is to make available to the U.S. energy marketplace advanced, more efficient, economically feasible, and environmentally acceptable coal technologies.

Because of DOE's limited role of providing cost-shared funding for JEA's proposed project and because of the advantages associated with the proposed location, DOE does not plan to evaluate alternative sites for the proposed project. JEA considered additional sites during its site selection process. Site selection was governed primarily by benefits that could be realized by JEA. An existing plant site was preferred because the cost associated with construction of the project at a ''greenfield'' site in an undisturbed area would be much higher, and the environmental impact likely would be much greater than at an existing facility. The existing Northside Generating Station has several advantages because it is an operating plant with land available for installation of new facilities. Much of the required infrastructure, including the electric transmission lines and towers, is already in place, thereby reducing the level of capital investment and construction impacts. The station has the flexibility to accommodate possible fuel delivery needs with its existing rail and water facilities. Furthermore, most of the operational staffing for the new facility would be accommodated by the existing Northside Generating Station staff.

**Preliminary Identification of Environmental Issues**

The following issues have been tentatively identified for analysis in the EIS. This list, which was developed partly on the basis of concerns provided by the public in response to JEA's stakeholder outreach program, is not intended to be all inclusive, but is presented to facilitate public comment on the scope of the EIS. Additions to or deletions from this list may occur as a result of the scoping process. The issues include:

(1) Atmospheric Resources: potential air quality impacts resulting from air emissions during current and future operation of Northside Generating Station (e.g., effects of ground-level concentrations of criteria pollutants, and trace metals including mercury, on surrounding residential areas and the Timucuan Preserve (a National Park Service Class II ecological and historic preserve adjacent to the western edge of the Northside Generating Station); potential effects of greenhouse gas emissions on global climate change;

(2) Water Resources and Aquatic Ecology: potential effects on surface water and groundwater resources consumed and discharged; potential effects on estuarine salt marsh ecosystems and aquatic biota resulting from withdrawing and discharging cooling water from the St. Johns River (e.g., thermal discharge, entrainment or impingement of fish and invertebrate species);

(3) Infrastructure and Land Use: potential effects resulting from the transport of coal, petroleum coke, and limestone required for the proposed project, including the development of land for infrastructure, storage, or waste disposal; affected resource areas including land (e.g., existing shoreline and wetlands), utilities, and

transportation routes (e.g., train traffic to supply coal);

(4) Solid Waste: pollution prevention and waste management practices, including solid waste impacts, caused by the generation, treatment, transport, storage, and disposal of solid wastes;

(5) Construction: impacts associated with noise, traffic patterns, and construction-related emissions;

(6) Visual: impacts associated with a new stack that is taller than existing structures at Northside Generating Station;

(7) Floodplains: potential impacts (e.g., impeding floodwaters, re-directing floodwaters, on-site and off-site property damage) of siting new buildings and infrastructure within floodplain and hurricane storm surge areas;

(8) Wetlands: potential reduction of wetlands due to new construction (e.g., construction associated with feedstock transport infrastructure);

(9) Community Impacts: impacts on public safety related to fire and emergency vehicle access to the Northside community of Jacksonville; impacts to local traffic patterns resulting from rail traffic; socioeconomic impacts on public services and infrastructure (e.g., police protection, schools, and utilities); noise associated with project operation; environmental justice with respect to the surrounding community; and

(10) Cumulative effects that result from the incremental impacts of the proposed project when added to other past, present, and reasonably foreseeable future actions (e.g., incremental discharge of cooling water affecting aquatic biota).

## Public Scoping Process

To ensure that the full range of issues related to this proposal are addressed, DOE will conduct an open process to define the scope of the EIS. The public scoping period will run until December 31, 1997. Interested agencies, organizations, and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and the alternatives that should be analyzed.

Scoping comments should clearly describe specific issues or topics that the EIS should address in order to assist DOE in identifying significant issues. Written, e-mailed, faxed, or telephoned comments should be communicated by December 31, 1997 (see **ADDRESSES**).

In addition, a public scoping meeting to be conducted by DOE will be held in the In-Plant Conference Room at the Northside Generating Station on December 3, 1997, at 7 p.m. The address of the Northside Generating Station is 4377 Heckscher Drive, Jacksonville, Florida. DOE requests that anyone who wishes to speak at this public scoping meeting contact Dr. Jan Wachter, either by phone, fax, computer, or in writing (see **ADDRESSES** in this Notice). Individuals who do not make advance arrangements to speak may register at the meeting and will be given the opportunity to speak after all previously scheduled speakers have made their presentations. Speakers who wish to make presentations longer than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, it may be necessary to limit speakers to five minute presentations initially, with the opportunity for additional presentation as time permits. Speakers can also provide additional written information to supplement their presentations. Oral and written comments will be given equal weight.

DOE will begin the meeting with an overview of the proposed CFB combustor project. A presiding officer will be designated by DOE to chair the meeting. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked to clarify their statements to ensure that DOE fully understands the comments or suggestions. The presiding officer will establish the order of speakers and provide, any additional procedures necessary to conduct the meeting.

Issued in Washington, D.C., this 6th day of November, 1997.

**Peter N. Brush,**

*Acting Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 97–29890 Filed 11–12–97; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[FERC–512]**

## Information Collection Submitted for Review and Request For Comments

November 6, 1997.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

**SUMMARY:** The Federal Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 28, 1997 (62 FR 28844) and has made this notation in its submission to OMB.

**DATES:** Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

**ADDRESSES:** Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 726 Jackson Place, N.W., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy regulatory Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael P. Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at mmiller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:**

## Description

The energy information collection submitted to OMB for review contains:

*1. Collection of Information:* FERC–512 ''Application for Preliminary Permit''

*2. Sponsor:* Federal Energy Regulatory Commission

*3. Control No.:* OMB No. 1902–0073. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is a decrease in the reporting burden due to a decrease in the number of applicants filing with the Commission. These are mandatory collection requirements.

*4. Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under Commission identifier FERC–512 is filed in accordance with Sections 4(f), 5, 7, (FPA). The Part I of the FPA gives the Commission authority to issue licenses

for hydroelectric projects on the waters over which Congress has jurisdiction. The purpose of obtaining a preliminary permit is to maintain priority status for an application for a license, while the applicant conducts site examinations and surveys and to prepare maps, plans, specifications and estimates. The Commission's staff use the information collected under FERC–512 to conduct research on the jurisdictional aspects of the project. The research includes a determination of the applicant's qualifications to hold a preliminary permit, a review of the proposed hydro development for feasibility and to issue public notice of the application to solicit public and agency comments.

*5. Respondent Description:* The respondent universe currently comprises on average, 45 applicants for an application for a hydroelectric preliminary permit.

*6. Estimated Burden:* 3,285 total burden hours, 6 respondents, 1 response annually, 73 hours per response (average).

*7. Estimated Cost Burden to Respondents:* 3,285 hours ÷ 2,087 hours per year × $110,000 per year = $173,142.

**Statutory Authority:** Sections 4(f), 5, 7 of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.*

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29801 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–153–008]**

### Granite State Gas Transmission, Inc., Notice of Proposed Changes in FERC Gas Tariff

November 6, 1997.

Take notice that on November 3, 1997, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below, to become effective November 1, 1997:

Fourth Revised Sheet No. 215
Fourth Revised Sheet No. 289

Grante State Asserts that the tariff sheets are in compliance with the Director letter order issued in this proceeding on October 30, 1997. Further Granite State asserts that, it has submitted prior tariff filings with the Commission adopting and making effective as of November 1, 1997 certain Gas Industry Standard Board's (GISB) requirements related to Electronic Data Interchange (EDI) and Electronic Delivery Mechanism (EDM). Granite State asserts that complications and delays have occurred in establishing computer capability to implement the GISB EDI/EDM standards and requirements in Granite State's operations. Accordingly, Granite State further requests an extension until December 31, 1997 to comply with the EDI/EDM requirements and the foregoing tariff sheets remove from the tariff those requirements until Granite State has the capability to comply with them.

Granite State states that copies of its filing were served on its firm and interruptible customers, the regulatory agencies of the states of Maine, Massachusetts and New Hampshire, and the intervenor in Docket No. RP07–137–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29810 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–154–008]**

### Koch Gateway Pipeline Company; Notice of Compliance Filing

November 6, 1997.

Take notice that on November 3, 1997, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1997:

Substitute Fourth Revised Sheet No. 802
Second Revised Sheet No. 2401

Koch states that this filing is being submitted in compliance with OPR Letter Order dated October 22, 1997. Koch revised its tariff to reflect GISB November 1, 1997, Standards, as directed by the Commission.

Koch also states that it has served copies of this filing upon each person designated on the official service list as compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's rules and 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. 97–29811 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–373–000]**

### Koch Gateway Pipeline Company; Notice of Informal Settlement Conference

November 6, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on November 19, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Sandra J. Delude at (202) 208–0583.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29816 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–176–006]**

### MIGC, Inc.; Notice of Compliance Filing

November 6, 1997.

Take notice that on November 3, 1997, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, to be effective November 1, 1997.

MIGC states that the purpose of the filing is to comply with the Commission's June 10 Letter Order (as modified by a June 20 Errata to the Letter Order) directing MIGC to file to reflect changes in its tariff to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Commission's Regulations by Order Nos. 587–C.

MIGC states that copies of its filing are being mailed to its jurisdictional customers, all parties on the official service list in Docket No. RP97–176–000, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and 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. 97–29813 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–155–088]**

### Mobile Bay Pipeline Company; Notice of Compliance Filing

November 6, 1997.

Take notice that on November 3, 1997, Mobile Bay Pipeline Company (Mobile) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 1, 1997:

Substitute Third Revised Sheet No. 132
Substitute Second Revised Sheet No. 133
Second Revised Sheet No. 134

Mobile states that this filing is being submitted in compliance with OPR Letter Order dated October 22, 1997. Mobile revised its tariff to reflect GISB November 1, 1997, Standards, as directed by the Commission.

Mobile also states that it has served copies of this filing upon each person designated on the official service list as compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's rules and 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. 97–29812 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–392–001]**

### National Fuel Gas Supply Corporation; Notice of Technical Conference

November 6, 1997.

Pursuant to the Commission's order, issued on October 29, 1997, a technical conference will be held to resolve the issues raised in the above-captioned proceeding.

The conference will be held on Tuesday, November 18, 1997 from 10:00 a.m. to 5:00 p.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29817 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP97–275–008, and TM97–2–59–006]**

### Northern Natural Gas Company; Notice of Compliance Filing

November 6, 1997.

Take notice that on November 3, 1997, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff Fifth Revised Volume No. 1, the following tariff sheets:

Fifth Revised Sheet No. 109
Third Revised Sheet No. 123
Fifth Revised Sheet No. 132
Substitute Original Sheet No. 301
Substitue First Revised Sheet No. 301.
Original Sheet No. 301A
Substitute Original Sheet No. 301A

Northern states that this filing is made in compliance with the Commission's Order issued October 17, 1997 in the above-referenced dockets addressing the fuel periodic rate adjustment (PRA) mechanism.

Northern states that copies of the filing were serve upon Northern's customers and interested State Commissions.

Any person desiring to to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. Copies of this filing are on file with the Commission and are available for inspection.

**Lois D. Cashell,**

*Secretarty.*

[FR Doc. 97–29814 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP97–275–000 and TM97–2–59–000]**

### Northern Natural Gas Company; Notice of Informal Settlement Conference

November 6, 1997.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10:00 a.m. on Wednesday, November 12, 1997, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) prior to attending.

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Russell B. Mamone (202) 208–0744.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29815 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

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## Department of Energy

### Federal Energy Regulatory Commission

**[Docket No. OA97–618–000]**

### Ohio Valley Electric Corporation Indiana-Kentucky Electric Corporation; Notice of Revision of Tariff

November 6, 1997.

Take notice that on July 9, 1997, Ohio Valley Electric Corporation and its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation (together, the ''OVEC System'') tendered for filed an amended version of their Open Access Transmission Tariff (the ''compliance Tariff'').

As required by the Commission's Order No. 888–A, the Compliance Tariff incorporates changes to the OVEC System's Open Access Transmission Tariff filed with the Commission on July 9, 1996. The requested effective date of the Compliance Tariff is September 7, 1997, sixty (60) days after the date of the OVEC System's filing.

Copies of the filing were served upon the OVEC System's jurisdictional customers and upon each state public service commission with retail rate jurisdiction over such customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 18, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29808 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EC96–19–006 and ER96–1663–007]**

### Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company; Notice of Filings

November 6, 1997.

Take notice that on October 31, 1997, the California Power Exchange Corporation (PX), tendered for filing a *pro forma* agreement and PX protocols that it had committed to file with the Commission by November 1, 1997. In addition, the PX submitted proposed amendments to the PX Tariff. The PX states that certain of these protocols and proposed tariff changes are submitted for informational purposes.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 21, 1997. Filings must include a one page executive summary.

Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29803 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EC96–19–007, ER96–1663–008, et al.]**

### Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, et al.; Notice of Filings

November 6, 1997.

Take notice that on October 31, 1997, Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (Edison), (collectively ''the Companies''), and the California Independent System Operator Corporation (ISO), tendered for filing several filings related to the *pro forma* reliability Must-Run Agreements contained in Exhibit G of the ISO Operating Agreement and Tariff.

*Docket Nos. EC96–19–007 and ER96–1663–008*

In Docket No. EC96–19–007 and ER96–1663–008, the ISO filed amendments to the *pro forma* reliability Must-Run Agreements contained in Exhibit G of the ISO Operating Agreement and Tariff. The ISO requests that these amendments be considered with the reliability Must-Run Agreement rate filings of the Companies, filed on October 31, 1997.

*Docket No. ER98–495–000*

In Docket No. ER98–495–000, PG&E tendered for filing a proposed Must-Run Agreement and Cost support for rates included in schedules to the Agreement. PG&E requests that this filing be made effective by January 1, 1998, to enable the ISO to provide transmission service using the dispatch of reliability must-run generating units covered by this Agreement when needed.

PG&E states that this filing is a further part of the comprehensive restructuring proposal for the California electric power industry whose implementation relies on several rate schedules filed and to be filed with the Commission. According to PG&E, the Agreement authorizes the ISO to dispatch, for

energy or specified ancillary services, certain steam thermal, geothermal and hydroelectric generating facilities owned and operated by PG&E, when needed to assure reliable service. PG&E states that this dispatch will normally be necessary when a local transmission constraint limits the ability of the ISO to transmit enough energy or ancillary services available from successful bids into the California Power Exchange (PX) to serve load in certain areas with transmission constraints.

*Docket No. ER98–496–000*

In Docket No. ER98–496–000, SDG&E tendered for filing the terms and conditions, including rates and performance criteria of SDG&E's proposed Master Must Run Agreement to be entered into with the ISO. SDG&E requests that the filing be made effective subject to refund within 60 days of this filing but no later than January 1, 1998.

SDG&E states that the proposed filing is intended to implement a portion of the comprehensive restructuring of the California electric industry proposed in Docket Nos. EC96–19–000 and ER96–1663–000. SDG&E further states that the proposed filing would establish the rates, terms, and conditions under which it will provide energy and ancillary services to the ISO as necessary to ensure reliability of the ISO controlled grid.

*Docket No. ER98–441–000*

In Docket No. ER98–441–000, Edison filed six Must-Run Agreements, applicable to Edison's six must-run facilities. Edison requests that the proposed filing be made effective on the date that the PX commences operations.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules or Practice and Procedure (18 CFR §§ 385.211, 385.214). All such motions or protests should be filed on or before November 21, 1997. Filings must include a one page executive summary.

Protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29804 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. EC96–19–008 and ER96–1663–009]**

## Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company; Notice of Filings

November 6, 1997.

Take notice that on October 31, 1997, the California Independent System Corporation (ISO), tendered for filing *pro forma* agreements and ISO protocols that it had committed to file with the Commission by November 1, 1997. In addition, the ISO submitted proposed amendments to the ISO Operating Agreement and Tariff. The ISO states that certain of these protocols and proposed tariff changes are submitted for informational purposes.

Any person desiring to be heard or to protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 21, 1997. Filings must include a one page executive summary.

Protests filed with the Commission will be considered by it in determining the appropriate action to be take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29805 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## FEDERAL ENERGY REGULATORY COMMISSION

**[Project No. 2042–008]**

## Public Utility District No. 1 of Pend Oreille County, Washington; Notice Of Application For Approval of Contracts For The Sale Of Power for A Period Extending Beyond The Term of The License

November 6, 1997.

On October 3, 1997, pursuant to Section 22 of the Federal Power Act, 16 U.S.C. § 815, Public Utility District No. 1 of Pend Oreille County, Washington (Pend Oreille), filed an application requesting Commission approval of a contract for the sale of power from the Box Canyon Project No. 2042 for a period extending approximately three and one-half years beyond the January 30, 2002 expiration date of the license. The project is located on the Pend Oreille River in Pend Oreille County, Washington.

Section 22 provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service commission or other similar authority in the state in which the sale or delivery of power is made. Pend Oreille states in its application that Commission approval of the power sales contract is in the public interest because the contract permitted Pend Oreille to finance the construction of the project when it did not have the necessary credit rating to do so independently.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene may became a party to the proceeding. Comments, protests, or motions to intervene must be filed by [the 30th day following publication of this notice in the **Federal Register**]; must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and ''Project No. 2042.'' Send the filings (original and 14 copies) to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. A copy of any filing must also be served upon each representative of the licensee specified in its application.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29806 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–146–006]**

### U–T Offshore System; Notice of Compliance Filing

November 6, 1997.

Take notice that on November 3, 1997, U–T Offshore System (U–TOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective November 1, 1997:

Sub Seventh Revised Sheet No. 73
Sub Second Revised Sheet No. 73A
Sub First Revised Sheet No. 73B

U–TOS asserts that the purpose of this filing is to comply with the Commission's October 24, 1997, letter order in the captioned proceeding regarding Order No. 587–C. The above mentioned letter order indicated that a number of the standards did not reflect the correct version number set forth in Section 284.10(b) of the regulations, with the exception of the Electronic Delivery Mechanism Standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should 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 and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29809 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP96–655–001 and CP97–291–000,** ***et al.***

### Destin Pipeline Company, L.L.C. and Southern Natural Gas Company; Notice of Availability of the Final Environmental Impact Statement for the Proposed Destin Pipeline Project

November 6, 1997.

The staff of Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (FEIS) on the natural gas pipeline facilities proposed by Destin Pipeline Company, L.L.C. and Southern Natural Gas Company in the above-referenced dockets and referred to as the Destin Pipeline Project.

The staff prepared the FEIS to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would have limited adverse environmental impact.

The FEIS assesses the potential environmental effects of the construction and operation of the following facilities in the central Gulf of Mexico and Mississippi:

- a total of about 215.5 miles of 36–, 30–, and 16-inch-diameter interstate pipeline, consisting of 75.6 miles offshore pipeline and 139.9 miles of onshore pipeline;
- about 27,078 horsepower of new compression at two new compressor stations;
- seven new meter stations; and
- associated aboveground facilities, including a liquids slug catcher, and offshore gathering platform, and a related nonjurisdictional gas processing plant.

The purpose of the proposed facilities is to transport up to 1 billion cubic feet per day of natural gas from the development of new offshore deepwater production areas in the central Gulf of Mexico to interconnections with six major interstate pipelines in Mississippi. The proposed facilities would provide a new natural gas transportation infrastructure that would avoid the overburdened pipeline systems in southeastern Louisiana.

The FEIS will be used in the regulatory decision-making process at the FERC and may be presented as evidentiary material in formal hearings at the FERC. While the period for filing interventions in this case has expired, motions to intervene out-of-time can be filed with FERC in accordance with the Commission's Rules of Practice and Procedures, 18 CFR 385.214(d). Further, anyone desiring to file a protest with the FERC should do so in accordance with 18 CFR 385.211.

The FEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E. Washington, D.C. 20426, (202) 208–1371.

A limited number of copies are available from the Public Reference and Files Branch identified above.

Copies of the FEIS have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

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. 97–29802 Filed 11–12–97; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Amendment of License

November 6, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of license.

b. *Project No:* 2170–008.

c. *Date Filed:* May 27, 1997.

d. *Applicant:* Chugach Electric Association, Inc.

e. *Name of Project:* Cooper Lake.

f. *Location:* On the Cooper Creek, Copper Lake, and Kenai Lake on Kenai Peninsula, in the vicinity of Cooper Landing, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Burke Wick, Chugach Electric Association, Inc., 5601 Minnesota Drive, P.O. Box 196300, Anchorage, Alaska 99519–6300, Tel: (907) 563–7494.

i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.

j. *Comment Date:* December 22, 1997.

k. *Description of Amendment:* Licensee proposes to increase the spillway capacity to allow passage of the probable maximum flood (PMF). The proposed work consists of installing a 4.5-ft-high sheetpile parapet wall along the crest of the dam. The spillway channel will be deepened and the

spillway crest elevation will be reduced from 1,210 ft to 1,206 ft. This will allow raising the operating pool level of the lake to 1,206 ft.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D.2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 97–29807 Filed 11–13–97; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–59206]**

## Proposed Settlement; Municipal Solid Waste Landfills NSPS and EG Litigation

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

**ACTION:** Notice of proposed settlement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement in *National Solid Wastes Management Association* v. *Browner, et al.,* No. 96–1152 (D.C. Cir). This case involves a challenge to EPA's rule entitled ''Standards of Performance For New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills,'' issued on March 12, 1996. 61 FR 9905 (March 12, 1996). The major action the Environmental Protection Agency (''Agency'') would take under this proposed settlement would be to propose a subpart-specific definition of the term ''modification'' for landfills. Under this definition, the term ''modification'' would be defined solely for landfills as any increase in the permitted volume design capacity of the landfill, by either vertical or horizontal expansion. EPA believes this definition is consistent with the existing definition of modification found at 40 CFR 60.14 and, in particular, is consistent with the exemption at 40 CFR 60.14(e) for modifications that do not require a capital expenditure. Other actions to be taken under the proposed settlement include a number of technical corrections and clarifications, including a clarification of the timing of Title V permitting obligations for sources subject to the rule.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement, which includes a draft rulemaking proposal as an attachment, are available from Samantha Hooks, Air And Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–3804. Written comments should be sent to Michael Goo, Air and Radiation Division, Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and must be submitted on or before December 15, 1997.

Copies of the settlement also are available through the Technology Transfer Network (''TTN''), which is an Agency electronic bulletin board that may be accessed by dialing (919) 541–5472 for up to a 14,400 baud modem; this service is free except for the cost of the phone call. The TTN is also available on the Internet (access: http://ttnwww.rtpnc.epa.gov). If more information on the TTN is needed, call the HELP line at (919) 541–5472.

Dated: November 6, 1997.

**Jonathan Z. Cannon,**

*General Counsel.*

[FR Doc. 97–29857 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5920–7]**

## Agency Information Collection Activities; OMB Responses

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). 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.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer (202) 260–2740, please refer to the appropriate EPA Information Collection Request (ICR) Number.

**SUPPLEMENTARY INFORMATION:**

### OMB Responses to Agency Clearance Requests

*OMB Approvals*

EPA ICR No. 0234.06; Performance Evaluation Studies on Water and Wastewater Laboratories; was approved 09/30/97; OMB No. 2080–0021; expires 09/30/2000.

EPA ICR No. 1791.01; Establishment of Drinking Water Intake No Discharge

Zone(s) under Clean Water Act; was approved 10/20/97; OMB No. 2040–0187; expires 10/31/2000.

EPA ICR No. 1815.01; Small Business Compliance Assistance Centers; was approved 10/22/97; OMB No. 2020–0010; expires 10/31/2000.

EPA ICR No. 1414.03; Hazardous Organic NESHAP (HON)—NESHAP Subparts F, G, H, and I; was approved 05/30/97; OMB No. 2060–0282; expires 05/31/2000.

EPA ICR No. 1695.03; Amendment to the Information Collection Request; Emission Standards for New Non-road Spark-Ignition Engines; was approved 11/03/97; OMB No. 2060–0338; expires 11/30/2000.

EPA ICR No. 0011.09; Selective Enforcement Auditing and Recordkeeping Requirements for On-Highway HDE, Non-road Compression Ignition Engines, and On-Highway Light-Duty Vehicles and Light-Duty Trucks; was approved 11/03/97; OMB No. 2060–0064; expires 08/31/99.

EPA ICR No. 1684.04; Compression Ignition Non-Road Engine Certification Application; was approved 11/03/97; OMB No. 2060–0287; expires 11/30/2000.

EPA ICR No. 1826.01; Information Collection for Equipment Manufacturer Flexibility; was approved 11/03/97; OMB No. 2060–0369; expires 11/30/2000.

EPA ICR No. 0282.10; Emission Defect Information and Voluntary Emission Recall Report; was approved 11/03/97; OMB No. 2060–0048; expires 7/31/99.

EPA ICR No. 0095.10; Precertification and Testing Exemption Reporting and Recordkeeping Requirements; was approved 11/03/97; OMB No. 2060–0007; expires 07/31/99.

*OMB Disapproval*

EPA ICR No. 1821.01; National Emission Standards for Hazardous Air Pollutants for Steel Pickling; was disapproved by OMB 10/28/97.

Dated: November 6, 1997.

**Joseph Retzer,**

*Division Director, Regulatory Information Division.*

[FR Doc. 97–29858 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5922–1]**

### Proposed Settlement Involving EPA and the Loef Company

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of proposed settlement.

**SUMMARY:** Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) has offered to Potentially Responsible Parties (PRPs); the Loef Company, Inc., a debtor-in-possession in bankruptcy case no. 96–31517 pending before the United States Bankruptcy Court for the Middle District of Georgia (Bankruptcy Court), Robert L. Blumberg, Frederick J. Loef, and Sarah G. Loef; an Agreement for Recovery of Response Cost at the Interstate Lead Company Superfund Site (ILCO) in Leeds, Alabama, and the Sapp Battery Superfund Site (Sapp Battery) in Alford, Florida. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the Agreement if comments received disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, 61 Forsyth St., Atlanta, GA 30303, 404–562–8887.

Written comments may be submitted to Mrs. Kim Dao Vu at the address above within 30 days of the date of publication.

Dated: November 4, 1997.

**Anita Davis,**

*Acting Chief, Programs Services Branch, Waste Management Division.*

[FR Doc. 97–30017 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:00 a.m., Monday, November 17, 1997.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Proposed 1998 Federal Reserve Bank officer salary structure adjustments.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph R. Coyne, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 7, 1997.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 97–29963 Filed 11–7–97; 5:11 pm]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Commission of Dietary Supplement Labels: Notice of Meeting #10

**AGENCY:** Office of Disease Prevention and Health Promotion, HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Health and Human Services (HHS) is providing notice of the tenth meeting of the Commission on Dietary Supplement Labels.

**DATES:** The Commission intends to hold a brief meeting on November 24, 1997, beginning about 1:30 p.m. E.S.T., or shortly thereafter, at the HHS Auditorium, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201. The meeting is open to the public; seating is limited.

**FOR FURTHER INFORMATION CONTACT:** Kenneth D. Fisher, Ph.D., Executive Director, Commission on Dietary Supplement Labels, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201, (202) 690–7102.

**SUPPLEMENTARY INFORMATION:** Public Law 103–417, Section 12, authorized the establishment of a Commission on Dietary Supplement Labels whose seven members have been appointed by the President. The appointments to the Commission by the President and the establishment of the Commission by the

Secretary of Health and Human Services reflect the commitment of the President and the Secretary to the development of a sound and consistent regulatory policy on labeling of dietary supplements.

The Commission is charged with conducting a study and providing recommendations for regulation of label claims and statements for dietary supplements, including the use of supplemental literature in connection with their sale and, in addition, procedures for evaluation of label claims. The Commission is evaluating how best to provide truthful, scientifically valid, and non-misleading information to consumers in order that they may make informed health care choices for themselves and their families. The Commission's report may include recommendations on legislation, if appropriate and necessary.

The purpose of Meeting #10 is to announce the completion and public availability of the Final Report of the Commission. The meeting agenda will include approval of the minutes of the previous meeting and follow-up activities to be undertaken by the staff.

The meeting is open to the public; however seating is limited. If you will require a sign language interpreter, please call Sandra Saunders (202) 690–7102 by 4:30 p.m. E.S.T. on November 14, 1997.

Dated: November 5, 1997.

**Susanne A. Stoiber,**

*Acting Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion), U.S. Department of Health and Human Services.*

[FR Doc. 97–29872 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–17–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Advisory Commission on Consumer Protection and Quality in the Health Care Industry; Notice of Public Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Commission on Consumer Protection and Quality in the Health Care Industry. This two-day meeting will be open to the public, limited only by the space available.

*Place of Meeting:* William Natcher Conference Center, National Institutes of Health (Building 45), 45 Center Drive, Bethesda, MD 20892. Exact locations of the sessions will be available at the conference center and on the Commission's web site, ''www.hcqualitycommission.gov''.

*Times and Dates:* The public meeting will span two days. On Tuesday, November 18, 1997, the subcommittee break-out sessions will take place from 8:30 a.m. until 4:30 p.m. On Wednesday, November 19, 1997, the general plenary session will begin at 8:00 a.m. and it will continue until 4:00 p.m.

*Purpose/Agenda:* To hear testimony and continue formal proceedings of the Commission's three (3) remaining subcommittees (Subcommittee on Consumer Rights has completed its work). Agenda items are subject to change as priorities dictate.

*Contact Person:* For more information, including substantive program information and summaries of the meeting, please contact: Edward (Chip) Malin, Hubert Humphrey Building, Room 118F, 200 Independence Avenue, SW., Washington, DC 20201; [202/205–3333].

Dated: November 5, 1997.

**Janet Corrigan,**

*Executive Director, Advisory Commission on Consumer Protection and Quality in the Health Care Industry.*

[FR Doc. 97–29873 Filed 11–12–97; 8:45 am]

BILLING CODE 4110–60–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Health Care Policy and Research

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Health Care Policy and Research, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Agency for Health Care Policy and Research (AHCPR) is planning to request the Office of Management and Budget (OMB) to allow a proposed information collection of the ''Medical Expenditure Panel Survey Household Component (MEPS–HC)—Panels 3 and 4.'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on September 8, 1997 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.

**DATES:** Comments on this notice must be received by December 15, 1997.

**ADDRESSES:** Written comments should be submitted to the OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB; New Executive Office Building, Room 10235; Washington, 20503.

All comments will become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–1406, ext. 1497.

**SUPPLEMENTARY INFORMATION:**

#### Proposed Project

''Medical Expenditure Panel Survey Household Component (MEPS–HC)—Panels 3 and 4.''

The AHCPR is planning to conduct an annual panel survey of U.S. households to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and sources of payment for health services. Each panel consists of a nationally representative sample of U.S. households who remain in MEPS for two consecutive years of data collection. The first two panels of MEPS began in 1996 and 1997. Panels 3 and 4 of the MEPS–HC begin in 1998 and 1999, respectively. The MEPS–HC is jointly sponsored by the AHCPR and the National Center for Health Statistics (NCHS). It will be conducted using a sample of households selected from households which responded to the National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health related data from approximately 50,000 households and 110,000 people. Due to the Department of Health and Human Services (HHS) efforts to integrate survey data collection activities, the NHIS is used as the sampling frame for the MEPS and several other surveys.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, medications, employment, and health insurance. Subject to AHCPR and NCHS confidentiality statutes, data will be made available through publications, articles in major journals as well as public use data files. The data are intended to be used for purposes such as:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the

availability, costs, and scope of private health insurance benefits among Americans;

- Examining the effects of changes in how chronic care and disability are managed and financed;
- Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and
- Examining access to and costs of health care for common diseases and conditions, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important generalizations on the civilian noninstitutionalized population of the United States, as well as to conduct research in which the family is the unit of analysis.

**Method of Collection**

The data will be collected using a combination of modes. For example, the AHCPR intends to introduce study participants to the survey through advance mailings. The first contact will provide the household with information regarding the importance and uses of the information obtained. The AHCPR will then conduct five (in-person) interviews with each household to obtain health care use and expense data. Lastly, the AHCPR will conduct one telephone interview with each household to obtain tax and asset information. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHCPR will conduct interviews over the telephone, if necessary. Burden estimates follow:

*Initial Number of Respondents:* 10,000.

Panel 3: 4800.

Panel 4: 5200.

*Number of Surveys Per Respondent:* 6.

*Average Burden Per Respondent:* 9.0 hours.

*Estimated Burden Total:* 81,100 hours.

Panel 3: 39,050 hours.

Panel 4: 42,050 hours.

**Request for Comments**

Comments are invited on: (a) the necessity of the proposed collection; (b) the accuracy of the Agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: November 4, 1997.

**John M. Eisenberg,**

*Administrator.*

[FR Doc. 97–29837 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–90–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Health Care Policy and Research

### Notice of Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following advisory subcommittees scheduled to meet during November 1997:

*Name:* Health Services Research Initial Review Group (Subcommittees: Health Systems Research, Health Care quality and Effectiveness Research, Health Care Technology and Decision Sciences, and Health Research Dissemination and Implementation).

*Date and Time:* November 19, 1997, 8:00 a.m.

*Place:* Bethesda Hyatt Hotel, One Metro Plaza, Bethesda, Maryland 20816.

Open November 19, 8:00 a.m. to 8:30 a.m.

Closed for remainder of meetings.

*Purpose:* The Health Systems Research Subcommittee is charged with the initial review of research applications relating to cost and financing of health care, health care markets, organizational and delivery system issues, and the provider workforce. The Health Research Dissemination and Implementation Subcommittee is charged with the initial review of research applications relating to behavior change, demonstrations and interventions, consumer decision-making, dissemination, health professional and consumer education, and translation of research findings. The Health Care Technology and Decision Sciences Subcommittee is charged with the initial review of research applications relating to the development, refinement, assessment, cost-effectiveness, and application of health care technologies. The Health Care Quality and Effectiveness Research Subcommittee is charged with the initial review of research applications relating to clinical outcomes and effectiveness, quality and cost-effectiveness of health care, effectiveness research, evidence-based medicine, and quality of care research.

*Agenda:* The open sessions of these meetings on November 19, from 8:00 a.m. to 8:30 a.m., will be devoted to business meetings covering administrative matters and reports. During the closed sessions, the Subcommittees will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain rosters of members, minutes of the meetings, or other relevant information should contact Sheila S. Simmons, Committee Management Officer, Agency for Health Care Policy and Research, Suite 400, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1452 ext. 1627.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: November 4, 1997.

**John M. Eisenberg,**

*Administrator.*

[FR Doc. 97–29836 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–90–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Exchange of Letters Between the Food and Drug Administration and the Australian Therapeutic Goods Administration

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of an exchange of letters (EOL) between FDA and the Australian Therapeutic Goods Administration. The purpose of the EOL is to facilitate the exchange of documents and information concerning a drug or biological preparation that is considered for orphan status.

**DATES:** The agreement became effective August 12, 1997.

**FOR FURTHER INFORMATION CONTACT:** Marlene E. Haffner, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

**SUPPLEMENTARY INFORMATION:** It is FDA's policy that EOL's be used in lieu of a formal agreement when the actions contemplated require only a limited resource expenditure and do not rise to the significance of a formal agreement. For example, an exchange of letters could formalize an understanding that each agency will provide the other with documents that are available upon request to any member of the public. Each letter should set out only the actions to be carried out by the agency signing the letter and not mutual considerations. FDA uses the same clearance for EOL's as it does for memoranda of understanding (MOU's). Therefore, MOU's in accordance with 21 CFR 20.108 (c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this EOL.

Dated: November 5, 1997.

**William K. Hubbard,**

*Associate Commissioner for Policy Coordination.*

The EOL's are set forth as follows:

**Exchange of Letters Between the Food and Drug Administration and the Australian Therapeutic Goods Administration**

**225–97–8003**

August 12, 1997
Mr. Terry Slater
National Manager
Therapeutic Goods Administration
Commonwealth Department of Health and Family Services
P.O. Box 100
Woden ACT 2606
AUSTRALIA

Dear Mr. Slater:

The U.S. Food and Drug Administration is pleased to cooperate with your government in facilitating the exchange of documents and information concerning a drug or biological preparation that your government is considering for orphan product status. We hope that this cooperation will facilitate and expedite access to needed therapy for Australian patients with rare diseases.

Upon request from the Australian Therapeutic Goods Administration (TGA), and to the extent permitted by U.S. law and FDA regulations, and as appropriate, with the permission of the U.S. sponsor, the FDA Office of Orphan Products Development (OPD) intends to provide to the TGA a copy of the U.S. designation request and review performed by the OPD on a particular product, whether such orphan designation request has or has not been granted.

Upon request from the TGA, and under the same terms and conditions noted in the preceding paragraph, the Center for Drug Evaluation and Research (CDER) or the Center for Biologic Evaluation and Research (CBER) intends to provide summary information concerning evaluation and approval of a particular product. OPD expects to be receptive to requests for assistance in seeking permission of the sponsor to permit TGA to utilize the necessary information. We understand that the reports and information FDA provides will form the basis for a similar orphan product evaluation for Australia.

Information provided by FDA pursuant to this arrangement will be provided in confidence to the TGA. The information will be provided in accordance with FDA law and regulations, including privacy and confidentiality requirements, and only with assurances of TGA's authority and commitment to protect the information from public disclosure in Australia. Copies of designation or evaluation reports will be provided to the TGA in conformance with the requirements of Part 20 of Title 21, U.S. Code of Federal Regulations, and with the written consent (where appropriate) of the U.S. sponsor of the designation request or product approval application.

For the purpose of coordination, we propose that the respective liaison officials be:

For the FDA:

Director, Office of Orphan Products Development
Food and Drug Administration/HF–35
5600 Fishers Lane Room 8–73
Rockville, Maryland 20857
U.S.A.
Telephone: 301–827–3666
FAX: 301–443–4915

For the Australian TGA:

Director, Drug Safety and Evaluation Branch
Therapeutic Goods Administration
P.O. Box 100
Woden, ACT 2606
Australia
Telephone: 61 2 6232 8100
FAX: 61 2 6232 8140

To help ensure that this information exchange program works well and meets our mutual needs and requirements, we feel that it is important that, at appropriate intervals, and by mutual concurrence, a discussion or meeting take place between representatives of our two agencies to assess the activities and the provisions outlined in this letter.

We anticipate that these arrangements will provide a sound basis on which further cooperative arrangements between us on products for patients with rare diseases will develop.

Sincerely,
Marlene E. Haffner, M.D., M.P.H.
Rear Admiral, United States Public Health Service
Director, Office of Orphan Products Development
Marlene E. Haffner, MD, MPH
Rear Admiral, United States Public Health Service
Director, Office of Orphan Products Development
5600 Fishers Lane, HF–35
Room 8–73
Rockville, MD 20857 USA

Dear Dr. Haffner:

The purpose of this letter is to formalise our agreement regarding provision of information on orphan drugs by the U.S. Food and Drug Administration (FDA) U.S.A. to the Therapeutic Goods Administration (TGA), Department of Health and Family Services, Australia.

The TGA formally requests that the U.S. FDA provide orphan drug designation reports and orphan drug evaluation reports to the TGA.

In the spirit of co-operation, and on behalf of the TGA, I agree as follows:

1. Following receipt by the TGA of an application requesting orphan drug designation of a drug in Australia, the TGA will request from the Office of Orphan Drugs Development a copy of an orphan drug designation report for the drug.

This request will apply in cases where the drug has been granted orphan drug designation in the U.S. or where the drug has been refused orphan drug designation in the U.S.

2. Following receipt by the TGA of an application to register a product for which orphan designation has been granted for the drug in Australia, the TGA will request from the U.S. FDA a copy of the Center for Drug Evaluation and Research (CDER) evaluation reports or the Center for Biologics Evaluation and Research (CBER) evaluation report.

This request will apply in cases where a drug has been granted orphan drug designation in the U.S. and where an application to register a product containing that drug in the U.S. has been approved, refused, or is pending.

3. It is intended that where possible, the reports provided under this arrangement will form the basis of the evaluation of similar application sin Australia. Therefore, the reports must be sufficiently complete to enable appropriate evaluation of the product.
4. Information will be provided in accordance with agency regulations (including confidentiality requirements).
5. Copies of designation reports of evaluation reports will be provided to the TGA only after the written consent of the U.S. sponsor of the designation request or product registration application has been obtained, except as otherwise provided in FDA's regulations disclosure (21 CFR 20.89).
6. Liaison officers for the purpose of coordinating these provisions are as follows:

For the FDA:

Director, Office of Orphan Products Development
Food and Drug Administration/HF–35
5600 Fishers Lane, Room 8–73
Rockville, Maryland 20857
U.S.A.
Telephone: 301–827–3666
FAX: 301–443–4915

For the TGA:

Director, Drug Safety and Evaluation Branch
Therapeutic Goods Administration
P.O. Box 100
Woden, ACT 2606

Australia
Telephone: 61 2 6232 8100
FAX: 61 2 6232 8140

I am confident the implementation of these provisions will provide a sound basis on which to develop further cooperative arrangements between us on orphan drug products and to work toward a reciprocal arrangement in the future.

I look forward to your official confirmation these arrangements can be agreed.

Yours sincerely
Terry Slater
National Manager
Therapeutic Goods Administration
12 August 1997

[FR Doc. 97–29906 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 97F–0450]**

### Nalco Chemical Co.; Filing of Food Additive Petition

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Nalco Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of an emulsifier blend containing sorbitan monostearate, polyoxyethylene (20) sorbitan monostearate, and polyoxyethylene (20) sorbitan monolaurate as an anti-corrosive agent in boilers where steam may contact food.

**DATES:** Written comments on the petitioner's environmental assessment by December 15, 1997.

**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:** Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 7A4540) has been filed by Nalco Chemical Co., One Nalco Center, Naperville, IL 60568–1198. The petition proposes to amend the food additive regulations in § 173.310 *Boiler water additives* (21 CFR 173.310) to provide for the safe use of an emulsifier blend containing sorbitan monostearate, polyoxyethylene (20) sorbitan monostearate, and polyoxyethylene (20) sorbitan monolaurate as an anti-corrosive agent in boilers where steam may contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 15, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: October 28, 1997.

**Alan M. Rulis,**

*Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 97–29771 Filed 11–12–97; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Program Exclusions: October 1997

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the month of October 1997, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

| Subject<br>City, State | Effective date |
|---|---|
| **Program-Related Convictions** | |
| ADEFIHAN, TITILAYO O, MILWAUKEE, WI | 11/20/97 |
| ALEXANDER, EDNA DENISE, DEVINE, TX | 11/20/97 |
| ALLEN, ANDREW JACKSON, WINSLOW, AZ | 11/20/97 |
| AMICUCCI, DIANE CAROL, CARMEL, NY | 11/20/97 |
| BANDY, BRIAN DWAYNE, ASHLAND, KY | 11/20/97 |
| BARNES, DAVID L, HAMMOND, LA | 11/20/97 |
| BATRA, KRISHAN KUMAR, ODESSA, FL | 11/20/97 |
| BEAUDOIN, GERARD MARCEL JR, EGLIN AFB, FL | 11/20/97 |
| BROWN, YVONNE, ROCKVILLE CENTRE, NY | 11/20/97 |
| BROYLES, STEPHEN R, TAMPA, FL | 11/20/97 |
| BUDDE, MICHAEL J, COLUMBIA, IL | 11/20/97 |

| Subject<br>City, State | Effective<br>date |
|---|---|
| CASTILLO, JESUS N, ASHLAND, KY | 11/20/97 |
| CATO, DEBORAH ANN, ATLANTA, GA | 11/20/97 |
| CHAMPION, DAVID, DECATUR, GA | 11/20/97 |
| CHAN, SOPHEATEVY, COACHELLA, CA | 11/20/97 |
| CHERKAS, LEONARD A, HUNTINGDON VALLEY, PA | 11/20/97 |
| CHERKAS DENTAL ASSOCIATES, HUNTINGDON VALLEY, PA | 11/20/97 |
| CHRISTIAN, KELLY WAYNE, BEAVER, WV | 11/20/97 |
| CIGGS, JIMMY D, LAKE WORTH, FL | 11/20/97 |
| CONORMAN, GEORGE JAMES, BEAVER, WV | 11/20/97 |
| CONTE, JOANNE, NEW YORK CITY, NY | 11/20/97 |
| COTO'S PHARMACY, HIALEAH, FL | 11/20/97 |
| DANLEY, MELANIE REBECCA, ARLINGTON, TX | 11/20/97 |
| FEINISTEIN, DAVID S, CROSS RIVER, NY | 11/20/97 |
| FERRIS, SAM, W PALM BEACH, FL | 11/20/97 |
| GAMEZ, JORGE, MIAMI, FL | 11/20/97 |
| GELLER, STANLEY J, SAN DIEGO, CA | 11/20/97 |
| GIBSON, ROGER L, ASHLAND, KY | 11/20/97 |
| GOLD COAST TAXI, INC, LAKE PARK, FL | 11/20/97 |
| GONZALEZ, YOHANKA, MIAMI, FL | 11/20/97 |
| GONZALEZ, RAFAEL, TEANECK, NY | 11/20/97 |
| GREEN, TONY GERALD, LAKELAND, FL | 11/20/97 |
| GUZMAN, CARMEN, BRONX, NY | 11/20/97 |
| HALL, CHARLIEMAE, ATLANTA, GA | 11/20/97 |
| HALL, WAYNE, ATLANTA, GA | 11/20/97 |
| HARKLESS, WILLIE EARL, ATLANTA, GA | 11/20/97 |
| HATCHER, KRISTIE, JUPITER, FL | 11/20/97 |
| HATHCOCK, KITTY ARMEDIA, FORT WORTH, TX | 11/20/97 |
| HATHCOCK, BOBBY EUGENE, BEAVER, WV | 11/20/97 |
| HEALTH CARE PROVIDERS INC, CHESTERFIELD, MO | 08/04/97 |
| HERNANDEZ, EDGAR, MIAMI, FL | 11/20/97 |
| HICKMAN, MICHAEL, CHATTANOOGA, TN | 11/20/97 |
| HOME MEDICAL EQUIPMENT, INC., FALSTON, MD | 08/11/97 |
| HYSON, BRADFORD A., STREET, MD | 06/12/97 |
| HYSON, MARY, BEL AIR, MD | 06/12/97 |
| HYSON, RODNEY F., FALSTON, MD | 06/12/97 |
| INNOVATIVE MEDICAL PRODUCTS INC, CHESTERFIELD, MO | 08/04/97 |
| JOHNSON, EARL, STONE MOUNTAIN, GA | 11/20/97 |
| JOHNSON, SHARON, MARIETTA, GA | 11/20/97 |
| JOHNSON, CHARLENE L, EAST POINT, GA | 11/20/97 |
| JONES, HENRY LEE, PINE BLUFF, AR | 11/20/97 |
| JONES, BRENDA GAIL, ATLANTA, GA | 11/20/97 |
| KNIGHT, FAY DENISE, ORLANDO, FL | 11/20/97 |
| KNIGHT, LEONARD ISAIAH, ORLANDO, FL | 11/20/97 |
| LAWRENCE, TERI TYLER, PINE GROVE, LA | 11/20/97 |
| LEONE, JOSEPH J, MANALAPAN, NJ | 11/20/97 |
| LIM, MILLIAN K, PALM BCH GARDENS, FL | 11/20/97 |
| MALONE, HELEN, DECATUR, GA | 11/20/97 |
| MARIN, PHILIP G, ELK GROVE, CA | 11/20/97 |
| MARRERO, MARIA DEL CARMAN, MIAMI, FL | 11/20/97 |
| MARSHALL, GARY SCOTT, PEEKSKILL, NY | 11/20/97 |
| MCBROOM, WILLIAM DAVID, GOLDSBORO, NC | 11/20/97 |
| MCCORMICK, MELINDA, SIKESTON, MO | 11/20/97 |
| MCKISIC, BELINDA, ATLANTA, GA | 11/20/97 |
| MILLBURG, LAURA HART, AUBURN, IL | 11/20/97 |
| MORALES, IRIS, BRONX, NY | 11/20/97 |
| MORRISON, WYVETTE J, LEXINGTON, KY | 11/20/97 |
| MOSCH, PAUL G, COUDERSPORT, PA | 11/20/97 |
| MOSS, CHARLES C, PORTLAND, OR | 11/20/97 |
| MUKHTAR, JUNAID, ORLANDO, FL | 11/20/97 |
| MURRAY, LINDA SUE PIERCE, BOWIE, TX | 11/20/97 |
| NAWROCKI, RAYMOND, JUPITER, FL | 11/20/97 |
| OREM MEDICAL CORPORATION, FALSTON, MD | 06/12/97 |
| OTT, KENNETH J, BORON, CA | 11/20/97 |
| PALMA, NITA ALMUETE PADDIT, WHITTIER, CA | 11/20/97 |
| PAPPALARDO, JOSEPH F, STATEN ISLAND, NY | 11/20/97 |
| PAUL, FITZPATRICK, BROOKLYN, NY | 11/20/97 |
| PONDER, KATHY ANN, W PALM BEACH, FL | 11/20/97 |
| PROHIAS, MARIA LOURDES, MARIANNA, FL | 11/20/97 |
| QUALITY AMBULANCE SERVICE, INC, ASHLAND, KY | 11/20/97 |
| RAY, EARL F, LENEXA, KS | 08/04/97 |
| RODRIGUEZ, AMERICA, HIALEAH GARDENS, FL | 11/20/97 |
| ROGOVE, JAY H, DIX HILLS, NY | 11/20/97 |
| ROS, VANNARA, WHITTIER, CA | 11/20/97 |

| Subject City, State | Effective date |
|---|---|
| SACASAS, ROBERTO, MIAMI, FL | 11/20/97 |
| SKJONSBERG, DOLLIE, SEATTLE, WA | 11/20/97 |
| SLOMAN, ERIC, WALTHAM, MA | 11/20/97 |
| SLOMAN, ROGER H, LAKE PARK, FL | 11/20/97 |
| STECKELBERG, JUDITH A, LONE ROCK, WI | 11/20/97 |
| STRAND, STEVEN D, DINUBA, CA | 11/20/97 |
| SUMP, CAROLYN ANN, CLARINDA, IA | 11/20/97 |
| SWAN, ROBERT N, HIALEAH, FL | 11/20/97 |
| TANG, SARETH, LONG BEACH, CA | 11/20/97 |
| THOMPSON, JACK JR, W PALM BEACH, FL | 11/20/97 |
| TORRES, PEDRO, NEW ROCHELLE, NY | 11/20/97 |
| UY, SIENG, LONG BEACH, CA | 11/20/97 |
| VALLE, BLANCA, MIAMI, FL | 11/20/97 |
| VASQUEZ, HUMBERTO, MIAMI, FL | 11/20/97 |
| VERGEL, JAIME, MIAMI, FL | 11/20/97 |
| WALKER, JOYCE OLA, HOUSTON, TX | 11/20/97 |
| WALLACE, WILLIAM W, JACKSONVILLE, FL | 11/20/97 |
| WARD, WOODROW W, BUTNER, NC | 11/20/97 |
| WHITE, MARGARET E, BLAIRS, VA | 11/20/97 |
| WILLIAMS, DAVID L, BAY SHORE, NY | 11/20/97 |
| WORCESTER UNIVERSITY PHARMACY, WORCESTER, MA | 11/20/97 |
| **Patient Abuse/Neglect Convictions** | |
| AROJO, VANILZA, MARLBORO, MA | 11/20/97 |
| BENNETT, KEVIN W, BUFFALO, NY | 11/20/97 |
| BRUSO, LAUREEN, CHICOPEE, MA | 11/20/97 |
| BUTLER, LISA RUTH, TWIN GROVES, AR | 11/20/97 |
| CARSON, RODNEY D, JOPLIN, MO | 11/20/97 |
| CRAGG, JOSEPH, ROCHESTER, NY | 11/20/97 |
| DANTZLER, DEBORAH, HEIDELBERG, MS | 11/20/97 |
| DAVIS, LATISHA, LAUREL, MS | 11/20/97 |
| DUBE, CALVIN E, LEWISTON, ME | 11/20/97 |
| ESLINGER, BERTA C, SIOUX CITY, IA | 11/20/97 |
| FIRESTONE, MOREY HARVEY, W BLOOMFIELD, MI | 11/20/97 |
| FONTANEZ, LINDA, E PATCHOGUE, NY | 11/20/97 |
| FOREMAN, ROBIN LYNN CHASTAIN, DURANT, OK | 11/20/97 |
| FOSS, CATHERINE E, FREDERICA, DE | 11/20/97 |
| FOX, BETTY, DERMA, MS | 11/20/97 |
| GAITER, SHANDRA NICOLE, SAGINAW, MI | 11/20/97 |
| GRIFFIN, PATRICK H, NEW YORK CITY, NY | 11/20/97 |
| GROCE, MICHELLE, WILMINGTON, DE | 11/20/97 |
| HARTE, BRIAN K, PENSACOLA, FL | 11/20/97 |
| HEROD, HAROLD J, MILWAUKEE, WI | 11/20/97 |
| HOYLE, JACQUELINE D, JACKSON, TN | 11/20/97 |
| JOHNSON, RICHARD H, AIRWAY HEIGHTS, WA | 11/20/97 |
| JOHNSON, BRENDA CHRISTINE, PHOENIX, AZ | 11/20/97 |
| JORDAN, ROBERT, CLEVELAND, OH | 11/20/97 |
| JORDAN, JOY F, HILLSBORO, TX | 11/20/97 |
| KEISTER, JERRY, JACKSONVILLE, AR | 11/20/97 |
| LOWE, LINDA K, BESSEMER CITY, NC | 11/20/97 |
| MARTINEZ, MARTHA O, BIG LAKE, TX | 11/20/97 |
| MARTINEZ, JAY, ALTUS, OK | 11/20/97 |
| MCCLOUD, ANNA SUE, NEWPORT, AR | 11/20/97 |
| MCNEAR, REBECCA, CAWLING, IL | 11/20/97 |
| MIDDLETON, TONJA G, FAYETTESVILLE, NC | 11/20/97 |
| PAIGE, LAKISHA K, SWEENY, TX | 11/20/97 |
| PURDOM, BERTHA L PRITCHETT, BIRMINGHAM, AL | 11/20/97 |
| RAY, HENRY C, SEATTLE, WA | 11/20/97 |
| ROBERTS, DONALD, STARKVILLE, MS | 11/20/97 |
| SILVA, RAY, HURLEY, NM | 11/20/97 |
| STEWART, SUSIE MAE, SHREVEPORT, LA | 11/20/97 |
| THOMPSON, GENE A, SIDNEY, OH | 11/20/97 |
| TUTOR, ROBERT LEE, TEMPLE, TX | 11/20/97 |
| VON SEE, GERALDINE, SOMERSET, MA | 11/20/97 |
| WATSON, MARY ANN, PORTLAND, OR | 11/20/97 |
| WILLIS, VIDA MARIE, BALTIMORE, MD | 11/20/97 |
| YOUNG, LATONYA, COMO, MS | 11/20/97 |
| **Conviction For Health Care Fraud** | |
| ALEXANDER, BRENDA, INDIANAPOLIS, IN | 11/20/97 |
| ATKINS, VANESSA, CHICAGO, IL | 11/20/97 |

| Subject<br>City, State | Effective date |
|---|---|
| BIANCHI, MARIA, STATEN ISLAND, NY | 11/20/97 |
| CHRONIS, KIM, CLINTON TWNSHP, MI | 11/20/97 |
| HARRIS, STEFFENY T, CLINTON, SC | 11/20/97 |
| JOHNSON, MICHAEL D, JACKSON, TN | 11/20/97 |
| LEVIN, CHAIA, PHILADELPHIA, PA | 11/20/97 |
| LYERLA, JON R, GREENVILLE, IL | 11/20/97 |
| MARTIN, STELLA, CLINTON TWNSHP, MI | 11/20/97 |
| MCDONALD, ROBIN, PORT BYRON, NY | 11/20/97 |
| NAVARRA, ELIZABETH, DOBBS FERRY, NY | 11/20/97 |
| NOE, ALBERT D, JACKSON, TN | 11/20/97 |
| PROVENCIO, MICHELLE, ALBUQUERQUE, NM | 11/20/97 |
| SARTIANO, FRANCIS A, MADISON, CT | 11/20/97 |
| SHAFIR, RITA, PHILADELPHIA, PA | 11/20/97 |
| STONE, MARY S, COLLINSVILLE, VA | 11/20/97 |
| **Conviction-Obstruction Of An Investig.** | |
| AZAN, MOHAMMAD, NEW YORK, NY | 11/20/97 |
| **Controlled Substance Convictions** | |
| ABDUL, DURRANI, STERLING HGHTS, MI | 11/20/97 |
| BRADFIELD, SHARON L, WALLED LAKE, MI | 11/20/97 |
| MUNSON, ERIC G, BIRMINGHAM, MI | 11/20/97 |
| **License Revocation/Suspension/Surrender** | |
| ANFENSON, DOROTHEA MAE, GLENDALE, CA | 11/20/97 |
| ARMSTRONG, DIANA L, MURRAY, KY | 11/20/97 |
| ATWOOD, RONALD DWIGHT, BRISBANE, CA | 11/20/97 |
| BASCOM, DELLA M, VERGENNES, VT | 11/20/97 |
| BHARMOTA, HARJIT S, MARION, OH | 11/20/97 |
| BORISUK, LYNN MARIE, AKRON, OH | 11/20/97 |
| BOROWEC, LAWRENCE W, NEWFIELD, NJ | 11/20/97 |
| BOZZO, LAURA, NORTH CANAAN, CT | 11/20/97 |
| BRAYSHAW, NORA, WOODSIDE, CA | 11/20/97 |
| BROWN, IAN STEVEN, LOS ANGELES, CA | 11/20/97 |
| BROWN, JIMMIE RUSSELL, SANGER, CA | 11/20/97 |
| BRYANT, MARY M, PUYALLUP, WA | 11/20/97 |
| BURKETT, ROX C, MODESTO, CA | 11/20/97 |
| BUSER, MARCIA CYN, MAGALIA, CA | 11/20/97 |
| CAHALL, JOSEPH WILLIAM, CINCINNATI, OH | 11/20/97 |
| CAMPBELL, ALICE MARIE, ROANOKE, VA | 11/20/97 |
| CHICKOS, PATRICK J, FELTON, CA | 11/20/97 |
| CIELO, PATRIA CORDERO, FOSTER CITY, CA | 11/20/97 |
| CLEGG, CHARLES T, ANAHEIM, CA | 11/20/97 |
| CODERRE, JOHN DAVID, BAYSIDE, NY | 11/20/97 |
| COLLING, SANDRA FAYE, LAPEER, MI | 11/20/97 |
| DELACOSTE, MARGARET J, ANDOVER, MA | 11/20/97 |
| DRYER, RICGINDA LYNN, AHWAHEE, CA | 11/20/97 |
| EDDLEMAN-JOHNSON, PATRICIA ANN, VISALIA, CA | 11/20/97 |
| EWERS, CYNTHIA, EAST HADDAM, CT | 11/20/97 |
| FEENEY, JAY L, PLYMOUTH, MA | 11/20/97 |
| FELDMAN, BENJAMIN J, RANCHO MIRAGE, CA | 11/20/97 |
| FOSTER, LEBARON A, MOBILE, AL | 11/20/97 |
| FREEMAN, TERRY MITCHELL, LOS ANGELES, CA | 11/20/97 |
| GAITAN, ISABEL M, SAN FRANCISCO, CA | 11/20/97 |
| GELLINGS, BRIAN, QUINTON, VA | 11/20/97 |
| GREEN, MARK D, BOSTON, MA | 11/20/97 |
| GREENE, MARIA A, WEST WARWICK, RI | 11/20/97 |
| HAHS, GARY L, HESPERIA, CA | 11/20/97 |
| HARNEDY, NOREEN THERESA, SAN FRANCISCO, CA | 11/20/97 |
| HASSARD, ALEXANDER DANIEL, YOUNGSTOWN, OH | 11/20/97 |
| HAZELTINE, LAURIE KYLE, CAMBRIDGE, VT | 11/20/97 |
| HOLLOWAY, LAWRENCE M JR, FLINT, MI | 11/20/97 |
| HRABARCHUK, EUGENE, CEDAR GROVE, NJ | 11/20/97 |
| ISERMAN, BARBARA, ROCKFORD, MN | 11/20/97 |
| JUAREZ, JESUS R, FRESNO, CA | 11/20/97 |
| KATZ, GERALD S, LYNN, MA | 11/20/97 |
| KAZALLA, SCOTT M, TAMARAC, FL | 11/20/97 |
| KEENAN-FRIDAY, GERALDINE L, MINNEAPOLIS, MN | 11/20/97 |
| KUTZNER, ROBERT RUSSELL, SANTA MARIA, CA | 11/20/97 |
| LAFRANCE, MELODY R, ST LOUIS PARK, MN | 11/20/97 |

| Subject City, State | Effective date |
|---|---|
| LANDAU, ALLYN BETH, SAN FRANCISCO, CA | 11/20/97 |
| LANO, PAUL MICHAEL, ALAMEDA, CA | 11/20/97 |
| LASKY, KELLYE JO KING, SAN JOSE, CA | 11/20/97 |
| LEE, MUN FA, CLEARLAKE, CA | 11/20/97 |
| LEE, ROBERT, EVERGREEN PARK, IL | 11/20/97 |
| LEWIS, CHARLES M, BROOKLYN, NY | 11/20/97 |
| LEWIS, DANNY MICHAEL, FREMAN, VA | 11/20/97 |
| LILLO, JOSE ALBERTO, SANTA ANA, CA | 11/20/97 |
| LLOYD, DONALD B, WENTACHEE, WA | 11/20/97 |
| MACCANI, JAMES E, MINNEAPOLIS, MN | 11/20/97 |
| MANSMANN, PATRICIA A, EXTON, PA | 11/20/97 |
| MARQUIS, BETTY, ELLINGTON, CT | 11/20/97 |
| MCCARTHY, BRIAN ALAN, RICHMOND, VA | 11/20/97 |
| MCFADDEN, MICHAEL J, SAN FRANCISCO, CA | 11/20/97 |
| MCPARTLAND, SHAWN D, ROCKY POINT, NY | 11/20/97 |
| MEREDITH, CATHERINE M, RICHMOND, VA | 11/20/97 |
| MILLER, JANE E, STOCKTON, CA | 11/20/97 |
| MILLER-LUNDAHL, MARIANNE, FULLERTON, CA | 11/20/97 |
| MISTO, RALPH L, CRANSTON, RI | 11/20/97 |
| NEGRON, ROSALINDA, PHILADELPHIA, PA | 11/20/97 |
| NIGL, ALFRED JAMES, LA MESA, CA | 11/20/97 |
| NODAL, RAUL FROILAN, TAMPA, FL | 11/20/97 |
| NOSAL, JULIE A, BIRCHDALE, MN | 11/20/97 |
| OKUN, JAMES D, BAKERSFIELD, CA | 11/20/97 |
| PATHAK, RAMESHWAR, SHIRLEY, NY | 11/20/97 |
| PAWLISZ, TADEUSZ, CHICAGO, IL | 11/20/97 |
| POLITO, MATTHEW A, WILLOWICK, OH | 11/20/97 |
| RAMIREZ, CARLOS, HARWICH, MA | 11/20/97 |
| RANDALL, EDWARD A, LA QUINTA, CA | 11/20/97 |
| REDFIELD, JOHN T, EUGENE, OR | 11/20/97 |
| REED, JUDI, EUREKA, CA | 11/20/97 |
| REIMAN, JOHN KARL, COLUMBIA, CA | 11/20/97 |
| REITMAN, TONI JEAN, RIVERSIDE, CA | 11/20/97 |
| RIVER, ELLIOT, SAN FRANCISCO, CA | 11/20/97 |
| ROBERTS, MARY HOLLAND A, SANTA ANA, CA | 11/20/97 |
| ROBERTS, IFOR JOHN, DURHAM, NC | 11/20/97 |
| ROSENSTEIN, MELVYN, SANTA MONICA, CA | 11/20/97 |
| ROTRAMEL, JAMES D, CASTAIC, CA | 11/20/97 |
| RUSSELL, IDA MAY, NORTH POWNAL, VT | 11/20/97 |
| SALEM, NYMPHA Y, TULARE, CA | 11/20/97 |
| SANDERS, RAYMOND, CITRUS HEIGHTS, CA | 11/20/97 |
| SANDLIN, CARROLL MILTON, ESCONDIDO, CA | 11/20/97 |
| SANTIAGO, REYNALDO, PHILADELPHIA, PA | 11/20/97 |
| SBORDONE, GARY N, MELROSE, MA | 11/20/97 |
| SCHMUCKER-KARPOW, CELESTE, MONTVILLE, NJ | 11/20/97 |
| SCHROETER, DAVID B, JENISON, MI | 11/20/97 |
| SIETSEMA, GERALDINE, SACRED HEART, MN | 11/20/97 |
| SMITH, KENNETH C, HUBBARD, OH | 11/20/97 |
| SZYFERBLATT, LEO BERNARD, MONTICELLO, NY | 11/20/97 |
| TANG, BING HUEI, FLUSHING, NY | 11/20/97 |
| TAYLOR, DAVID L, REDONDA, AZ | 11/20/97 |
| TAYLOR, KATHARINE, CONCORD, NH | 11/20/97 |
| THUROW, JEAN, EVANSTON, IL | 11/20/97 |
| TOWLES, WILLIAM J, SAN CLEMENTE, CA | 11/20/97 |
| TUKEY, JAMES H, POWNAL, ME | 11/20/97 |
| VAN VLIET, BRADLEY RUSSELL, CONCORD, CA | 11/20/97 |
| WALDROP, RICHARD MORRIS, SOLEDAD, CA | 11/20/97 |
| WALKER, DEANA L, CHICO, CA | 11/20/97 |
| WALTON, JOYCE LEE, CARMICHAEL, CA | 11/20/97 |
| WENTWORTH, THOMAS, MINNEAPOLIS, MN | 11/20/97 |
| WILLIAMSON, WILLIAM T, REDLANDS, CA | 11/20/97 |
| WONG, GEORGE S, WALNUT CREEK, CA | 11/20/97 |
| WORLEY, RONALD D, OAKLAND, CA | 11/20/97 |
| WYMAN, ROSEMARY A, SANTA ANA, CA | 11/20/97 |
| YAGOOBIAN, EDWARD, DIAMOND BAR, CA | 11/20/97 |
| YOUNG, YAVARACE, ALTON, IL | 11/20/97 |

**Federal/State Exclusion/Suspension**

| | |
|---|---|
| BECKER, JON, LEWISTON, ME | 11/20/97 |
| CAMPBELL, MARJORIE, NEW YORK, NY | 11/20/97 |
| CUTLER-OROSI FAMILY MEDICAL, OROSI, CA | 11/20/97 |
| DELUCA, VINCENT M, BEECHURST, NY | 11/20/97 |

| Subject<br>City, State | Effective date |
|---|---|
| GIBBONS, WAYNE L, WILLINGBORO, NJ | 11/20/97 |
| JENAMED INC, E NORTHPORT, NY | 11/20/97 |
| KANG, PETER, ELMHURST, NY | 11/20/97 |
| LAWRENCE, ELSA L, MOSCOW, ID | 11/20/97 |
| PEYKAR, EZZAT O, GREAT NECK, NY | 11/20/97 |
| SCHWARTZ, JEFFREY SCOTT, ATLANTIC BEACH, NY | 11/20/97 |
| SEARS, MARY JEAN, CALDWELL, ID | 11/20/97 |
| TAMES, STEVEN M, HAWTHORNE, NY | 11/20/97 |
| WOODLAKE RURAL HEALTH CLINIC, WOODLAKE, CA | 11/20/97 |
| **Fraud/Kickbacks And Other Prohibited Activities** | |
| EGOZI, MAURICE, NORTH MIAMI BEACH, FL | 07/29/97 |
| EGOZI, ANOUCHKA, NORTH MIAMI BEACH, FL | 07/29/97 |
| MEDEL, RAQUEL, MIAMI BEACH, FL | 07/29/97 |
| MEDEL, ROGELIO, MIAMI BEACH, FL | 07/29/97 |
| R & M LABORATORY, MIAMI, FL | 07/29/97 |
| **Owned/Controlled By Convicted Excluded** | |
| AMBULANCE SERVICE, INC, JACKSONVILLE, FL | 11/20/97 |
| B & V MEDICAL SUPPLY, MIAMI, FL | 11/20/97 |
| BBC MEDICAL CENTER, MIAMI, FL | 11/20/97 |
| C & S LABORATORY, INC, MIAMI, FL | 11/20/97 |
| CARIBMED CARE CENTER, INC, MARIANNA, FL | 11/20/97 |
| CPC MEDICAL CENTER, HIALEAH, FL | 11/20/97 |
| DADE DIAGNOSTIC SERVICES, INC, ASHLAND, KY | 11/20/97 |
| DADE HEALTH CARE CENTER, INC, ASHLAND, KY | 11/20/97 |
| FAR SOUTH SIDE HEALTH ASSOC, CHICAGO, IL | 11/20/97 |
| FIRST COAST TRANS SVC, INC, JACKSONVILLE, FL | 11/20/97 |
| FLORIDA NATIONAL HEALTH CORP, ALTAMONTE SPRGS, FL | 11/20/97 |
| GREAT MIAMI PATIENT CARE, MIAMI, FL | 11/20/97 |
| INSTITUTO LATINO AMER DE IMPOT, MIAMI, FL | 11/13/97 |
| MEDIX PHYSICIAN INC, HIALEAH, FL | 11/20/97 |
| MIRAMAR MEDICAL TRAUMA CENTER, ASHLAND, KY | 11/20/97 |
| NEW HORIZONS OF PINELLAS, INC, TAMPA, FL | 11/20/97 |
| ORLANDO RECOVERY CENTER, ORLANDO, FL | 11/20/97 |
| P R MEDICAL SERVICES, MIAMI, FL | 11/20/97 |
| PARADISE TAXI CAB, INC., DADE CITY, FL | 11/20/97 |
| SMILE BRITE FAMILY DENTISTRY, ATLANTA, GA | 11/20/97 |
| SUPREME MEDICAL SERVICES, MIAMI, FL | 11/20/97 |
| WILLIAMS CLINICAL LABORATORY, BIRMINGHAM, AL | 11/20/97 |
| **Default On Heal Loan** | |
| ALTER, DON E, LUBBOCK, TX | 11/20/97 |
| AYBAR, RANDALL, LOS ANGELES, CA | 11/20/97 |
| BRITT, WILLIAM R, COLLEYVILLE, TX | 11/20/97 |
| CARTER, KENNETH O, PIKESVILLE, MD | 11/20/97 |
| CENTOLA, ROBERT L, RICHARDSON, TX | 11/20/97 |
| COHEN, DOROTHY A, SAN JOSE, CA | 11/20/97 |
| COLLYER, GEORGE H, SAN FRANCISCO, CA | 11/20/97 |
| DODSON, MASON D, LINDALE, TX | 11/20/97 |
| DREW, GARY WILLIAM, CARROLLTON, TX | 11/20/97 |
| ELY, STEPHEN ROBERT, FRESNO, CA | 11/20/97 |
| HENTHRON, WILLIAM H II, MCALLEN, TX | 11/20/97 |
| HOEHN, FRANK G, MIDLAND, TX | 11/20/97 |
| ITO, STEPHEN M, MURRIETA, CA | 11/20/97 |
| LINDSEY-WRIGHT, KAREN N, LONG BEACH, CA | 11/20/97 |
| MORONEY, WILLIAM P JR, SAN MATEO, CA | 11/20/97 |
| PALLADINO, JENNIFER M, WHITTIER, CA | 11/20/97 |
| WILLIAMS, LAURA ANN, LANHAM, MD | 11/20/97 |

Dated: October 30, 1997.

**Joanne Lanahan,**

*Director, Health Care Administrative Sanctions, Office of Investigations, OI.*

[FR Doc. 97–29792 Filed 11–12–97; 8:45 am]

BILLING CODE 4150–04–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; 'Test-Retest Study of the Alcohol Use Disorder and Associated Disabilities Interview Schedule (AUDADIS–IV) in a General Population Sample'

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, which provides for an opportunity for public comment on proposed data collection projects, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**Proposed Collection**

The Biometry Branch (BB), Division of Biometry and Epidemiology (DBE), NIAAA, intends to conduct the 'Test-Retest Study of the Alcohol Use Disorder and Associated Disabilities Interview Schedule (AUDADIS–IV) in a General Population Sample' to assess the test-retest reliability of new sections of the AUDADIS–IV in a general population sample. The AUDADIS–IV is a fully-structured interview designed to collect information on alcohol and drug use disorders and their associated psychiatric and medical conditions. The NIAAA is authorized by Section 464H of Title IV of the Public Health Act (42 U.S.C. 285n).

The information proposed for collection in this study will be used by the NIAAA to develop and finalize psychometrically sound measures of alcohol and drug-related disabilities for use in major epidemiologic surveys conducted in the United States. Currently, there is a great need for more reliable measurement of alcohol and drug use disorders and their associated disabilities in all fields of substance use research.

The annual burden estimates are as follows:

| Type and number of respondents | Responses per respondent | Total responses | Hours | Total hours |
|---|---|---|---|---|
| (First (Test Interviews) 500 | 1 | 500 | 1 | 500 |
| (Second (Retest) Interviews) 500 | 1 | 500 | 1 | 500 |
| Total Number of Respondents—500 (per year) | | | | |
| Total Number of Responses—1000 (per year) | | | | |
| Total hours—1000 (per year) | | | | |

**Request for Comments**

Comments are invited on: (a) Whether the proposed collection is necessary, including whether the information has practical use; (b) ways to enhance the clarity, quality, and use of the information to be collected; (c) the accuracy of the agency estimate of burden of the proposed collection; and (d) ways to minimize the collection burden of the respondents. Send written comments to Dr. Bridget Grant, Biometry Branch, Division of Biometry and Epidemiology (DBE), NIAAA, NIH, Willco Bldg., Suite 514, 6000 Executive Boulevard, Bethesda, Maryland 20892–7003.

**For Further Information**

To request more information on the proposed project or to obtain a copy of the data collection plans, contact Dr. Bridget Grant, Biometry Branch, Division of Biometry and Epidemiology, NIAAA, Willco Bldg., 6000 Executive Boulevard, Suite 514, Bethesda, Maryland 20892–7003, or call non-toll-free number (301) 443–7370.

**Comments Due Date**

Comments regarding this information collection are best assured of having their full effect if received on or before January 12, 1998.

Dated: November 5, 1997.

**Martin K. Trusty,**

*Executive Officer, NIAAA.*

[FR Doc. 97–29841 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Identification of the Gene Causing Familial Mediterranean Fever**

D Kastner (NIAMS) et al.

Serial No. 60/056,217 filed 21 Aug. 97

*Licensing Contact:* Stephen Finley, 301/496–7056 ext. 215

The invention identifies the gene (MEFV) encoding the protein (pyrin) that is associated with familial Mediterranean fever (FMF). FMF, a recessive inherited disorder, is characterized by episodes of fever, inflammation, and unexplained arthritis, pleurisy, or abdominal pain. Pyrin is thought to play a role in keeping inflammation under control, whereas mutated forms lead to a malfunctioning protein and uncontrolled inflammation. Mutated forms of MEFV were isolated and correlated to FMF disease. It is anticipated that the immediate use of the pyrin gene and its mutations will be to aid in the diagnosis of FMF. It may also prove useful for evaluating FMF as a possible cause of currently unexplained fevers or abdominal pain.

The normal gene and its mutations may also be useful for studying and controlling inflammation.

**Methods for Inactivating Enveloped RNA Virus Particles and Compositions for Use Therewith**

HF Rosenberg, JB Domachowske (NIAID)
Serial Number: 60/052,986 filed 02 Jul 97
*Licensing Contact:* Robert Benson, 301/496–7056 ext. 267

The inventors have discovered that treatment of enveloped single-stranded RNA viruses with eosinophil-derived neurotoxin (EDN), a ribonuclease, inactivates the viruses in cell culture. Respiratory Syncytial Virus (RSV) and Parainfluenza Virus (PIV) are medically the most important enveloped RNA viruses; together they hospitalize over 100,000 infants per year in the US. EDN is the major eosinophil ribonuclease. It has been cloned and recombinant EDN is available. Despite its name, EDN is not toxic to respiratory epithelial or other somatic cells. Both parenteral and aerosol administration are contemplated. Claimed are methods of treatment and pharmaceutical compositions.

**Actinomycin D: A New Use for AIDS Therapy**

JG Levin, J Guo (NICHD)
Serial No. 60/047,223 filed 20 May 97
*Licensing Contact:* Robert Benson, 301/496–7056 ext. 267

This invention is a method of treating HIV infection by administering Actinomycin D. In a broader sense the invention is the discovery of a new target for anti-HIV therapy, namely the inhibition of the first strand transfer step in reverse transcription, an early step in HIV replication. Actinomycin D, a licensed drug used to treat Wilm's tumor, inhibits the first strand transfer step at a concentration estimated to be an order of magnitude lower than that used to treat cancer, as shown by inhibition studies with purified reverse transcriptase and detergent-treated HIV virions.

**Rapid Method for Diagnosing the Various Forms of Alpha-Thalassemia**

GP Rodgers, DC Tang (NIDDK)
Serial No. 60/031,880 filed 27 Nov 96
*Licensing Contact:* J. Peter Kim, 301/496–7056 ext. 264

The present invention is directed to a simple, inexpensive, and rapid method for detecting thalassemias. The present invention provides for the identification of nucleic acid primers capable of detecting and distinguishing between the various forms of alpha-thalassemia using any biological material (dry or fluid) containing nucleic acid material. The invention further provides for a method and diagnostic kit for the detection and quantitation of hemoglobin (Hb) alpha gene(s) in alpha-thalassemia patients, a method and kit for screening for carriers of this genetic disorder, a sensitive non-radioisotopic test capable of differentiating between the various forms of thalassemia, and a means to identify persons who are at risk of having offspring with homozygous alpha-thalassemia.

Dated: November 4, 1997.

**Barbara M. McGarey,**

*Deputy Director, Office of Technology Transfer.*

[FR Doc. 97–29843 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Meeting of the National Advisory Board on Medical Rehabilitation Research

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Advisory Board on Medical Rehabilitation Research, National Institute of Child Health and Human Development, November 24–25, 1997, Natcher Conference Center, Conference Rooms E1–E2, Bethesda, Maryland.

The meeting will be open to the public from 8:00 a.m. to 5:00 p.m. on November 24 and 8:00 a.m. to adjournment on November 25. Attendance by the public will be limited to space available. Board topics will include: (1) A report on fiscal issues concerning the National Center for Medical Rehabilitation Research (Center) and the Institute; (2) reports on the program activities of the Center; (3) a discussion of general priority areas of research for the Center; and (4) a discussion of support for medical rehabilitation research by government agencies.

Ms. Debbie Welty, Board Secretary, NICHD, 6100 Building, Room 2A03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301–402–2242, will provide a summary of the meeting and a roster of Advisory Board members as well as substantive program information. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Welty.

Dated: November 6, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29847 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Cancer Drug Discovery: Diversity Generation and Smart Assays.

*Date:* December 14–16, 1997.

*Time:* December 14–7:00 p.m. to Recess, December 15–8:00 a.m. to Recess, December 16–8:00 a.m. to Adjournment.

*Place:* Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

*Contact Person:* Ray Bramhall, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 643, 6130 Executive Boulevard, MSC 7407, Bethesda, MD 20892–7407, Telephone: 301/496–3428.

*Purpose/Agenda:* To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 6, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29844 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following of the National Cancer Institute Initial Review Group:

Agency/Purpose To review, discuss and evaluate grant applications.

*Committee Name:* Subcommittee C—Basic and Preclinical Sciences.

*Date:* December 9–10, 1997.

*Time:* December 9—8:00 a.m. to Recess, December 10—8:00 a.m. to Adjournment.

*Place:* Ramada Inn—Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Virginia P. Wray, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., EPN, Room 635, Bethesda, MD 20892–7408, Telephone: 301–496–9236.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 6, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29845 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Cancer Institute Initial Review Group:

*Agenda/Purpose:* To review, discuss and evaluate grant applications.

*Committee Name:* Subcommittee D—Clinical Research Studies.

*Date:* December 2–3, 1997.

*Time:* 8 a.m. to Adjournment.

*Place:* Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Martin H. Goldrosen, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., EPN, Room 635C, Bethesda, MD 20892–7408, Telephone: 301–496–7930.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 6, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29849 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

*Name of SEP:* NCI Scholars Program.

*Date:* November 18, 1997.

*Time:* 8:00 a.m. to Adjournment.

*Place:* Ramada Inn—Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Gerald Lovinger, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630C, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7987.

*Purpose/Agenda:* To review, discuss and evaluate grant applications.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 6, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29852 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

*Agenda Purpose:* To review and evaluate grant applications.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.

*Date:* December 2, 1997.

*Time:* 8 a.m.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Lawrence E. Chaitkin, Parklawn, Room 9c–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301, 443-4843.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: November 6, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29848 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose:* To review and evaluate grant applications.
*Committee Name:* National Institute of Mental Health Special Emphasis Panel.
*Date:* November 19, 1997.
*Time:* 12 p.m.
*Place:* Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857.
*Contact Person:* Salvador H. Cuellar, Parklawn, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301, 443–4868.

*Committee Name:* National Institute of Mental Health Special Emphasis Panel.
*Date:* December 4, 1997.
*Time:* 10 a.m.
*Place:* Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857.
*Contact Person:* Phyllis D. Artis, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301, 443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282).

Dated: November 6, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29853 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institutes of Mental Health; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Institute of Mental Health Special Emphasis Panel:

*Agenda/Purpose:* To review and evaluate grant applications.
*Committee Name:* National Institute or Mental Special Emphasis Panel.
*Date:* December 2, 1997.
*Time:* 4 p.m.
*Place:* Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857.
*Contact Person:* Shirley H. Maltz, Parklawn, Room 9–101, 5600 Fishers Lane, Rockville, MD 20857; Telephone: 301–443–3936.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282).

Dated: November 6, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29854 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Child Health and Human Development Special Emphasis Panel (SEP) meeting:

*Name of SEP:* Specialized Cooperative Centers Program in Reproductive Research.
*Date:* November 12–14, 1997.
*Time:* November 12—6:00 p.m.–10:00 p.m.; November 13—8:30 a.m.–5:00 p.m.; November 14—8:30 a.m.–adjournment.
*Place:* Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, Maryland.
*Contact Person:* A. T. Gregoire, Ph.D., Scientific Review Administrator, NICHD, 6100 Executive Boulevard, Room 5E01, Rockville, MD 20852; Telephone: 301–496–1485.

*Purpose/Agenda:* To evaluate and review a research grant application.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. The discussion of this application could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. [93.864, Population Research and No. 93.865, Research for Mothers and Children], National Institute of Health, HHS)

Dated: November 6, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29855 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

*Purpose/Agenda:* To review individual grant applications.
*Name of SEP:* Clinical Sciences.
*Date:* November 13, 1997.
*Time:* 1:00 p.m.
*Place:* NIH, Rockledge 2, Room 4118, Telephone Conference.
*Contact Person:* Dr. Christine Melchior, Scientific Review Administrator, 6701 Rockledge Drive, Room 4118, Bethesda, Maryland 20892, (301) 435–1713.

*Name of SEP:* Clinical Sciences.
*Date:* November 19–20, 1997.
*Time:* 8:00 a.m.
*Place:* Holiday Inn, Chevy Chase, Maryland.
*Contact Person:* Dr. Richard Panniers, Scientific Review Administrator, 6701 Rockledge Drive, Room 5106, Bethesda, Maryland 20892, (301) 435–1166.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

*Name of SEP:* Clinical Sciences.
*Date:* December 1, 1997.

*Time:* 2:00 p.m.
*Place:* NIH, Rockledge 2, Room 4128, Telephone Conference.
*Contact Person:* Dr. Anshumali Chaudhari, Scientific Review Administrator, 6701 Rockledge Drive, Room 4128, Bethesda, Maryland 20892, (301) 435–1210.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* December 2–4, 1997.
*Time:* 7:00 p.m.
*Place:* Colony Inn, New Haven, CT.
*Contact Person:* Dr. Dave Remondini, Scientific Review Administrator, 6701 Rockledge Drive, Room 6154, Bethesda, Maryland 20892, (301) 435–1038.

*Name of SEP:* Microbiological and Immunological Sciences.
*Date:* December 4, 1997.
*Time:* 8:30 a.m.
*Place:* Doubletree Hotel, Rockville, MD.
*Contact Person:* Dr. Mohindar Poonian, Scientific Review Administrator, 6701 Rockledge Drive, Room 5110, Bethesda, Maryland 20892, (301) 435–1713.

*Name of SEP:* Biological and Physiological Sciences.
*Date:* December 9, 1997.
*Time:* 12:00 p.m.
*Place:* NIH, Rockledge 2, Room 5146, Telephone Conference.
*Contact Person:* Dr. Ramesh Nayak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5146, Bethesda, Maryland 20892, (301) 435–1026.

*Name of SEP:* Clinical Sciences.
*Date:* December 12, 1997.
*Time:* 10:00 a.m.
*Place:* Holiday Inn, Chevy Chase, MD.
*Contact Person:* Dr. Harold Davidson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4216, Bethesda, Maryland 20892, (301) 435–1776.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 6, 1997.

**LaVerne Y. Stringfield,**

*Committee Management Officer, NIH.*

[FR Doc. 97–29846 Filed 11–12–97; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the SAMHSA Reports Clearance Officer on (301) 443–8005.

*Comments are invited on:* (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Proposed Project:* State Prevention Needs Assessments: Alcohol and Other Drugs—New—SAMHSA's Center for Substance Abuse Prevention (CSAP) has awarded contracts to several States to assess the nature and extent of substance abuse prevention services needs. The information collected in this project will be combined with existing sources and may use multiple approaches to assess risk and protective factors for substance use, prevention service needs, and substance abuse prevalence. These needs assessment studies will permit some cross-State comparisons of predictor variables to assist Federal program planning, allocating resources, and responding to GPRA. The estimated annualized burden for the three-year project is shown below.

| | No. of respondents | No. of responses per respondent | Average burden per response | Total burden hours | Total annualized burden hours |
|---|---|---|---|---|---|
| Students | 45,600 | 1 | 0.75 | 34,200 | 11,400 |
| Young Adults | 3,100 | 1 | 0.50 | 1,550 | 517 |
| Community/Program Providers | 1,253 | 1 | 1.00 | 1,253 | 418 |

Send comments to Beatrice Rouse, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received on or before January 12, 1998.

Dated: November 6, 1997.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 97–29839 Filed 11–12–97; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Mental Health Services; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in December 1997.

A portion of the meeting will be open and will include a general announcements and discussions and advice on issues and initiatives relevant to the policy and operation of CMHS/SAMHSA. Public comments are welcome during the open session. Please notify the contact listed below if you would like to make comments or if you have a disability which requires reasonable accommodation.

The meeting also will include the review, discussion, and evaluation of individual contract proposals. Therefore, a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), (4) and (6) and 5 U.S.C. App. 2, Section 10(d).

A summary of the agenda and a roster of Council members may be obtained from Ms. Patricia Gratton, Committee

Management Officer, CMHS, Room 11C–26, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443–7987.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

*Committee Name:* CMHS National Advisory Council.

*Meeting Dates:* December 4–5, 1997.

*Place:* Omni Shoreham Hotel, 2500 Calvert Street, N.W. Washington, D.C.

*Closed:* December 4, 9:00 a.m.–9:15 a.m.

*Open:* December 4, 9:15 a.m.–4:45 p.m.

*Open: December 5, 9:00 a.m.–Adjournment.*

*Contact:* Ina B. Lyons, Room 13–103, Parklawn Building, Telephone: (301) 443–7586 and FAX (301) 443–5163.

Dated: November 6, 1997.

**Jeri Lipov,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 97–29838 Filed 11–12–97; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Jan Roger van Oosten, Seattle, WA. The applicant wishes to amend his approved cooperative breeding program to include additional specimens of the Yellow-bibbed lory (*Lorius chlorocercus*). The International Loriinae Society maintains responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 6, 1997.

**Dr. Susan Lieberman,**

*Chief, Branch of Operations, Office of Management Authority.*

[FR Doc. 97–29829 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Application for Approval

The following applicant has applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Susan Boyer, Julian, CA. The applicant wishes to amend her approved cooperative breeding program to include the Greater Indian Hill mynah (*Gracula religiosa intermedia*). The American Federation of Aviculture maintains responsibility for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 430, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 6, 1997.

**Dr. Susan Lieberman,**

*Chief, Branch of Operations, Office of Management Authority.*

[FR Doc. 97–29830 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of the Draft Sharon Steel Restoration Plan and Public Information Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability and public informational meeting.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the release of the Draft Sharon Steel Restoration Plan for public review and comment. The draft plan identifies restoration projects to restore migratory bird resources injured by the release of hazardous materials from the Sharon Steel and Midvale Slag Superfund Sites, along the Jordan River in Salt Lake County, Utah. Restoration proposals were solicited through the Final Sharon Steel Damage Settlement: A Conceptual Restoration Plan and the Commerce Business Daily.

**DATES:** Written comments must be submitted on or before December 15, 1997.

**ADDRESSES:** Requests for copies of the Draft Plan may be made to U.S. Fish and Wildlife Service, Salt Lake City Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115. Written comments should be sent to the above address.

**FOR FURTHER INFORMATION CONTACT:** Reed Harris, Field Supervisor, or Elise Peterson Environmental Contaminants Program, at the above Salt Lake City Field Office address (telephone 801/524–5001 extension 123).

**SUPPLEMENTARY INFORMATION:**

### Background

A $2.3 million damage settlement was awarded to the U.S. Department of the Interior (DOI) in compensation for injuries to Federally-protected trust resources caused by contamination of the Jordan River corridor from the Sharon Steel and Midvale Slag Superfund Sites. Under Federal law, these trust resources are specifically protected on behalf of the public, and include migratory birds, as well as threatened and endangered species and their habitats. Consequently, Sharon Steel damage settlement money must be used to restore, replace, or acquire the equivalent of the trust resources injured on site by contaminants.

The DOI and the State of Utah signed a Memorandum of Understanding (MOU) July 11, 1991, to cooperate as trustees in planning and implementing resource restoration with Sharon Steel

settlement money. The MOU established a Trustee Committee consisting of representatives from DOI and the State of Utah to plan and direct restoration activities.

The Trustee Committee outlined the following project goals: (1) to restore, replace, enhance, or acquire appropriate natural , functioning habitats along the Jordan River corridor for the benefit of identified trust resources; (2) to ensure that funds are utilized to provide maximum benefits for trust resources; and (3) to ensure the provision of benefits to trust resources in perpetuity. Restoration alternatives to meet these goals were identified. These alternatives included: (a) no-action or natural recovery, (b) restoration on the Sharon Steel/Midvale Slag sites, and (c) Jordan River Corridor replacement/ enhancement of habitat for trust resources. Due to its protective and relatively cost effective nature, replacement/enhancement of resources in the Jordan River corridor was chosen as the preferred alternative for enhancement of wetland and riparian migratory bird habitats.

The primary steps towards achievement of project restoration objectives were subsequently identified as: (1) definition of restoration targets in terms of species and habitats, (2) development of criteria to consider when identifying and ranking projects, (3) identification of restoration tools or activities and solicitation of cooperative project proposals, (4) identification and ranking of specific restoration projects (cooperative proposals) and/or sites, (5) implementation of selected project(s), and (6) monitoring of the project(s) to ensure long-term viability.

The Sharon Steel Damage Settlement Restoration Plan: A Concept Document was subsequently issued which lent guidance to the restoration project selection process. The Draft Sharon Steel Restoration Plan identifies restoration projects selected for funding through cooperative agreements that will be implemented through partnerships with State or Federal agencies, county or local governments, or nonprofit organizations. Close cooperation among all programs in the Jordan River corridor (e.g., Central Utah Project, Jordan River Parkway plans, Jordan River Sub-basin Watershed Management Council, etc.) will insure cost-effective expenditure of public funds, increase success of all programs, and provide maximum benefits to the Jordan River ecosystem.

Management in perpetuity for wildlife will be assured by Restoration Plan stipulations which require land/wildlife management plans for each project proposal, and deed restrictions, which stipulate future land uses and return of lands to DOI or the State of Utah if cooperative agreements and management plan objectives are not upheld. Monitoring of sites will be performed by the Service to document project progress, assure compliance with management objectives and deed restrictions, and to measure timely success in the restoration of trust resources.

Interested members of the public are invited to review and comment on the Draft Restoration Plan. In Utah, copies are available for review at the U.S. Fish and Wildlife Service's Ecological Services Office in Salt Lake City (145 East 1300 South, Suite 404, Salt Lake City), the Utah Department of Environmental Quality, Division of Environmental Response and Remediation (168 North 1950 West, Salt Lake City), and the Salt Lake City Library.

A public informational meeting will be held to describe the restoration projects proposed in the Restoration Plan and to answer questions. The meeting will be held November 20, 1997, at Midvale City Hall at 7:30 p.m. All written and public meeting comments will be considered and addressed in the final Restoration Plan.

Dated: November 6, 1997.

**Joseph J. Webster,**

*Acting Regional Director, Denver, Colorado.*

[FR Doc. 97–29828 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–55–M

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–350–1020–00]**

### Notice of Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Mananagement, Northeast California Resource Advisory Council, Susanville, California.

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. Bureau of Land Management's Northeast California Resource Advisory Council will meet Tuesday, Dec. 2, 1997, at the BLM's Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA 96130.

**SUPPLEMENTARY INFORMATION:** The meeting begins at 10 a.m. in the conference room of the BLM office. Members will discuss development of BLM-California's Environmental Impact Statement for Healthy Rangeland Standards and Guidelines, and discuss progress on phase one fire management planning in the Alturas, Eagle Lake and Surprise Resource Areas. Public comments will be taken at 1 p.m. Depending on the number of persons wishing to speak a time limit could be established.

**FOR FURTHER INFORMATION:** Contact Jeff Fontana, public affairs officer, (530) 257–5381.

**John Bosworth,**

*Acting Area Manager.*

[FR Doc. 97–29818 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–40–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–050–07–1220–00; 8322]**

### Arizona: Closure of All Public Lands Within the La Posa Plain Camping Closure Area to Overnight Occupation, Identification of Five ''Fourteen-Day Camping Areas,'' and Restriction of Native Wood Collection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of closure of all public lands within the La Posa Plain Camping Closure Area to overnight occupation, identification of five ''Fourteen-Day Camping Areas,'' and restriction of Native Wood Collection.

**SUMMARY:** Notice is hereby given that all types of camping and night-time occupation must occur within designated camping areas within the La Posa Plain Area, and that native wood collection is prohibited on the public land within the La Posa Plain Camping Closure Area. The area affected by the closure contains 121,500 acres more or less.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management, Yuma Field Office, La Posa Interdisciplinary Management Plan specified that no overnight occupation or collection of native wood shall be permitted with the closure area. This closures of public land within this area to overnight occupation and firewood collection is being implemented to resolve natural resource impacts resulting from unauthorized dumping of solid and liquid waste, disturbance of native soils, and depletion of native wood resources. Camping and occupation of public land within this area is restricted to five designated 14-day camping areas and the La Posa Long-Term Visitor Area (LTVA). The five 14-day camping areas are: Plomosa Road located 5 miles north of Quartzsite, Arizona, on the north and south sides of Plomosa Road; Dome

Rock located 6 miles west of Quartzsite south of Interstate 10; Hi-Jolly located 3 miles north of Quartzsite east of Highway 95 at mile marker 112; Scaddan Wash located 3 miles east of Quartzsite south of Interstate 10 adjacent to the south frontage road; and Road-Runner located 5 miles south of Quartzsite west of Highway 95 at mile marker 99. These areas are clearly identified on the ground with perimeter signs and information kiosks at the ignress and egress points which provide maps of the areas.

Authority for this action is contained in 43 CFR 8364.1. Violation of this regulation is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. A map of the overnight occupation and camping closure areas and designate camping areas is available at the Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365, or by mail.

**EFFECTIVE DATES:** September 30, 1997.

**FOR FURTHER INFORMATION CONTACT:** Outdoor Recreational Planner John Reid, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365; (520 317–3274.

Dated: November 3, 1997.

**Curt Gunn,**

*Program Manager, Resources, Lands, and Minerals.*

[FR Doc. 97–29866 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–32–M

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Concession Contract Negotiations: National Preserve; Correction

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

**ACTION:** Correction to public notice, proposal to award concession permits, Wrangell—St. Elias National Preserve.

**SUMMARY:** This notice contains a correction to the public notice that was published Friday, October 17, 1997 (62 FR 54127–54128). That notice advertised the National Park Service's proposal to award 17 concession permits authorizing the operation of sport hunting guide-outfitter services for the public at Wrangell St. Elias National Preserve.

**EFFECTIVE DATE:** November 13, 1997.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Wrangell St. Elias National Park and Preserve, P.O. Box 439,Copper Center, Alaska 99573.

**SUPPLEMENTARY INFORMATION:**

### Need for Correction

The Summary action of the notice published on Friday, October 17, 1997 (62 FR 54127–54128) incorrectly stated that the existing permits expire by limitation of time on December 31, 1997 and that the term of the proposed new permits will be for ''a period of five years from January 1, 1998 through December 31, 2002.'' The Effective Date was stated ''December 16, 1997''.

### Correction of Notice

The existing permits expire by limitation of time on December 31, 1998, and proposed new permits will have a term of five years from January 1, 1999 through December 31, 2003. The date applications are due has been extended from December 16, 1997 to January 15, 1998.

**Paul Anderson,**

*Acting Regional Director, Alaska Region.*

[FR Doc. 97–29775 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Draft Environmental Assessment

**ACTION:** Release of Draft Environmental Assessment for Navigational Improvements for Washington Sailing Marina and Columbia Island Marina for public review and announcement of a public meeting on November 21, 1997 at Patowmack Landing Restaurant at the Washington Sailing Marina in Alexandria, Virginia.

**SUMMARY:** Washington Sailing Marina (WSM), located on Dangerfield Island, just opposite National Airport and Columbia Island Marina (CIM), at the southern end of Lyndon Baines Johnson Grove and 3 miles upstream from WSM are owned by the National Park Service (NPS) and managed by Guest Services, Inc. The marinas provide for recreational boating and access to the Federal navigational project in the Potomac River. The WSM provides recreational sailing and the CIM provides recreational power boating. The access channels serving to connect these marinas with the Federal Navigational channel are inadequate and unsafe for the types of boats currently using these marinas.

Through both studies, the benefits which may reasonably be expected to accrue from the proposed project are being balanced against its reasonable foreseeable detriments.

In accordance with the National Environmental Policy Act and Clean Water Act the NPS is soliciting comments from the public, state, and local agencies and officials, and other interested parties. The public review and comment period for the draft feasibility study and draft environmental assessment will begin on November 21, 1997 and close on December 21, 1997.

A public meeting will be held on November 21, 1997 at 7:00 p.m. at Patowmack Landing Restaurant meeting room, located at the Washington Sailing Marina, one mile south of National Airport, on George Washington Memorial Parkway.

For further information please contact Superintendent, George Washington Memorial Parkway at 703–285–2600. Requests for copies of the draft plan or written comments may be addressed to Superintendent, at George Washington Memorial Parkway, c/o Turkey Run Park, McLean, Virginia 22101. Comments must be received by December 21, 1997, to be addressed by the Final Feasibility Study and Environmental Assessment.

Dated: November 3, 1997.

**Audry F. Calhoun,**

*Superintendent, George Washington Memorial Parkway.*

[FR Doc. 97–29774 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Notice of Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1997 Christmas Pageant of Peace, which opens December 4, on the Ellipse (President's Park), south of the White House.

The meeting will be held at 1 p.m., Thursday, November 13, 1997, in room 234 of the National Park Service's National Capital Region Building, at 1100 Ohio Drive, S.W., in East Potomac Park.

Persons who would like to comment at the meeting should notify the National Park Service by November 10, by calling the White House Visitor Center between 9 a.m. and 4 p.m. weekdays, at (202) 208–1631. Written comments may be sent to the Park Manager, White House Visitor Center, 1100 Ohio Drive, SW., Washington, DC 20242, and can be accepted until November 7.

Dated: November 3, 1997.

**Tom Peyton,**

*Park Manager, President's Park.*

[FR Doc. 97–29773 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Park System Advisory Board

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

**ACTION:** Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), that a meeting of the National Park System Advisory Board will be held on November 20–21, 1997, at the Presidio, Golden Gate Club, Building 135, Fisher Loop, San Francisco, California. November 20, 1997, will be a meeting day for the committees of the Board. The Committee on Use, Recreation and Tourism will meet at the Presidio. The Committee on Humanities, Science and Education will meet at Point Reyes National Seashore. The full Board will meet November 21, 1997, beginning at 8:30 a.m. and will adjourn at 4:30 p.m.

On November 21, after remarks from the Chairman, the Board will be addressed by Director Robert Stanton. NPS Deputy Director Jackie Lowey will report on the NPS Transportation Working Group, followed by committee reports. The Board will vote on National Historic Landmark nominations in the afternoon.

The Board may be addressed at various times by other officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and persons will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW., Washington, DC 20240 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: November 5, 1997.

**Denis P. Galvin,**

*Acting Director, National Park Service.*

[FR Doc. 97–29778 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 1,1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by November 28, 1997.

**Carol D. Shull,**

*Keeper of the National Register.*

**CONNECTICUT**

**Hartford County**

Hubbard Park, Roughly bounded by W. Main St., I–691, CT 66, Reservoir Ave., Edgewood Dr, and Berlin, Meriden and Southing townlines, Meriden, 97001466

**New London County**

Burnett's Corner, Along Packer Rd., S of CT 184, Groton, 97001468

Woodbridge Farm, 29, 30, and 90 Woodbridge Rd., Salem, 97001467

**DISTRICT OF COLUMBIA**

**District of Columbia State Equivalent**

United States Daughters of 1812, National Headquarters, 1461 Rhode Island Ave., NW., Washington, 97001469

**GEORGIA**

**Richmond County**

Bethlehem Historic District, Roughly bounded by Wrightsboro Rd., MLK Jr. Blvd., Railroad, Poplar, and Clay Sts., Augusta, 97001470

**IOWA**

**Montgomery County**

Moore, Josiah B. and Sara, House, 508 E. Second St., Villisca, 97001471

**MASSACHUSETTS**

**Middlesex County**

Prince Hall Mystic Cemetery, Address Restricted, Arlington, 97001473

**Suffolk County**

St. Luke's and St. Margaret's Church, 5–7 St. Luke's Rd., Boston, 97001472

**MICHIGAN**

**Cass County**

Jones, Carroll and Bessie E. (Caul), House, 170 W. Main St., Marcellus, 97001482

**Delta County**

Sand Lighthouse, 12 Waterplant Rd., Escanaba, 97001474

**Newaygo County**

Hardy Hydroelectric Plant, 6928 E. 36th St., Newaygo vicinity, 97001479

**Wayne County**

Ford—Bacon House, 45 Vinewood, Wyandotte, 97001476

Grindley, Robert M. and Matilda (Kitch), House, 123 Parsons, Detroit, 97001475

Hook and Ladder House No. 5—Detroit Fire Department Repair Shop, 3400–3434 Russell, Detroit, 97001481

Warren—Prentis Historic District, Bounded by Woodward, Warren, Third, and alley S of Prentis, Detroit, 97001477

Willis—Selden Historic District, Bounded by alley N of W. Willis, Woodward, alley S of Selden, and Third Ave., Detroit, 97001478

Woodbridge Neighborhood Historic District (Boundary Increase), 4304–14 Trumbull Ave. and 3800 Grand River, Detroit, 97001480

**MISSOURI**

**Jackson County**

Scarritt Point North Historic District, Roughly along Gladstone Blvd., Windor, Bales, Indiana, and Norledge Aves., Kansas City, 97001484

Scarritt Point South Historic District, Roughly along Gladstone and Benton Blvds., and Thompson Ave., Kansas City, 97001483

**Saline County**

Sweet Springs Historic District (Sweet Springs MPS), Roughly along Lexington, Marshall, Miller, and Spring Sts., Sweet Springs, 97001485

**NEW YORK**

**Cattaraugus County**

Oak Hill Park Historic District, Roughly along Laurens, N. Second, Third, Fourth, and W. Sullivan Sts., Olean, 97001495

**Livingston County**

Linwood, 1912 York Rd., York vicinity, 97001493

**Tioga County**

Belcher-Holden Farm (Newark Valley MPS), 5825 NY 38, Newark Valley, 97001486

Chamberlain, Daniel, House (Newark Valley MPS), 627 Brown Rd., Newark Valley, 97001489

Farrand-Pierson House (Newark Valley MPS), 441 Brown Rd., Newark Valley, 97001490

Maple Lawn Farm (Newark Valley MPS), 10981 NY 38, Newark Valley, 97001487

Nowland House (Newark Valley MPS), 88 S. Main St., Newark Valley, 97001488

Sutton-Chapman-Howland House (Newark Valley MPS), 55 Main St., Newark Valley, 97001492
Wade Farm (Newark Valley MPS), 5579 NY 38, Newark Valley, 97001491

**Westchester County**

Trinity Episcopal Church Complex, 335 Fourth Ave., Mount Vernon, 97001494

**NORTH CAROLINA**

**Brunswick County**

Bald Head Creek Boathouse, Smith Island, mouth of Cape Fear R, Smith Island, 97001496

**Surry County**

Bank of Pilot Mountain, (Former), 100 E. Main St., Pilot Mountain, 97001497

**Wake County**

Odd Fellows Building, 19 W Hargett St., Raleigh, 97001498
Pine Street Creamery, (Former), 414 Glenwood Ave., Raleigh, 97001499

**TENNESSEE**

**Bedford County**

River Side Farmhouse, 497 Shofner Rd., Shelbyville vicinity, 97001501

**Maury County**

Prewitt-Amis-Finney House, 2629 Pullen Mill Rd., Culleoka vicinity, 97001503

**Roane County**

Kingston Avenue Historic District, Roughly along N. Kingston, S. Kingston, and E. Rockwood Aves., Rockwood, 97001500

**Sevier County**

Wade, Dwight and Kate, House, 114 Joy St., Sevierville, 97001502

**VIRGINIA**

**Albemarle County**

Earlysville Union Church, VA 743, NW of jct. with VA 633, Earlysville, 97001504

**Arlington County**

Calvert Manor, 1925–1927 N. Calvert St., Arlington vicinity, 97001506

**Culpeper County**

Maple Springs, 20509 Clover Hill Rd., Jeffersonton vicinity, 97001510

**Franklin County**

Early, Jubal A., House, NW of jct. of VA 116 and VA 684, Boones Mill vicinity, 97001507

**Goochland County**

Jackson Blacksmith Shop, 2558 Blacksmith Shop Rd., Goochland vicinity, 97001511

**Rappahannock County**

Flint Hill Baptist Church, 0.3 mi N of jct. of US 522 and VA 729, Flint Hill, 97001509

**Spotsylvania County**

La Vista, 4420 Guinea Station Rd., Guinea vicinity, 97001508

**Bedford Independent City**

Ballard, John D., House, 525 Longwood Ave., Bedford, 97001505

**WISCONSIN**

**La Crosse County**

Chicago, Milwaukee and Saint Paul Railway Passenger Depot, 601 Saint Andrew Rd., LaCrosse, 97001512

[FR Doc. 97–29777 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–70–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

## Central Valley Project Improvement Act, Criteria for Evaluating Water Conservation Plans

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of draft decision of evaluation of water conservation plan for Delano-Earlimart Irrigation District.

**SUMMARY:** To meet the requirements of the Central Valley Project Improvement Act (CVPIA), the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans (Criteria) dated April 30, 1993, and revised in September 1996. These Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water conservation plans developed by project contracts in the MP Region, including those required by the Reclamation Reform Act of 1982. The Criteria were developed and the plans evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination on the adequacy of each contractor's water conservation plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations. This program is on-going; an updated list will be published to recognize districts as plans are revised to meet the Criteria.

**DATES:** All public comments must be received by December 15, 1997.

**ADDRESSES:** Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–402, Sacramento, CA 95825.

**FOR FURTHER INFORMATION CONTACT:** To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above, or by telephone at (916) 978–5215 (TDD 978–5608).

**SUPPLEMENTARY INFORMATION:** Under provisions of Section 3405(e) of the CVPIA (Title 34 of Pub. L. 102–575), ''The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria. For evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria will be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The MP Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contacts over 2,000 irrigable acres) will prepare water conservation plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water conservation plans. The steps are:

1. Coordinate with other agencies and the public.
2. Describe the district.
3. Inventory water resources.
4. Review the past water conservation plan and activities.
5. Identify best management practices to be implemented.
6. Develop schedules, budgets, and projected results.
7. Review, evaluate, and adopt the water conservation plan.
8. Implement, monitor, and update the water conservation plan.

The MP contractor listed below has developed a water conservation plan which Reclamation has evaluated and preliminarily determined meet the requirements of the Criteria.

- Delano-Earlimart Irrigation District

Public comment on Reclamation's preliminary (i.e., draft) determinations at this time is invited. Copies of the plans listed above will be available for review at Reclamation's MP Regional Office and MP's area offices. If you wish to review a copy of the plans, please contact Ms. Billingsley to find the office nearest you.

Dated: November 6, 1997.

**Robert F. Stackhouse,**

*Regional Resources Manager.*

[FR Doc. 97–29827 Filed 11–12–97; 8:45 am]

BILLING CODE 4310–94–M

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Malaria Vaccine Development Program Federal Advisory Committee; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the USAID Malaria Vaccine Development Program (MVDP) Federal Advisory Committee. The meeting will be held from 8:30 AM to 5:00 PM on December 15, 1997 and from 8:30 to noon on 16 December 1997 at the Conference Room of the Environmental Health Project located in Suite 300, 1611 North Kent Street in Arlington, VA 22209–2111.

The agenda will concentrate on the activities of the MVDP over the past six months and plans for the next year.

The meeting will be open to the public except for a 30 to 60 minute segment at approximately 2:30 PM on December 15, 1997, during which procurement sensitive information will be discussed. Any interested person may attend the meeting, may file written statements with the committee before or after the meeting, or present any oral statements in accordance with procedures established by the committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting or to obtain additional information about the USAID MVDP should contact Carter Diggs, the designated Federal Officer for the USAID MDP Federal Advisory Committee at the Office of Health and Nutrition USAID/G/PHN/HN/EH, Room 3.07–013, 3rd floor, RRB, Washington, DC 20523–3700, telephone (202) 712–5728, Fax (202) 216–3702, cdiggs@usaid.gov.

**Carter Diggs,**

*USAID Designated Federal Officer (Technical Advisor, Malaria Vaccine Development Program).*

[FR Doc. 97–29867 Filed 11–12–97; 8:45 am]

BILLING CODE 6116–01–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 332–388]**

### Simplification of the Harmonized Tariff Schedule of the United States

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of investigation.

**EFFECTIVE DATE:** November 5, 1997.

**FOR FURTHER INFORMATION CONTACT:** Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements (O/TA&TA) (202–205–2592). The O/TA&TA fax number is: 202/205–2616. Mr. Rosengarden may also be reached via Internet e-mail at rosengarden@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. Media representatives should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819). This notice, and any subsequent notices published pursuant to section 332(g) of the Tariff Act of 1930, may be obtained from the ITC Internet web server: http://www.usitc.gov.

**SUMMARY:** Following receipt of a letter from the Chairman, Committee on Ways and Means, U.S. House of Representatives, the Commission has instituted investigation No. 332–388, Simplification of the Harmonized Tariff Schedule of the United States, under section 332(g) of the Tariff Act of 1930. The purpose of the investigation is to propose modifications to the Harmonized Tariff Schedule of the United States (HTS) in order to make it simpler, more transparent and easier to use.

**Background:**

As requested by the Committee, the Commission will conduct the investigation in accordance with the following guidelines:

—The investigation should examine the difficulties arising from the complexity and size of the HTS, and the Commission should suggest modifications to alleviate compliance and administrative burdens for the business community and the U.S. Customs Service.

—Concession-rate levels scheduled to go into effect on January 1, 2004 should be used as the basis for general rates and special rates of duty. Tariff categories scheduled for rate reductions beyond January 1, 2004 should be identified and their staging schedules indicated in the report, along with any suggested modification that take delayed staging into account.

—Consistent with sound nomenclature principles and U.S. international obligations under the Harmonized System Convention, the Commission should suggest ways to simplify the U.S. tariff structure to the extent practicable without affecting duty-rate changes with a significant effect on U.S. industry and trade.

—For each of HTS chapters 1 through 97, the Commission should suggest appropriate methods of reflecting Column 2 rates. Consistent with guidelines for rate changes, the Commission should avoid proposing or maintaining rate lines solely for the purpose of reflecting Column 2 rates of duty.

—The Commission should suggest conversions of all specific, compound, and complex rates of duty to ad valorem equivalent rates, provided that such conversions would not have significant effects on U.S. industry and trade. In calculating rate conversions, the Commission should use trade data from the three most recent calendar years.

—The Commission should suggest an appropriate simplification of HTS statistical reporting categories for consideration by the Committee for Statistical Annotation of the Tariff Schedules, in accordance with section 484(f) of the Tariff Act of 1930, as amended.

The Committee on Ways and Means has requested that the Commission complete its investigation and submit its report to that Committee, the Committee on Finance of the Senate, and to the President, by July 13, 2000.

As requested by the Committee, the Commission will consult with interested agencies in the Executive Branch, including the Office of the U.S. Trade Representative, the U.S. Customs Service, and the U.S. Bureau of the Census. In addition, a primary focus of the investigation will be to obtain the broadest possible range of private-sector input including U.S. producers, U.S. importers, and, via foreign embassies, major foreign exporters to the United States. To that end, the Commission anticipates that frequent notices and repeated contacts with interested parties will take place. Commission staff expect to work closely with various industry groups to ensure that the Commission is in a position to understand their interests and will be able to see that their concerns are recognized in the development of proposals to simplify the U.S. tariff structure. The Commission believes that it is vital to have significant private-sector input during all phases of this work.

The Commission will from time to time issue notices and solicit comments and proposals with respect to specific portions of the HTS. However, comments addressed to the overall scope and direction of this investigation must be submitted by C.O.B. May 29, 1998.

*Written Submissions:* All submissions in connection with this investigation should be addressed to the Secretary, United States International Trade

Commission, 500 E Street S.W., Washington, D.C. 20436.

Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons.

*Public Hearing:* At an appropriate time during the investigation, the Commission will hold public hearings to obtain the views of interested parties. Any such hearings will be announced in a future public notice.

Issued: November 6, 1997.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 97–29782 Filed 11–12–97; 8:45 am]

BILLING CODE 7020–02–P

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants''.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* One-time submission of operating license renewals and occasional submissions for holders of renewed licenses.

5. *Who will be required or asked to report:* Commercial nuclear power plant licensees who renew operating licenses.

6. *An estimate of the number of responses:* 1.33 responses (4 renewal applications during the 3-year clearance).

7. *The estimated number of annual respondents:* 1.33 respondents.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* Approximately 89,333 hours (85,333 hours one-time reporting burden and 4,000 recordkeeping burden).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 54 of the NRC regulations, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' specifies the procedures, criteria, and standards governing nuclear power plant license renewal, including information submittal and recordkeeping requirements, so that the NRC may make determinations necessary to promote the health and safety of the public.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by December 15, 1997. Norma Gonzales, Office of Information and Regulatory Affairs (3150–0155), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 6th day of November 1997.

For the Nuclear Regulatory Commission.

**Brenda Jo Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 97–29887 Filed 11–12–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** U. S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* New

2. *The title of the information collection:* Request for Taxpayer Identification Number.

3. *The form number if applicable:* NRC Form 531

4. *How often the collection is required:* One time from each applicant or individual to enable the Department of Treasury to process electronic financial payment or collect debts owed to the government.

5. *Who will be required or asked to report:* All individuals doing business with the Nuclear Regulatory Commission, including contractors and recipients of credit, licenses, permits, and benefits.

6. *An estimate of the number of responses:* 2,600 (1,600 the first year and 500 annually thereafter or 867 annually over a three year period).

7. *The estimated number of annual respondents:* 867.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 72 (5 minutes per response).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* The Debt Collection Improvement Act of 1996 requires that agencies collect taxpayer identification numbers (TINs) from individuals who do business with the Government, including contractors and recipients of credit, licenses, permits, and benefits. The TIN will be used to process all electronic payments (refunds) made to licensees by electronic funds transfer by the Department of the Treasury. The Department of the Treasury will use the TIN to determine whether the refund

can be used to administratively offset any delinquent debts reported to the Treasury by other government agencies. In addition, the TIN will be used to collect and report to the Department of the Treasury any delinquent indebtedness arising out of the licensee's or applicant's relationship with the NRC.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by December 15, 1997. Norma Gonzales, Office of Information and Regulatory Affairs (3150- ), NEOB–10202, Office of Management and Budget, Washington, DC 20503. Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 6th day of November 1997.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 97–29888 Filed 11–12–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–302]**

## Florida Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR 72, issued to the Florida Power Corporation, (FPC or the licensee), for operation of the Crystal River Nuclear Generating Unit 3 (CR3) located in Citrus County, Florida.

The proposed amendment involves modifications to the electrical controls of the Reactor Building (RB) Recirculation System Fan/Cooler, AHF–1C. FPC has determined that the modification involves an Unreviewed Safety Question, in that modification will install additional components that could increase the probability of occurrence of a malfunction of equipment important to safety previously evaluated in the Final Safety Analysis Report (FSAR). Therefore, this action requires NRC approval. The proposed modification to the fan logic will enable utilization of AHF–1C, in place of either AHF–1A or AHF–1B (the normally running RB Recirculation System fans), by providing engineered safeguards (ES) auto-start permissive interlocks from its MCC–3AB transfer switch. This modification will automatically prevent inadvertent loading of two RB Recirculation System fans on a single emergency diesel generator when the ES–MCC–3AB source is transferred. The AHF–1C Engineered Safeguards ''A'' train auto start signal will be enabled only when AHF–1C is ES-selected as the ''A'' train fan with ES–MCC–3AB supplied from the ''A'' train source. Conversely, the AHF–1C ES ''B'' train auto-start signal will be enabled only when AHF–1C is ES-selected as the ''B'' train fan with ES–MCC–3AB supplied from the ''B'' train source.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment involves the addition of electrical circuits to preclude the loading of two Reactor Building Recirculation System fans onto the same Emergency Diesel Generator when AHF–1C is in service. This equipment will enable use of Reactor Building Recirculation System fan/cooler unit AHF–1C in place of either AHF–1A or AHF–1B by providing ES auto-start permissive interlocks from the source transfer switch for Motor Control Center ES–MCC–3AB. The AHF–1C ES-select control circuitry and ES–MCC–3AB do not initiate any accidents previously evaluated. Accident mitigation strategies assume that one train of the Reactor Building Recirculation System is available. This license amendment does not restrict the availability of one train. One Reactor Building Recirculation System fan/cooler unit will always be in operation even if AHF–1C is not available because of a malfunction in this control circuitry.

A failure to open or close a manual Nuclear Services Closed Cycle Cooling (SW) System valve at a Reactor Building Recirculation System cooling coil is a remote possibility. Adequate procedural controls are in place to ensure that proper steps are taken when a fan/cooler unit is being placed in service or removed from service. These procedures are not required during an accident, but are part of the normal operation of CR–3. However, should a failure occur, the other aligned Reactor Building Recirculation fan/cooler unit is available. In addition, both trains of the Reactor Building Spray System will be available to perform the post accident containment heat removal function.

Failure to properly ES-select a fan/cooler unit could result in a failure of the ES start function. However, an alignment error in the ES-selection of AHF–1C is annunciated and printed out by the events recorder to minimize the effect of this type of failure. Also procedural controls are in place to align the ES-selection for the fan/cooler unit being placed in service. The other train of the Reactor Building Recirculation System would be available, as well as, both trains of the Reactor Building Spray System. Therefore, this license amendment does not involve a significant increase in the probability of an accident previously evaluated.

Because of CR–3 single failure design bases considerations, a failure of one-half of the Reactor Building Recirculation System during accident mitigation would mean that both trains of the Reactor Building Spray System are available for mitigating any accident previously evaluated. Accident analyses for CR–3 assume only one train of the Reactor Building Recirculation System. Either train of the Reactor Building Spray System has the capability to maintain the accident dose consequences well below the requirements of 10 CFR 100 (25 rem whole body, 300 rem thyroid) and General Design Criteria 19 (5 rem whole body, or its equivalent to any part of the body). Installation of the ES auto-start permissive interlocks from the transfer switch for Motor Control Center ES-MCC–3AB will not alter any assumptions made in evaluating the radiological consequences of any accident described in the FSAR nor will it affect any fission product barriers since the post-accident containment heat removal functions will still meet design requirements. Therefore installation of ES auto-start permissive interlocks from Motor Control Center ES-MCC–3AB transfer switch does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The accident mitigation strategies for CR–3 assume two different types of post-accident

containment heat removal functions—Reactor Building Recirculation System and Reactor Building Spray System. This license amendment will allow the use of Reactor Building Recirculation System fan/cooler unit AHF–1C, which is presently administratively out of service, to control the Reactor Building temperature during normal operations and to mitigate any postulated accidents. The use of AHF–1C in place of either AHF–1A or AHF–1B does not alter the success path for post-accident mitigation. The addition of the ES auto-start permissive interlocks from the ES-MCC–3AB transfer switch will not introduce failure modes and effects that create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in the margin of safety.

This license amendment will allow the use of Reactor Building Recirculation System fan/cooler unit AHF–1C that is presently administratively out of service. AHF–1C is identical in design function to the other two fan/cooler units that are presently in service. During normal operation, two operating Reactor Building Recirculation System fan/cooler units maintain the Reactor Building temperature below the Improved Technical Specification limit of 130°F. Installation of this modification will allow the use of AHF–1C in place of either AHF–1A or AHF–1B, and maintain the licensing and design bases that assume two trains are operable for accident mitigation. The use of AHF–1C in place of the other fan/cooler units will preserve the margin of safety, pre-accident and post-accident, because the assumptions used in FSAR analyses remain valid. Peak Reactor Building pressures and temperatures will not be exceeded and the margin provided by this fission product barrier will not be reduced. Therefore, this license amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 15, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 4, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, Maryland, this 6th day of November 1997.

For the Nuclear Regulatory Commission.

**L. Raghavan,**

*Sr. Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.*

[FR Doc. 97–29889 Filed 11–12–97; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–31373; License No. 12–16559–01; EA 97–207]**

## In the Matter of Conam Inspection, Inc. Itasca, IL; Order Imposing Civil Monetary Penalty

**I**

Conam Inspection, Inc. (Conam or Licensee) is the holder of Byproduct Materials License No. 12–16559–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on January 2, 1990. The license authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at the Licensee's facilities in Columbus, Ohio; Gary, Indiana; Reading, Pennsylvania; Gallipolis, Ohio; and at temporary job sites anywhere in the United States where the NRC maintains jurisdiction for regulating the use of licensed material.

**II**

An inspection and investigation of the Licensee's activities were conducted between March 28, 1996 and November 12, 1996. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 9, 1997. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for three of the violations in the aggregate (Violations I.A, I.B, and I.C).

The Licensee responded to the Notice in a letter dated July 7, 1997. In its response, the Licensee denied Violations I.B and I.C, and requested remission or full mitigation of the civil penalty.

**III**

After consideration of the Licensee's response and arguments for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the Licensee did not provide an adequate basis for withdrawing Violations I.B and I.C, or mitigating the severity level of Violations I.A, I.B, and I.C in the aggregate, or mitigating the civil penalty associated with Violations I.A, I.B, and I.C. Therefore, a civil penalty in the amount of $16,000 should be imposed.

**IV**

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $16,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

**V**

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations I.B and I.C of the Notice referenced in Section II above, and

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 5th day of November 1997.

**James Lieberman,**

*Director, Office of Enforcement.*

## Appendix A—Evaluations and Conclusion

On June 9, 1997, the NRC issued to Conam Inspection, Inc., (Licensee or Conam) a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $16,000 for violations identified during an NRC inspection and investigation conducted from March 28 through November 12, 1996. The Licensee responded to the Notice by letter dated July 7, 1997. With regard to the violations assessed a civil penalty, the Licensee admitted Violation I.A; denied Violations I.B and I.C; and requested remission or full mitigation of the civil penalty. The NRC's evaluations and conclusion regarding the Licensee's requests are as follows:

*Restatement of Violation I.B*

I.B 10 CFR 34.43(b) requires, in part, a licensee to ensure that a survey with a calibrated and operable radiation survey instrument is made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The survey must include the entire circumference of the radiographic exposure device and any source guide tube.

Contrary to the above, on February 27, 1996, at Eli Lilly, Indianapolis, IN, a Licensee radiographer did not perform an adequate survey after each radiographic exposure to determine that the sealed source had been returned to its shielded position, in that the survey did not include the entire circumference of the radiographic exposure device and the source guide tube.

*Summary of Licensee's Response to Violation I.B*

The Licensee, in its response, denies Violation I.B and states that on February 28, 1996, the day following the incident, the radiographer expressly stated to the Licensee's Radiation Safety Officer (RSO) that he had performed a full 360-degree circumferential survey of the radiographic exposure device.

*NRC Evaluation of Licensee's Response to Violation I.B*

The specific issue addressed in Violation I.B is whether the radiographer performed the required survey to determine that the source had completely been withdrawn into the radiographic exposure device. This requires, among other things, that the radiographer be aware of the results of the survey, especially the dose rate measured at the exit port (front) of the radiographic exposure device. As noted on page 7 of the Licensee's reply to the Notice, the Licensee states (regarding the radiographer's survey) that: ''He then failed to properly read his survey meter when he performed a radiation survey in a 360-degree motion around the camera.'' The fact that the radiographer improperly read the survey meter means that he failed to properly determine: (1) Whether the source had been completely withdrawn into the radiographic exposure device; and (2) the radiological conditions and potential hazards incident to use of radioactive material.

In addition, during the investigation conducted by the NRC's Office of Investigations, the radiographer stated that he surveyed the radiographic exposure device, but only on the sides. He also stated to the investigator that because of the position of the radiographic exposure device, he did not survey the front part. This conflicts with the information provided by the radiographer to the Licensee's RSO, but appears to be more in line with the facts of the case given the elevated exposure result to the radiographer's film badge.

In either case, whether the radiographer improperly read the survey meter or whether the radiographer failed to survey the front part, the NRC concludes that Violation I.B occurred as stated in the Notice.

*Restatement of Violation I.C*

I.C 10 CFR 20.1201(a)(1)(i) requires, with exceptions not applicable here, that a licensee control the occupational dose to individual adults to an annual dose limit of 5 rems total effective dose equivalent.

Contrary to the above, the Licensee did not limit the annual occupational dose to an adult radiographer to 5 rems, total effective dose equivalent. Specifically, the individual received a radiation dose of a minimum of 6 rems, total effective dose equivalent, during an event on February 27, 1996.

*Summary of Licensee's Response to Violation I.C*

The Licensee, in its response, denies Violation I.C, states that the NRC's methodology in determining the total effective dose equivalent is flawed, and does not agree with the intent of the regulations. The Licensee contends that using conventional dose assessment models, consensus industry standards, and the NRC's own definitions, the maximum likely Total Effective Dose Equivalent (TEDE) incurred by the radiographer during the event was 2.9 rems, based upon the radiographer's *description* of time and motion.

As a basis for its argument, the Licensee asserts that while the Licensee's consultant calculated a dose to the right thigh of 9.369 rems, this dose does not constitute the TEDE. The Licensee states that the dose limits are based on the 1976 [1977] recommendations of the International Commission on Radiological Protection (ICRP), which states that there is a predictable relationship between irradiation of the whole body and biological effects. The Licensee argues that the dose to the radiographer's thigh is not an appropriate predictor of biological effects, and thus should not be compared to the primary dose limit in 10 CFR 20.1201.

The Licensee asserts that the ICRP recommendations should take precedence in determining how the TEDE is computed. As such, in calculating the TEDE, the Licensee uses weighting factors for each tissue area which are derived from ICRP Publication 26. The Licensee believes this is an acceptable approach because the Statements of Consideration for the issuance of the revised 10 CFR Part 20 included, as reasons for the revision, the need to incorporate updated scientific information, to reflect changes in the basic philosophy of radiation protection, and to put into practice recommendations from ICRP 26 and subsequent ICRP publications. The Licensee asserts that sections 10 CFR 20.1003, which defines the TEDE, and 10 CFR 20.1201(a), which specifies exposure limits, conform with ICRP 26 recommendations.

The Licensee maintains that the NRC's guidance on interpretation of 10 CFR 20.1201(c) permits use of external dose weighting factors. However, the Licensee argues that the language in 10 CFR 20.1201(c): (1) Conflicts with the definition of deep-dose equivalent provided in 10 CFR 20.1003; (2) is inconsistent with the ICRP recommendations; and (3) deviates from the fundamental principles underlying the dose limits in 10 CFR Part 20.

The Licensee does note that the specific use of weighting factors other than 1.0 for all organs was not approved by 10 CFR Part 20; rather, 10 CFR 20.1003 states that ''[f]or the purpose of weighting the external whole-body dose (for adding it to the internal dose), a single weighting factor, Wt=1.0, has been specified. The use of other weighting factors for external exposures will be approved on a case-by-case basis until such time as specific guidance is issued.'' The Licensee notes that the NRC has not yet issued specific

guidance in interpreting this issue; however, since the American National Standards Institute (ANSI) has issued N13.41, ''Criteria for Performing Multiple Dosimetry,'' the Licensee believes that it should be able to use this methodology in computing its TEDE value. This guidance was utilized and the resulting TEDE was 2.9 rems.

The Licensee asserts that in light of the conflicting regulatory language in 10 CFR Part 20 regarding non-uniform exposure of the whole body, and the fact that 10 CFR 20.1003 allows weighting factors to be considered, the dose determined for the radiographer using ANSI N13.41 protocol was appropriate and consistent with the rationale underlying the occupational dose limits.

*NRC Evaluation of Licensee's Response to Violation I.C*

The specific issue addressed in Violation I.C is whether the radiographer's total effective dose equivalent *as defined in the regulations* exceeded the regulatory limits. The Licensee's use of ICRP 26 and ANSI N13.41 (i.e., use of a compartmentalization methodology to sum the effective dose equivalents for various areas of the whole body) was neither approved by the NRC nor in accordance with NRC requirements, for the reasons described below.

1. NRC Basis for Violation I.C

As noted in the Notice, 10 CFR 20.1201(a)(1)(i) requires, in part, that a licensee control the occupational dose to individual adults to an annual dose limit of 5 rems total effective dose equivalent. In addition, 10 CFR 20.1201(c) requires, in part, that the assigned deep-dose equivalent must be for the part of the body receiving the highest exposure and that the deep-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure. As defined in 10 CFR 20.1003, Whole body means: ''for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.'' [1]

Based on the findings in the NRC inspection report dated November 18, 1996, the NRC concluded, as described in the Notice, that the radiographer received a TEDE of 6 rems. The conclusion was based on: (1) Measurements of time and distances as re-enacted by the radiographer and the Licensee's film badge dose; and (2) the dose to the part of the body receiving the highest exposure (i.e., upper left thigh), given that the individual monitoring device was not in the region of highest potential exposure, the dose field from the radiographic exposure device was non-uniform, and the position of the radiographer and his film badge in relationship to the radiographic exposure device.

2. The Licensee's Use of ICRP 26 and ANSI N13.41

The NRC agrees that the dose limits in 10 CFR Part 20 are based on the ICRP 26 recommendations and acknowledges that the radiographer's thigh may not be an appropriate predictor of biological effects. However, the Licensee's use of ICRP 26 and the draft ANSI N13.41 for calculating the radiographer's whole-body dose is inappropriate in this case.

While the ICRP 26 recommendations in principle permit the use of external weighting factors, no specific recommendations were included concerning the use of weighting factors for external dose because there are practical problems with such use. The application of weighting factors also entails calculation of organ doses instead of whole-body doses from external radiation. One component of this calculation is the estimation of radiation attenuation as a function of the depth in the body. Therefore, as noted in the NRC's Statement of Consideration for 10 CFR Part 20 (56 FR 23369), the Commission decided that ''application of weighting factors for external exposures will be evaluated on a case-by-case basis until more guidance and additional weighting factors (such as for the head and the extremities) are recommended * * * The use of other weighting factors for external exposure *may be approved on a case-by-case basis upon request to the NRC.''* (emphasis added). This means that, if a licensee proposes to use other weighting factors for external use, the licensee needs to develop the basis and technical justification for its request, submit the request to the NRC, and await approval of its request *before using* any modified weighting factors. To date, the Licensee has not submitted to the Commission such a request for an exemption of 10 CFR 20.1201.

With regard to ANSI N13.41, this is a *draft* standard that has been neither approved by ANSI, nor reviewed and approved by the Commission for use by NRC licensees. Moreover, ANSI N13.41 is not applicable because this case falls outside of the scope of that standard. This is evident from the standard itself, which states, under *Scope,* page 9, that ''this standard contains criteria applicable to *routine occupational activities* (emphasis added) for when and how to use multiple dosimeters to monitor the body and extremity of individuals exposed to sources of ionizing radiation.'' The next paragraph under this section goes on to state, ''Sudden or unexpected changes in the radiation environment *as might occur during accidents are beyond the scope of this standard''* (emphasis added).

The dose calculated by the consultant to the radiographer's right thigh was 9.369 rems. As noted in the Licensee's response, the footnote attached to 10 CFR 20.1003 specifies that a single weighting factor, Wt=1.0, be used for external exposures.

However, rather than using this weighting factor, the Licensee applied the factors provided in ANSI N13.41 (which are less than 1.0) to calculate exposures of portions of the whole body to arrive at the overall dose determination. The Licensee's use of weighting factors (on the basis that the NRC has not issued new weighting factors) without prior NRC approval is contrary to NRC requirements. Given the above, the Licensee's method for calculating the radiographer's exposure is incorrect.

3. Arguments Concerning Deep-Dose Equivalent

10 CFR 20.1201(c) requires, in part, that the assigned deep-dose equivalent must be for the part of the body receiving the highest exposure. 10 CFR 20.1003 defines deep-dose equivalent as the dose equivalent at a tissue depth of 1 cm (1000 mg/cm$^2$) [regardless of the part of the whole body that is exposed]. Given that ICRP 26 did not include specific recommendations concerning the use of weighting factors for external dose, and the fact that there are practical problems in using weighting factors to assess external exposure as noted above, the NRC disagrees with the Licensee's argument that 10 CFR 20.1201(c) is inconsistent with the ICRP recommendations and that 10 CFR 20.1201(c) deviates from the fundamental principles underlying the dose limits in 10 CFR Part 20.

4. Use of the Consultant Results and Part 20 Weighting Factors

The NRC bases its enforcement actions on its regulations as codified in Title 10, Code of Federal Regulations. In this case, 10 CFR 20.1003 defines the weighting factor for the whole body as 1.0. As noted in the Licensee's response, the NRC has not approved the use of

[1] The NRC's definition is based, in part, on the fact that these portions of the whole body contain blood-forming organs.

other weighting factors for external exposures nor has the NRC issued specific guidance on the use of other weighting factors. The regulations do allow for the use of a different methodology, but only after review and prior approval by the NRC. In this case, such approval was not obtained by the Licensee. Because the thigh (right or left) is an area of the body meeting the definition for whole body, the appropriate weighting factor per the regulations is 1.0. Therefore, if the Licensee chooses to use the consultant's results in conjunction with the Part 20 weighting factors, the radiographer's TEDE for the event would be:

Dose to right thigh (9.369 rems) × weighting factor (1.0) = 9.369 rems

The Licensee correctly notes that the limit for whole-body exposure in 10 CFR 20.1201(a)(1)(i) is a TEDE of 5 rems. 10 CFR 20.1003 defines the TEDE as the sum of the deep-dose equivalent (external exposure) and committed effective dose equivalent (internal exposure). In this case, the TEDE can be considered to be equal to the deep-dose equivalent, because there was no internal exposure involved.

The circumstances surrounding the exposure, as described in the inspection report and by the radiographer during the conduct of the NRC's investigation, demonstrated that the radiographer's body was between the radiographic exposure device and the radiographer's film badge. As noted in the radiographer's and RSO's description of the Licensee's time-motion study, no props were used—the event was discussed at a table with the radiographer describing to the RSO what occurred. During this time-motion discussion, it was not clear that the radiographer's film badge was at the point nearest the source. It was clear that the beam from the exit port of the radiographic exposure device would be very directional and non-uniform. Later, on April 11, 1996, a re-enactment of the event by the radiographer in the presence of the Licensee's RSO and NRC personnel was performed and appropriate props were used. The radiographer was asked to demonstrate his activities at the time the exposure occurred. This re-enactment provided information that the Licensee had not obtained during its verbal time-motion discussion, namely, that the radiographer's leg was significantly closer to the source than was his film badge. For the sake of argument, the NRC has chosen to utilize the Licensee's dose calculation based on its verbal characterization, and the resulting dose obtained to the right thigh. If the Licensee chooses to use the consultant's results (which utilized variables from the NRC's re-enactment) in conjunction with the Part 20 weighting factors, the radiographer's TEDE for the event would be:

Dose to left thigh (42.075 rems) × weighting factor (1.0) = 42.075 rems

10 CFR 20.1201(c) states that ''the assigned deep-dose equivalent and shallow-dose equivalent must be for the part of the body receiving the highest exposure. The deep-dose equivalent, eye dose equivalent and shallow-dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.'' In this case, the individual monitoring device was not in the region of highest potential exposure, given the non-uniform nature of the dose field from the radiographic exposure device and the position of the radiographer and his film badge in relationship to the radiographic exposure device. Therefore, per this requirement, the assigned deep-dose equivalent must be for the right thigh (using the Licensee's computation), as it is part of the whole body. This results in an assigned deep-dose equivalent of 9.369 rems. As noted above, the TEDE consists of the sum of the deep-dose equivalent and committed effective dose equivalent. In this case, it is equal to the deep-dose equivalent, 9.369 rems, a value that is in excess of the limit specified in 10 CFR 20.1201(a)(1)(i).

Given the above, the NRC concludes that: (a) The Licensee has not provided a basis to substantiate that the radiographer's TEDE was below 5 rems; and (b) Violation I.C occurred as stated in the Notice.

*Summary of Licensee's Request for Remission or Mitigation and Reconsideration of Severity Level*

The Licensee offered several arguments in support of its request for remission or mitigation of the proposed penalty. Below is a summary listing of the Licensee's arguments that are related to its request for remission or mitigation, some of which have been consolidated. The NRC's evaluation follows each argument.

**Appendix A**

1. Licensee's Argument

The Licensee asserts that violations cited in Section I of the Notice should not be considered willful, for the following reasons:

- Based on the Licensee's discussion of the event on February 28, 1996, between the RSO and the radiographer, the Licensee concluded that the radiographer was negligent in failing to rotate the selector ring from the ''operate'' to the ''lock'' position and failing to depress the plunger mechanism of the radiographic exposure device.
- This act was not the result of deficiencies in the Licensee's Radiation Safety Program, nor did it follow other incidents of a similar nature. As evidence for its argument, the Licensee notes that seven prior unannounced NRC inspections had not identified any violations of applicable regulations.
- The Licensee disputes the fact that it was a ''typical'' practice of Conam radiographers to rely upon the automatic locking mechanism of their radiographic exposure devices rather than locking them in the manner required by the Licensee's radiation safety procedures.
- The Licensee believes that ''[b]ecause the NRC's conclusion that a ''willful'' violation has occurred is influenced by its erroneous conclusion that a violation of the occupational exposure limit occurred, its characterization of the violation as ''willful'' is flawed.''

*NRC Evaluation*

In its Notice, the NRC did not conclude that the violations in Section I were willful; rather, the NRC concluded that only Violation I.A was willful. In this regard, Section IV.C of the NRC Enforcement Policy defines willful violations to encompass not merely deliberate acts but acts of careless disregard as well. As part of the NRC's evaluation of this event, an investigation was conducted by the NRC's Office of Investigations (OI). That investigation concluded that the Licensee's radiographer willfully failed to follow the Licensee's procedures while operating the radiographic exposure device. The radiographer, who was knowledgeable of the requirement but failed to perform it due to being ''lax,'' demonstrated careless disregard for NRC requirements, a condition that clearly meets the NRC's definition of a willful violation.

Given the results of the OI investigation, the problem with failing to follow procedures was not isolated. As noted both in the November 18, 1996 inspection report and during the subsequent Predecisional Enforcement Conference, the Licensee's policy for performing field audits did not

encompass multiple exposures or other situations where the potential existed for a radiographer to fail to properly rotate the selector ring and depress the plunger. A single radiographic shot was often used, where this act would be performed prior to moving the radiographic exposure device. As such, the Licensee was unaware of the problem until it manifested itself in the exposure event that occurred on February 27, 1996, although a better field auditing technique may have allowed the Licensee to identify the problem prior to the February event. Therefore, the Licensee's arguments (i.e., lack of deficiencies in its radiation safety program and the lack of NRC findings during prior unannounced NRC inspections) do not alter the NRC's conclusion concerning the willful act of the radiographer.

When questioned by the OI investigator, approximately 25% of the Licensee's radiographers at the Gary, Indiana facility, including the radiographer associated with the event, admitted that on or prior to February 28, 1996, they failed on occasion to rotate the selector ring from the ''operate'' to the ''lock'' position and failed to depress the plunger mechanism as required by the Licensee's operating procedures. They stated to the investigator that they had been ''lax,'' but that they were knowledgeable of the requirement. They also stated that after the memo was issued by the RSO discussing the event and the need to follow procedures, they no longer violated this requirement.

In determining whether the radiographer willfully failed to lock the radiographic exposure device, the NRC based its conclusion on interviews with the radiographer as noted above. The Licensee's belief that the NRC's conclusion concerning willfulness was influenced by whether a violation of the occupational exposure limit occurred is simply incorrect.

2. Licensee's Argument

The Licensee asserts that the NRC improperly denied identification and corrective action credit under the terms of the NRC Enforcement Policy, Section VI.B.2.b and c, by ignoring essential facts. The Licensee asserts that while the incident was identified through an event, this fact does not preclude identification credit where the problem arose from a single incident of negligence by a radiographer in violation of well-publicized Conam safety procedures, where the Licensee's quarterly radiation safety compliance audit program was demonstrably adequate, and where there were no prior deficient occurrences to identify the problem.

In addition, the Licensee argues that its corrective actions were also prompt and comprehensive and should result in credit. The Licensee believes that the incident was promptly and comprehensively addressed and corrected by the Licensee's RSO through his analysis of the film badge, his issuance of a February 29, 1996, memorandum reminding all Conam radiographic personnel of the proper procedure for operating radiographic exposure devices, his withdrawal of the radiographer from further radiographic duties, and the suspension of the radiographer without pay for one week.

The Licensee disagrees with the NRC's position, as described in the Notice, that credit should not be given because the Licensee did not confirm that each radiographer had received the February 29, 1996, memorandum from the RSO, nor had the Licensee instituted any monitoring/auditing program to evaluate the effectiveness of the memorandum. The Licensee states that there is no evidence that the radiographers did not receive the memorandum, and that there has been no repetition of the problem since the February event's occurrence. The Licensee believes that the NRC's dismissal of credit for identification and corrective action ignores the fact that the February event was the only one of its kind against a record of no violations whatsoever during seven prior NRC inspections, and no that subsequent violations since the event have been identified by NRC inspections.

*NRC Evaluation*

The NRC Enforcement Policy, Section VI.B.2.b, discusses the criteria to be considered when deciding if a licensee should be given credit for actions related to identification. These circumstances include: (i) Whether the problem requiring corrective action was NRC-identified, licensee-identified, or revealed through an event; and (ii) for a problem revealed through an event, the ease of discovery, the licensee's self-monitoring effort, the degree of licensee initiative in identifying the problem requiring corrective action, and whether prior opportunities existed to identify the problem (Section VI.B.2.b(2)(ii) of the Enforcement Policy).

The NRC and the Licensee both agree that the problem requiring corrective action was revealed through an event. Therefore, the criteria in Section VI.B.2.b(2)(ii) of the Enforcement Policy are applicable in this case. Regarding the ease of discovery, as well as the Licensee's self-monitoring effort, the radiographer involved in the incident reported the problem to the Licensee's RSO; and the problem was not identified through any self-monitoring action of the Licensee's RSO or management, such as an audit. Regarding the degree of licensee initiative in identifying the problem requiring corrective action, the Licensee's initiative does not deserve credit, as described below. Regarding the existence of prior opportunities to identify the problem, as stated earlier, the OI investigation revealed that approximately 25% of the Licensee's radiographers and assistant radiographers at the Gary, Indiana facility admitted that on or prior to February 28, 1996, they on occasion failed to rotate the selector ring from the ''operate'' to the ''lock'' position and failed to depress the plunger mechanism as required by the Licensee's operating procedures. Thus, the problem with failing to follow procedures was not isolated. The Licensee performs quarterly field audits of its radiographers. As noted in the inspection report and during the Predecisional Enforcement Conference, the Licensee's policy for performing field audits did not encompass multiple exposures or other situations where the potential existed for a radiographer to fail to properly rotate the selector ring and depress the plunger. Therefore, numerous prior opportunities existed to identify the problem, yet the problem was not identified prior to the February 27, 1996 incident. Thus, credit for identification is not warranted.

The NRC Enforcement Policy, Section VI.B.2.c, discusses the criteria to be considered when deciding if a licensee should be given credit for prompt and comprehensive corrective actions. These criteria include: (i) The timeliness of the corrective action, (ii) the adequacy of the licensee's root cause analysis for the violation, and (iii) the comprehensiveness of the corrective action. As stated in the inspection report, the NRC acknowledges the Licensee's prompt action in issuing a memorandum to all radiation safety supervisory personnel advising all radiography staff to complete a full and accurate survey of the radiographic exposure device, collimator, guide tube, and connector after each exposure and to secure the source assembly in accordance with the Licensee's procedures. However, although the issuance of the memorandum was timely, it does not constitute a comprehensive corrective action.

Specifically, after the Licensee received the vendor's report indicating the radiographer's dose, the Licensee

did not perform an exact time-motion study at the scene of the event to determine the locations of the whole body, film badge and radiographic exposure device exit port. Photographs of the scene that were obtained later did not include the position of the radiographer. In addition, the Licensee could not confirm that each radiographer had received the memorandum, nor had the Licensee instituted any monitoring/auditing program to evaluate the effectiveness of the memorandum. The Licensee's argument that there is no evidence that the radiographers did *not* receive the memorandum is not persuasive; a comprehensive corrective action would ensure that each radiographer had received, reviewed, and understood the memorandum, and would monitor the radiographers' understanding of and compliance with the memorandum. Such comprehensive corrective actions were not implemented by the Licensee.

Finally, the fact that no violations had been identified during seven NRC inspections prior to the February 27, 1996 event, although commendable, is not relevant as far as credit for corrective action is concerned. Further, in accordance with Section VI.B.2.c of the NRC Enforcement Policy, the adequacy of a licensee's corrective actions is judged at the time of the enforcement conference, not on the basis of whether subsequent violations following the event have been identified by the NRC. Given the above, the NRC concludes that while the Licensee took some timely actions, on balance, such actions did not address the root cause of the violations and were not comprehensive. Thus, credit for prompt and comprehensive corrective actions is not warranted.

3. Licensee's Argument

The Licensee asserts that the NRC Enforcement Policy should find, at worst, that the February 27,1996 incident involved two non-willful Severity Level III violations which, with appropriate identification and corrective action credit, do not justify any civil penalty. The Licensee asserts that to aggregate the violations cited in Section I of the Notice and assign a Severity Level II ''problem'' to this collection is not consistent with the NRC's Enforcement Policy published in 60 FR 34381 (June 30, 1995). The Licensee believes that the NRC's Notice compounds that error by determining that the Severity Level II problem was willful, and on that basis justifying a 100% escalation of the $8,000 Severity Level II base penalty.

*NRC Evaluation*

As described above, the NRC has determined that Violation I.A was willful, that Violations I.A, I.B, and I.C occurred as described in the inspection report, and that credit for identification and corrective action is not warranted. The NRC Enforcement Policy, Section IV.A, states, in part, that the purpose of aggregating violations is to focus the licensee's attention on the fundamental underlying causes for which enforcement action appears warranted and to reflect the fact that several violations with a common cause may be more significant collectively than individually and may, therefore, warrant a more substantial enforcement action. As noted in the Notice, in consideration of the willfulness involved, the relationship of these violations to a single incident, and the fact that two safety barriers were breached, the violations are of very significant regulatory concern. Therefore, consistent with Section IV.A of the Enforcement Policy, the violations in Section I of the Notice were combined to reflect that, collectively, they are more significant than individually and, therefore, warrant a more substantial enforcement action.

As to the Licensee's argument concerning escalation of the $8,000 base penalty, the NRC did not escalate the civil penalty on the basis of a willful violation. The base amount for a Severity Level II problem is $8,000. Credit was not warranted for the identification and corrective action factors. Therefore, in accordance with the civil penalty assessment process described in Section VI.b.2, the civil penalty for the Severity Level II problem is twice the base amount (i.e., $16,000).

*NRC Conclusion*

The NRC concludes that the Licensee did not provide an adequate basis for withdrawing Violations I.B and I.C, for mitigating the severity level of Violations I.A, I.B, and I.C in the aggregate, or for mitigating the civil penalty associated with Violations I.A, I.B, and I.C. Therefore, the proposed civil penalty in the amount of $16,000 should be imposed by order.

**Appendix B Evaluation of Violations Not Assessed a Civil Penalty**

Of the violations not assessed a civil penalty, the Licensee admitted violation II.B and denied Violation II.A.

*Restatement of Violation II.A*

II.A 10 CFR 20.2203(a)(2)(i) requires, in part, that a licensee submit a written report within 30 days after learning of a dose in excess of the occupational dose limits for adults as defined in 10 CFR 20.1201.

Contrary to the above, on April 11, 1996, the Licensee learned of an event that caused an adult radiographer to receive a total effective dose equivalent of more than 5 rems total effective dose equivalent and did not submit a written report within 30 days as required.

*Summary of Licensee's Response to Violation II.A*

The Licensee, in its response, denies Violation II.A and states that, because the radiographer was not exposed to a dose in excess of 5 rems, total effective dose equivalent, no reporting obligation arose under applicable regulations.

*NRC Evaluation of Licensee's Response to Violation II.A*

The specific issue raised by Violation II.A was whether the Licensee was required to submit a report to the NRC after learning of a dose in excess of the occupational dose limits for adults as defined in 10 CFR 20.1201. In this case, the Licensee's evaluation of the circumstances did not appear to be adequate in that the Licensee did not complete an exact time/motion study at the scene of the event to determine the locations of the whole body, film badge, and radiography exposure device. As a result, the Licensee did not conclude that an exposure in excess of the dose limits occurred.[2]

By letter dated June 23, 1997, the Licensee did submit the report required by 10 CFR 20.2203(a)(2)(i), but solely on the basis that the NRC's letter transmitting the Notice of Violation and Proposed Imposition of Civil Penalty specifically stated that the Licensee was required to make such a report. As noted above, the Licensee still contends that an exposure in excess of regulatory limits did not occur based on the Licensee's unapproved methodology it used to compute the TEDE.

Given that the Licensee did not learn that the radiographer's exposure was in excess of regulatory limits, and that, after being informed by the NRC of the radiographer's exposure, the Licensee submitted a report per the requirements of 10 CFR 20.2203(a)(2)(i), the NRC concludes that Violation II.A should be withdrawn.

**NRC Conclusion**

The NRC staff concludes that the Licensee provided an adequate basis for

[2] For details concerning the Licensee's evaluation, see Summary of the Licensee's Response to Violation I.C and the NRC's Evaluation of the Licensee's Response to Violation I.C.

withdrawing Violation II.A. Therefore, Violation II.A should be withdrawn.

[FR Doc. 97–29886 Filed 11–12–97; 8:45 am]

BILLING CODE 7590–01–P

## PENSION BENEFIT GUARANTY CORPORATION

### Proposed Submission of Information Collection for OMB Review; Comment Request; Allocating Unfunded Vested Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of intention to request extension of OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation (''PBGC'') intends to request that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Allocating Unfunded Vested Benefits (29 CFR Part 4211) (OMB control number 1212–0035; expires February 28, 1998). This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

**DATES:** Comments should be submitted by January 12, 1998.

**ADDRESSES:** Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

**FOR FURTHER INFORMATION CONTACT:** Deborah C. Murphy, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

**SUPPLEMENTARY INFORMATION:** Section 4211(c)(5)(A) of the Employee Retirement Income Security Act of 1974 (''ERISA'') requires the PBGC to prescribe by regulation a procedure whereby multiemployer pension plans can change the way they allocate unfunded vested benefits to withdrawing employers, subject to PBGC approval. Approval of a change is to be based on a determination that the change will not significantly increase the risk of loss to plan participants or the PBGC.

The PBGC's regulation on Allocating Unfunded Vested Benefits (29 CFR Part 4211) includes, in § 4211.22, rules for requesting the PBGC's approval of an amendment to a plan's allocation method. Section 4211.22(d) prescribes information that the PBGC needs to identify the plan and evaluate the risk of loss, if any, posed by the amendment (and, hence, determine whether it should approve the amendment). Section 4211.22(e) requires the submission of other information that the PBGC may need to review the amendment. (The regulation may be accessed on the PBGC's home page at http://www.pbgc.gov.)

The collection of information under the regulation has been approved by OMB under control number 1212–0035 through February 28, 1998. The PBGC intends to request that OMB extend its approval for another three years. The PBGC estimates that it receives five submissions from plan sponsors annually under the regulation; that virtually all submissions are prepared by outside consultants; that the total annual hour burden of engaging the services of such consultants is one hour; and that the total annual cost burden of having the submissions prepared is $1,575.

The PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Issued in Washington, DC, this 7th day of November, 1997.

**David M. Strauss,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 97–29880 Filed 11–12–97; 8:45 am]

BILLING CODE 7708–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–26774]**

### Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

November 6, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 1, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

*New England Electric System, et al. (70–9143); Notice of Proposal to Amend Articles of Incorporation and Authorize Registered Holding Company to Acquire Preferred Stock of Utility Subsidiaries; Order Authorizing Solicitation of Proxies*

New England Electric System (''NEES''), a registered holding company, and its wholly-owned public utility subsidiaries, New England Power Company (''the Power Company''), Massachusetts Electric Company (''Mass Electric''), and the Narragansett Electric Company (''Narragansett''), all located at 25 Research Drive, Westborough, Massachusetts 01582, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c), 12(d) and 12(e) of

the Act and rules 43, 44, 51, 54, 62 and 65 under the Act.[1]

*The Power Company*

The Power Company has outstanding 6,449,896 shares of common stock, $100 par value per share (''Power Company Common Stock''), all of which are held by NEES. The Power Company also has issued a 6% cumulative preferred stock, outstanding 75,020 shares, $100 par value (''Power Company Cumulative Preferred Stock''). The Power Company's other outstanding preferred stock consists of 321,640 shares of dividend series preferred stock, $100 par value per share (''Power Company Dividend Series Preferred Stock''), issued in four series.[2] There is also authorized another class of preferred stock (''Power Company Preferred Stock—Cumulative''), $25 par value, of which there are no series currently outstanding. The Power Company Common Stock shares general voting rights with the Power Company Cumulative Preferred Stock, and are entitled to one vote per share. No other class of Power Company equity securities is outstanding.

The Power Company's by-laws and articles of incorporation (''Power Company Articles'') currently provide that, without a vote of a majority of the outstanding Power Company Dividend Series Preferred Stock and Preferred Stock—Cummulative, the Power Company will not issue or assume any evidence of unsecured indebtedness (except for redemption of outstanding shares of all series of the stock), if the total amount (exclusive of certain unsecured indebtedness) immediately after the issue would exceed 20% of total secured indebtedness, capital, premium, and retained earnings, of which 20%, not more than one-half shall be short-term unsecured indebtedness.[3] (''(Power Company Restriction Provision'').

The Power Company proposes to solicit proxies from the holders of outstanding shares of Power Company Dividend Series Preferred Stock and Common Stock (''Power Company Proxy Solicitation'') for use at a special meeting of its stockholders (''Power Company Special Meeting'') to consider a proposed amendment to the Power Company Articles that would eliminate in its entirety the Power Company Restriction Provision (''Power Company Proposed Amendment'') from the Power Company Articles. Approval of the Power Company Proposed Amendment requires the affirmative vote at the Power Company Special Meeting of the holders of not less than two-thirds of the total number of the then-outstanding shares of (1) The Power Company Dividend Series Preferred Stock of all Power Company Series, voting together as one class, and (2) the Power Company Common Stock. NEES will vote its shares of Power Company Stock in favor of the Power Company Proposed Amendment.

If the Power Company Proposed Amendment is adopted, the Power Company would make a special cash payment of $1.00 per share (''Power Company Cash Payment'') to each holder of Power Company Dividend Series Preferred Stock of any Series who voted shares (in person by ballot or by proxy) (each, a ''Power Company Share'') in favor of the Power Company Proposed Amendment at the Power Company Special Meeting (except that no Power Company Cash Payment will be made with respect to any Power Company Share validly tendered under the concurrent tender offer described below). The Power Company will disburse Power Company Cash Payments out of its general funds following adoption of the Power Company Proposed Amendment.

Concurrently with or shortly before the Power Company Proxy Solicitation, and subject to the terms and conditions stated in an Offer to Purchase and Proxy Statement and Information Statement and accompanying Letter of Transmittal (collectively, ''Power Company Offer Documents''), NEES proposes to make a cash tender offer (''Power Company Tender Offer'') to acquire any and all outstanding shares of Power Company Preferred Stock of each Power Company Series, at cash purchase prices which NEES anticipates will include a market premium for each Series (each, a ''Power Company Purchase Price''). The Power Company Purchase Price and the other terms and conditions of the Power Company Tender Offer apply equally to all preferred stockholders of the respective Power Company Series. The offer for any one Power Company Series is independent of the offer for any other Power Company Series or for the shares of any other subsidiary.

NEES anticipates that the Power Company Tender Offer will expire at 5:00 p.m. Eastern Standard Time on December 12, 1997, the date of the Power Company Special Meeting (''Power Company Expiration Date''), unless otherwise extended. The Power Company Tender Offer is not conditioned upon any minimum number of shares of Power Company preferred stock being tendered. Preferred stockholders who tender their shares under a Power Company Tender Offer are required to vote in favor of or consent to the Power Company Proposed Amendment, and one of the conditions of the Power Company Tender Offer requires that the Power Company Proposed Amendment be approved and adopted.

[1] The Power Company, Mass. Electric and Narragansett are sometimes referred to individually as a ''Subsidiary'' or collectively as ''Subsidiaries.''

[2] The four series of Power Company Dividend Series Preferred Stock consist of a 4.56% series, of which 100,000 shares are outstanding; a 4.60% series, of which 80,140 shares are outstanding; a 4.64% series, of which 41,500 shares are outstanding; and a 6.08% series, of which 100,000 shares are outstanding (each, a ''Power Company Series'').

[3] The Power Company Restriction Provision specifically provides that the Power Company will not:

[I]ssue any unsecured notes, debentures or other securities representing unsecured indebtedness, or assume any such unsecured securities, for purposes other than the redemption or other retirement of outstanding shares of all series of the Dividend Series Preferred Stock and the Preferred Stock—Cumulative, if immediately after such issue or assumption the total principal amount of all unsecured notes, debentures or other securities representing unsecured indebtedness issued or assumed by the corporation and then outstanding (including unsecured securities then to be issued or assumed but excluding unsecured securities theretofore so voted for by holders of Dividend Series Preferred Stock and Preferred Stock—Cumulative) (the ''Unsecured Indebtedness'') would exceed twenty per cent (20%) of the aggregate of (i) the total principal amount of all bonds and other securities representing secured indebtedness issued or assumed by the corporation and then outstanding and (ii) the capital, premium and retained earnings of the corporation as then stated on the books of account of the corporation; provided, however, that after July 1, 1976, short-term unsecured indebtedness shall not exceed ten per cent (10%) of such aggregate of (i) and (ii) above; and provided, further, that after July 1, 1976, in the event unsecured securities representing short-term unsecured indebtedness (excluding unsecured securities theretofore so voted for by the holders of Dividend Series Preferred Stock and Preferred Stock—Cumulative) exceed ten per cent (10%) of (i) and (ii) above, no unsecured securities representing unsecured indebtedness shall be issued or assumed (except for the purpose of redemption or other retirement of outstanding shares of all series of the Dividend Series Preferred Stock and the Preferred Stock—Cumulative) unless such ratio of short-term unsecured indebtedness immediately after such issue or assumption is to be not over ten per cent (10%) of such aggregate of (i) and (ii) above. ''Short-term unsecured indebtedness'' as used herein means unsecured indebtedness of an original maturity of less than ten years and ''long-term unsecured indebtedness'' means unsecured indebtedness of ten years or more. For the purposes hereof, when any long-term unsecured indebtedness becomes due within ten years, or when any long-term unsecured indebtedness is to be retired within ten years through a sinking fund or otherwise, such long-term unsecured indebtedness, in each case, shall be considered short-term unsecured indebtedness; provided, however, that any long-term unsecured indebtedness of a single maturity (except as provided above in respect of a sinking fund therefore), or the last maturity of any long-term unsecured indebtedness of serial maturities, shall not be considered short-term unsecured indebtedness until due within five years.

*Mass. Electric*

Mass Electric has outstanding 2,398,111 shares of common stock, $25 par value (''Mass. Electric Common Stock''), all of which are held by NEES. Mass. Electric's outstanding preferred stock consists of 350,000 shares of dividend series preferred stock, $100 par value, issued in three series [4] (''Mass. Electric Dividend Series Preferred Stock''), and 600,000 shares of preferred stock—cumulative, $25 par value, of which there is one series outstanding,[5] all of which are traded over the counter. (''Mass. Electric Preferred Stock—Cumulative''). Mass. Electric Common Stock and Mass. Electric Dividend Series Preferred Stock are entitled to one vote per share. The Mass. Electric Preferred Stock—Cumulative is entitled to a quarter vote per share. No other class of Mass. Electric equity securities is outstanding.

Mass. Electric's By-Laws and Articles of Organization (''Mass. Electric Articles'') currently provide that, without a vote of a majority of the outstanding Mass. Electric Dividend Series Preferred Stock and Preferred Stock—Cumulative, Mass. Electric will not issue or assume any unsecured indebtedness (except for redemption of outstanding shares of all series of preferred stock), if the total amount of the indebtedness (exclusive of certain unsecured indebtedness) immediately after the issue would exceed 20% of total capitalization, or if, immediately after the issue, the total amount of the short-term unsecured indebtedness (exclusive of certain short-term unsecured indebtedness) issued or assumed by Mass. Electric after September 30, 1998, would exceed 10% of total capitalization.[6] (''Mass. Electric Restriction Provision'').

Mass. Electric proposes to solicit proxies from the holders of outstanding shares of Mass. Electric Dividend Series Preferred Stock and Common Stock (''Mass. Electric Proxy Solicitation'') for use at a special meeting of its stockholders (''Mass. Electric Special Meeting'') to consider a proposed amendment to the Mass. Electric Articles that would eliminate in its entirety the Mass. Electric Restriction Provision (''Mass. Electric Proposed Amendment'') from the Mass. Electric Articles. Approval of the Mass. Electric Proposed Amendment requires the affirmative vote at the Mass. Electric Special Meeting of the holders of not less than two-thirds of the total number of the then-outstanding shares of (1) the Mass. Electric preferred stock of all Mass. Electric Series, voting together as one class, and (2) the Mass. Electric Common Stock. NEES will vote its shares of Mass. Electric Common Stock in favor of the Mass. Electric Proposed Amendment.

If the Mass. Electric Proposed Amendment is adopted, Mass. Electric would make a special cash payment of $1.00 per share (''Mass. Electric Cash Payment'') to each holder of Mass. Electric Dividend Series Preferred Stock of any Series, and 25 cents per share to each holder of the Mass. Electric Preferred Stock—Cumulative who voted shares (each, a ''Mass. Electric Share'') (in person by ballot or by proxy) in favor of the Mass. Electric Proposed Amendment at the Mass. Electric Special Meeting (except that no Mass. Electric Cash Payment will be made with respect to any Mass. Electric Share validly tendered under the concurrent tender offer described below). Mass. Electric will disburse Mass. Electric Cash Payments out of its general funds following adoption of the Mass. Electric Proposed Amendment.

Concurrently with or shortly before the Mass. Electric Proxy Solicitation, and subject to the terms and conditions stated in an Offer to Purchase Proxy Statement and accompanying Letter of Transmittal (together, ''Mass. Electric Offer Documents''), NEES proposes to make a cash tender officer (''Mass. Electric Tender Offer'') to acquire any and all outstanding shares of Mass. Electric Preferred Stock of each Series, at cash purchase prices which NEES anticipates will include a market premium for each Mass. Electric Series (each, a ''Mass. Electric Purchase Price''). The Mass. Electric Purchase Price and the other terms and conditions of the Mass. Electric Tender Offer apply equally to all preferred stockholders of the respective Mass. Electric Series. The offer for any one Mass. Electric Series is independent of the offer for any other Mass. Electric Series or for the shares of any other subsidiary.

NEES anticipates that the Mass. Electric Tender Offer will expire at 5:00 P.M. Eastern Standard Time on December 12, 1997, the date of the Mass. Electric Special Meeting (''Mass. Electric Expiration Date''), unless otherwise extended. The Mass. Electric Tender Offer is not conditioned upon any minimum number of shares of Mass. Electric preferred stock being tendered. Preferred stockholders who tender their shares under a Mass. Electric Tender Offer are required to vote in favor of or consent to the Mass. Electric Proposed Amendment, and one of the conditions of the Mass. Electric Tender offer requires that the Mass. Electric Proposed Amendment be approved and adopted.

*Narragansett*

Narragansett has outstanding 1,132,487 shares of common stock, $50 par value (''Narragansett Common Stock''), all of which are held by NEES. Narragansett's outstanding preferred stock consists of 730,000 shares of

[4] The three series of Mass. Electric Dividend Series Preferred Stock consist of a 4.44% series, of which 75,000 shares are outstanding; a 4.76% Series, of which 75,000 shares are outstanding; and a 6.99% series, of which 200,000 shares are outstanding.

[5] The single series of Mass. Electric Preferred Stock—Cumulative is a 6.84% series. Each of the series referred to in footnote 4 and this series shall be referred as a ''Mass. Electric Series.''

[6] The Mass. Electric Restrictive Provision specifically provides that Mass. Electric will not:

[I]ssue or assume any unsecured notes, debentures or other securities representing unsecured indebtedness for purposes other than (x) the refunding of outstanding unsecured indebtedness theretofore issued or assumed by the corporation resulting in maturities later than the maturity of the indebtedness being refunded or (y) the reacquisition, redemption or other retirement of any indebtedness which reacquisition, redemption or other retirement has been authorized under the provisions of the Public Utility Holding Company Act of 1935, if, immediately after such issue or assumption, the total principal amount of all unsecured notes, debentures or other securities representing both long and short-term unsecured indebtedness issued or assumed by the corporation and then to be outstanding (but excluding unsecured indebtedness theretofore so voted for by holders of Preferred Stock and Preferred Stock—Cumulative) would exceed twenty per cent (20%) of total capitalization, or if, immediately after such issue or assumption, such short-term unsecured indebtedness issued or assumed by the corporation after September 30, 1998, and then to be outstanding (but excluding short-term indebtedness theretofore so voted for by holders of Preferred Stock or Preferred Stock—Cumulative) would exceed ten per cent (10%) of total capitalization; provided, however, that in the event such short-term unsecured indebtedness (but excluding short-term unsecured indebtedness theretofore so vetoed by holders of Preferred Stock and Preferred Stock—Cumulative) exceeds such latter limit, no unsecured securities representing unsecured indebtedness shall be issued or assumed (except for the purposes specified in clauses (x) and (y) above) unless such ratio of short-term unsecured indebtedness immediately after such issue or assumption is not in excess of such limit.

''Short-term unsecured indebtedness'' as used in this subsection E(4) means unsecured indebtedness of an original maturity of less than ten years and ''long-term unsecured indebtedness'' means unsecured indebtedness of an original maturity of ten years or more. For the purposes hereof, when any long-term unsecured indebtedness becomes due within five years, or when any long-term unsecured indebtedness is to be retired within five years through a sinking fund or otherwise, such long-term unsecured indebtedness, in each case, shall be considered short-term unsecured indebtedness. ''Total capitalization'' as used in this subsection E(4) means the aggregate of (i) the total principal amount of all bonds and other securities representing secured indebtedness issued or assumed by the corporation and then outstanding and (ii) the capital. premium and surplus of the corporation as then stated on the books of account of the corporation.

cumulative preferred stock, $50 par value, issued in three series,[7] all of which are traded over the counter. (''Narragansett Cumulative Preferred Stock''). Narragansett Common Stock and Narragansett Cumulative Preferred Stock are entitled to one vote per share. No other class of Narragansett equity securities is outstanding.

Narragansett's Preferred Stock Provisions (''Narragansett Provisions'') currently provide that, without a vote of a majority of the outstanding Narragansett preferred stock, voting as a class, Narragansett will not issue or assume any unsecured indebtedness (except for redemption of outstanding shares of all series of preferred stock) if the total amount of the indebtedness (exclusive of certain unsecured indebtedness) immediately after the issue would exceed 10% of all secured indebtedness and capital and surplus of Narragansett.[8] (''Narragansett Restriction Provisions'').

Narragansett proposes to solicit proxies from the holders of outstanding shares of Narragansett Cumulative Preferred Stock and Common Stock (''Narragansett Proxy Solicitation'') for use at a special meeting of its stockholders (''Narragansett Special Meeting'') to consider a proposed amendment to the Narragansett Provisions that would eliminate in its entirety the Narragansett Restriction Provision (''Narragansett Proposed Amendment'') from the Narragansett Provisions. Approval of the Narragansett Proposed Amendment requires the affirmative vote at the Narragansett Special Meeting of the holders of (1) not less than two-thirds of the total number of the then-outstanding shares of Narragansett preferred stock of all Narragansett Series, voting together as one class, (2) 75% of the preferred shares present or represented at the meeting, and (3) a majority of the Narragansett Common Stock. NEES will vote its shares of Narragansett Common Stock in favor of the Narragansett Proposed Amendment.

If the Narragansett Proposed Amendment is adopted, Narragansett would make a special cash payment of 50 cents per share (''Narragansett Cash Payment'') to each holder of Narragansett Cumulative Preferred Stock of any Narragansett Series who voted shares (each, a ''Narragansett Share'') (in person by ballot or by proxy) in favor of the Narragansett Proposed Amendment at the Narragansett Special Meeting (except that no Narragansett Cash Payment will be made with respect to any Narragansett Share validly tendered under the concurrent tender offer described below). Narragansett will disburse Narragansett Cash Payments out of its general funds following adoption of the Proposed Amendment.

Concurrently with or shortly before the Narragansett Proxy Solicitation, and subject to the terms and conditions stated in an offer to Purchase Proxy Statement and accompanying Letter of Transmittal (collectively, ''Narragansett Offer Documents''), NEES proposes to make a cash tender offer (''Narragansett Tender Offer'') to acquire any and all outstanding shares of Narragansett Cumulative Preferred Stock of each Narragansett Series, at cash purchase prices which NEES anticipates will include a market premium for each Narragansett Series (each, a ''Narragansett Purchase Price''). The Narragansett Purchase Price and the other terms and conditions of the Narragansett Tender Offer apply equally to all preferred stockholders of the respective Narragansett Series. The offer for any one Narragansett Series is independent of the offer for any other Narragansett Series or for the shares of any other subsidiary.

NEES anticipates that the Narragansett Tender Offer will expire at 5:00 p.m. on December 12, 1997, the date of the Narragansett Special Meeting (''Narragansett Expiration Date''), unless otherwise extended. The Narragansett Tender Offer is not conditioned upon any minimum number of shares of Narragansett preferred stock being tendered. Preferred stockholders who tender their shares under a Narragansett Tender Offer are required to vote in favor of or consent to the Narragansett Proposed Amendment, and one of conditions of the Narragansett Tender offer requires that the Narragansett Proposed Amendment be approved and adopted.

Tenders of Power Company Shares, Mass. Electric Shares and Narragansett Shares (collectively, ''Shares'') made under the Power Company Tender Offer, Mass. Electric Tender Offer and Narragansett Tender Offer, respectively (individually, ''Tender Offer'' and collectively, ''Tender Offers''), may be withdrawn at any time prior to the Power Company Expiration Date, Mass. Electric Expiration Date and the Narragansett Expiration Date, respectively (individually and collectively, ''Expiration Date''). Thereafter, the tenders are irrevocable, subject to certain exceptions identified in the Power Company Offer Documents, Mass. Electric Offer Documents and Narragansett Offer Documents (individually and collectively, ''Offer Documents''). NEES states that its obligations to proceed with the Tender Offers and to accept for payment and to pay for any Shares tendered will be made in accordance with rule 51 under the Act and are subject to various conditions enumerated in the Offer Documents, including the receipt of a Commission order under the Act authorizing the proposed transactions and the adoption of the Power Company Proposed Amendment, Mass. Electric Proposed Amendment and the Narragansett Proposed Amendment (individually, ''Proposed Amendment'' and collectively, ''Proposed Amendments'') at the Power Company Special Meeting, Mass. Electric Special Meeting and Narragansett Special Meeting, respectively (individually and collectively, ''Special Meeting'').

Applicants undertake to comply with all requirements of the Securities Exchange Act of 1934 (''Exchange Act'') and rules and regulations thereunder in connection with the Power Company Proxy Solicitation, Mass. Electric Proxy Solicitation and Narragansett Proxy Solicitation, as applicable (individually, ''Proxy Solicitation'' and collectively, ''Proxy Solicitations''), except to the extent applicants rely on exemptions from the requirements of rule 13e–3 and regulation 14A of the Exchange Act, and acknowledge that any authorization granted under the Act is conditioned upon their compliance. Shares validly tendered will be held by NEES until the Expiration Date (or returned in the event a Tender Offer is terminated). Subject to the terms and conditions of the Tender Offers, as promptly as practicable after the Expiration Date, NEES will accept for payment (and thereby purchase) and pay for Shares validly tendered and not

[7] The three series of Narragansett cumulative preferred stock consist of a 4.50% series, of which 180,000 shares are outstanding; a 4.64% series, of which 150,000 shares are outstanding; and a 6.95% series, of which 400,000 shares are outstanding (each, a ''Narragansett Series'').

[8] The Narragansett Restriction Provision specifically provides that Narragansett will not:

[I]ssue any unsecured notes, debentures or other securities representing unsecured indebtedness, or assume any such unsecured securities, for purposes other than the refunding of outstanding unsecured securities theretofore issued or assumed by the Company resulting in equal or longer maturities or the redemption or other retirement of all outstanding shares of the Preferred Stock, if, immediately after such issue or assumption, the total principal amount of all unsecured notes, debentures or other securities representing unsecured indebtedness issued or assumed by the Company and then outstanding (including unsecured securities then to be issued or assumed) but excluding unsecured securities theretofore so consented to by holders of Preferred Stock, would exceed ten per cent (10%) of the aggregate of (i) the total principal amount of all bonds and other securities representing secured indebtedness issued or assumed by the Company and then outstanding and (ii) the capital and surplus of the Company as then stated on the books of account of the Company.

withdrawn. NEES intends to use its general funds (which, in the ordinary course, include funds from the Power Company, Mass. Electric and Narragansett) and incur indebtedness under NEES' committed lines of credit, including any bank revolving credit agreements, in an amount sufficient to pay the Power Company Purchase Price, Mass. Electric Purchase Price and Narragansett Purchase Price (individually and collectively, ''Purchase Price'') for all tendered Shares. Merrill Lynch, Pierce, Fenner & Smith Incorporated will act as dealer manager for NEES in connection with the Tender Offers.[9]

If a Proposed Amendment is adopted at a Subsidiary's Special Meeting, promptly after consummation of the Tender Offer, either the issuing Subsidiary will purchase the Shares sold to NEES under the Tender Offer at the relevant Purchase Price plus expenses incurred in the Tender Offer, or NEES will donate the Shares to that Subsidiary as a capital contribution. The Subsidiary will then retire and cancel the shares.

If a Proposed Amendment is not adopted at the relevant Special Meeting, NEES may elect, but is not obligated, to waive adoption of the Proposed Amendment as a condition to its obligation to proceed with the Tender Offer, subject to applicable law. In that case, as promptly as practicable after NEES's waiver of the condition and its purchase of Shares validly tendered under the Tender Offers, the affected Subsidiary anticipates that it would call another special meeting and solicit proxies to secure the requisite affirmative vote of stockholders to amend the Power Company Articles, Mass. Electric Articles and Narragansett Provisions (individually and collectively, ''Articles''), to eliminate the Power Company Restriction Provision, Mass. Electric Restriction Provision and Narragansett Restriction Provision (collectively, ''Restriction Provisions''), as the case may be. At each meeting, NEES would vote any Shares acquired by it under the Tender Offer or otherwise [10] (as well as all of its shares of Common Stock of the affected Subsidiaries) in favor of the Proposed Amendment. If a Proposed Amendment is adopted at that meeting and in any event within one year from the Expiration Date (including any potential extension under a Tender Offer), NEES will promptly after the meeting or at the expiration of the one-year period, as applicable, sell the Shares to the Subsidiary at the applicable Purchase Price plus expenses paid under the Tender Offer, and the Subsidiary will retire and cancel the Shares.

The Applicants believe that the purchase of the Shares at this time represents an attractive economic opportunity that will benefit NEES, its shareholders, and its Subsidiaries. The Applicants further contend that elimination of the Restriction Provisions will produce savings in financing costs that outweigh the one-time costs of the Tender Offers and the Proxy Solicitations,[11] and will be in the best interests of their customers and shareholders.[12]

To finance its proposed purchase of Shares under the Tender Offers, NEES plans to use general funds and incur debt under its committed lines of credit, including any bank revolving credit agreements, in an amount sufficient to pay the Purchase Price for all tendered Shares, an amount expected to be approximately $135 million, excluding payment of accrued dividends, but including fees and other expenses.

The applicants also request authorization to deviate from the preferred stock provisions of the *Statement of Policy Regarding Preferred Stock Subject to the Public Utility Holding Company Act of 1935,* HCAR No. 13106 (Feb. 16, 1956), to the extent applicable with respect to the Proposed Amendments.

It appears to the Commission that the application-declaration, to the extent that it relates to the proposed Proxy Solicitations should be permitted to become effective immediately under rule 62(d).

*It is ordered,* that the application-declaration, to the extent that it relates to the proposed Proxy Solicitations be, and it hereby is, permitted to become effective immediately, under rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–29881 Filed 11–12–97; 8:45 am]

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[9] NEES has agreed to pay the dealer manager a fee of .5% of par per share for any Shares tendered, accepted for payment and paid for pursuant to the Tender Offers, the Subsidiaries have agreed to pay the dealer managers a fee of .5% of par per share for any Shares that are not tendered pursuant to the Tender Offers but which vote in favor of the Proposed Amendment. NEES has agreed to reimburse the dealer manager for its reasonable out-of-pocket expenses, including attorneys' fees.

In addition, NEES has agreed to pay soliciting brokers and dealers a separate fee of 1.5% of par per share for any Shares tendered, accepted for payment and paid for pursuant to the Tender Offers except that for transactions with beneficial owners equal to or exceeding 2,500 Shares, NEES will pay a solicitation fee of 1% of par per share for Shares of such Series.

Any fee payable for transactions equal to or exceeding 2,500 shares shall be payable 80% to the dealer manager and 20% to any soliciting dealer (which may be the dealer manager). No fee shall be payable to a soliciting dealer in respect of shares (a) beneficially owned by such soliciting dealer or (b) registered in the name of such soliciting dealer as nominee when the shares are being rendered for the benefit of one or more beneficial owners identified in the applicable Letter of Transmittal or in the applicable Notice of Solicited Tenders (including in the materials provided to brokers and dealers).

NEES proposes to pay Boston Equiserve, L.P., in its capacity as depositary for the Tender Offers, a fee estimated at approximately $40,000.

[10] Applicant states that, in contrast, if the Subsidiary, rather than NEES, had acquired its shares under the Tender Offer, upon the acquisition the shares would be deemed treasury shares under applicable state law and, as such, the Subsidiary would be precluded from voting those shares under any circumstance.

[11] Each of the Subsidiaries have engaged Georgeson & Company, Inc. to act as information agent in connection with the Proxy Solicitations for a fee and reimbursement of reasonable out-of-pocket expenses expected not to exceed approximately $10,000.

[12] The Applicants state that the proposed acquisition by NEES of Shares under the Tender Offers will benefit NEES' utility system customers and shareholders by (1) contributing to the elimination of the provisions concerning unsecured indebtedness, and (2) acquiring and retiring of outstanding shares of the preferred stock and their potential replacement with comparatively less expensive financing alternatives. Moreover, the applicants maintain that tendering Power Company Preferred Stockholders, Mass. Electric Preferred Stockholders and Narragansett Preferred Stockholders will benefit by having the option to sell their Preferred Stock at prices that NEES expects will be a premium to the market price and without the usual transaction costs associated with a sale.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–39302; File No. SR–OPRA–97–4]**

## Options Price Reporting Authority; Order Granting Approval of Amendment to OPRA Plan Revising OPRA's Dial-Up Market Data Service Rider to Its Vendor Agreement To Accommodate the Vendor's Provision of Dial-Up Service to Customers of OPRA Subscribers

November 5, 1997.

### I. Introduction

On September 11, 1997, the Options Price Reporting Authority (''OPRA'') [1]

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. *See* Exchange Act Release No. 17638 (March 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the

Continued

submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act''), an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The proposed amendment revises the Dial-Up Market Data Service Rider (''Rider'') to OPRA's vendor agreement to accommodate a third party vendor's provisions of dial-up service to customers of an OPRA subscriber.

The proposed amendment was published for comment in the **Federal Register** on October 2, 1997.[2] No comments were received on the proposal. This order approves the proposal.

## II. Description and Purpose of the Amendment

The purpose of the amendment is to add provisions to OPRA's Rider to the vendor agreement to accommodate the situation in which an OPRA vendor provides a dial-up service to the customers of an OPRA subscriber, rather than to its own customers. According to OPRA, several vendors and broker-dealer subscribers have recently expressed interest in such an arrangement. As this arrangement is not currently contemplated under the Rider, the proposal would amend the Rider to address the one significant difference between the traditional situation of a firm providing a dial-up service to its own customers and the recent proposals for firms to arrange for third-party vendors to provide a dial-up service for the firms' customers. In the former case, there is a direct contractual relationship between the vendor, a party to the Rider, and the vendor's customers. In the latter case, however, the vendor's subscriber, rather than the vendor, has a contractual relationship with the customer.

In its current form, the Rider imposes certain obligations on vendors who provide a dial-up service. These obligations require that contracts between vendors and their customers contain specific provisions, for the benefit of OPRA, relating to proprietary rights to OPRA data, non-retransmission of data, the absence of any guarantee of the data and a disclaimer of liability. The proposed amendment to the Rider would mandate that vendors require comparable provisions to be included in contracts between subscribers and their customers who receive a dial-up service from a third-party vendor.[3]

Other than as described above, OPRA proposes no change in the way in which dial-up services may be offered to investors. OPRA represents that no new or additional OPRA fees will result from this proposed amendment and the amendment will not make any new parties subject to OPRA's existing fee. OPRA proposes to phase in the revised form of the Rider to take the place of the existing Rider.

## III. Discussion

After careful review, the Commission finds that the proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[4] Specifically, the Commission believes that the proposed amendment, which accommodates the provision of OPRA data through third-party vendors, is consistent with Rule 11Aa3–2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system.

The Commission notes that the proposed amendment will require third party vendors that provide a dial-up service to the customers of OPRA subscribers to obtain an agreement from the subscribers, in writing, that the subscribers will include provisions for the benefit of OPRA in the subscribers' written agreements with its customers. The Commission believes that it is reasonable for OPRA to extend its existing contractual protections to situations in which a third party vendor provides a dial-up service to the customers of an OPRA subscriber. The Commission notes that the proposed amendment also provides OPRA subscribers with alternatives for the provision of the dial-up service to their customers. Accordingly, the Commission believes that the proposed amendment will provide additional flexibility to OPRA subscribers while providing OPRA with the contractual protections that it requires.

## IV. Conclusion

*It is therefore ordered*, pursuant to Rule 11Aa3–2 of the Act, that the proposed amendment (SR–OPRA–97–4) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97–29882 Filed 11–12–97; 8:45 am]

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OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''Phlx'').

[2] *See* Exchange Act Release No. 39137 (September 26, 1997) 62 FR 51707.

[3] The proposal would require vendors to obtain a written agreement from each OPRA subscriber whose customers will be provided the dial-up service from the vendor that the subscriber will: (1) obtain from each of its customers to whom the vendor furnishes the service an agreement that the customer will: (a) receive OPRA data only for such person's use, (b) not retransmit the data to anyone else, and (c) acknowledge that OPRA data is the property of the respective exchange or market in which a reported transaction occurred or a reported quotation was entered; (2) provide to the vendor a current list of customers entitled to receive the service from the vendor and to certify that each named customer has entered into the required agreement; (3) maintain the same customer records required to be maintained by the vendor with respect to customers; and (4) acknowledge the absence of any guarantee and the disclaimer of liability on the part of OPRA, OPRA's processor and each participating exchange.

[4] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 17 CFR 200.30–3(a)(29).

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## DEPARMENT OF TRANSPORTATION

## Federal Aviation Administration

**[Summary Notice No. RE–97–57]**

## Petitions for Exemption Summary of Petitions Received; Dispositions of Petitions Issued

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

**ACTION:** Notice of petitions for exemption received and dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before December 3, 1997.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa,dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC, 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Heather Thorson, (202) 267–7470 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on November 6, 1997.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

## Petitions for Exemption

*Docket No.:* 29038.

*Petitioner:* GE Varig.

*Sections of the FAR Affected:* 14 CFR 145.47(b).

*Description of Relief Sought:* To permit the petitioner to substitute the calibration standards of the Instituto Nacional de Metrologia, Normalização e Qualidade Industrial, Brazil's national standards organization, for the calibration standards of the U.S. National Institute of Standards and Technology to test its inspection equipment.

*Docket No.:* 29039.

*Petitioner:* Worldwide Aircraft Services, Inc.

*Sections of the FAR Affected:* 14 CFR 25.807(g)(1), 25.807(i)(1), and 25.857(e).

*Description of Relief Sought:* To exempt Worldwide Aircraft Services from the requirements of 14 CFR §§ 25.807(g)(1), 25.807(i)(1), and 25.857(e) for the carriage of supernumeraries on Embraer model 120 airplanes with a Class E cargo compartment.

*Docket No.:* 26734.

*Petitioner:* Sierra Industries, Inc.

*Sections of the FAR Affected:* 14 CFR 91.9(a) and 91.531(a)(1) and (2).

*Description of Relief Sought:* To permit certain qualified pilots of Cessna Model 500 Citation (CE–500) airplanes with Supplemental Type Certificate (STC) No. SA09377SC to operate those airplanes within a pilot who is designated as second in command.

*Docket No.:* 29027.

*Petitioner:* National Business Aviation Association, Inc.

*Sections of the FAR Affected:* 14 CFR 61.57(b).

*Description of Relief Sought:* To permit NBAA-member companies to meet night takeoff and landing recent flight experience requirements using a Level C or Level D flight simulator, and to accomplish the required takeoffs and landings every 180 days rather than every 90 days.

*Docket No.:* 27052.

*Petitioner:* Petroleum Helicopters, Inc.

*Sections of the FAR Affected:* 14 CFR 135.143(c).

*Description of Relief Sought:* To permit the petitioner to continue to operate its Bell Model 206L–1 helicopters (Registration Nos. N2761X, N5005B, N50182, and N50046; and Serial Nos. 45283, 45175, 45242, 45173, respectively) without having a TSO–C112 (Mode S) transponder installed on those aircraft.

*Docket No.:* 29034.

*Petitioner:* Eagle Jet Charter, Inc.

*Sections of the FAR Affected:* 14 CFR 93.316(b).

*Description of Relief Sought:* To permit the petitioner to continue to operate its Fokker F–27 turboprop aircraft after January 31, 1998, under instrument flight rules in the Grand Canyon National Park Special Flight rules Area at cruise altitudes of 15,000 and 16,000 feet mean sea level without those aircraft being listed on its operations specifications as commercial sightseeing aircraft.

## Dispositions of Petitions

*Docket No.:* 012SW.

*Petitioner:* Frank D. Robinson.

*Sections of the FAR Affected:* 14 CFR 27.1(a).

*Description of Relief Sought/Disposition:* To permit certification of hydraulically boosted controls on the Model R44 helicopter without the necessity of considering the jamming of a control valve as a possible single failure. *Grant, October 17, 1997, Exemption No. 6692.*

*Docket No.:* 23771.

*Petitioner:* Cessna Aircraft Company.

*Sections of the FAR Affected:* 14 CFR 91.9(a) and 91.531(a)(1) and (2).

*Description of Relief Sought/Disposition:* To permit certain qualified pilots of Cessna Citation Model 550, S550, 552, or 560 aircraft to operate those aircraft without a pilot who is designated as second in command. *Grant, October 28, 1997, Exemption No. 4050J.*

[FR Doc. 97–29902 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Flight Standards District Office at Scottsdale, AZ; Certificate Management Office at Phoenix, AZ; Notice of Consolidation

Notice is hereby given that on or about November 10, 1997, the Flight Standards District Office at Scottsdale, Arizona and the Certificate Management Office at Phoenix, Arizona will be consolidated as Arizona Flight Standards District Office. Services to the general public of Arizona will continue to be provided by the new organization at the same physical locations. This information will be reflected in the FAA Organizational Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.)

Issued in Los Angeles, CA, on October 27, 1997.

**Lynore C. Brekke,**

*Acting Regional Administrator, Western-Pacific Region.*

[FR Doc. 97–29903 Filed 11–12–97; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Sec. 5a Application No. 61]**

### National Classification Committee—Agreement

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Request for comments.

**SUMMARY:** The Surface Transportation Board is commencing a proceeding to determine whether, under 49 U.S.C. 13703(d) and (e), it is in the public interest to renew the bureau agreement of the National Classification Committee, which administers the National Motor Freight Classification.

**DATES:** Written notices of intent to participate are due by November 28, 1997. Shortly thereafter, we will serve a preliminary service list and request for written corrections. By December 11, 1997, we will serve any necessary corrections to the service list. Opening comments are due by January 8, 1998. Reply comments are due by February 5, 1998.

**ADDRESSES:** Send an original and 10 copies of notices of intent to participate and comments, referring to ''Section 5a Application No. 61,'' to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

Opening and reply comments must be served on the persons identified as ''parties of record'' on the service list.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

**SUPPLEMENTARY INFORMATION:** Under 49 U.S.C. 13703, we have the authority to immunize approved motor carrier bureau agreements from the antitrust laws. One such bureau, the National Motor Freight Traffic Association, operating through its National Classification Committee (NCC), administers the National Motor Freight Classification (NMFC). The NMFC groups all articles moving by truck into classes based on their transportation characteristics. The NCC operates pursuant to a bureau agreement approved in *National Classification Committee—Agreement*, 299 I.C.C. 519 (1956), and renewed in *National Classification Committee—Agreement*, Section 5a Application No. 61 (ICC served May 18, 1987).[1] Under 49 U.S.C. 13703(d) and (e), all motor carrier bureau agreements will expire on December 31, 1998, unless we approve renewal. Renewal of the collective rate setting bureau agreements of the motor carriers is under investigation in Section 5a Application No. 118 (Amendment No. 1), *et al.*[2]

By this notice, we are commencing a separate proceeding to explore whether we should renew the NCC's agreement before its statutory expiration. In particular, we question whether the NCC needs antitrust immunity given the fact that its activities, such as grouping freight with common transportation characteristics, publishing bill of lading formats, and gathering information, would not, on the surface, appear to involve antitrust violations. The parties are invited to address, and organize their discussion of, this and other public interest issues by answering the following specific questions:

1. Does the NCC in fact engage in activities that would violate the antitrust laws in the absence of antitrust immunity conferred under 49 U.S.C. 13703?

2. If the NCC engages in activities that would violate the antitrust laws in the absence of antitrust immunity under section 13703, does the public interest require (a) continued exemption of these activities from antitrust law, subject to our regulation, or (b) a regime of marketplace competition subject to antitrust law? Are there ''borderline'' areas of NCC activity that might be subject to antitrust enforcement in the absence of immunization under 49 U.S.C. 13703, where the public interest warrants continued antitrust immunity for those activities under that section?

3. Should we exclude from any immunity we might confer activities that would *not* violate the antitrust laws in the absence of antitrust immunity, so as to avoid confusing the public about the scope and impact of our regulatory jurisdiction?

4. How do the public interests aspects of the NCC's activities relate to the public interest aspects of the activities of the operating motor carrier rate bureaus, whose renewal is the subject of the proceedings in Section 5a Application No. 118 (Amendment No. 1), *et al., supra*? If we decide not to renew the rate setting immunity of those bureaus, could we, and should we, nonetheless continue immunity for classification?

Decided: November 5, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 97–29901 Filed 11–12–97; 8:45 am]

**BILLING CODE 4915–00–P**

[1] Traditionally, motor carrier rate bureau proceedings have been identified as ''Section 5a'' proceedings, in reference to section 5a of the Interstate Commerce Act as it existed prior to its 1978 codification as 49 U.S.C. 10706. In the ICC Termination Act of 1995, the statutory provisions governing motor carrier rate bureau agreements were severed from the rail provisions of section 10706 and recodified as section 13703.

[2] See the notice published in the **Federal Register** on May 20, 1997, at 62 FR 27653, and the Board's decisions in those consolidated proceedings served on May 20, 1997, and August 15, 1997. In the decision served on August 15, 1997, we denied a petition to expand the consolidated proceedings to consider whether antitrust immunity should be continued for activities under the NCC agreement, but stated that we would in the future address matters relating to antitrust immunity for NCC activities separately.

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB CONTROL NO. 2900–0546]**

## Proposed Information Collection Activity; Proposed Collection; Comment Request, Revision

**AGENCY:** National Cemetery System, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The National Cemetery System (NCS) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the biennial survey of individuals holding gravesite set-asides in national cemeteries to determine if they wish to retain their set-aside, or wish to relinquish it.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 12, 1998.

**ADDRESSES:** Submit written comments on the collection of information to Rosetta Holloway, National Cemetery System (402D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0546'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Rosetta Holloway at (202) 273–5185.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCS invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of NCS's functions, including whether the information will have practical utility; (2) the accuracy of NCS's estimate of the burden of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title and Form Number:* Adjacent Gravesite Set-Aside Survey (2 Year), VA Form Letter 40–40.

*OMB Control Number:* 2900–0546.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* In the past, the survey was conducted annually. VA Form Letter 40–40 will be sent biennially (once every two years on a 24 month rotating basis) to individuals holding gravesite set-asides in national cemeteries to ascertain their wish to retain their set-aside, or wish to relinquish it. The collection of information is necessary to assure that gravesite set-asides are not

wasted. Some holders become ineligible, are buried elsewhere, or simply wish to cancel a gravesite set-aside for them. Without this information, unused set-asides would exist which could be used by other veterans.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 3,000 hours.

*Estimated Average Burden Per Respondent:* 10 minutes.

*Frequency of Response:* Biennially.

*Estimated Number of Annual Respondents:* 18,000.

Dated: October 17, 1997.

By direction of the Secretary.

**Barbara Epps,**

*Management Analyst, Information Management Service.*

[FR Doc. 97–29785 Filed 11–12–97; 8:45 am]

BILLING CODE 8320–01–M

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0227]**

## Proposed Information Collection Activity: Proposed Collection; Comment Request; Revision

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice of the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on VHA's National Customer Feedback Surveys.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 12, 1998.

**ADDRESSES:** Submit written comments on the collection to Ann Bickoff, Veterans health Administration (161A1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0227'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ann Bickoff at (202) 273–8310.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) way to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* National Customer Feedback Surveys.

Survey Instruments and Form Numbers: a. Prosthetic Patient Satisfaction Survey, VA Form 10–0142B.

b. Customer Feedback Surveys, VA Form 10–1465 (Series): Nationwide Inpatient Survey, VA Form 10–1465–1; Mental Health Insert, VA Form 10–1465–2; Nationwide Outpatient Survey, VA Form 10–1465–3; Health Update Insert, VA Form 10–1465–4; Persian Gulf Patient Survey Inpatient, VA Form 10–1465–5; Persian Gulf Patient Survey Inpatient, VA Form 10–1465–5; Persian Gulf Patient Survey Outpatient, VA Form 10–1465–6; Spinal Cord Injury Inpatient Survey, VA Form 10–1465–7; Spinal Cord Injury Outpatient Survey, VA Form 10–1465–8; Home Based Primary Care, VA Form 10–1465–9; Nursing Home Care, VA Form 10–1465–10; Women Veterans Patient Survey, VA Form 10–1465–11; Ambulatory Care Team, VA Form 10–1465–12.

c. Dietetic Service Survey, VA Form 10–5387.

*OMB Control Number:* 2900–0227.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* a. The Prosthetic Patient Satisfaction Survey is used to systematically obtain information from prosthetic patients that can be used to identify problems or complaints that need attention and to improve the quality of prosthetic services. The information obtained from the survey will be integrated into each VA filed facility's overall Quality Management Program.

b. The Customer Feedback Surveys are used to implement Title 38, U.S.C., Section 219, which requires the Secretary of Veterans Affairs to evaluate programs and provision of services to beneficiaries. The information collected meets management, medical and legislative requirements and helps assure that the VA maintains a high quality of care for those who have served the nation.

c. The Dietetic Service Survey is used to collect the necessary information to determine whether improvements are needed to enhance the patients's nutritional therapy. The information will be used to effectively gauge when improvements are needed to enhance patient's nutritional therapy. The information obtained through the survey will have practical utility at all levels of the program to plan and redirect resources and efforts to improve or maintain a high quality of service.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 87,032 total hours.

a. Prosthetic Patient Satisfaction Survey—1,557 hours.

b. Customer Feedback Surveys: Nationwide Inpatient Survey—8,452 hours; Mental health Insert—4,226 hours; Nationwide Outpatient Survey—6,875 hours; Health Update Insert—6,875 hours; Persian Gulf Patient Inpatient Survey—12,500 hours; Persian Gulf Patient Outpatient Survey—12,500 hours; Spinal Cord Injury Inpatient Survey—1,875 hours; Spinal Cord Injury Outpatient Survey—1,875 hours; Home Based Primary Care Survey—627 hours; Nursing Home Care Survey—1,333 hours; Women Veterans Patient Survey—1,250 hours; Ambulatory Care Team Survey—22,500 hours.

c. Dietetic Service Survey—4,587 hours.

*Estimated Average Burden Per Respondent.* a. Prosthetic Patient Satisfaction Survey—3 minutes.

b. Customer Feedback Surveys: Nationwide Inpatient Survey—15 minutes; Mental Health Insert—7.5 minutes; Nationwide Outpatient Survey—15 minutes; Health Update Insert—15 minutes; Persian Gulf Patient Inpatient Survey—30 minutes; Persian Gulf Patient Outpatient Survey—30 minutes; Spinal Cord Injury Inpatient Survey—22 minutes; Spinal Cord Injury Outpatient Survey—22 minutes; Home Based Primary Care Survey—15 minutes; Nursing Home Care Survey—20 minutes; Women Veterans Patient Survey—15 minutes; Ambulatory Care Team Survey—15 minutes.

c. Dietetic Service Survey—2 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 349,673. a. Prosthetic Patient Satisfaction Survey—31,145.

b. Customer Feedback Surveys: Nationwide Inpatient Survey—33,810; Mental Health Insert—33,810; Nationwide Outpatient Survey—27,500; Health Update Insert—27,500; Persian Gulf Patient Inpatient Survey—25,000; Persian Gulf Patient Outpatient Survey—25,000; Spinal Cord Injury Inpatient Survey—5,000; Spinal Cord Injury Outpatient Survey—5,000; Home Based Primary Care Survey—2,507; Nursing Home Care Survey—4,000; Women Veterans Patient Survey—5,000; Ambulatory Care Team Survey—90,000.

c. Dietetic Service Survey—34,400.

Dated: October 17, 1997.

By direction of the Secretary.

**Barbara Epps,**

*Management Analyst, Information Management Service.*

[FR Doc. 97–29786 Filed 11–12–97; 8:45 am]

BILLING CODE 8320–01–M

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Advisory Committee on Minority Veterans will be held from Monday, December 8, 1997, through Wednesday, December 10, 1997, in Washington, DC. The purpose of the Advisory Committee on Minority Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services for minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The meeting will convene in room 230, VA Central Office (VACO) Building, 810 Vermont Avenue, NW, Washington, DC, from 8:30 A.M. to 5:00 P.M. On Monday, December 8, the Committee will receive an orientation on its duties and responsibilities. On Tuesday, December 9, the Committee will review the implementation plan for the 63 recommendations contained in its third Annual Report. The Committee will also finalize plans for each subcommittee and set the agenda for the coming year. On Wednesday, December 10, the Subcommittees will examine issues germane to their assigned areas of responsibility. These sessions will be open to the public, up to the seating capacity of the meeting room. Because seating is limited, it will be necessary for those wishing to attend to contact Mrs.Crystal Lawrence-Greenwell, Department of Veterans Affairs (phone (202) 273–6708) prior to December 5, 1997. No time will be allocated for the purpose of receiving oral presentations from the public. However, the Committee will accept appropriate written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: November 5, 1997.

By Direction of the Acting Secretary.

**Heyward Bannister,**

*Committee Management Officer*

[FR Doc. 97–29787 Filed 11–12–97; 8:45 am]

BILLING CODE 8320–01–M

# Corrections

**Federal Register**

Vol. 62, No. 219

Thursday, November 13, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 46 CFR Part 27

**[CGD 97-064]**

**RIN 2115-AF-53**

### Towing Vessel Safety

*Correction*

In proposed rule document 97–26304 beginning on page 52057, in the issue of Monday, October 6, 1997, make the following correction:

**§ 27.325 [Corrected]**

On page 52069, in the third column, in § 27.325(a), in the third line from the bottom, ''or'' should read ''and''.

**BILLING CODE 1505-01-D**

federal register

Thursday
November 13, 1997

## Part II

# Department of Education

**Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research; Notice**

## DEPARTMENT OF EDUCATION

**[CFDA Nos.: 84.133A and 84.133B]**

### Office of Special Education and Rehabilitative Services National Institute on Disability and Rehabilitation Research

*Subject:* Notice Reinviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1998.

*Purpose:* On May 9, 1997 a notice was published in the **Federal Register** inviting applications for new awards under the Rehabilitation Research and Training Center (RRTC) program and Knowledge Dissemination and Utilization Program (D&U) for fiscal year 1997 (62 FR 25770). The same **Federal Register** included a notice of final funding priorities establishing the required activities for the RRTCs and D&U projects (62 FR 25760). There were no satisfactory applications received for an RRTC on effective interventions for children and youth who exhibit severe problem behaviors (62 FR 25767) and a D&U project on improving the utilization of existing and emerging rehabilitation technology in State vocational rehabilitation programs (62 FR 25769).

On July 1, 1997 a notice was published in the **Federal Register** inviting applications for a new award under the D&U program (62 FR 35644). The same **Federal Register** included a notice of final funding priority establishing the required activities for a D&U project on Parenting with a Disability Technical Assistance Center (62 FR 35643). There were no satisfactory applications received for this project.

On July 14, 1997 a notice was published in the **Federal Register** inviting applications for a new award under the RRTC program (62 FR 37650). The same **Federal Register** included a notice of final funding priority establishing the required activities for an RRTC on Medical Rehabilitation Services and Outcomes (62 FR 37646). There were no satisfactory applications received for this RRTC.

There is a continuing need for these RRTCs and D&U projects. The purpose of this notice is to reinvite applications for these projects for FY 1998.

On February 6, 1997 NIDRR published in the **Federal Register** regulations consolidating a number of regulations governing NIDRR's existing programs, including, but not limited to, Parts 350 (General Provisions), 352 (Rehabilitation Research and Training Centers), and 355 (Knowledge Dissemination and Utilization Programs) (62 FR 5712). These new regulations took effect on October 1, 1997 and apply to this competition. The new regulations include a new menu of selection criteria (34 CFR 350.54) for use in evaluating all applications. NIDRR has drawn from this menu of selection criteria to establish the specific selection criteria that will be used to evaluate applications for the four priorities included in this notice reinviting applications. In addition, because Part 355 was consolidated into Part 350, the final priorities established for D&U projects in FY 1997 will be used for equivalent training, dissemination, and technical assistance projects in FY 1998.

**Note To Applicants:** This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, and 350.

*Program Title:* Disability and Rehabilitation Research Project and Centers Program.

*CFDA Numbers:* 84.133A and 84.133B.

*Purpose Of Program:* The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, develop methods, procedures, and rehabilitation technology, that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, the purpose of the Disability and Rehabilitation Research Project and Centers Program is to improve the effectiveness of services authorized under the Act.

*Eligible Applicants:* Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

**Program Authority:** 29 U.S.C. 762 (a) and (b)(6).

APPLICATION NOTICE FOR FISCAL YEAR 1998 DISABILITY AND REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

| Funding priority | Deadline for transmittal of applications | Estimated number of awards | Maximum award amount (per year)* | Project period (months) |
|---|---|---|---|---|
| (1). Improving the Utilization of Emerging and Existing Rehabilitation Technology in State VR Programs | 1/12/98 | 1 | $500,000 | 60 |
| (2). Parenting with a Disability Technical Assistance Center | 1/12/98 | 1 | 500,000 | 60 |

*NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

*Priority 1:* The final priority on improving the utilization of existing and emerging rehabilitation technology in State vocational rehabilitation programs published in the **Federal Register** on May 9, 1997 applies to this competition (62 FR 25769).

*Priority 2:* The final priority on parenting with a disability technical assistance center published in the

**Federal Register** on July 1, 1997 applies to this competition (62 FR 35643).

*Selection Criteria:* The Secretary uses the following selection criteria to evaluate applications for a Training, Dissemination, and Technical Assistance Project on improving the utilization of existing and emerging rehabilitation technology in State vocational rehabilitation programs and a Technical Assistance Center on parenting with a disability under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of training activities* (13 points total).

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (4 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (3 points).

(iii) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (4 points).

(iv) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (2 points).

(d) *Design of dissemination activities* (24 points total).

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (7 points).

(ii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (7 points).

(iii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (7 points).

(iv) The extent to which the information to be disseminated will be accessible to individuals with disabilities (3 points).

(e) *Design of utilization activities* (8 points total).

(i) The extent to which the utilization strategies are likely to be effective (8 points).

(f) *Design of technical assistance activities* (10 points total).

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (3 points).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (2 points).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (3 points).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (2 points).

(g) *Plan of operation* (6 points total).

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (3 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (3 points).

(h) *Collaboration (2 points total).*

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) *Adequacy and reasonableness of the budget* (4 points total).

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 point).

(j) *Plan of evaluation* (7 points total).

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total).

(i) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(ii) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(iii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iv) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(v) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority (1 point).

(l) *Adequacy and accessibility of resources* (4 points total).

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

APPLICATION NOTICE FOR FISCAL YEAR 1998 REHABILITATION RESEARCH AND TRAINING CENTERS, CFDA NO. 84–133B

| Funding priority | Deadline for transmittal of applications | Estimated number of awards | Maximum award amount (per year)* | Project period (months) |
|---|---|---|---|---|
| 3.) Effective Interventions for Children and Youth who Exhibit Severe Problem Behaviors | 1/12/98 | 1 | $600,000 | 60 |
| 4.) Medical Rehabilitation Services and Outcomes | 1/12/98 | 1 | 950,000 | 60 |

*NOTE: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

*Priority 3:* The RRTC final priority on effective interventions for children and youth who exhibit severe problem behaviors published in the **Federal Register** on May 9, 1997 applies to this competition (62 FR 25767).

*Priority 4:* The RRTC final priority on medical rehabilitation services and outcomes published in the **Federal Register** on July 14, 1997 applies to this competition (62 FR 37646).

*Selection Criteria:* The Secretary uses the following selection criteria to evaluate applications for an RRTC on effective interventions for children and youth who exhibit severe problem behaviors and an RRTC on medical rehabilitation services and outcomes under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total).

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total).

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources,

equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (2 points total).

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) *Adequacy and reasonableness of the budget* (3 points total).

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total).

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total).

(i) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 points).

(ii) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(iii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iv) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(v) The extent to which the project staff includes outstanding scientists in the field (2 points).

(l) *Adequacy and accessibility of resources* (4 points).

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

## Instructions For Application Narrative

The Secretary strongly recommends that applicants include a one-page abstract in their application.

*Strict Page Limits*

Part III of the application, the Application Narrative, requires applicants to address the selection criteria that will be used by reviewers in evaluating individual proposals. The applicant for an RRTC must limit Part III—Application Narrative to no more than 125 double-spaced 8½×11″ pages (on one side only) with one inch margins (top, bottom, and sides). The applicant for a Training, Dissemination and Technical Assistance Project on improving the utilization of existing and emerging rehabilitation technology in State vocational rehabilitation programs, or a Technical Assistance Center on parenting with a disability must limit Part III—Application Narrative to no more than 75 double-spaced 8½×11″ pages (on one side only) with one inch margins (top, bottom, and sides).

These page limitations applies to all materials presented in the application narrative—including, for example, any charts, tables, figures, and graphs. The application narrative page limit does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications.

All sections of text in the application narrative must be double-spaced (no more than 3 lines per vertical inch). The double-spacing requirement applies to *EVERY* line on a page, including every line in the title, headings, footnotes, quotations, references, figure captions, and all parts of tables.

If using a proportional computer font, an applicant must use a font no smaller than a 12-point font and an average character density no greater than 14 characters per inch. If using a nonproportional font or typewriter, an applicant must use more no than 12 characters per inch.

The one-page abstract, resume(s), bibliography, or letters of support, while considered part of the application, are not subject to the page limitation, double spacing, and font requirements. Applicants should note that reviewers are not required to review any information provided in addition to the application information listed above.

**Note:** The Secretary will reject without consideration or evaluation any application that does not adhere to these page limit, double-spacing, and font requirements.

## Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed

postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

## Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

## Note to Applicants

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions.

**Note:** ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 600 Independence Avenue S.W., Switzer Building, 3317, Washington, D.C. 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 600 Maryland Avenue, S.W., room 3418, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205-5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742.

*Internet: Donna—Nangle@ed.gov*

Individuals with disabilities may obtain this document in an alternate format(e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

*Electronic Access to This Document*

Anyone may view this document, as well as all other Department of Education documents published in the Federal Register, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

5http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

**Note:** The official version of this document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 760–762.

Dated: November 6, 1997.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

## Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

### Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to

as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

An applicant for a Training, Dissemination, and Technical Assistance project or a Technical Assistance Center should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

An applicant for an RRTC is limited to an indirect cost rate of 15 percent.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications be funded

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):**

☐☐ – ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐ . ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(cities, counties, states, etc.)*:

**13. PROPOSED PROJECT:**

| Start Date | Ending Date |
|---|---|
| | |

**14. CONGRESSIONAL DISTRICTS OF:**

| a. Applicant | b. Project |
|---|---|
| | |

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED**

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | **Total (f)** |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| **12. Total Costs (lines 9-11)** | | | | | | |

ED FORM NO. 524

| Name of Institution/Organization | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. |
|---|---|

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | **Total (f)** |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| **12. Total Costs (lines 9-11)** | | | | | | |

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

# INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

**Lines 1-11, columns (a)-(e):** For each project year for which funding is requested, show the total amount requested for each applicable budget category.

**Lines 1-11, column (f):** Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

**Line 12, columns (a)-(e):** Show the total budget request for each project year for which funding is requested.

**Line 12, column (f):** Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

**Lines 1-11, columns (a)-(e):** For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

**Lines 1-11, column (f):** Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

**Line 12, columns (a)-(e):** Show the total matching or other contribution for each project year.

**Line 12, column (f):** Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–C

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, D.C. 20503.

*Disability and Rehabilitation Research Projects* (CFDA No. 84.133A) 34 CFR Part 350 Subpart B.

*Rehabilitation Research and Training Center* (CFDA No. 84.133B) 34 CFR Part 350 Subpart C.

**Notice To All Applicants**

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provision Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

*To Whom Does This Provision Apply?*

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.*

*What Does This Provision Require?*

Section 427 requires each applicant for fund (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

*What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?*

The following examples may help illustrate how an applicant may comply with section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it tends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

**Estimated Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE | |
|---|---|---|
| APPLICANT ORGANIZATION | | DATE SUBMITTED |

SF 424B (4-88) Back

# CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

## 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

## 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

## 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of

receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

## DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

---

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| | |
|---|---|
| NAME OF APP LICANT NAME | PR/AWARD NUMBER AND / OR PROJECT |
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013

# Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

# DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

| | | |
|---|---|---|
| 1. **Type of Federal Action:**<br>☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | 2. **Status of Federal Action:**<br>☐ a. bid/offer/application<br>b. initial award<br>c. post-award | 3. **Report Type:**<br>☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter ____<br>date of last report ____ |
| 4. **Name and Address of Reporting Entity:**<br>☐ Prime ☐ Subawardee<br>Tier _____, *if known:*<br>**Congressional District,** *if known:* | 5. **If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:**<br>**Congressional District,** *if known:* | |
| 6. **Federal Department/Agency:** | 7. **Federal Program Name/Description:**<br>CFDA Number, *if applicable*: | |
| 8. **Federal Action Number,** *if known:* | 9. **Award Amount,** *if known:*<br>$ | |
| 10. **a. Name and Address of Lobbying ~~Entity~~ Registrant** *(if individual, last name, first name, MI):* | **b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):* | |
| ~~**11. Amount of Payment** *(check all that apply):*~~<br>~~$ _____ ☐ actual ☐ planned~~ | ~~**13. Type of Payment** *(Check all that apply):*~~<br>~~☐ a. retainer~~<br>~~☐ b. one-time fee~~<br>~~☐ c. commission~~<br>~~☐ d. contingent fee~~<br>~~○ e. deferred~~<br>~~☐ f. other; specify: _____~~ | |
| ~~**12. Form of Payment** *(check all that apply):*~~<br>~~☐ a. cash~~<br>~~☐ b. in-kind; specify: nature _____ value _____~~ | | |
| ~~**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**~~<br>~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~ | | |
| ~~**15. Continuation Sheet(s) SF-LLL attached:** ☐ Yes ☐ No~~ | | |
| 16. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.** | **Signature:** _____<br>**Print Name:** _____<br>**Title:** _____<br>**Telephone No.:** _____ **Date:** _____ | |
| **Federal Use Only** | **Authorized for Local Reproduction**<br>**Standard Form - LLL** | |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate~~. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

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# Part III

# Environmental Protection Agency

## 40 CFR Part 247

## Comprehensive Guideline for Procurement of Products Containing Recovered Materials; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 247**

**[SWH–FRL–5909–6]**

**RIN 2050–AE23**

## Comprehensive Guideline for Procurement of Products Containing Recovered Materials

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency today is issuing an amendment to the May 1, 1995 Comprehensive Procurement Guideline (CPG). EPA is designating 12 new items that are or can be made with recovered materials. These items are shower and restroom dividers/partitions; consolidated and reprocessed latex paint for specified uses; parking stops; channelizers; delineators; flexible delineators; plastic fencing for specified uses; garden and soaker hoses; lawn and garden edging; printer ribbons; plastic envelopes; and pallets. In addition, this action clarifies EPA's previous designation of floor tiles, structural fiberboard, and laminated paperboard as items that can be made with recovered materials.

The CPG implements section 6002 of the Resource Conservation and Recovery Act (RCRA), which requires EPA to designate items that are or can be produced with recovered materials and to recommend practices for the procurement of designated items by procuring agencies. Once EPA designates an item, RCRA requires any procuring agency using appropriated Federal funds to procure that item to purchase it with the highest percentage of recovered materials practicable. Today's action will foster markets for materials recovered from solid waste by using government purchasing power to stimulate the use of these materials in the manufacture of new products.

RCRA section 6002 provides certain limited exceptions to the general requirement to buy EPA-designated items. Under certain circumstances based on competition, price, availability, and performance, procuring agencies are not required to purchase an item designated by EPA. In the May 1, 1995 CPG, EPA codified the RCRA section 6002 procurement requirements for the convenience of procuring agencies so they can find all of the RCRA section 6002 procurement provisions, as well as EPA's item designations, in one location. EPA inadvertently omitted the limitations from the codification of agency requirements, however. Today, EPA is codifying these procurement limitations with the affirmative procurement program portion of the CPG for the convenience of procuring agencies.

**EFFECTIVE DATES:** The amendments to the Comprehensive Procurement Guideline designating additional procurement items (§§ 247.3; 247.12 through 247.17) are effective on November 13, 1998. The amendment adding the procurement limitations (§ 247.2(d)) is effective November 13, 1997.

**ADDRESSES:** The public docket for this notice is Docket F–97–CP2F–FFFFF. Documents related to today's notice are available for viewing in the RCRA Information Center (RIC), which is located at U.S. Environmental Protection Agency, Crystal Gateway One, 1235 Jefferson Davis Highway, Ground Floor, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See Section VIII of the ''Supplementary Information'' section below for information on accessing the documents electronically.

**FOR FURTHER INFORMATION CONTACT:**

*General procurement guidelines information:* RCRA Hotline at (800) 424–9346, TDD (800) 553–7672 (hearing impaired) or, in the Washington, DC area at (703) 412–9810 or TDD (703) 412–3323.

*Technical information on individual item recommendations:* For paper and paper products, vehicular products, construction products, non-paper office products, and pallets: Dana Arnold, (703) 308–7279; for landscaping products, transportation products, and park and recreation products: Terry Grist, (703) 308–7257.

**SUPPLEMENTARY INFORMATION:**

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### I. Authority

This amendment to the Comprehensive Procurement Guideline is promulgated under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962, and section 502 of Executive Order 12873, ''Federal Acquisition, Recycling, and Waste Prevention'' (58 FR 54911, October 22, 1993).

### II. Regulated Entities

This action may potentially affect those procuring agencies that purchase the following: shower and restroom dividers/partitions, consolidated and reprocessed latex paint for specified uses, floor tiles, structural fiberboard, laminated paperboard, parking stops, temporary traffic control devices, plastic fencing for specified uses, garden and soaker hose, lawn and garden edging, printer ribbons, plastic envelopes, or pallets. For purposes of RCRA section 6002, procuring agencies include the following: (1) any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement; or (3) any contractors with these agencies (with respect to work performed under the contract). See

RCRA section 1004(17). The requirements of section 6002 apply to such procuring agencies only when procuring designated items where the price of the item exceeds $10,000 or the quantity of the item purchased in the previous year exceeded $10,000. Potential regulated entities for this rule are shown in Table 1.

TABLE 1.—ENTITIES POTENTIALLY SUBJECT TO SECTION 6002 REQUIREMENTS TRIGGERED BY CPG AMENDMENTS

| Category | Examples of regulated entities |
|---|---|
| Federal Government | Federal departments or agencies that procure $10,000 or more worth of a designated item in a given year. |
| State Government | A State agency that uses appropriated Federal funds to procure $10,000 or more worth of a designated item in a given year. |
| Local Government | A local agency that uses appropriated Federal funds to procure $10,000 or more worth of a designated item in a given year. |
| Contractor | A contractor working on a project funded by appropriated Federal funds that purchases $10,000 or more worth of a designated item in a given year. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that could potentially be subject to regulatory requirements triggered by this action. To determine whether your procurement practices are affected by this action, you should carefully examine the applicability criteria in 40 CFR 247.2. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## III. Background

Section 6002(e) of RCRA requires EPA to designate items that are or can be made with recovered materials and to recommend practices to assist procuring agencies in meeting their obligations with respect to procurement of designated items under RCRA section 6002. RCRA requires that each procuring agency, when purchasing an EPA-designated item, must purchase that item composed of the highest percentage of recovered materials practicable.

Executive Order 12873 (Executive Order) establishes the procedure for EPA to follow in implementing RCRA section 6002(e). Section 502 of the Executive Order directs EPA to issue a Comprehensive Procurement Guideline (CPG) that designates items that are or can be made with recovered materials. Concurrent with the CPG, EPA must publish its recommended procurement practices for purchasing designated items, including recovered materials content levels, in a related Recovered Materials Advisory Notice (RMAN). The Executive Order also directs EPA to update the CPG annually and to issue RMANs periodically to reflect changing market conditions. The original CPG (CPG I) was published on May 1, 1995 (60 FR 21370). It established eight product categories, designated 19 new items, and consolidated five earlier item designations. Concurrently, EPA published the first RMAN (RMAN I) (60 FR 21386).

On November 7, 1996, EPA proposed to designate 13 additional items (CPG II) and published draft recommendations for purchasing those items containing recovered materials (RMAN II). See 61 FR 57748–57759 and 61 FR 57760–57766, respectively. EPA also proposed clarifications of the previous designations of floor tiles, structural fiberboard, and laminated paperboard. In addition, EPA proposed to codify the RCRA section 6002 limitations on the affirmative procurement requirements, which had inadvertently been omitted from CPG I. Today, EPA is (1) designating 12 of the items, (2) clarifying the previous designations of floor tiles, structural, fiberboard, and laminated paperboard, and (3) codifying the procurement limitations. As explained in section V.B.3 below, EPA has decided not to designate ink jet cartridges. The 12 newly-designated items are listed below under their associated product category.

*Construction Products*

Shower and restroom dividers/partitions
Consolidated and reprocessed latex paint for specified uses

*Transportation Products*

Parking stops
Channelizers
Delineators
Flexible delineators

*Park and Recreation Products*

Plastic fencing for specified uses

*Landscaping Products*

Garden and soaker hoses
Lawn and garden edging

*Non-Paper Office Products*

Printer ribbons
Plastic envelopes

*Miscellaneous*

Pallets

### *A. Criteria for Selecting Items for Designation*

While not limiting consideration to these criteria, RCRA section 6002(e) requires EPA to consider the following when determining which items it will designate:

(1) Availability of the item;

(2) Potential impact of the procurement of the item by procuring agencies on the solid waste stream;

(3) Economic and technological feasibility of producing the item; and

(4) Other uses for the recovered materials used to produce the item.

EPA consulted with Federal procurement and requirements officials to identify other criteria to consider when selecting items for designation. Based on these discussions, the Agency concluded that the limitations set forth in RCRA section 6002(c) should also be factored into its selection decisions. This provision requires each procuring agency that procures an item designated by EPA to procure the item composed of the highest percentage of recovered materials practicable, while maintaining a satisfactory level of competition. A procuring agency, however, may decide not to procure an EPA-designated item containing recovered materials if it determines: (1) the item is not reasonably available within a reasonable period of time; (2) the item fails to meet the performance standards set forth in the agency's specification; or (3) the item is available only at an unreasonable price.

EPA recognized that these limitations could limit the potential impact of an individual item designation to the extent they provide procuring agencies with a rationale for not purchasing EPA-designated items with recovered materials content. (The limitations of section 6002(c) also effectively describe the circumstances in which a designated

item is ''available'' for purposes of the statute.) For this reason, EPA takes into account the limitations cited in RCRA section 6002(c) in its selection of items for designation in the CPG. Thus, in the May 1, 1995 CPG I, the Agency stated that it had developed the following criteria for use in selecting items for designation: use of materials found in solid waste, economic and technological feasibility and performance, impact of government procurement, availability and competition, and other uses for recovered materials. EPA provided a detailed discussion of these criteria in the CPG I background documents and repeated that discussion, for the convenience of the reader, in Section II of the document entitled, ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses.'' A copy of this document is included in the RCRA public docket for the proposed CPG II rule, docket F–96-CP2P-FFFFF.

In CPG I, EPA stated that it had adopted two approaches in its designation of items that are made with recovered materials. For some items, such as floor tiles, the Agency designated broad categories of items and provided information in the RMAN as to their appropriate applications or uses. For other items, such as plastic trash bags, EPA designated specific items, and, in some instances, included in the designation the specific types of recovered materials or applications to which the designation applies. The Agency explained these approaches to designating items in the preamble to CPG I (60 FR 21373, May 1, 1995).

EPA sometimes had information on the availability of a particular item made with a specific recovered material (e.g., plastic), but no information on the availability of the item made from a different recovered material or any indication that it is possible to make the item with a different recovered material. In these instances, EPA concluded that it was appropriate to include the specific material in the item designation in order to provide vital information to procuring agencies as they seek to fulfill their obligations to purchase designated items composed of the highest percentage of recovered materials practicable. This information enables the agencies to focus their efforts on products that are currently available for purchase, reducing their administrative burden. EPA also included information in the proposed CPG, as well as in the draft RMAN that accompanied the proposed CPG, that advised procuring agencies that EPA is not recommending the purchase of an item made from one particular material over a similar item made from another material. For example, EPA included the following statement in the preamble discussion for plastic desktop accessories (59 FR 18879, April 20, 1994): This designation does not preclude a procuring agency from purchasing desktop accessories manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing plastic desktop accessories, purchase these accessories made with recovered materials.''

The Agency understands that some procuring agencies may believe that the designation of a broad category of items in the CPG requires them (1) to procure all items included in such category with recovered materials content and (2) to establish an affirmative procurement program for the entire category of items, even where specific items within the category may not meet current performance standards. This is clearly not required under RCRA as implemented through the CPG and the RMAN. RCRA section 6002 does not require a procuring agency to purchase items with recovered materials content that are not available or that do not meet a procuring agency's specifications or reasonable performance standards for the contemplated use. Further, section 6002 does not require a procuring agency to purchase such items if the item with recovered materials content is only available at an unreasonable price or the purchase of such item is inconsistent with maintaining a reasonable level of competition. However, EPA stresses that, when procuring any product for which a recovered materials alternative is available that meets the procuring agency's performance needs, if all other factors are equal, the procuring agency should seek to purchase the product made with highest percentage of recovered materials practicable.

The items designated today have all been evaluated with respect to the EPA's criteria. Details of these evaluations are discussed in ''Final CPG II/RMAN II Background Document,'' which has been placed in the docket for the final CPG II and RMAN II and is available electronically. (See Section VIII below for Internet access directions.)

*B. Procurement Limitations of RCRA Section 6002*

In the May 1, 1995 CPG, the Agency amended 40 CFR 247.2 to include the RCRA provisions on the applicability of the guidelines to procuring agencies. (See 60 FR 21381.) In that amendment, EPA inadvertently failed to include the statutory exceptions to the general requirement to purchase designated items set forth in section 6002(c)(1) (A) through (C). Today, in § 247.2(d), EPA is adding these procurement limitations. As discussed in the previous section, these provisions authorize a procuring agency to decide not to purchase EPA designated items with recovered materials based on the following determinations:

1. The agency is unable to secure a satisfactory level of competition;
2. The item is not reasonably available within a reasonable period of time;
3. The item fails to meet the reasonable performance standards set forth in the agency's specification; and
4. The item is available only at an unreasonable price.

EPA received no comments on the proposed language and, as noted above, is today amending § 247.2 to add these provisions. EPA is making this amendment effective immediately. Section 553(d) of the Administrative Procedure Act authorizes an exception to the general requirement that a substantive rule must be published 30 days before its effective date where an agency determines there is good cause for doing so. As explained above, these amendments merely codify the statutory conditions spelled out in section 6002(c) under which a procuring agency may determine not to procure items designated in the guidelines. Today's amendments do not change a procuring agency's current obligations under section 6002 of RCRA to procure designated items to the maximum extent practicable but merely restate in the regulations the exceptions to the general requirement provided in the statute. Under the circumstances, there is good cause for making these amendments effective immediately.

*C. Clarification of Floor Tiles, Structural Fiberboard and Laminated Paperboard Designations*

In the May 1, 1995 CPG, EPA designated floor tiles, structural fiberboard, and laminated paperboard and, in the RMAN, provided recommendations for purchasing these items containing recovered materials. EPA has since learned that there may be some confusion on the part of procuring agencies as to their obligation to purchase these items for specific applications. In fact, the Agency received inquiries regarding the requirements to purchase floor tile and structural fiberboard for use as acoustical ceiling tile. Based on these inquiries, the Agency concluded that it should clarify the obligations of procuring agencies with respect to these items. Additionally, the Agency published a separate notice in the **Federal Register** providing additional information to assist procuring agencies in determining their obligation to purchase designated items for specific

applications and to clarify these issues. See 61 FR 58067, November 12, 1996.

1. Floor Tiles

In the original CPG, EPA designated 19 items that are, or can be, produced with recovered materials content, including floor tiles and patio blocks containing recovered rubber or plastic [40 CFR 247.12(e)]. The Agency designated these items as broad categories of items, encompassing many different applications. In the companion RMAN, however, the Agency recommended that procuring agencies purchase floor tiles with specified minimum recovered rubber or plastic content for ''heavy duty/commercial type'' applications only. EPA limited the recommended applications to heavy-duty/commercial-type uses because, at the time CPG I was issued, the Agency was not aware of any manufacturers that made floor tile with recovered materials for standard office flooring. However, at least two manufacturers were reportedly considering using recovered materials in standard office flooring and one manufacturer indicated that these products would be available in 1995, the year CPG I was issued. This information suggested to the Agency that floor tiles could be made with recovered materials for standard office flooring. Therefore, the Agency elected to broadly designate floor tiles and limit its initial recommendations to heavy-duty/commercial type uses. The Agency has no information that standard office floor tiles are currently commercially available containing recovered materials.

In CPG I and RMAN I, EPA used the term ''heavy-duty, commercial-type uses'' because there were no published industry-wide definitions to describe the applications to which the recovered materials requirements of the CPG should be applied. In the supporting analysis for RMAN I, EPA explained what it meant by ''heavy-duty, commercial-type applications.'' There, the Agency described, in general terms, a number of commercial and industrial settings where the use of such tiles with recovered materials content would be appropriate. These would include entranceways in airports and stores, furniture showrooms, skating rinks and fitness centers. EPA has learned that this discussion may have caused some confusion. Some procuring agencies may have confused EPA's description of the areas where, given special circumstances, such tiles might be appropriate, with an EPA recommendation that such tile should always be used in such settings. This was not the Agency's intention. Therefore, the Agency is today clarifying its recommendation that the use of these tiles would be appropriate for specialty purpose uses at such locations (e.g., raised, open-web tiles for drainage on school kitchen flooring). Such specialty purpose uses involve limited flooring areas where grease, tar, snow, ice, wetness or similar substances or conditions are likely to be present. Commenters also supported the Agency in its views about the limitations on uses for floor tiles containing recovered materials. Thus, EPA is not, at this time, recommending floor tile made with recovered materials for standard office or more general purpose uses.

2. Structural Fiberboard and Laminated Paperboard

In CPG I, EPA designated structural fiberboard and laminated paperboard products for applications other than building insulation [40 CFR 247.12(b)]. EPA included acoustical and non-acoustical ceiling tiles and lay-in panels in its list of applications to which the designation applies. Since CPG I was issued, one manufacturer of mineral fiber ceiling products has expressed concern over the scope of the structural fiberboard and laminated paperboard designations, particularly as they apply to acoustical and non-acoustical ceiling tiles and lay-in panels.

EPA is clarifying that the specific applications included in the structural fiberboard and laminated paperboard designation, i.e., building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard), apply to the purchase of cellulosic fiber structural fiberboard and laminated paperboard products only. The listed applications, and therefore the designation, do not apply to products made from other similar or competing materials. In other words, if a procuring agency is purchasing a cellulosic fiberboard acoustical ceiling tile, then the agency should purchase the ceiling tile made with recovered materials. However, if the agency prefers to purchase a ceiling tile made with mineral fiber rather than fiberboard, it is free to do so. In the latter instance, there is no requirement to purchase a cellulosic fiberboard ceiling tile.

## IV. Definitions

Today, in § 247.3, EPA is adding definitions for the following new item-specific terms: channelizers, delineators, flexible delineators, garden hoses, latex paint, lawn edging, pallets, parking stops, plastic fencing, printer ribbons, restroom dividers/partitions, shower dividers/partitions, and soaker hoses. These definitions are based on industry definitions, including ASTM or other standard specifications, or represent descriptions of the scope of items being designated.

For several items being designated today, EPA recommends in the final RMAN II that procuring agencies use two-part content levels—a postconsumer recovered materials component and a total recovered materials component. In these instances, EPA found that both types of materials were being used to manufacture the products. Recommending only postconsumer content levels would be contrary to the RCRA mandate to maximize the use of recovered materials because it would fail to acknowledge the contribution to solid waste management made by manufacturers using other manufacturers' byproducts as feedstock.

Because the recommendations for the items being designated today use the terms ''postconsumer materials'' and ''recovered materials,'' the definitions for these terms are repeated in this action as a reference for the convenience of the reader. These definitions were part of CPG I and can be found at 40 CFR § 247.3.

*Postconsumer materials* means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. *Postconsumer material* is part of the broader category of recovered materials.

*Recovered materials* means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within an original manufacturing process.

## V. Comment Summary and Agency's Response

EPA received submittals from 20 commenters in response to the proposed CPG II and the draft RMAN II. These commenters represented various interests, including Federal agencies, State agencies, local governments, product manufacturers, and product users. A summary of the comments and EPA's response can be found in ''Final CPG II/RMAN II Background Document.''

In this section, EPA discusses the major comments regarding the proposed CPG II. For a discussion of the major comments pertaining to the draft RMAN II, see the preamble to the notice of

availability of the final RMAN II, which is found in the notices section of today's **Federal Register**.

*A. General Comments*

1. Recordkeeping and Reporting

*Comment:* A Federal agency expressed concern about the burden of tracking purchases of each procurement item designated by EPA and the potential difficulty in establishing the infrastructure to institute policies and procedures at a time when administrative staff is being reduced. The commenter further noted that the use of government credit cards increases the difficulty of tracking purchases. In addition, the commenter suggested that an interagency reporting task force convened by the Office of Federal Procurement Policy (OFPP) and the Office of the Federal Environmental Executive (OFEE) should address streamlining reporting requirements.

*Response:* Because EPA addressed the RCRA reporting requirements in the CPG I rulemaking, reporting issues were not addressed as part of the CPG II proposal. See, for example, the background documents for the final CPG I and RMAN I for EPA's previous discussions of the RCRA annual review and reporting requirements: ''Items Designated in the Comprehensive Procurement Guideline—Supporting Analyses,'' pages 40–41, and ''RMAN for Items Designated in the Comprehensive Procurement Guideline—Supporting Analyses,'' pages 8–9.

The requirement that Federal procuring agencies report on their procurement of EPA-designated items is mandated by RCRA section 6002(g) and Section 301 of Executive Order 12873. Therefore, reporting is not at the discretion of OFEE or EPA. While EPA and OFEE are cognizant of the labor necessary to collect and report annual procurement data, neither office is authorized to significantly change the data contained in the final report.

As noted by the commenter, OFEE and OFPP chartered an interagency steering committee to identify streamlining initiatives for the data collection requirements. As a result of the committee's recommendations, the agency data collection requirements for FY96 were reduced by ⅓ by capturing data in a more efficient manner. For agencies that requisition CPG items from the U.S. General Services Administration's (GSA) Federal Supply System, the supply center tracks and reports on the agencies purchases. While this significantly reduces an agency's data collection and reporting burden, the final report contains the same itemized information.

2. Interaction Between RCRA Section 6002 and the Federal Acquisition Regulation

*Comment:* A Federal agency raised issues specific to the Federal Acquisition Regulation (FAR), which governs Federal acquisition activities. The agency stated that the proposed CPG II and draft RMAN II did not adequately address the importance of and the responsibility of key non-procurement personnel, who generally develop and define a procuring agency's environmental needs. The agency referenced provisions of the FAR. Additionally, the agency stated that the draft RMAN II provides no specific guidance on the use of required sources, such as Federal Prison Industries (UNICOR) and Javits-Wagner-O'Day (JWOD) participating non-profit agencies.

*Response:* EPA has stated on many occasions that implementation of RCRA section 6002 must be consistent with other Federal procurement law. For example, in Appendix I to ''Final CPG II/RMAN II Background Document,'' EPA states the following:

> The purchase of recycled products under RCRA section 6002 must be consistent with other Federal procurement law, which requires that contracts be awarded to the lowest priced, responsive, responsible bidder * * *
>
> On August 27, 1997, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issued an interim rule amending the Federal Acquisition Regulation (FAR) parts 1, 10, 11, 13, 15, 23, 36, 42, and 52 to reflect the government's preference for the acquisition of environmentally-sound and energy-efficient products and services and to establish an affirmative procurement program favoring items containing the maximum practicable content of recovered materials. See 62 FR 44809, August 22, 1997.

As the commenter indicated, the FAR specifies the role of contracting officers and other agency personnel in acquisitions, as well as providing for implementation of the required sources requirements and the RCRA section 6002 affirmative procurement requirements. To the extent that the FAR generally dictates use of certain required sources like UNICOR, EPA believes that it is reasonable to assume that federal procuring agencies will look to such sources for procurement of designated items. In fact, required sources such as UNICOR and the National Industries for the Blind offer several of the items previously designated by EPA (e.g., toner cartridges, recycled paper products). Therefore, EPA refers procuring agencies to the FAR for guidance regarding these acquisitions issues.

3. Designation of Materials

*Comment:* A commenter requested that EPA designate steel in order to recognize that this material is recyclable, has a high recycling rate, and contains recovered materials.

*Response:* EPA agrees that steel, like many metals, is both recyclable and can contain recovered materials. EPA also agrees that steel, like many metals, is a waste management success story in terms of its recyclability, high recycling rate, and recovered materials content. EPA also applauds the steel industry's source reduction efforts to produce stronger, lighter weight steel products, in response to customer demand.

However, RCRA specifically requires EPA to designate products that are or can be made with recovered materials, not the component materials used in those products. Accordingly, EPA designates products that are manufactured with steel, but not materials, such as steel, that can contain recovered materials.

*B. Comments on Proposed Item Designations*

No commenters opposed the designations of the following items: parking stops, channelizers, delineators, flexible delineators, garden and soaker hoses, lawn and garden edging, printer ribbons, plastic envelopes, and pallets. EPA is promulgating these items as proposed. Commenters suggested revisions to the designations of shower and restroom dividers, latex paint, and snow fencing, and opposed the proposed designation of ink jet cartridges. In response, EPA is designating shower and restroom dividers and latex paint, with modifications, and revising the designation of snow fencing to plastic fencing for specific uses. EPA is not designating ink jet cartridges at this time. The comments on shower and restroom dividers and snow fencing, and the significant comments pertaining to the proposed designations of latex paint and ink jet cartridges, as well as EPA's response, are discussed in the following subsections. For a full discussion of the comments and EPA's response, including additional research conducted by EPA, see ''Final CPG II/RMAN II Background Document.''

1. Shower and Restroom Dividers

*Comment:* EPA received one comment suggesting that shower and restroom dividers be referred to as dividers/partitions.

*Response:* After additional research into industry practices, EPA found that both of the terms—''partitions'' and ''dividers''—are commonly used. Generally speaking, ''partition'' implies that a door is used, and ''divider'' implies a dividing wall. Based on the comment and the additional research, EPA is revising the term for this item in the final CPG II and companion RMAN II to ''shower and restroom dividers/partitions.''

2. Latex Paint

*Comment:* A commenter opposed the proposed designation of latex paint based on concerns about performance and availability. The commenter further noted that the proposed designation was overly broad and did not reflect the variety of different latex paint applications in government buildings and their performance requirements. The commenter suggested that EPA could limit the designation and recommendations to interior and exterior architectural applications where color, consistency of performance, and durability are not primary concerns and a spray-gun application is not used.

EPA met with the commenter on June 17, 1997 to discuss this and other comments. A copy of the meeting notes has been placed in the RCRA docket for the final CPG II.

In supplemental comments, the commenter suggested that EPA distinguish between consolidated and reprocessed latex paints. The commenter suggested that EPA revise the designation so as to designate only:

- Consolidated latex paint used for covering graffiti, where consistent color and consistency of performance are not primary concerns.
- Reprocessed latex paint used for interior and exterior architectural applications where the reprocessed latex paint meets all end use specifications (e.g., color, weathering, durability, hiding power, and applicability) for a particular application.

These suggestions are similar to the applications for reprocessed and consolidated latex paints that EPA had recommended in the draft RMAN II.

The commenter stated that adding the language about end use specifications in the suggested designation would alleviate paint industry concerns that the listing of latex paints will require the use of reprocessed latex paints for all interior and exterior uses without regard to any performance criteria. The commenter further stated that the selection of latex paint for a particular application is a complex process and that, while the GSA specification for ''recycled'' latex paint covers certain performance attributes, it may not include all of the attributes necessary for a particular application. The commenter referenced three ASTM latex paint specifications that the commenter believes procuring agencies should consider in evaluating whether reprocessed latex paint has the appropriate performance attributes for a particular application. A copy of the supplemental comments is included in the docket for the final CPG II.

*Response:* EPA agrees that reprocessed and consolidated latex paints are not suitable for all applications. In the proposed CPG II, EPA noted, for example, that there is little available information on the performance of reprocessed or consolidated paints for non-architectural applications. See 61 FR 57752. In the draft RMAN II, EPA recommended the use of consolidated paint in limited applications, such as covering graffiti, where color and consistency of performance are not primary concerns. EPA recommended the use of reprocessed paint for interior and exterior architectural applications. See Section C–7 of the draft RMAN II at 61 FR 57763.

In researching latex paint for the proposed CPG II, EPA identified a latex paint study by the California Polytechnic University (CalPoly). The CalPoly study included testing of reprocessed and consolidated latex paints for various key parameters that measure the performance and durability of paint for a number of different applications. The CalPoly study concluded that reprocessed paints are suitable for these applications reviewed in the study. A copy of this study was included in the docket for the proposed CPG II and draft RMAN II, docket F–96–CP2P–FFFFF. Both the GSA's Engineering and Commodity Management Division and CalPoly found that latex paints containing postconsumer materials can be manufactured to provide consistent performance, normal coverage and hiding of the underlying surface, and durability. In addition, the GSA specification provides for testing of color and application properties, among other requirements.

Latex paints containing postconsumer materials also can be formulated to be used in spray-guns. According to paint manufacturers and municipalities contacted by EPA, spray applications of reprocessed latex paint pose few, if any, problems as long as the paint is clean and has been filtered properly. EPA notes, however, that some users have encountered problems with clogged spray nozzles, and one manufacturer recommends using a larger diameter spray tip to ensure that the nozzle will not become clogged. GSA specification TT–P–2846 requires that the reprocessed and consolidated latex paint meet specified brushing, roller coating, and spraying properties, which should ensure that manufacturers properly filter their products.

EPA also conducted additional research into the applications for which agencies currently are using reprocessed latex paints. EPA found that agencies currently are using reprocessed paints for the same uses for which they would normally use latex paint—e.g., interior and exterior wallboard, ceilings, and trim; exterior gutter boards; and concrete, stucco, masonry, and wood, as well as metal surfaces.

After considering the comments and conducting further research on reprocessed latex applications, EPA has concluded that the proposed designation of ''latex paint'' is too broad given the uses for which consolidated and reprocessed latex paints currently are available. As discussed above in Section III.A, EPA sometimes designates broad category items and provides information in the RMAN as to their appropriate applications or uses. In other instances, EPA designates specific items and might include in the designation the specific types of applications to which the designation applies. The approach that EPA uses depends on the whether items manufactured from other types of materials or for other applications are made with or could contain recovered materials. In the past, if EPA was not aware that items used for other applications were available, EPA limited its designations so as not to create an unnecessary burden on agencies to try to purchase an item that is not available. (See the preamble to CPG I, 60 FR 21373, May 1, 1995, for a more detailed discussion of EPA's approach.)

Based on the available information, EPA has concluded that consolidated latex paints are currently used for graffiti abatement. EPA further has determined that reprocessed latex paints are available for architectural applications, but not for non-architectural applications, such as marking pavements or athletic fields. EPA also agrees with the commenter that reprocessed latex paints may not be available for all architectural performance needs.

Therefore, to avoid confusion by procuring agencies about the scope of the latex paint designation, EPA has

concluded that it is preferable to limit the scope of the latex paint designation, rather than designating the broad category ''latex paint,'' and recommending specific applications for using consolidated and reprocessed latex paints in RMAN II. A narrower designation will enable procuring agencies to focus their procurement efforts on the types of latex paint currently available either through GSA or directly from paint manufacturers.

Therefore, in today's final CPG II, EPA is revising the broad ''latex paint'' designation to provide the following specific designations:

- Consolidated latex paint used for covering graffiti.
- Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.

Under this revised designation, procuring agencies must purchase reprocessed latex paint for the interior and exterior architectural applications for which they would ordinarily use latex paint, such as wallboard, concrete, stucco, masonry, wood, and metal. Procuring agencies requiring a latex paint not meeting GSA's general ''recycled'' latex paint specification should determine whether a latex paint containing recovered materials is available and if not, may use a latex paint not containing recovered materials for that particular application.

As discussed in section III.B above, RCRA section 6002 provides that a procuring agency is not required to purchase an EPA-designated item containing recovered materials if that item is not reasonably available or fails to meet the reasonable performance standards set forth in the agency's specifications. Thus, if an agency has a particular need (e.g., color, weathering, durability, hiding power) for a particular application, and consolidated or reprocessed latex paint is not available (or does not meet that specification), the agency may purchase a latex paint not containing recovered materials. Given the obligation of procuring agencies to procure designated items with the highest percentage of recovered materials practicable, an agency should thoroughly research the availability of consolidated or reprocessed latex paint meeting its specifications.

However, because RCRA provides for performance exceptions to the requirement to purchase EPA-designated items containing recovered materials, it would be redundant for EPA to include performance considerations in the description of the designation of consolidated and reprocessed latex paints. For this reason, in the final designations published today, EPA has not included the language about end use specifications suggested by the commenter.

*Comment:* The commenter also had noted that an Army Corps of Engineers study of reprocessed and consolidated latex paints had not yet been completed. The commenter stated that it was therefore premature for EPA to designate latex paints.

*Response:* EPA noted in the background document for the proposed CPG II that the Paint Technology Center at the U.S. Army Construction Engineering Research Laboratories (USACERL) was planning to test the performance of latex paint containing postconsumer materials. See page 28, ''Comprehensive Procurement Guideline (CPG) II—Supporting Analyses,'' August 1, 1996. EPA contacted USACERL about the study of reprocessed latex paint. USACERL informed EPA that it does not have any specific concerns about the performance qualities of reprocessed latex paint in different applications. Rather, USACERL tested reprocessed latex paints to confirm that they met GSA specification TT–P–2846 for ''recycled'' latex paints. USACERL also tested reprocessed latex paints against the GSA specifications for interior and exterior latex paints. To date, USACERL found that the reprocessed paints tested met the specifications for recycled latex paint and interior latex paints. USACERL is completing testing against the exterior paint specification, but the reprocessed latex paints performed well against the exterior paint tests conducted to date. Based on this information about the results of the USACERL testing of reprocessed and consolidated latex paints, EPA does not believe that the designation of latex paint should be delayed pending the final outcome of the USACERL study.

Further, USACERL informed EPA that the Army uses acrylic latex paints to paint primed metal and expressed concern only about the availability of reprocessed latex paint containing 100% acrylic. USACERL had not researched the availability of this item, however. EPA notes that under RCRA section 6002, a procuring agency is not required to purchase an EPA-designated item containing recovered materials if that item does not meet the agency's reasonable performance standards or if the item is not reasonably available. If the Army requires acrylic latex paints for a particular application and this item is not available containing recovered materials, then the Army is not required to purchase latex paint containing recovered materials for that application. For such situations, EPA has previously recommended that agencies place a statement in their affirmative procurement programs indicating that the item is not available.

Because the purpose of the government buy-recycled program is to develop markets for recovered materials, EPA is reluctant to exclude acrylic latex paints from the scope of the latex paint designation. Rather, EPA believes that the Army should determine periodically whether acrylic latex paints containing recovered materials are available in order to encourage the recovery of this type of paint from the waste stream. Further, EPA notes that during development of CPG II, neither the Army nor any other Federal agency requested that EPA limit the scope of the designation. Therefore, in the final CPG II, EPA is designating latex paints and not excluding acrylic latex paints.

*Comment:* The commenter further stated that EPA had failed to examine the true costs of using reprocessed latex paint because it is ''likely'' that more coats of reprocessed paint would be required and ''it seems likely that'' more frequent repainting will be required where reprocessed latex paint is used. The commenter provided no documentation to support these comments.

*Response:* The information available to EPA from research, product testing by CalPoly, and users indicates that reprocessed latex paints cover the same as virgin latex paints and do not require more frequent repainting. This information is included in the record for this rulemaking. According to the CalPoly research report and additional research conducted by EPA, reprocessed and consolidated paints meet specifications for sag resistance (a measure of a paint's tendency to run on a vertical surface), contrast ratios (ability to hide the underlying surface), and scrub resistance (an indication of the resistance of a paint film to repeated washing or scrubbing). None of the users contacted by EPA had experienced problems with paint coverage or durability. Based on this testing and use information, EPA believes that procuring agencies will not incur additional costs from extra or more frequent coats of paint.

*Comment:* The commenter also noted that reprocessed and consolidated latex paints are not universally available in the United States.

*Response:* EPA has never limited its designations only to items that are

''universally'' available or immediately available in every part of the United States. Because the purpose of the federal buy-recycled program is to develop markets for, and spur development of, products containing recovered materials, it has always been understood that these items might not be available to all procuring agencies in all instances. Nor does RCRA specify universal availability as a criteria for EPA to consider when designating items. Rather, it is expected that, as procuring agencies seek to purchase products containing recovered materials, these items will become more widely and universally available. For this reason, RCRA section 6002 provides that procuring agencies are not required to buy an EPA-designated item containing recovered materials if that item is not available within a reasonable time.

EPA explicitly recognized this early in its development of the guidelines program. Thus, for example, in the first procurement guideline issued in 1983, EPA designated cement and concrete containing coal fly ash, even though coal fly ash was not available in every part of the country. EPA recommended that agencies provide incentives for greater availability by allowing for the use of coal fly ash as an optional or alternate material. EPA stated that ''[a]llowing fly ash will also serve as an incentive to potential users in that area. Contractors will not make the commitment necessary to use fly ash unless it is more readily accepted. Including it in bid solicitations and allowing it to be used provides this incentive.'' See 48 FR 4242, January 28, 1983.

3. Snow Fencing

*Comment:* GSA recommended that EPA revise the definition of ''snow fencing'' by adding ''and to delineate construction areas.''

*Response:* EPA reviewed its research into snow fencing and found that plastic fencing containing recovered materials can be used for several applications, including control of drifting snow and sand and as a warning or safety barrier at construction areas. Plastic fencing used in these applications is called many names—snow fencing, temporary fencing, beach or dune fencing, warning barrier, and safety barrier. While ''snow fencing'' is a commonly used term, EPA agrees with GSA that using this term alone can mislead procuring agencies about the scope of EPA's designation. Therefore, in § 247.14(b) of today's final CPG II, EPA is revising the designation of ''snow fencing'' as follows: plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications. EPA also is changing the term ''snow fencing'' to ''plastic fencing'' in the definitions and adding the phrase ''and to provide a warning or barrier in construction and other areas'' to the definition.

4. Ink Jet Cartridges

Commenters raised a number of concerns in opposing the proposed designation of ink jet cartridges. These comments raised solid waste, performance, quality, availability, and patent and trademark concerns. After considering the information submitted by commenters, EPA has concluded that there is insufficient evidence to support a designation of ink jet cartridges at this time. On April 14, 1997, EPA published a Notice of Data Availability in the **Federal Register** (62 FR 18072) to notify interested parties of the tentative decision not to designate ink jet cartridges, summarize the information available to the Agency, and request further public comment.

EPA received only two responses to the April 14 notice—one from a vendor of ink jet refilling equipment and additional information from one of the original commenters. The vendor appears to have promising technology for resolving many of the performance and solid waste issues raised by commenters. The vendor did not, however, submit sufficient information to change EPA's earlier conclusion that there is insufficient information to support designating ink jet cartridges at this time. In particular, the commenter did not address the lack of industry quality and performance standards. Therefore, EPA has decided not to designate ink jet cartridges in today's final CPG II. EPA also is deleting the recommendations for purchasing ink jet cartridges from the final RMAN II published in the notice section of today's **Federal Register**. EPA will continue to monitor developments in ink jet cartridge and refilling/remanufacturing technology and will consider designating ink jet cartridges in the future.

*C. Comments on Other Items Considered for Designation*

In the background document for the proposed CPG II, EPA stated that it had considered the following 12 items and determined that it was inappropriate to designate them: lead-acid batteries, water retention systems, flat sheet glass, wall covering, ceramic and glass tile, glass fiber-reinforced concrete, curbing, dock bumpers, glass beads for reflective paint, magazine boxes, rulers, and pallet stretch wrap. EPA requested additional information demonstrating that the items should be reconsidered for possible future designation. No comments were submitted on these items or on EPA's decision not to designate them. Therefore, EPA is no longer considering these items for future designation in the CPG.

*D. Comments on Public Participation Process*

On September 20, 1995, EPA issued a notice in the **Federal Register** explaining the procedures for interested persons to (1) suggest items for EPA to consider for designation in future updates to the CPG and (2) provide information for EPA to use in developing or revising its recommendations for recovered materials content levels contained in the RMANs that accompany the CPG updates (60 FR 48714). EPA stated that it would issue annual notices to request additional information from interested persons.

No comments were received on these procedures, and EPA plans to continue to use them. Over 30 commenters submitted information on items for EPA to consider. Some of these comments provided supporting information for items designated in today's CPG II. EPA currently is evaluating the other items for potential designation in future CPG updates. Because EPA is still considering these items, we will not be issuing annual notices requesting additional suggestions and information. However, persons wishing to submit information for EPA to consider may send it to: Buy Recycled Program, U.S. Environmental Protection Agency, 5306W, 401 M Street, SW., Washington, DC 20460. Any submittals should address the seven areas listed in the September 20, 1995 **Federal Register** notice. See 60 FR 48715.

## VI. Availability of Designated Items

EPA has developed lists of manufacturers and vendors of the items designated in today's rule. In addition, EPA has updated the lists of manufacturers and vendors of the 24 items designated in the original CPG. These lists have been placed in the RCRA docket for this action and will be updated periodically as new sources are identified and product information changes. These lists will also be available through EPA's web site on the Internet. (See section VIII below for Internet access information.) Procuring agencies should contact the manufacturers/vendors directly to discuss their specific needs and to

obtain detailed information on the availability and price of recycled products meeting those needs.

Other information is available from the GSA, the Defense Logistics Agency (DLA), State and local recycling offices, private corporations, and trade associations. Refer to Section XV of the document, ''Final CPG II/RMAN II Background Document'' for more detailed information on these other sources of information.

State and local recycling programs are also a potential source of information on local distributors and availability. In addition, state and local government purchasing officials that are contracting for recycled content products may have relative price information. A current list of state purchasing/procurement officials has been placed in the docket for the final CPG II. Also included in the public docket is a list of states with recycled content products purchasing programs, current as of April 1994. Information is also available from trade associations whose members manufacture or distribute products containing recovered materials. These trade associations are included in the updated lists of product manufacturers and vendors described above.

Additionally, Environmental Newsletters, Inc., publisher of *Waste Reduction Tips*, prepared a directory of recycled product directories. EPA has placed the ''1996 Directory of Recycled Product Directories,'' from Environmental Newsletters' *Recycled Products Business Letter*, in the public docket for the final CPG II. Environmental Newsletters, Inc. can be reached at 703 758–8436 for further information.

Finally, EPA is considering mechanisms to increase the electronic dissemination of information about the items designated in the CPG, such as a buy-recycled home page on the Internet. If the Agency decides to implement such mechanisms, we will provide public notice in the **Federal Register** in concert with future revisions to the CPG.

## VII. Economic Impact Analysis

### *A. Requirements of Executive Order 12866*

Executive Order 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create 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; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA estimates that the costs associated with today's rule is well below the $100 million threshold. To enable the Agency to evaluate the potential impact of today's action, EPA has prepared an Economic Impact Analysis (EIA), as discussed below. For more information on the estimated economic impact of today's rule, see the ''Economic Impact Analysis for the Final Comprehensive Procurement Guideline II.''

#### 1. Summary of Costs

EPA estimated that the annualized costs of the proposed rule to designate 13 items would fall in the range of $4.8 to $8.7 million. Because today's final rule designates 12 items, rather than 13 items, EPA revised the economic impact analysis to reflect the fact that fewer items are being designated than originally proposed.

As shown in Table 2 below, EPA estimates that the annualized costs of today's rule will range from $4.5 to $8.4 million, with costs being spread across all procuring agencies (i.e., Federal agencies, State and local agencies that use appropriated Federal funds to procure designated items, and government contractors). These costs are annualized over a 10-year period at a three percent discount rate. Because there is considerable uncertainty regarding several of the parameters that drive the costs, EPA conducted sensitivity analyses to identify the range of potential costs of today's rule. Thus, high-end and low-end estimates are presented along with the best estimate. The primary parameter affecting the range of cost estimates is the number of products each procuring agency is assumed to procure each year. Details of the costs associated with today's final rule are provided in the Economic Impact Analysis for this rule.

TABLE 2.—SUMMARY OF ANNUALIZED COSTS OF CPG II AMENDMENTS TO ALL PROCURING AGENCIES

| Procuring agency | Total annualized costs ($1000) | Best estimate total annualized costs ($1000) |
|---|---|---|
| Federal Agencies | 5,008–2,584 | 5,008 |
| States | 926–520 | 926 |
| Local Governments | 2,337–1,324 | 1,700 |
| Contractors | 81–27 | 54 |
| Total | 8,352–4,455 | 8,352 |

As a result of today's action, procuring agencies will be required to perform certain activities pursuant to RCRA section 6002, including rule review and implementation; estimation, certification, and verification of designated item procurement; and for Federal agencies, reporting and recordkeeping. The costs shown in Table 2 represent the estimated annualized costs associated with these activities. Table 2 also includes estimates for Federal agencies that will incur costs for specification revisions and affirmative procurement program modification. More details of the costs associated with today's rule are included in the Economic Impact Analysis.

With regard to possible impacts to business, including small businesses, there may be both positive and negative impacts to individual businesses. EPA anticipates that today's final rule will provide additional opportunities for recycling businesses to begin supplying recovered materials to manufacturers and products made from recovered materials to procuring agencies. In addition, other businesses, including small businesses, that do not directly contract with procuring agencies may be affected positively by the increased

demand for recovered materials. These include businesses involved in materials recovery programs and materials recycling. Municipalities that run recycling programs are also expected to benefit from increased demand for certain materials recovered from municipal solid waste.

EPA is unable to determine the number of businesses, including small businesses, that may be adversely impacted by today's final rule. It is possible that if a business that currently supplies products to a procuring agency uses virgin materials only, the amendments to the CPG may reduce its ability to compete for future contracts. However, the amendments to the CPG will not affect existing purchase orders, nor will it preclude businesses from adapting their product lines to meet new specifications or solicitation requirements for products containing recovered materials. Thus, many businesses, including small businesses, that market to procuring agencies have the option to adapt their product lines to meet specifications.

2. Product Cost

Another potential cost of today's action is the possible price differential between an item made with recovered materials and an equivalent item manufactured using virgin materials. The relative prices of recycled content products compared to prices of comparable virgin products vary. In many cases, recycled content products are less expensive than their virgin counterparts. In other cases, virgin products have lower prices than recycled content products. Many factors can affect the price of various products. For example, temporary fluctuations in the overall economy can create oversupplies of virgin products, leading to a decrease in prices for these items. Under RCRA section 6002(c), procuring agencies are not required to purchase a product containing recovered materials if it is only available at an unreasonable price. However, the decision to pay more or less for such a product is left to the procuring agency.

3. Summary of Benefits

EPA anticipates that today's final rule will result in increased opportunities for recycling and waste prevention (e.g., from reinking ribbons or repairing pallets). Waste prevention can reduce the nation's reliance on natural resources by reducing the amount of materials used in making products. Less raw materials use results in a commensurate reduction in energy use and a reduction in the generation and release of air and water pollutants associated with manufacturing. Additionally, waste prevention leads to a reduction in the environmental impacts of mining, harvesting, and other extraction processes.

Recycling can effect the more efficient use of natural resources. For many products, the use of recovered materials in manufacturing can result in significantly lower energy and material input costs than when virgin raw materials are used; reduce the generation and release of air and water pollutants often associated with manufacturing; and reduce the environmental impacts of mining, harvesting, and other extraction of natural resources. For example, according to information published by the Steel Recycling Institute, recycling one ton of steel saves nearly 11 million Btus of energy; 2,500 lbs. of ore; 1,000 lbs. of coal; and 40 lbs. of limestone. Recycling can also reduce greenhouse gas emissions associated with manufacturing new products. When compared to landfilling, recycling one ton of high density polyethylene, low density polyethylene, or polyethylene terephthalate plastic can reduce greenhouse gas emissions by up to 0.64 metric tons of carbon equivalent (MTCE). In addition to conserving non-renewable resources and reducing the environmental impacts associated with resource extraction and processing, recycling can also divert large amounts of materials from landfills, conserving increasingly valuable space for the management of materials that truly require disposal.

By purchasing products made from recovered materials, government agencies can increase opportunities for realizing these benefits. On a national and regional level, today's final rule can result in expanding and strengthening markets for materials diverted or recovered through public and private collection programs. Also, since many State and local governments, as well as private companies, reference EPA guidelines when purchasing designated items, this rule can result in increased purchase of recycled products, locally, regionally, and nationally and provide opportunities for businesses engaged in recycling activities.

*B. Unfunded Mandates Reform Act of 1995 and Consultation with State, Local, and Tribal Governments*

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that today's final rule does not include a Federal mandate that may result in estimated annualized costs of $100 million or more to either State or local governments in the aggregate, or to the private sector. To the extent enforceable duties arise as a result of this rule on State and local governments, they are exempt from inclusion as Federal inter-governmental mandates if such duties are conditions of Federal assistance. Even if they are not conditions of Federal assistance, such enforceable duties do not result in a significant regulatory action being imposed upon State and local governments since the estimated aggregate cost of compliance for them are not expected to exceed, at the maximum, $2.6 million annually. The cost of enforceable duties which may arise as a result of today's rule on the private sector are estimated not to exceed $54,000 annually. Thus, today's rule is not subject to the written statement requirement in sections 202 and 205 of the Act.

The newly designated items included in the CPG may give rise to additional obligations under section 6002(i) (requiring procuring agencies to adopt affirmative procurement program and to amend their specifications) for state and local governments. As noted above, the expense associated with any additional costs is not expected to exceed, at the maximum, $2.6 million annually. In compliance with E.O. 12875, which requires the involvement of State and local governments in the development of certain Federal regulatory actions,

EPA conducts a wide outreach effort and actively seeks the input of representatives of state and local governments in the process of developing its guidelines.

When EPA proposes to designate items in the CPG, information about the proposal is distributed to governmental organizations so that they can inform their members about the proposals and solicit their comments. These organizations include the U.S. Conference of Mayors, the National Association of Counties, the National Association of Towns and Townships, the National Association of State Purchasing Officials, and the American Association of State Highway and Transportation Officials. EPA also provides information to potentially affected entities through relevant recycling, solid waste, environmental, and industry publications. In addition, EPA's regional offices sponsor and participate in regional and state meetings at which information about proposed and final designations of items in the CPG is presented. Finally, EPA has sponsored buy-recycled education and outreach activities by organizations such as the U.S. Conference of Mayors, the Northeast Recycling Council, the Environmental Defense Fund, Keep America Beautiful, and the California Local Government Commission, whose target audience includes small governmental entities.

The requirements do not significantly affect small governments because they are subject to the same requirements as other entities whose duties result from today's rule. As discussed above, the expense associated with any additional costs to State and local governments, is not expected to exceed, at the maximum, $2.6 million annually. The requirements do not uniquely affect small governments because they have the same ability to purchase these designated items as other entities whose duties result from today's rule. Additionally, use of designated items affects small governments in the same manner as other such entities. Thus, any applicable requirements of section 203 have been satisfied.

*C. Impacted Entities*

RCRA section 6002 applies to procuring agencies that use at least a portion of Federal funds to procure over $10,000 worth of a designated product in a given year. EPA estimates that this rule would apply to 35 Federal agencies, all 56 states and territories and 1,900 local governments. EPA calculated the number of local entities that would be impacted based on information regarding the amount of Federal funds that are dispersed to specific counties. In addition, EPA assumed that 1,000 contractors may be affected. A description of this information is provided in the Economic Impact Analysis for today's rule.

*D. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act, provides that, whenever an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to public a general notice of proposed rulemaking, the agency must prepare a final regulatory flexibility analysis (FRFA). The agency must prepare an FRFA for a final rule unless the head of the agency certifies that it will not have a significant economic impact on a substantial number of small entities. The Administrator is today certifying, pursuant to section 605(b) of the RFA, that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare an FRFA.

The final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The RFA defines ''small entity'' to mean a small business, small organization or small governmental jurisdiction. EPA's action today in designating 12 new items that are or may be produced with recovered materials content may establish requirements applicable, in some cases, to small governmental jurisdictions and small businesses.

In the case of small entities which are small governmental jurisdictions, EPA has concluded that the rule will not have a significant economic impact. EPA concluded that no small government with a population of less than 50,000 is likely to incur costs associated with the designation of the 12 items because it is improbable that such jurisdictions will purchase more than $10,000 of any designated item. Consequently, section 6002 would not apply to their purchases of designated items. Moreover, there is no evidence that complying with the requirements of section 6002 would impose significant additional costs on the small governmental entity to comply in the event that a small governmental jurisdiction purchased more than $10,000 worth of a designated item. This is the case because in many instances items with recovered materials content may be less expensive than items produced from virgin material.

Similarly, EPA has concluded that the economic impact on small entities that are small businesses would not be significant. The CPG applies to small businesses that are ''procuring agencies.'' The potential economic impact of the CPG on small businesses that are ''procuring agencies'' is minimal.

RCRA section 6002 applies to a contractor with a Federal agency (or a state or local agency that is a procuring agency under Section 6002) when the contractor is purchasing a designated item, is using Federal money to do so, and exceeds the $10,000 threshold. There is an exception for purchases that are ''incidental to'' the purposes of the contract, i.e., not the direct result of the funds disbursement. For example, a courier service contractor is not required to purchase re-refined oil and retread tires for its fleets because purchases of these items are incidental to the purpose of the contract. Therefore, as a practical matter, there would be very limited circumstances when a contractor's status as a ''procuring agency'' for section 6002 purposes would impose additional costs on the contractor. Thus, for example, if the State or Federal agency is contracting with a supplier to obtain a designated item, then the cost of the designated item (and any associated costs of meeting section 6002 requirements) to the supplier presumably will be fully recovered in the contract price. Any costs to small businesses that are ''procuring agencies'' (and subject to section 6002) are likely to be insubstantial. Even if a small business is required to purchase other items with recovered materials content, such items may be less expensive than items with virgin content.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. § 605(b), I hereby certify that today's designations will not have a significant economic impact on a substantial number of small entities. Because today's action does not impose significant new burdens on small entities, this rule does not require a final regulatory flexibility analysis.

The basis for EPA's conclusions that today's rule will not have a significant impact on a substantial number of small entities is described in greater detail in the ''Economic Impact Analysis'' for the rule which is located in the RCRA public docket.

While not a factor relevant to determining whether the rule will have a significant impact for RFA purposes, EPA believes that the effect of today's rule would be to provide positive opportunities to businesses engaged in recycling and the manufacture of recycled products. Purchase and use of recycled products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies. Technological innovation associated with the use of recovered materials can translate into economic growth and increased industry competitiveness worldwide, thereby, creating opportunities for small entities.

## VIII. Supporting Information and Accessing Internet

The index of supporting materials for today's final CPG II is available in the RCRA Information Center (RIC) and on the Internet. The address and telephone number of the RIC are provided in ADDRESSES above. The index and the following supporting materials are available in the RIC and on the Internet:

''Final CPG II/RMAN II Background Document,'' U.S. EPA, Office of Solid Waste and Emergency Response, September 1997.

Copies of the following supporting materials are available for viewing at the RIC only:

''Economic Impact Analysis for the Final Comprehensive Procurement Guideline II,'' U.S. Environmental Protection Agency, August 1997.

''Ex Parte Meeting Notes, Meeting Between U.S. Environmental Protection Agency and National Paint & Coatings Association, June 17, 1997.''

''Letter to Dana F. Arnold, U.S. Environmental Protection Agency, from National Paint & Coatings Association, July 28, 1997.''

''Telephone Notes, Testing of Reprocessed/consolidated Latex Paint, Between Dana Arnold, U.S. Environmental Protection Agency and Sue Drozdz, Army Corps of Engineers, May 19, 1997.''

''National Association of State Purchasing Officials, 1996–1997 Membership Roster.''

Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/non-hw/index.htm#procure.

FTP: ftp.epa/gov

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## IX. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 247

Environmental protection, Channelizers, Consolidated latex paint, Construction products, Delineators, Flexible delineators, Garden hose, Garden edging, Government procurement, Laminated paperboard, Landscaping products, Latex paint, Lawn edging, Office products, Pallets, Park and recreation products, Parking stops, Plastic fencing, Printer ribbons, Procurement guidelines, Recycling, Reprocessed latex paint, Restroom dividers/partitions, Shower dividers/partitions, Soaker hose, Structural fiberboard, Temporary traffic control devices, Transportation products.

Dated: October 8, 1997.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, title 40 , chapter I of the Code of Federal Regulations, part 247, is amended as set forth below.

## PART 247—COMPREHENSIVE PROCUREMENT GUIDELINE FOR PRODUCTS CONTAINING RECOVERED MATERIALS

1. The authority citation for part 247 continues to read as follows:

**Authority:** 24 U.S.C. 6912(a) and 6962; E.O. 12873, 58 FR 54911.

2. In § 247.2, paragraph (d) is added to read as follows:

### § 247.2 Applicability.

* * * * *

(d) RCRA section 6002(c)(1) requires procuring agencies to procure designated items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines. Procuring agencies may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

3. In § 247.3, the following definitions are added alphabetically:

### §247.3 Definitions.

* * * * *

*Channelizers* means highly visible barrels or drums that can be positioned to direct traffic through detours;

*Delineator* means a highly visible pavement marker that can be positioned to direct traffic or define boundaries;

* * * * *

*Flexible delineator* means a highly visible marker that can be positioned to direct traffic or define boundaries and that will flex if struck by a vehicle to prevent damage to the vehicle or the delineator;

* * * * *

*Garden hose* means a flexible tubing that conducts water to a specific location;

* * * * *

*Latex paint* means a water-based decorative or protective covering having a latex binder;

*Lawn edging* means a barrier used between lawns and landscaped areas or garden beds to prevent grass roots or weeds from spreading to the landscaped areas;

* * * * *

*Pallet* means a portable platform for storing or moving cargo or freight;

* * * * *

*Parking stop* means a barrier used to mark parking spaces and keep parked vehicles from rolling beyond a designated parking area;

* * * * *

*Plastic fencing* means a barrier with an open-weave pattern that can be used to control drifting snow or sand by restricting the force of wind and to provide a warning or barrier in construction and other areas;

* * * * *

*Printer ribbon* means a nylon fabric designed to hold ink and used in dot matrix and other types of impact printers;

* * * * *

*Restroom divider/partition* means a barrier used to provide privacy in public restroom facilities;

* * * * *

*Shower divider/partition* means a water-proof barrier used to provide privacy in public shower facilities;

*Soaker hose* means a perforated flexible tubing that is used to deliver gentle irrigation to plants;

* * * * *

4. Section 247.12 is amended by adding new paragraphs (f) and (g) to read as follows:

**§ 247.12 Construction products.**

* * * * *

(f) Shower and restroom dividers/partitions containing recovered plastic or steel.

(g)(1) Consolidated latex paint used for covering graffiti; and

(2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.

5. Section 247.13 is amended by redesignating the existing text as paragraph (a) and by adding new paragraphs (b), (c), (d), and (e) to read as follows:

**§ 247.13 Transportation products.**

* * * * *

(b) Parking stops made from concrete or containing recovered plastic or rubber.

(c) Channelizers containing recovered plastic or rubber.

(d) Delineators containing recovered plastic, rubber, or steel.

(e) Flexible delineators containing recovered plastic.

6. Section 247.14 is amended by redesignating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

**§ 247.14 Park and recreation products.**

* * * * *

(b) Plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.

7. In § 247.15, new paragraphs (c) and (d) are added to read as follows:

**§ 247.15 Landscaping products.**

* * * * *

(c) Garden and soaker hoses containing recovered plastic or rubber.

(d) Lawn and garden edging containing recovered plastic or rubber.

8. In § 247.16, new paragraphs (f) and (g) are added to read as follows:

**§ 247.16 Non-paper office products.**

* * * * *

(f) Printer ribbons.

(g) Plastic envelopes.

9. Section 247.17 is revised to read as follows:

**§ 247.17 Miscellaneous products.**

(a) Pallets containing recovered wood, plastic, or paperboard.

(b) (Reserved)

[FR Doc. 97–29734 Filed 11–12–97; 8:45 am]

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federal register

Thursday
November 13, 1997

# Part IV

# Environmental Protection Agency

## Recovered Materials Advisory Notice II; Notice of Availability

## ENVIRONMENTAL PROTECTION AGENCY

**[SWH–FRL–5909–7]**

## Recovered Materials Advisory Notice II

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Availability of Final Document.

**SUMMARY:** The Environmental Protection Agency is providing notice of the availability of the final Recovered Materials Advisory Notice II (RMAN II) and supporting materials. The final RMAN II contains EPA's recommendations for purchasing 12 items designated in the final Comprehensive Procurement Guideline II, which is published elsewhere in today's **Federal Register**. This action will promote recycling by using government purchasing to expand markets for recovered materials. Under section 6002 of the Resource Conservation and Recovery Act of 1976, EPA designates items that are or can be made with recovered materials and provides recommendations for the procurement of these items. The 12 items for which EPA is making recommendations are shower and restroom dividers/partitions, consolidated and reprocessed latex paint for specified uses, parking stops, channelizers, delineators, flexible delineators, plastic fencing for specified uses, garden and soaker hoses, lawn and garden edging, printer ribbons, plastic envelopes, and pallets. The final RMAN II contains recommended recovered materials content levels for these items and other purchasing recommendations. In addition, today's final RMAN II clarifies recommendations for floor tiles previously made in a May 1, 1995 RMAN (60 FR 21392).

**EFFECTIVE DATES:** The recommendations for purchasing the 12 newly-designated items are effective November 13, 1998. The clarifications to the recommendations for purchasing floor tiles are effective upon publication.

**ADDRESSES:** The public docket for this notice is Docket F–97-CP2F-FFFFF. Documents related to today's notice are available for viewing in the RCRA Information Center (RIC), which is located at U.S. Environmental Protection Agency, Crystal Gateway One, 1235 Jefferson Davis Highway, Ground Floor, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See Section V of the ''Supplementary Information'' section below for information on accessing the documents electronically.

**FOR FURTHER INFORMATION CONTACT:** *General procurement guidelines information:* RCRA Hotline at (800) 424–9346, TDD (800) 553-7672 (hearing impaired) or, in the Washington, DC area at (703) 412–9810 or TDD (703) 412-3323.

*Technical information on individual item recommendations:* For paper and paper products, vehicular products, construction products, non-paper office products, and pallets: Dana Arnold, (703) 308–7279; for landscaping products, transportation products, and park and recreation products: Terry Grist, (703) 308–7257.

**SUPPLEMENTARY INFORMATION:**

Preamble Outline

I. Authority
II. Background
III. Definitions
IV. Agency's Response to Comments
A. Ink Jet Cartridges
B. Comments on Other Items
V. Supporting Information and Accessing Internet

### I. Authority

The Recovered Materials Advisory Notice II (RMAN II) is published under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6912(a) and 6962; and Executive Order 12873 (58 FR 54911, October 22, 1993).

### II. Background

Section 6002 of RCRA establishes a Federal buy-recycled program. RCRA section 6002(e) requires EPA to (1) designate items that are or can be produced with recovered materials and (2) prepare guidelines to assist procuring agencies in complying with affirmative procurement requirements set forth in paragraphs (c), (d), and (i) of section 6002. Once EPA has designated an item, section 6002 requires that any procuring agency using appropriated Federal funds to procure that item must purchase it containing recovered materials to the maximum extent practicable. For the purposes of RCRA section 6002, procuring agencies include the following: (1) any Federal agency; (2) any State or local agencies using appropriated Federal funds for a procurement; and (3) any contractors with these agencies (with respect to work performed under the contract). The requirements of section 6002 apply to such procuring agencies only when procuring a designated item where the price of the item exceeds $10,000 or when the quantity of the item, or functionally equivalent items, purchased in the previous year exceeded $10,000.

Executive Order 12873 (58 FR 54911, October 22, 1993) directs EPA to designate items in a Comprehensive Procurement Guideline (CPG) and publish guidance that contains EPA's recommended recovered materials content levels for the designated items in Recovered Materials Advisory Notices (RMAN). The Executive Order further directs EPA to update the CPG annually and the RMAN periodically to reflect changes in market conditions. EPA codifies the CPG designations in the Code of Federal Regulations (CFR), but, because the recommendations are guidance, the RMAN is not codified in the CFR. This process enables EPA to make timely revisions to its recommendations in response to changes in a product's availability or recovered materials content.

EPA issued the CPG I and RMAN I on May 1, 1995 (60 FR 21370 and 21386, respectively). CPG I designated 19 items and consolidated five previous item designations made in earlier EPA procurement guidelines, and RMAN I recommended purchasing practices for these 24 items. On November 7, 1996, EPA published CPG II (61 FR 57747), which proposed to designate an additional 13 items. EPA concurrently published a draft RMAN II (61 FR 57759). The 13 items proposed for designation were: shower and restroom dividers, latex paint, parking stops, channelizers, delineators, flexible delineators, snow fencing, garden and soaker hoses, lawn and garden edging, printer ribbons, ink jet cartridges, plastic envelopes, and pallets. The draft RMAN II also provided clarification of EPA's 1995 recommendations for purchasing floor tiles containing recovered materials. In today's final RMAN II, EPA is publishing recommendations for 12 of the 13 items, as well as the floor tiles clarification. For reasons discussed in subsection A below, EPA has decided not to designate ink jet cartridges and, therefore, is not publishing draft recommendations for purchasing this item.

EPA, once again, wants to stress that the recommendations in its RMAN are just that—recommendations and guidance to procuring agencies in fulfilling their obligations under section 6002. The designation of an item as one

that is or can be manufactured with recovered materials and the inclusions of recommended content levels for an item in an RMAN do not compel the procurement of an item when it is not suitable for an agency's intended purpose. Section 6002 is explicit in this regard when it authorizes a procuring agency not to procure a designated item which ''fails to meet the performance standards set forth in the applicable specification or fails to meet the reasonable performance standards of the procuring agencies.'' Section 6002(1)(B), 42 U.S.C. 6962(c)(B).

Thus, for example, in the final CPG II published elsewhere in today's **Federal Register**, EPA is designating shower and restroom dividers/partitions as items that are or can be produced with recovered materials. The Agency's research shows that these items are available in either steel or plastic containing recovered materials. However, the mere fact that these items are available containing recovered materials does not require the procurement of steel or plastic dividers/partitions in every circumstance. The choice of appropriate materials used in construction remains with building engineers and architects. The effect of designation (and section 6002) is simply to require the purchase of items with recovered materials where consistent with the purpose for which the item is to be used. Procuring agencies remain free to procure dividers/partitions made of materials other than steel or plastic (e.g., wood) where the design specifications call for other materials.

## III. Definitions

Today's final RMAN II recommends postconsumer or recovered materials content levels at which EPA believes the designated items are generally available. For shower and restroom dividers/partitions, plastic fencing, lawn and garden edging, and plastic envelopes, the RMAN II recommends two-part content levels—a postconsumer recovered materials component and a total recovered materials component. In these instances, EPA found that both types of materials were being used to manufacture these products. Recommending only postconsumer content levels would be contrary to the RCRA mandate to maximize the use of recovered materials because it would fail to acknowledge the contribution to solid waste management made by manufacturers using other recovered materials as feedstock. The terms ''recovered materials'' and ''postconsumer materials'' are defined in the CPG at 40 CFR 247.3. These definitions are repeated in this notice as a reference for the convenience of the reader.

*Postconsumer materials* means a material or finished product that has served its intended end use and has been diverted or recovered from waste destined for disposal, having completed its life as a consumer item. Postconsumer material is part of the broader category of recovered materials.

*Recovered materials* means waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly used within an original manufacturing process.

## IV. Agency's Response to Public Comments

### *A. Ink Jet Cartridges*

EPA received comments opposing the proposed designation of ink jet cartridges. These comments raised solid waste, performance, quality, availability, and patent and trademark concerns. After considering the information submitted by commenters, EPA tentatively concluded that there was insufficient evidence to support a designation of ink jet cartridges at this time. On April 14, 1997, EPA published a Notice of Data Availability in the **Federal Register** (62 FR 18072) in order to notify interested parties of the tentative decision not to designate ink jet cartridges, summarize the information available to the Agency, and request further public comment.

EPA received only two responses to the April 14 notice—one from a vendor of ink jet refilling equipment and additional information from one of the original commenters. The vendor appears to have promising technology for resolving many of the performance and solid waste issues raised by commenters. The vendor did not, however, submit sufficient information to change EPA's earlier conclusion that there is insufficient information to support designating ink jet cartridges at this time. Therefore, EPA is not designating ink jet cartridges in the final CPG II published elsewhere in today's **Federal Register**. EPA also is deleting the recommendations for purchasing ink jet cartridges from today's final RMAN II. EPA will continue to monitor developments in ink jet cartridge and refilling/remanufacturing technology and will consider designating ink jet cartridges in the future.

### *B. Comments on Other Items*

EPA received only a few comments on the draft RMAN II. One commenter recommended that EPA refer to shower and restroom dividers as ''dividers/partitions.'' After researching common industry terminology, EPA revised the term in the final CPG II and is using the term ''dividers/partitions'' in today's final RMAN II.

Commenters also recommended revisions to the recovered materials content recommendations for steel shower and restroom dividers, white and other light-colored reprocessed latex paints, and plastic pallets. Based on the information provided by these commenters and additional research, EPA revised the recommendations for these items in today's final RMAN II. EPA revised the steel content recommendations, added content recommendations for white and other light-colored reprocessed latex paint, and distinguished between plastic lumber pallets and thermoset plastic pallets in recommending content levels for plastic pallets.

In addition, in the final CPG II published in the final rules section of today's **Federal Register**, EPA revised the latex paint designation from the broad category ''latex paint'' to a more specific designation of ''consolidated latex paint used for covering graffiti and reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.'' Because the more specific designation includes the applications that EPA previously had recommended in the draft RMAN II, EPA has deleted those recommendations from Section C–7 of the final RMAN II. EPA also added a note to the table of recommended content levels for reprocessed and consolidated latex paint informing agencies that the recommendations applied to reprocessed and consolidated latex paints used for the designated applications.

Similarly, in today's final CPG II, EPA revised the snow fencing designation to ''plastic fencing containing recovered plastic for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.'' In the final RMAN II, EPA added information about specifications for plastic fencing used for warning and safety barriers.

Commenters also provided additional information about specifications and available sources of the designated products. These comments have been incorporated into today's final RMAN II.

A summary of all of the comments and the Agency's response are provided in the document entitled ''Final CPG II/RMAN II Background Document.'' A copy of this document has been placed in the docket for the final RMAN II. See ADDRESSES above for information

about reviewing documents in the public docket.

## V. Supporting Information and Accessing Internet

The index of supporting materials for today's final RMAN II is available in the RCRA Information Center (RIC) and on the Internet. The address and telephone number of the RIC are provided in ADDRESSES above. The index and the following supporting materials are available on the Internet:

''Final CPG II/RMAN II Background Document,'' U.S. EPA, Office of Solid Waste and Emergency Response, September 1997.

Copies of the following supporting materials are available for viewing at the RIC only:

''Ex Parte Meeting Notes, Meeting Between U.S. Environmental Protection Agency and National Paint & Coatings Association, June 17, 1997.''

''Letter to Dana F. Arnold, U.S. Environmental Protection Agency, from National Paint & Coatings Association, July 28, 1997.''

Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/non-hw/index.htm#ιprocure.
FTP: ftp.epa/gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer.

Dated: October 8, 1997.

**Carol M. Browner,**

*Administrator.*

## Recovered Materials Advisory Notice II

The following represents EPA's recommendations to procuring agencies for purchasing the items designated today in the Comprehensive Procurement Guideline II in compliance with section 6002 of the Resource Conservation and Recovery Act (RCRA). These recommendations are intended to be used in conjunction with the RMAN issued on May 1, 1995 (60 FR 21386) and the Paper Products RMAN issued on May 29, 1996 (61 FR 26985). Refer to the May 1, 1995 RMAN for definitions, general recommendations for affirmative procurement programs, and recommendations for previously designated items.

Contents

I. General Recommendations
II. Specific Recommendations for Procurement of Designated Items
Part C—Construction Products
Section C–5—Floor Tiles and Patio Blocks Containing Recovered Plastic or Rubber
Section C–6—Shower and Restroom Dividers/Partitions Containing Recovered Plastic or Steel
Section C–7—Reprocessed and Consolidated Latex Paints for Specified Uses
Part D—Transportation Products
Section D–2—Parking Stops Made from Concrete or Containing Recovered Plastic or Rubber
Section D–3—Channelizers, Delineators, and Flexible Delineators Containing Recovered Plastic, Rubber, or Steel
Part E—Park and Recreation Products
Section E–2—Plastic Fencing Containing Recovered Plastic for Specified Uses
Part F—Landscaping Products
Section F–3—Garden and Soaker Hoses Containing Recovered Plastic or Rubber
Section F–4—Lawn and Garden Edging Containing Recovered Plastic or Rubber
Part G—Non-Paper Office Products
Section G–6—Printer Ribbons
Section G–7—Plastic Envelopes
Part H—Miscellaneous Products
Section H–1—Pallets Containing Recovered Wood, Plastic, or Paperboard

### I. General Recommendations

(See the May 1, 1995 RMAN for EPA's general recommendations for definitions, specifications, and affirmative procurement programs.)

### II. Specific Recommendations for Procurement of Designated Items

(See the May 1, 1995 RMAN and the May 29, 1996 Paper Products RMAN for recommendations for purchasing previously-designated items.)

*Part C—Construction Products*

**Note:** Refer to Section E–2—Plastic Fencing Containing Recovered Plastic for Specified Uses and to Part F—Landscaping Products for additional items that can be used in construction applications.

Section C–5—Floor Tiles and Patio Blocks Containing Recovered Plastic or Rubber

**Note:** Table C–5 contains a clarification of EPA's recommendations for floor tiles. Table C–5 originally was published in the May 1, 1995 RMAN and contained EPA's recommendations for patio blocks, as well as recommendations for floor tiles. For the convenience of procuring agencies and other interested parties, EPA is republishing all of Section C–5, including Table C–5, with both the floor tiles and patio blocks recommendations. Readers should note that no change has been made to the recommendations for patio blocks.

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table C–5, procuring agencies establish minimum content standards for use in purchasing floor tiles and patio blocks. The recommended use of floor tiles containing recovered materials is limited to the applications cited in Table C–5.

TABLE C–5.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR FLOOR TILES AND PATIO BLOCKS CONTAINING RECOVERED PLASTIC OR RUBBER

| Product | Material | Postconsumer materials (%) | Total recovered materials content (%) |
|---|---|---|---|
| Patio Blocks | Rubber or rubber blends | 90–100 | —— |
| | Plastic or plastic Blends | —— | 90–100 |
| Floor Tiles (heavy duty/commercial use) | Rubber | 90–100 | —— |
| | Plastic | —— | 90–100 |

NOTES: The use of floor tiles with recovered materials content may be appropriate only for specialty purpose uses (e.g., raised, open-web tiles for drainage on school kitchen flooring). Such specialty purpose uses involve limited flooring areas where grease, tar, snow, ice, wetness or similar substances or conditions are likely to be present. Thus, EPA has no recovered materials content level recommendations for floor tiles made with recovered materials for standard office or more general purpose uses.

The recommended recovered materials content levels are based on dry weight of the raw materials, exclusive of any additives such as adhesives, binders, or coloring agent. EPA's recommendation does not preclude agencies from purchasing floor tiles or patio blocks manufactured from other materials. It simply recommends that procuring agencies, when purchasing floor tiles or patio blocks made from rubber or plastic, purchase these items made from recovered materials when these items meet applicable specifications and performance requirements.

Section C–6—Shower and Restroom Dividers/Partitions Containing Recovered Plastic or Steel

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table C–6, procuring agencies establish minimum content standards for use in purchasing shower and restroom dividers/partitions.

TABLE C–6.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR SHOWER AND RESTROOM DIVIDERS/PARTITIONS CONTAINING RECOVERED PLASTIC OR STEEL

| Material | Postconsumer materials (%) | Total recovered materials content (%) |
|---|---|---|
| Steel | 16 | 20–30 |
| Plastic | 20–100 | 20–100 |

NOTE: EPA's recommendation does not preclude agencies from purchasing shower and restroom dividers/partitions manufactured from another material, such as wood. It simply recommends that procuring agencies, when purchasing shower and restroom dividers/partitions made from plastic or steel, purchase these items made from recovered materials when these items meet applicable specifications and performance requirements.

*Specifications:* EPA recommends that procuring agencies use the following specifications when procuring shower and restroom dividers/partitions:

(1) The American Institute of Architects (AIA) has issued guidance for specifying construction materials, including plastic and steel dividers/partitions. The AIA guidance is known throughout the construction industry as the ''Masterspec'' and is available through the U.S. General Services Administration (GSA).

(2) U.S. Army Corps of Engineers' Guide Specification CEGS–10160, Toilet Partitions.

Section C–7—Reprocessed and Consolidated Latex Paints for Specified Uses

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table C–7, procuring agencies establish minimum content standards for use in purchasing reprocessed and consolidated latex paints.

TABLE C–7.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR REPROCESSED AND CONSOLIDATED LATEX PAINTS

| Product | Postconsumer latex paint (%) |
|---|---|
| Reprocessed Latex Paint. | |
| White, off-white, and pastel colors | 20 |
| Grey, brown, earthtones, and other dark colors | 50–99 |
| Consolidated latex paint | 100 |

NOTES: EPA's recommendations apply to reprocessed latex paints used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces, and to consolidated latex paints used for covering graffiti, where color and consistency of performance are not primary concerns.

EPA's recommendation does not preclude agencies from purchasing paints manufactured from other, non-latex materials, such as oil-based paints. It simply recommends that procuring agencies, when purchasing latex paints, purchase these items made from postconsumer recovered materials when these items meet applicable specifications and performance requirements.

Reprocessed and consolidated latex paints are available to Federal agencies through the GSA Federal Supply Service by ordering the following stock numbers:

| National Stock Numbers | Colors FEDSTD 595B Color No. |
|---|---|
| **Semi-gloss** | |
| 8010–01–380–2400 | Beige #27769 |
| 8010–01–380–2405 | Blue-gray #26420 |
| 8010–01–380–2438 | Sand-green #26307 |
| 8010–01–380–2382 | Sand-gray #26306 |
| 8010–01–380–2331 | Gray #26134 |
| 8010–01–380–2429 | Dark gray #26081 |
| 8010–01–380–2338 | Green #24491 |
| 8010–01–380–2379 | Sand #23690 |
| 8010–01–380–2332 | Tan #23617 |
| 8010–01–380–2417 | Tan #20372 |
| 8010–01–380–2353 | Sand-yellow #20318 |
| 8010–01–380–2363 | Dark brown #20140 |
| 8010–01–380–2447 | Red brown #20100 |
| **Flat** | |
| 8010–01–380–3293 | White #37886 |
| 8010–01–380–2425 | Beige #37769 |

| National Stock Numbers | Colors FEDSTD 595B Color No. |
|---|---|
| 8010–01–380–2442 | Blue-gray #36650 |
| 8010–01–380–2381 | Gray #36134 |
| 8010–01–380–2367 | Dark gray #36081 |
| 8010–01–380–2396 | Blue #35526 |
| 8010–01–380–2366 | Green #34491 |
| 8010–01–380–2421 | Sand #33690 |
| 8010–01–380–2351 | Tan #33617 |
| 8010–01–380–2416 | Dark brown #30140 |

The GSA Federal Supply Service has a free paint brochure available by calling 1–800–241–RAIN or FAX requests to (206) 931–7544.

*Specifications:* (1) EPA recommends that procuring agencies use GSA specification TT–P–2846, Paint, Latex (Recycled with Post-Consumer Waste). This specification applies to interior, exterior, and interior/exterior latex paints intended for use on wallboard, concrete, stucco, masonry, and wood.

(2) GSA specification TT–P–2846 requires high content levels (50–90% postconsumer paint). EPA recommends that procuring agencies refer to the requirements and quality assurance provisions in TT–P–2846 when purchasing reprocessed latex paint containing lower levels of postconsumer paint (e.g., whites, off-whites, and pastel colors).

*Part D—Transportation Products*

Section D–2—Parking Stops Made from Concrete or Containing Recovered Plastic or Rubber

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table D–2, procuring agencies establish minimum content standards for use in purchasing parking stops.

TABLE D–2.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PARKING STOPS MADE FROM CONCRETE OR CONTAINING RECOVERED PLASTIC OR RUBBER—Continued

| Material | Postconsumer content (%) | Recovered materials content (%) |
|---|---|---|
| Plastic and/or rubber | 100 | ----- |
| Concrete containing coal fly ash | ----- | 20–40 |
| Concrete containing GGBF slag | ----- | 25–70 |

NOTES: Parking stops made with recovered plastics may also include other recovered materials such as sawdust, wood, or fiberglass. The percentage of these materials contained in the product would also count toward the recovered materials content level of the parking stops.

ASTM specification C595M–95 Standard Specification for Blended Hydraulic Cements specifies the appropriate mix design, including recovered materials content, for concrete containing coal fly ash and GGBF slag.

EPA's recommendation does not preclude a procuring agency from purchasing parking stops manufactured from another material. It simply requires that a procuring agency, when purchasing concrete parking stops or parking stops made with plastic or rubber, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

Section D–3—Channelizers, Delineators, and Flexible Delineators Containing Recovered Plastic, Rubber, or Steel

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table D–3, procuring agencies establish minimum content standards for use in purchasing channelizers, delineators, and flexible delineators.

TABLE D–3.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR CHANNELIZERS, DELINEATORS, AND FLEXIBLE DELINEATORS CONTAINING RECOVERED PLASTIC, RUBBER, OR STEEL

| Product | Material | Postconsumer content (%) |
|---|---|---|
| Channelizers | Plastic | 25–95 |
| | Rubber (base only) | 100 |
| Delineators | Plastic | 25–90 |
| | Rubber (base only) | 100 |
| | Steel (base only) | 25–50 |
| Flexible delineators | Plastic | 25–85 |

NOTE: EPA's recommendation does not preclude a procuring agency from purchasing channelizers, delineators, or flexible delineators manufactured from another material. It simply requires that a procuring agency, when purchasing these items made from rubber, plastic, or steel, purchase them made with recovered materials when these items meet applicable specifications and performance requirements.

*Specifications:* EPA recommends that procuring agencies use the following specifications when procuring channelizers, delineators, and flexible delineators:

(1) The Federal Highway Administration's *Manual on Uniform Traffic Control Devices* contains specifications for the size, shape, mounting, and placement of temporary traffic control devices.

(2) The States of Florida and North Carolina have specifications that require the use of recovered materials in their flexible delineators. The California Department of Transportation (CALTRANS) has specifications for ''Drivable

Flexible Plastic Guide Marker and Clearance Marker Posts.'' A copy of these specifications are available from the RCRA Hotline at 1–800-424–9346.

*Part E—Park and Recreation Products*

Section E–2—Plastic Fencing Containing Recovered Plastic for Specified Uses

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table E–2, procuring agencies establish minimum content standards for use in purchasing plastic fencing for use in controlling snow or sand drifting and as a warning/safety barrier in construction or other applications.

TABLE E–2.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR FENCING CONTAINING RECOVERED PLASTIC

| Material | Postconsumer content (%) | Total recovered materials content (%) |
|---|---|---|
| Plastic | 60–100 | 90–100 |

NOTE: EPA's recommendation does not preclude a procuring agency from purchasing fencing manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing plastic fencing, purchase this item made with recovered materials when this item meets applicable specifications and performance requirements.

*Specifications:* The State of New York developed a specification for orange-colored plastic fencing used for snow barriers, warning barriers, and safety barriers, but discontinued its use because the state did not purchase enough fencing to warrant maintaining the specification. Height varied, depending on application, from four to six feet. Weight varied from 17 pounds per 100 foot section for warning barriers to 48 pounds per 100 foot section for snow fencing to 66 pounds per 100 foot section for six-foot safety barrier fencing. The New York specification also addressed mesh size, porosity, service temperature range, and strength for each application. A copy of this specification is available from the RCRA Hotline by calling 1–800–424–9346.

*Part F—Landscaping Products*

Section F–3—Garden and Soaker Hoses Containing Recovered Plastic or Rubber

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table F–3, procuring agencies establish minimum content standards for use in purchasing garden and soaker hoses.

TABLE F–3.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR GARDEN AND SOAKER HOSES CONTAINING RECOVERED PLASTIC OR RUBBER

| Product | Material | Postconsumer content (%) |
|---|---|---|
| Garden hose | Rubber and/or plastic | 60–65 |
| Soaker hose | Rubber and/or plastic | 60–70 |

NOTES: EPA's recommendation does not preclude a procuring agency from purchasing garden and soaker hoses manufactured from another material. It simply requires that a procuring agency, when purchasing garden and soaker hoses made from plastic or rubber, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

The Green Seal specification for watering hoses includes a 50 percent postconsumer content level. However, all companies from which EPA obtained information manufacture garden and/or soaker hoses with at least 60 percent postconsumer content.

*Specifications:* EPA recommends that procuring agencies use the following specifications when procuring garden and soaker hoses:

(1) ASTM D3901 Consumer Specification for Garden Hose. The specification addresses physical and performance characteristics (pressure, tensile, and ripping strength tests) and states that the material components are to be agreed upon by the purchaser and seller.

(2) Green Seal GC–2: Watering Hoses. The standard calls for the use of 50 percent postconsumer rubber material in garden hoses and 65 percent postconsumer rubber material in soaker hoses. EPA recommends that, when purchasing garden hoses, procuring agencies reference the technical requirements of this specification but set a higher content standard. Section F–4—Lawn and Garden Edging Containing Recovered Plastic or Rubber

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table F–4, procuring agencies establish minimum content standards for use in purchasing lawn and garden edging.

TABLE F–4.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR LAWN AND GARDEN EDGING CONTAINING RECOVERED PLASTIC OR RUBBER

| Material | Postconsumer content (%) | Total recovered materials content (%) |
|---|---|---|
| Plastic and/or rubber | 30–100 | 30–100 |

NOTES: EPA's recommendation does not preclude a procuring agency from purchasing lawn and garden edging manufactured from another material, such as wood. It simply requires that a procuring agency, when purchasing lawn and garden edging made from plastic and/or rubber, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

*Part G—Non-Paper Office Products*

Section G–6—Printer Ribbons

*Preference Program:* Minimum content standards are not appropriate for remanufactured items, such as printer ribbons, because a core part of the item is reused in the new product, even though certain components of a printer ribbon may contain recovered materials. In lieu of content standards, EPA recommends that procuring agencies adopt one or both of the following approaches: (1) procure printer ribbon reinking or reloading services or (2) procure reinked or reloaded printer ribbons. EPA further recommends that procuring agencies establish policies that give priority to reinking or reloading their expended printer ribbons. If reinking and reloading services are unavailable, procuring agencies should attempt to purchase reinked or reloaded printer ribbons. GSA offers remanufactured printer ribbons on the New Item Introductory Schedule (NIIS).

*Specifications:* The State of Alabama has a specification for reinked ribbons which requires the ribbons to be vacuum cleaned, reinked, and rewound to proper tension. A copy of this specification is available from the RCRA Hotline at 1–800–424–9346.

Section G–7—Plastic Envelopes

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table G–7, procuring agencies establish minimum content standards for use in purchasing plastic envelopes.

TABLE G–7.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PLASTIC ENVELOPES

| Material | Postconsumer content (%) | Total recovered materials content (%) |
|---|---|---|
| Plastic | 25 | 25–35 |

NOTE: EPA's recommendation does not preclude a procuring agency from purchasing envelopes manufactured from another material, such as paper. It simply requires that a procuring agency, when purchasing envelopes made from plastic, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements. Procuring agencies should note, however, that paper envelopes fall within the scope of EPA's previous designation of paper and paper products. EPA issued postconsumer and recovered materials content recommendations for paper products, including envelopes, in the Paper Products RMAN, which was issued in the FEDERAL REGISTER on May 29, 1996 at 61 FR 26985. A copy of the Paper Products RMAN is available from the RCRA Hotline at 1–800–424–9346 and electronically via EPA's Public Access Server at http://www.epa.gov/fedrgstr/search.htm.

*Specifications:* (1) GSA, the Government Printing Office (GPO), and the U.S. Postal Service (USPS) all currently purchase plastic envelopes made from Tyvek® containing recovered HDPE. GSA specifies ''DuPont Tyvek® or equal.'' USPS requires ''DuPont Tyvek®.'' GPO requires ''white spunbonded polyethylene with the characteristics of DuPont's product no. 1073;'' the title of the solicitation, however, states ''Tyvek® envelopes or similar.''

(2) The Navy requests that plastic envelopes not be sent to ships in order to minimize onboard disposal of plastic.

*Part H—Miscellaneous Products*

Section H–1—Pallets Containing Recovered Wood, Plastic, or Paperboard

*Preference Program:* EPA recommends that, based on the recovered materials content levels shown in Table H–1, procuring agencies establish minimum content standards for use in purchasing pallets.

TABLE H–1.—RECOMMENDED RECOVERED MATERIALS CONTENT LEVELS FOR PALLETS CONTAINING RECOVERED WOOD, PLASTIC, OR PAPERBOARD

| Product | Material | Postconsumer content (%) |
|---|---|---|
| Wooden pallets | Wood | 95–100 |
| Plastic pallets: | | |
| Plastic lumber | Plastic | 100 |
| Thermoformed | Plastic | 25–50 |
| Paperboard pallets | Paperboard | 50 |

NOTE: EPA's recommendation does not preclude a procuring agency from purchasing pallets manufactured from another material. It simply requires that a procuring agency, when purchasing pallets made from wood, plastic, or paperboard, purchase these items made with recovered materials when these items meet applicable specifications and performance requirements.

*Specifications:* EPA recommends that procuring agencies use the following specifications when procuring pallets:

(1) The Grocery Manufacturers of America issued a widely used standard for 48 by 40-inch stringer pallets known as the ''GMA spec.'' A copy of this specification is available from the RCRA Hotline at 1–800–424–9346.

(2) The National Wooden Pallet and Container Association is developing a standard through the American National Standards Institute (ANSI) for repairable 48 by 40-inch lumber-deck pallets. Contact NWPCA at (703) 527–7667 for current information about the availability of this standard.

(3) U.S. Postal Service specification USPS–P–1108, ''Pallet, Nestable, Plastic, Thermoformed (Item No. 3919B)'' is for thermoformed HDPE pallets. A copy of the current version, USPS–P–1108E, is available from the RCRA Hotline at 1–800–424–9346.

[FR Doc. 97–29733 Filed 11–12–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Thursday
November 13, 1997

# Part V

# Department of Labor

## Mine Safety and Health Administration

**30 CFR Part 47**

**National Mine Health and Safety Academy; Final Rule**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Part 47**

**RIN 1219–AB04**

## National Mine Health and Safety Academy

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the existing MSHA standards for charging tuition and room and board at MSHA's National Mine Health and Safety Academy (Academy) in Beckley, West Virginia. The final rule provides that MSHA may waive tuition fees and room and board charges for the training or meetings of students and non-profit organizations, after the Agency determines that the program would improve the implementation of a statutory function or an activity under the Federal Mine Safety and Health Act of 1977 (Mine Act) or a function related to an MSHA appropriation.

**EFFECTIVE DATE:** November 28, 1997.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director; MSHA, Office of Standards, Regulations, and Variances; phone 703–235–1910.

**SUPPLEMENTARY INFORMATION:**

### I. Paperwork Reduction Act

This final rule contains no information collection requirements.

### II. Introduction and Rulemaking Background

Under § 502(c)(1) of the Mine Act, the Academy is responsible for training programs for mine inspectors, mining personnel, or other persons as designated by the Secretary of Labor.

On March 22, 1985, MSHA published a final rule (50 FR 11642) in part 47 of title 30 of the Code of Federal Regulations. Part 47 contains the Agency's regulations on tuition fees, procedures for tuition payment and refunds, and charges for room and board. The rule was promulgated pursuant to OMB Circular A–25, which provides that government agencies are to recover all expenses for federally provided services which convey special benefits to recipients beyond those accruing to the general public.

Existing § 47.10 provides that the Academy will charge tuition fees to all persons attending Academy courses except employees of Federal, State, or local governments and persons attending the Academy under an MSHA State grant program. The authority to waive tuition fees was based, in part, upon § 302 of the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4742), which generally permits Federal agencies to admit State and local government employees to Agency training programs established for Federal personnel and to waive the costs of training.

Existing § 47.50 states that the Academy will charge room and board to all persons staying at the Academy except MSHA personnel, other persons performing a direct service for MSHA, and persons attending the Academy under a program supported through an MSHA State grant. Under existing § 47.50, MSHA has discretion, although very limited, to waive expenses for room and board for private persons, provided that they are performing a direct service for MSHA. For example, this provision may be applied when persons actively participate in the presentation of an Agency-sponsored event.

The general prohibition on waiving the collection of room and board expenses was derived from 31 U.S.C. 551 (now 31 U.S.C. 1345) which prohibits the use of appropriated funds for transportation and room and board for non-governmental personnel. The narrow discretion to waive the collection of room and board expenses for private persons performing a direct service for MSHA was derived from 5 U.S.C. 5703 which authorizes per diem, travel, and transportation expenses for non-governmental personnel, such as experts, consultants, and persons serving without pay.

Since promulgation of the current regulation, the Department of Labor has received permanent Congressional authorization to use appropriated funds for expenses for non-governmental attendees at meetings, including training seminars. Section 505 of Pub. L. 102–394, 106 Stat. 1792 (Oct. 6, 1992), the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act for fiscal year 1993 provides permanent authority to use specified appropriations for:

> * * * [the] expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of those functions or activities.

MSHA believes that this authority can be used effectively to advance safety and health protection for the Nation's miners by fostering the professional expertise and participation of non-profit organizations and students who can assist the Agency in the implementation of its statutory functions related to activities such as inspections, investigations, compliance promotions, accident prevention initiatives, and training development programs.

On occasion, under appropriate statutory authority, MSHA authorizes, on a reimbursable basis, use of the Academy for programs unrelated to the Agency's mission. This practice is unchanged by the final rule.

### III. Discussion and Summary of the Final Rule

The final rule amends existing §§ 47.10 and 47.50, regarding tuition fees and room and board charges at the Academy by adding a new provision allowing MSHA discretion to waive such fees and charges for students, or persons employed by non-profit organizations to attend training or meetings. MSHA may waive such fees only when training or a meeting at the Academy would contribute to an improvement in the conduct, supervision, or management of a Mine Act function or activity or a function related to an MSHA appropriation. The training or meeting would have to be MSHA-sponsored, and the qualifying non-governmental personnel would have to be invited by MSHA to participate in the training or meeting. Requests for waivers must be in writing.

The objective of this rule is to further MSHA's mission of preventing accidents and illnesses among miners through education. The waiver of fees and room and board charges will be dependent upon the availability of MSHA resources. In implementing this rule, MSHA may waive fees and charges after determining that the content of the training or meeting furthers the Agency's mission or a function related to an MSHA appropriation. MSHA will not waive fees and room and board charges for any program unrelated to the Agency's mission.

MSHA reserves the authority not to grant a waiver of fees, in whole or in part, although the training or meeting may directly further the Agency's mission and the person is invited by MSHA. The Agency intends to administer the rule in a fair and equitable manner in order to expand safety and health educational opportunities for the mining public. Training for MSHA personnel will be given first priority.

### IV. Exemption From Notice and Comment

This final rule amends a general statement of Agency practice and relates

to Agency management. Publication of a general notice of proposed rulemaking, therefore, is not required by the Administrative Procedure Act, 5 U.S.C. 553.

## V. Executive Order 12866, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act (SBREFA)

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of final regulations. It has been determined that this final rule is a significant regulatory action. MSHA has determined that this final rule will further the Agency's mission of preventing accidents and illnesses among miners through education at an annual cost of approximately $60,000.

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's impact on small entities. Under the SBREFA amendments to the RFA, MSHA must consult with the Small Business Administration (SBA) concerning any rule for which a regulatory flexibility analysis is required. This is not a major rule under SBREFA. This final rule imposes no costs on the public. A regulatory flexibility analysis, therefore, is not required. In the spirit of SBREFA, however, the Agency has provided a copy of this final rule and regulatory flexibility certification statement to the SBA Office of Advocacy. In addition, MSHA will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to all mine operators and miners' representatives.

*Regulatory Flexibility Certification Statement*

In accordance with § 605 of the RFA, MSHA certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

*Factual Basis for Certification*

The Agency has used a qualitative approach in concluding that the final rule does not have a significant impact on a substantial number of small entities. MSHA estimated that the final rule would result in an annual net benefit to the public and that the only effect of the final rule will be to reduce costs to the public. Therefore, there is no need for a regulatory flexibility analysis.

## VI. Unfunded Mandates Reform Act of 1995

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this final rule does not significantly or uniquely affect small governments.

## List of Subjects in 30 CFR Part 47

Education, Intergovernmental relations, Mine safety and health.

Dated: November 6, 1997.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

Accordingly, part 47, chapter I, subchapter H, of title 30 of the Code of Federal Regulations is amended as follows:

## PART 47—[AMENDED]

1. The authority citation for part 47 continues to read as follows:

**Authority:** 30 U.S.C. 957.

2. Section 47.10 is revised to read as follows:

### § 47.10 Tuition fees.

The National Mine Health and Safety Academy, located in Beckley, West Virginia, will charge tuition fees to all persons attending Academy courses, except employees of Federal, State, or local governments, persons attending the Academy under a program supported through an MSHA State grant, and persons performing a direct service. Also, subject to available resources, MSHA may waive all or part of fees for students, or persons employed by a non-profit organization, who are invited by MSHA to attend an Academy course which would, in the Agency's judgment, contribute to improved conduct, supervision, or management of a function or activity under the Federal Mine Safety and Health Act of 1977 or a function related to an MSHA appropriation. Requests for waivers must be in writing.

3. Section 47.50 is revised to read as follows:

### § 47.50 Charges for room and board.

The Academy will charge room and board to all persons staying at the Academy, except MSHA personnel, persons attending the Academy under a program supported through an MSHA State grant, and persons performing a direct service. Also, subject to available resources, MSHA may waive all or part of fees for students, or persons employed by a non-profit organization, who are invited by MSHA to attend an MSHA-sponsored training or meeting which would, in the Agency's judgment, contribute to improved conduct, supervision, or management of a function or activity under the Federal Mine Safety and Health Act of 1977 or a function related to an MSHA appropriation. Requests for waivers must be in writing. Charges for room and board will be based upon the average cost per person of the lodging, meals, and services provided and will be reassessed on an annual basis.

[FR Doc. 97–29900 Filed 11–12–97; 8:45 am]

BILLING CODE 4510–43–P

federal register

Thursday
November 13, 1997

## Part VI

# Department of Education

**Notice Inviting Application for Designation as an Eligible Institution for Fiscal Year 1998 for the Strengthening Institutions Program; Notice**

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.031A, CFDA No. 84.031G]**

## Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1998 for the Strengthening Institutions Program

### Purpose

The Secretary announces closing dates for applications from institutions that wish to be designated as an eligible institution under the Strengthening Institutions Program authorized under Title III, part A of the Higher Education Act of 1965, as amended (HEA). If an institution qualifies as an eligible institution under that program, it is eligible to receive program funds if it submits a successful grant application. It is also eligible to have certain of its matching requirements waived under the Federal Supplemental Educational Grant (FSEOG) and Federal Work Study (FWS) Programs. Moreover, the institution is eligible for a waiver even if it does not apply for a grant under the Strengthening Institutions Program. (The FSEOG and FWS programs are student financial assistance programs authorized under Title IV of the HEA.)

The Department will hold a Fiscal Year 1998 funding competition for new awards under the Strengthening Institutions Program and will publish a closing date notice in a future **Federal Register**. (There will be no competition for new awards under the Hispanic-Serving Institutions and Endowment Challenge Grant Programs because no funds were appropriated for those awards.)

An institution that wishes to be designated as an eligible institution under the Strengthening Institutions Program for any purpose must submit its application to the Department by February 2, 1998.

If an institution submits its application by December 29, 1997, the Department will notify the applicant of its eligibility status by February 2, 1998. If an applicant believes it failed to be designated as an eligible institution because of errors in its application or insufficient information in its waiver request, it may submit an amended application to the Department no later than March 20, 1998.

If an applicant submits its initial application after December 29, 1997, but on or before February 2, 1998, the Department does not guarantee that it will be able to review the application and notify the applicant in time for the applicant to submit an amended application by March 20, 1998, the deadline date for amended applications.

An applicant will not be designated as an eligible institution if the applicant misses the February 2, 1998 deadline for initial applications or the March 20,1998 deadline for amended applications. The Department strongly recommends that applicants apply by December 29,1997 to take advantage of the opportunity to amend unapproved applications.

### Deadline for Transmittal of Applications

December 29, 1997 for early applications, February 2, 1998 for all initial applications, and March 20, 1998 for amended applications. These deadlines apply to institutions of higher education that anticipate competing for new awards under the Strengthening Institutions Program, and for institutions that plan to obtain a waiver of certain non-Federal share requirements under the FSEOG and FWS Programs.

### Applications Available

November 20, 1997.

### Eligibility Information

To qualify as an eligible institution an applicant must (1) be accredited or preaccredited by a nationally recognized accrediting agency; (2) be legally authorized by the State in which it is located to be a junior or community college or to provide a bachelor's degree program; and (3) have a high enrollment of needy students. In addition, its educational and general (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements are found in the Strengthening Institutions Program regulations, 34 CFR 607.2–607.5.

### Enrollment of Needy Students

Under 34 CFR § 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction. To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 1995–96 must be more than the median for its category of comparable institutions provided in the table in this notice.

### Educational and General Expenditures per Full-Time Equivalent Student

An institution should compare its average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table in this notice. If the institution's average E&G expenditure for the 1995–1996 base year is less than the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages and the average E&G expenditures per FTE student for the 1995–96 base year for the four categories of comparable institutions:

| | Median Federal Pell Grant percentage | Average E&G expenditure per FTE student |
|---|---|---|
| 2-year Public Institutions | 30.16 | $7,114 |
| 2-year Non-Profit Private Institutions ..... | 31.57 | 11,704 |
| 4-year Public Institutions | 28.00 | 16,594 |
| 4-year Non-Profit Private Institutions ..... | 28.53 | 22,479 |

### Waiver Information

Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 607.3(b) and 607.4(c) and (d). *Institutions requesting a waiver of the needy student requirement must include the detailed information as set forth in the instructions for completing the application.*

The waiver authority provided in 34 CFR 607.3(b)(2) and (3), refers to ''low-income'' students and families. The regulations define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level in 1995–97 base year as established by the U.S. Bureau of the

Census, 34 CFR 607.3(c). For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

1995–96 BASE YEAR LOW-INCOME LEVELS

| Size of family unit | Contiguous 48 States, the District of Columbia, and outlying jurisdictions | Alaska | Hawaii |
|---|---|---|---|
| 1 | $11,205 | $14,010 | $12,915 |
| 2 | 15,045 | 18,810 | 17,325 |
| 3 | 18,885 | 23,610 | 21,735 |
| 4 | 22,725 | 28,410 | 26,145 |
| 5 | 26,565 | 33,210 | 30,555 |
| 6 | 30,405 | 38,010 | 34,965 |
| 7 | 34,245 | 42,810 | 39,375 |
| 8 | 38,085 | 47,610 | 43,710 |

For family units with more than eight members, add the following amount for each additional family member: $3,840 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $4,800 for Alaska; and $4,410 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on February 9, 1995 (Volume 60, Number 27, pages 7772–7774).

In reference to the waiver option specified in § 607.3(b)(4) of the regulations, information about ''metropolitan statistical areas'' may be obtained by requesting the *Metropolitan Statistical Areas, 1993*, order number PB 93–192664, from the National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. There is a charge for this publication.

## Applicable Regulations

Regulations applicable to the eligibility process include the Strengthening Institutions Program Regulations in 34 CFR part 607, and the Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 82, 85, and 86.

## For Applications or Information Contact

Blanca Westgate or Jane Wrenn, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 600 Independence Avenue, S.W., (Portals CY–80) Washington, D.C. 20202–5335. Telephone: (202) 708–8866, 708–9926 and 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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**Program Authority:** 20 U.S.C. 1057, 1059c and 1065a.

Dated: November 5, 1997.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 97–29796 Filed 11–12–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
November 13, 1997

# Part VII

# The President

## Notice of November 12, 1997—Continuation of Emergency Regarding Weapons of Mass Destruction

**Federal Register**
Vol. 62, No. 219
Thursday, November 13, 1997

# Presidential Documents

**Title 3—**

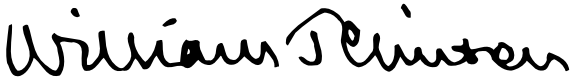
## The President

**Notice of November 12, 1997**

## Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (''weapons of mass destruction'') and the means of delivering such weapons. Because the proliferation of weapons of mass destruction and the means of delivering them continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on November 14, 1994, and extended on November 14, 1995 and November 14, 1996, must continue in effect beyond November 14, 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 declared in Executive Order 12938.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
*November 12, 1997.*

[FR Doc. 97–30110
Filed 11–12–97; 11:40 am]
Billing code 3195–01–P

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**Federal Register**

Vol. 62, No. 219

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